

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSIONS

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.**

Section 104(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA) generally requires employee benefit plan administrators annually to furnish a Summary Annual Report (the SAR) to each plan participant and to certain beneficiaries. The SAR must fairly summarize the information included in the plan's most recent annual report filed with the Department of Labor (the Department). Section 503(c)(1) of the Pension Protection Act of 2006 (Pub. L. No. 109-280) amended ERISA section 104(b)(3) to exempt defined benefit pension plans that are required to provide annual funding notices to participants and beneficiaries under ERISA section 101(f) from the SAR requirement.

The Department's regulation under section ERISA section 104(b)(3), codified at 29 C.F.R. § 2520.104b-10, prescribes the timing and format of the SAR. Plan administrators must furnish a copy of the SAR to each participant and to each beneficiary who is receiving benefits under the plan (other than welfare plan beneficiaries) within 9 months after the close of the plan year.

To ease the administrative burdens of preparing the SAR, the regulation provides model formats, one for pension plans and one for welfare plans. The model formats were designed to allow information from specific line items on the plan's annual report (Form 5500) to be transferred directly to the SAR. A guide that correlates the SAR items to the annual report line items is included in an appendix to the regulation. Also, the regulation and the model formats require plans to state that specified additional information, such as the full annual report and a statement of the plan's assets and liabilities, will be provided to participants and beneficiaries upon request.

A separate regulation, codified at 29 C.F.R. § 2520.104(b)-1(b), specifies the standards for distribution of the SAR. Examples of permissible delivery methods provided in the regulation include in-hand delivery, mail, or inclusion of the SAR as a special insert in a periodical distributed to all employees, such as a union newspaper or company publication. As further discussed in the answer to question 3, below, the regulation at 29 C.F.R. § 2520.104(b)-1(c) allows plan administrators to distribute SARs electronically if certain requirements are met.

- 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 current collection.**

The SAR provides plan a timely and accurate description of their plan's financial condition. The participants and beneficiaries who receive the SAR can determine, based on the information it contains, whether they have concerns with the operation of the plan and whether to exercise their rights under ERISA, for example, by contacting the Department when problems with the plan are identified. Concerned calls from participants and beneficiaries are a critical component of the Department's compliance assistance and enforcement efforts.

- 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 Department's regulation codified at 29 C.F.R. § 2520.104(b)-1(c) allows plan administrators to use electronic media to make disclosures required under Title I of ERISA, including the information collection requirements of this ICR, provided certain conditions are met. These conditions generally are designed to ensure that participants and beneficiaries are actually able to receive the required disclosures from plan administrators, and that plan administrators take measures to verify that the electronic system results in actual receipt of the disclosures.

In estimating the burden of this ICR, the Department has assumed, as further discussed below, that 38 percent of plans will provide the SAR by electronic means. The Department has assumed that this percentage will increase over time.

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

The SAR contains selected information from the more comprehensive financial data required to be included in the plan's most recent annual report, which is filed with the Department using the Form 5500 Series (forms and schedules jointly developed by the Department, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation). The plan is not required to send the entire annual report to participants and beneficiaries, although these individuals can request a copy of the annual report under ERISA section 104(b)(4). The SAR summarizes, rather than duplicates, the annual report information and provides the summary information in a simpler format.

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.*

For purposes of this information collection (and more generally for purposes of economic analysis under ERISA), the Department considers “small entities” to be employee benefit plans with fewer than 100 participants (i.e., “small plans”). In fashioning reporting and disclosure regulations, including the SAR regulation, the Department has modified the statutory requirements to reduce burden on small plans. Although most large and small plans are required to furnish SARs, certain small unfunded welfare benefit plans are exempted from the SAR requirement pursuant to the Department’s regulation codified at 29 C.F.R. § 2520.104-20 if certain conditions are satisfied. Small plans that must file annual reports normally are required to enter fewer data elements and therefore their SARs are simpler. In 2009 there were approximately 746,000 plans that were subject to the SAR requirements.¹ Of these, approximately 596,000 were small plans.

