

Justification for Emergence Processing Pursuant to 5 CFR 1320.13
MAP-21 Guidance
Control Number 1210-0126

Summary: This ICR is being submitted to the OMB for review and clearance utilizing emergency review procedures in accordance with the Paperwork Reduction Act of 1995 (P.L. 104-13, 44 U.S.C. Chapter 35) and 5 CFR 1320.13. OMB approval has been requested by April 29, 2013. The Department has asked that comments be submitted jointly to EBSA and OMB by April 26, 2013.

Emergency Request and Justification: The MAP-21 revisions were legally mandated by Congress. In order for EBSA to provide guidance on the MAP-21 changes to the annual funding notice requirements, it had to wait for the Department of the Treasury/IRS to issue guidance regarding the MAP-21 rules because pursuant to section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 3002(c) of ERISA, the Secretary of the Treasury has interpretive jurisdiction over how section 40211 of MAP-21 affects the minimum funding rules of section 303 of ERISA and section 430 of the Code. IRS issued this guidance in IRS Notice 2012-61, 2012 I.R.B. 42, and the guidance provided in the FAB builds off the IRS notice. EBSA collaborated extensively with the Pension Benefit Guaranty Corporation and the Department of the Treasury/IRA in preparing the FAB, and their input is reflected therein and generally expects the guidance to well received and non-controversial.

The guidance provided in the FAB is necessary for plan administrators to satisfy the annual funding notice requirements. The first annual funding notices reflecting the MAP-21 revisions for large calendar year plans must be sent out no later than April 30, 2013 (120 days after the close of the 2012 plan year). Therefore, use of the normal PRA clearance procedures is likely to public harm, because the statutory deadline would be missed, and beneficiaries would not have access to information to which they are entitled by law.

Background: On July 6, 2012, President Obama signed the Moving Ahead for Progress in the 21st Century Act (MAP-21).¹ The new law provides funding interest-rate stabilization for single employer defined benefit (DB) plans, effective for plan years beginning on and after January 1, 2012. To counter the current low interest rates that are triggering significantly larger pension contributions for many plan sponsors, MAP-21 sets a floor (or ceiling) for the interest rates that single employer defined benefit plan administrators generally are required to use to calculate contributions. Under the new rules, the generally required interest rates are limited to rates that are within a specified range, or corridor, above or below a 25-year average for the rates.

Section 101(f) of the Employee Retirement Income Security Act of 1974 (ERISA) sets forth the requirements for plan administrators of most single-employer defined benefit plans to furnish annual funding notices to the PBGC, plan participants and beneficiaries, and each labor organization representing such participants or beneficiaries. Section 40211(b)(2)(A) of MAP-21 amended ERISA section 101(f)(2) by adding a new subparagraph (D), which requires single-employer defined benefit plan administrators to disclose additional information in the

¹ Pub. L. 112-141, 126 Stat. 405.

annual funding notice for a plan year beginning after December 31, 2011, and before January 1, 2015, regarding the effect of the MAP-21 segment rate stabilization rules on plan liabilities and the plan sponsor's minimum required contributions to the plan. Section 40211(b)(2)(B) of MAP-21 requires the Department to modify the model annual funding notice required under section 501(c) of the Pension Protection Act of 2006 (PPA),² to prominently include the supplemental information required under new ERISA section 101(f)(2)(D).

The annual funding notice is an OMB approved collection of information under OMB control number 1210-0126. The most recent approval for this control number was issued February 18, 2013. EBSA is planning to issue a Field Assistance Bulletin (FAB), which will provide guidance on the MAP-21 requirements and modify the annual funding notice ICR.

The bulletin will provide that pending further guidance, the Department, as a matter of enforcement policy, will treat a single employer defined benefit plan administrator as satisfying section the MAP-21 requirements if the plan administrator complies with the guidance in the memorandum and otherwise acts in accordance with a good faith, reasonable interpretation of those requirements. An appendix to the FAB will contain a model supplement (the "MAP-21 Supplement") to the single-employer defined benefit plan model annual funding notice. Use of the MAP-21 Supplement is not mandatory; plan administrators may use other forms to satisfy the MAP-21 annual funding notice content requirements. However, the FAB provides that pending further guidance, use of an appropriately completed MAP-21 Supplement when applicable, together with the model annual funding notice, will, as a matter of Department enforcement policy, satisfy the content requirements of section 101(f)(2)(D) of ERISA.

² Pub. L. 109-280, 120 Stat. 780.