

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995
SUBMISSION

A. Justification

- 1. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.***

The Sarbanes-Oxley Act (SOA), enacted on July 30, 2002, amended the Employee Retirement Income Security Act (ERISA) to add, in subsection 101(i), the requirement that plan administrators of individual account pension plans (e.g., a profit sharing plan, 401(k) type plan or money purchase pension plan) must provide at least 30 days advance written notice to affected participants and beneficiaries in advance of any “blackout period” during which their existing rights to direct or diversify their investments under the plan, or obtain a loan or distribution from the plan will be temporarily suspended. The term “blackout period” is generally defined as any period of more than three consecutive business days during which time the ability of plan participants and beneficiaries to direct or diversify investments or to obtain loans or distributions is suspended, limited or restricted. Under 306(b)(2) of SOA, the Secretary of Labor was directed to issue interim final rules necessary to implement the SOA amendments. The Department’s regulation for this purpose is codified at 29 CFR 2520.101-3. The specific information collection provisions of the regulation are found in paragraphs (a), (b)(1), (b)(2)(i), (b)(2)(ii)(A) and (B), (b)(2)(iv), (b)(4), and (c)(1).

- 2. *Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the collection.***

The blackout notice requirement is intended to provide participants and beneficiaries with advance warning about any impending “blackout” period in which their ability to redirect/diversify the way in which their account balances are invested or obtain loans or a distribution from the plan will be temporarily suspended. These notices also inform participants about the rights that are to be suspended. The Department believes it is important for plan participants to have this information so that they may make informed decisions on how to manage their investments and protect their rights under the plan. The regulation does not require plan sponsors or their representatives to inform the Department about blackouts, and, as a result, the information collection is only a third-party disclosure requirement.

- 3. *Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration for using information technology to reduce burden.***

The information collection is a third-party disclosure, and respondents may use electronic methods of communication pursuant to the standards established in the Department's regulation at 29 CFR 2520.104b-1 concerning plans' use of electronic communication media to satisfy ERISA disclosure requirements. The regulation provides that plan sponsors may distribute notices to employees who have access to e-mail at the place of business (note that access does not include a kiosk-based system). In addition, notices may be distributed electronically to employees or their family members who are beneficiaries if they have electronic access at their homes and give prior approval for this type of distribution. The Department generally encourages affected entities to distribute required notices electronically whenever possible, provided that these regulatory standards are met. For the purposes of paperwork burden analysis, the Agency has developed a set of assumptions concerning the use of electronic technology generally for distribution of information to participants and beneficiaries. Based on these regulations, the Agency has assumed in this analysis that 38 percent of the required disclosures will be made electronically.¹

- 4. *Describe efforts to identify duplication. Show specifically why similar information already available cannot be used or modified for use for the purposes described in Item 2 above.***

This information is not available to individual account plan participants and beneficiaries from any other source.

- 5. *If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.***

The statutory provision applies equally to small and large businesses and plans, and the Department did fashion any special treatment for such small entities because participants and beneficiaries in small plans have the same need for the disclosure as do those in large plans, and the information collection is required only when a blackout period is imposed, which is generally under the control of the plan administrator.

- 6. *Describe the consequence to federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.***

The plan administrator controls the frequency of this information collection because the notice requirement applies only when a plan administrator decides to implement a blackout period. This Department is required by statute to implement this information collection. Failure to do so would be in contravention of a stated statutory requirement. The notice requirement ensures that individual plan participants and beneficiaries are aware of significant impending events that could

¹ This assumption is based on Employee Benefits Security Administration tabulations of the August 2001 Current Population Survey, computer use module.

affect their pension benefits and restrict their rights under the plan. Failure to conduct this information collection activity would undermine this important policy objective.

7. ***Explain any special circumstances that would cause an information collection to be conducted in a manner:***
- ***Requiring respondents to report information to the agency more often than quarterly;***
 - ***Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;***
 - ***Requiring respondents to submit more than an original and two copies of any document;***
 - ***Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;***
 - ***In connection with a statistical survey, that is not designed to produce valid and reliable result that can be generalized to the universe of study;***
 - ***Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;***
 - ***That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or***
 - ***Requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.***

None.

8. ***If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.***

The Department's Federal Register Notice soliciting comments on the extension of the information collection, as required by 5 CFR 1320.8(d), was published in the Federal Register on December 7, 2011 (76 FR 76439). The public was provided with 60 days to comment on the submission, and no public comments were received.

9. ***Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.***

Not applicable.

10. **Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

Not applicable.

11. **Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to person from whom the information is requested, and any steps to be taken to obtain their consent.**

Not applicable.

12. **Provide estimates of the hour burden of the collection of information. The statement should:**
- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of difference in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
 - **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
 - **Provide estimates of annualized cost to respondents for the hour burdens for collection of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.**

Estimates of the number of plans and participants and beneficiaries used in this burden analysis are based on Department of Labor tabulations of the 2009 Form 5500 data. The Department estimates that there will be 660,000 affected defined contribution plans with 87.4 million affected participants and beneficiaries.