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.*

This information collection is a third-party disclosure, and there is no requirement to provide the SAR to the Federal government. Failure to impose the information collection requirement would mean that participants and beneficiaries would not receive important financial information about their plans in a format designed to be understandable for them, and they would be less likely to be aware of the plan’s financial condition and to be able to effectively protect their benefits and exercise their rights under their plans and ERISA. Furthermore, the Department’s compliance assistance and enforcement efforts would likely be adversely affected because the Department would receive fewer calls from participants and beneficiaries about potential problems with their plans. These participant and beneficiary contacts are a critical component of the Department’s compliance assistance and enforcement program.

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 results 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;*

¹ All numbers in this burden analysis, apart from per-unit costs, have been rounded to the nearest thousand.

- *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 C.F.R. § 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, as required by 5 C.F.R. § 1320.8(d), soliciting comments on this information collection was published on April 5, 2012 (77 FR 20650). No comments were received

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

No payments or gifts are provided to respondents.

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

None.

- 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 persons from whom the information is requested, and any steps to be taken to obtain their consent.***

None.

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 differences 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 collections 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. Instead, this cost should be included in Item 14.**

The information collection provisions of this regulation consist of three separate requirements: (1) preparing the SAR; (2) distributing the SAR to the specified participants and beneficiaries; and (3) responding to requests from participants and beneficiaries for any of the additional information specified in the regulation.

In estimating paperwork burden for this regulation, the Department estimated the time that would be required to comply with its information collection requirements, assuming that all disclosures will be prepared and distributed in-house by the plans. Because most of the information that must be included in the SAR is derived directly from the Form 5500 annual report, the plans' professional and clerical staffs need only transfer the pertinent information from the Form 5500 to the model format and revise the model as needed to suit the plan's particular provisions. Additional time is required to reproduce and distribute the SAR to each participant and/or beneficiary.

Although the Department believes that a number of plans will hire service providers to comply with these information collection requirements, the Department has decided, for purposes of this burden estimate, to assume that all affected plans will use their own resources to do so. The burden of preparation of the notices, therefore, is reported solely as an hour burden.²

² This method has been chosen for several reasons. First, the Department does not presently have a reliable source of information to estimate how many plans would hire service providers for this purpose. Second, the Department does not have adequate information on which to base an estimate of the cost to plans of purchasing these services, particularly since the Department has reason to believe that the pricing of such services will be based on competitive factors and bundled with other related services. Finally, the Department believes that this method will provide a more accurate estimate of the paperwork burden by relying solely on the Department's estimate of the time necessary to create and distribute the disclosures and eliminating the artificial and arbitrary distinction between tasks performed by the respondents and tasks performed by a service provider. Translation of the total hour burden into dollars, with appropriate allocation between professional and clerical time, provides a reliable

In order to develop estimates of the paperwork burden of this regulation, the Department first developed an estimate of the number of plans that will have to comply with the information collection requirements. Based on Form 5500 data for the 2009 plan year, which provide the most recent reliable information available, the Department estimates that approximately 746,000 plans³ annually must provide an SAR under the regulation. The Department secondly developed an estimate of the number of participants and beneficiaries to whom the SAR must be provided. Based on 2009 Form 5500 data, the Department estimates that each year a total of 169 million participants and beneficiaries will receive an SAR. The burden for those plans is described as hour burden below.

Preparation. The Department assumes that preparing the SAR will take each plan 30 minutes of professional time. The Department estimates that 746,000 plans (660,000 pension plans and 86,000 welfare benefit plans) will prepare SARs annually. The annual hour burden estimate for preparation of the SAR is therefore 373,000 hours of professional time. The equivalent cost of these hours, at \$124.57 per hour for a professional's time,⁴ would be \$46.5 million for professional work annually to prepare SARs.