The blackout notice requirement applies in any case in which the plan will suspend a participant's or beneficiary's right to direct investments, diversify assets, obtain a plan loan, or request a distribution. Because all individual account plans must provide for the opportunity to request a distribution, for purposes of this analysis, the Department has assumed that all individual account plans will be required to comply with the blackout notice regulation. The total number of individual account plans has been adjusted to reflect the fact that only a subset of all plans will impose a blackout period in any given year. Based on the best available evidence, the Department has estimated that approximately seven percent of all individual account plans will impose a blackout period during any one year.² Assuming an even distribution of such blackout periods across plan size, the Department estimates that about 46,200 plans (660,000 * 7%) and 6.1

² Estimates of the number of blackouts were obtained from the Society of Professional Administrators and Recordkeepers, January 2006.

million participants (87.4 million * 7%) will be affected annually by the blackout notice regulation.

The final rule includes a model notice at paragraph (e) that is designed to facilitate compliance and lessen the burden otherwise required for notice preparation. The estimated burden hours include one half hour for the plan administrator to edit the model notice by adding plan-specific information. Preparation of the notice therefore accounts for 23,100 hours (46,200 plans * .50 hours per plan). (An additional preparation burden is accounted for as a cost in Item 13.)

The Department also assumes that plans instituting a blackout period will have the required notice reviewed by a member of its in-house legal staff. The Department has allotted one hour for this review. This results in an hour burden estimate of 46,200 hours (46,200 plans * 1 hour per plan).

The Department also expects that there will be an hourly burden arising from the distribution of the notices to participants of affected plans. The Department estimates that 3.8 million notices (62% of 6.1 million notices) will be distributed by mail and the remaining 2.3 million notices will be distributed electronically (38% of 6.1 million notices). Distribution of the notices to participants by mail is expected to require two minutes per notice for copying and mailing, for a total of 126,500 hours (6.1 million notices * 2/60 hours per notice * 62% received by mail). The direct costs of paper notice distribution are accounted for in Item 13.

Although preparation time for each blackout notice prepared by a plan is accounted for regardless of the distribution method, no additional time has been estimated for distribution of electronic notices because it is assumed that notices are drafted in electronic form, plan administrators use existing infrastructure to communicate electronically, and the cost/time required for electronic transmission is negligible.

The equivalent cost for the burden hours attributed to preparation of the notice itself is estimated at \$1.5 million. This is based on an hourly labor rate of \$66 for a financial professional multiplied by one-half hour (estimated time required) and then multiplied by the number of plans instituting a blackout (\$1.5 million = \$66 per hour * ½ hour * 46,200 plans). Equivalent cost for burden hours attributed to the review of the notice by legal staff is estimated at \$5.8 million. The hourly labor rates for in-house legal staff is estimated at \$125, and the review is expected to require one hour for each of the plans that prepare a notice (\$5.8 million = \$125 per hour * 1 hour * 46,200 plans). Finally, the equivalent cost for the burden hours attributed to distribution of the notices is \$3.6 million. Mailing each notice is expected to require 2 minutes to prepare the notice for mailing with a labor cost for clerical staff of about \$28 per hour and there are 3.8 million notices requiring mailing (\$3.6 million = \$28 per hour * 2/60 hours * 3.8 million notices).

Based on the above assumptions and calculations, the Department estimates that the total annual hourly burden arising from this Notice requirement is 195,800 hours (23,100 + 46,200 + 126,500), and the equivalent cost of these burden hours is estimated at \$10.9 million (\$1.5 million for preparing the notice + \$5.8 million for reviewing the notice + \$3.6 million for preparing the notices for mailing).³ Any discrepancies in the calculations above are a result of rounding.

No burden is estimated to be associated with paragraph (c) because it is assumed that the notice used for this provision is the same notice that has already been prepared and made available for distribution to participants.

- 13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 or 14).**

Annual cost burden for this information collection arises from materials and postage for distribution of the blackout notices. The annual cost to respondents for distribution of the notices is expected to be \$1.9 million. This cost comprises postage and materials cost for the notices provided in paper form, at \$0.50⁴ per notice for 3.8 million notices. It is assumed that electronic distribution of the remaining notices imposes no direct additional cost on plans.

- 14. Provide estimates of annualized cost to the federal government. Also, provide an description of the method used to estimate cost, which should include quantification of hours, operations expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items, 12, 13, and 14 in a single table.**

Because the SOA does not require any entity to file notices with the Department, there are no direct costs involved for the Department.

- 15. Explain any reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

The Department has revised its estimate, as compared to the 2009 submission, to reflect the current number of defined contribution plans, and the current number of defined contribution plan participants and beneficiaries. The resulting paperwork burden estimate presents a more accurate, current picture of the impact of this information collection.

³ The Department estimates 2012 hourly labor rates include wages, other benefits, and overhead based on data from the National Occupational Employment Survey (June 2011, Bureau of Labor Statistics) and the Employment Cost Index (September 2011, Bureau of Labor Statistics); the 2010 estimated labor rates are then inflated to 2012 labor rates.

⁴ Consisting of \$0.45 per notice for postage and an additional \$.05 per notice for materials (paper, ink, amortization of equipment).

16. *For collection of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.*

Not applicable.

17. *If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*

The OMB control number and expiration date will be published in the Federal Register following OMB approval.

18. *Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.*

None.

B. Collection of Information Employing Statistical Methods- Not applicable.