Distribution. The Department estimates that 169 million policy holders will receive SARs annually. Based on its expert knowledge and understanding of employee benefit practices, the Department has assumed that 38 percent of these individuals (64.2 million individuals) annually will receive SARs through electronic means in accordance with the Department's standards for electronic communication of required information under 29 C.F.R. § 2520.104b-1(c). The Department believes that plans will use their existing electronic communications systems and e-mail lists for these purposes. The process of preparation and distribution will require each of the 746,000 plans to use an additional two minutes of clerical time per plan to distribute the electronically provided SARs. This will result in an annual burden estimate of 24,867 hours of clerical time at an equivalent cost of \$701,489.

The Department assumes that the remaining 104.8 million participants and beneficiaries (62 percent of 169 million individuals) will annually receive SARs by mail. Reproduction and distribution of each SAR is estimated to take one minute of clerical time. Therefore, the Department estimates an additional annual hour burden for mail distribution of 1.7 million hours. The equivalent cost of these hours, at \$28.21 per hour, is \$49 million.

Providing Information on Request. Plans subject to the SAR requirement must be prepared to provide certain information upon request. The Department has assumed that each plan will need

cost comparison.

³This number includes approximately 660,000 Defined Contribution plans and 86,000 welfare plans.

⁴The 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.

to devote, on average, 15 minutes of clerical time per year to meet such requests. This includes the preparation as well as the distribution of the requested materials. For the estimated 746,000 affected plans, this creates an additional hour burden of 187,000 hours of clerical time, with an equivalent cost, at \$28.21 per hour, of \$5.26 million.

This ICR therefore estimates a total annual hour burden of 2.3 million hours. The equivalent costs of this hour burden would be approximately \$101.5 million.

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)

As explained in the answer to question 12, above, the Department has decided to assume that all affected plans will use their own resources to comply with these information collection requirements. Costs reported in this answer to question 13 relate to costs for material and postage. The Department has estimated the total annual cost burden for this information collection at \$58.3 million, calculated as follows:

Distribution of SAR. We have assumed that each plan's SAR will consist of two pages. As explained in the answer to question 12, above, we have assumed that 104.3 million policy holders will receive notices by mail and 64.2 million policy holders will receive these disclosures electronically. With standard postage costing \$0.45 per notice and reproduction costs of \$0.10 (\$0.05 per page), aggregate annual costs to provide the SAR amount to \$57.4 million.

Information on Request. The regulation requires plans to provide certain information on request. The Department's knowledge and experience indicates that such requests are rare. Therefore, for purposes of this burden analysis, the Department has assumed that each plan will be required to respond to only one request for information per year. The Department assumes that the documentation responding to a request is, on average, 25 pages of material with a postage cost of \$1.25 per request. This information collection results in an estimated additional annual cost burden of \$933,000 (1 x 746,000 plans x \$1.25). The Department assumes no additional cost for material for this information collection because the plan is permitted, under the regulation, to charge the requesting participant or beneficiary for copying costs.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational 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.

The regulation does not require information to be filed with the Federal government. Therefore, there are no ongoing costs to the Federal government.

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

The Department has revised some of the assumptions used to estimate burden hours and costs for this ICR, which results in revised estimates as compared with the 2009 submission. The primary cost increase results from an increase in the number of plans, participants, and policy-holders relative to the 2009 submission.

Additionally, the Department reverted back to its previous methodology for calculating postage costs. Historically, the Department has assumed that all plans pay the standard postage rate. For the 2009 submission, the Department attempted a more sophisticated measure, which included a factor for plans that pay the bulk postage rate; however, this approach is inconsistent with most of the Department's estimates, and there is minimal evidence that the approach resulted in a more accurate measure of the actual costs. Data on plans using the bulk rate is difficult to obtain, so the 2009 methodology really resulted in a shift from a certain minor overstatement of postage costs to a measure with more uncertainty that may have understated costs. Therefore, the Department reverted back to its previous methodology for this submission.

16. For collections 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.

This is not a collection of information for statistical use and there are no plans to publish the results of this collection.

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 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.

Not applicable; no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

Not applicable. The use of statistical methods is not relevant to the collections of information.