

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.*

The term "multiple employer welfare arrangement" (MEWA) is defined in Section 3(40) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, to mean, in pertinent part:

(A) . . . an employee welfare benefit plan, or any other arrangement, (other than an employee welfare benefit arrangement), which is established or maintained for the purpose of offering or providing [welfare plan benefits] to the employees of two or more employers, (including one or more self employed individuals), or their beneficiaries,

Under Section 514(b)(6) of ERISA, an employee welfare benefit plan that is a MEWA is generally subject to state insurance law. However, any such plan or other arrangement that is established or maintained under or pursuant to one or more agreements that the Secretary of Labor (the Secretary) finds to be collectively bargained is not subject to state insurance law.

Rules, codified at 29 CFR 2570.150, set forth an administrative procedure ("procedural rules") for obtaining a determination by the Secretary as to whether a particular MEWA that is an employee welfare benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40) of ERISA. These procedural rules set forth specific criteria in 29 CFR 2510.3-40 that, if met, constitute a finding by the Secretary that a plan is collectively bargained.

To initiate adjudicatory proceedings, an entity is required to file a petition for a determination under Section 3(40) of ERISA with an Administrative Law Judge (ALJ). The petition must identify the parties, describe the basis on which the petition is being filed and the plan in question, provide evidence that the plan satisfies the criteria to be a plan, and include affidavits as to both the competency of the affiant to testify and the facts that allegedly establish the plan as being established under or pursuant to agreements that the Secretary finds to be a collective bargaining agreement.

The procedures provide that administrative hearings are available only when the jurisdiction or law of a state has been asserted against a plan or other arrangement and the entity that is a MEWA contends that it meets the collectively bargained exception.

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.*

This collection of information is used by the Department in connection with proceedings to determine whether a plan or other arrangement is established or maintained pursuant to one or more agreements that which the Secretary finds to be a collective bargaining agreement under Section 3(40) of ERISA.

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 CFR 2520.104b-1(b), requires plan administrators to use measures reasonably calculated to ensure receipt by plan participants and beneficiaries of certain material such as reports, statements, and documents required under Title I of ERISA to be furnished by direct operation of law or an individual request.

The Department's regulation, codified at 29 CFR 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 system results in actual receipt of disclosures.

The Department's regulation, codified at 29 CFR 2520.107-1, allows all pension and welfare plans covered under Title I of ERISA to use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

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.*

A petition for an administrative hearing under the Department's procedures is based on information unique to the set of facts and circumstances that moved the petitioner to request an administrative hearing. Other than routine identifying information, the information collection requirements are not duplicated elsewhere.

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 Department has determined that this information collection will not have a significant impact on small entities.

The purpose of this regulation is to make available to plans an administrative procedure for a hearing before an ALJ (or, for an appeal, before the Secretary or the Secretary's delegate) to resolve a dispute regarding whether a plan is established under or pursuant to a collective bargaining agreement. Generally, plans form arrangements under collective bargaining agreements to gain purchasing and negotiating power through economies of scale. By their very nature, therefore, most entities seeking a determination regarding collective bargaining status are arrangements with a large number of participants, and not small plans, small businesses, or small entities. In addition, because the jurisdiction or law of a state must be asserted against an arrangement before a petition may be filed, only a limited number of arrangements, estimated at fewer than 50, are expected to file a petition, further limiting any effect the regulation might have on small businesses or other small entities. Finally, filing a petition to appear before the ALJ is a voluntary undertaking on the part of a plan.

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.*

An ALJ hearing is available when the jurisdiction or law of a state has been asserted against a plan or other arrangement, which contends that it meets the exception for plans established or maintained under or pursuant to one or more collective bargaining agreements, and the plan or arrangement wishes to contest the state's assertion. Without access to the ALJ hearing process, plans or arrangements would be unable challenge the state's assertion. The hearing process should generally result in clearer guidance for plans and arrangements and improve adherence to applicable requirements.

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;*

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- *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;*
- *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.*

Under the regulation, a respondent could be required to produce more than two copies of a petition and supporting documents. Petitioners are required to file the original petition with the Office of Administrative Law Judges' Chief Docket Clerk and send a copy with attachments to all parties of record. Parties of record must include the Secretary and at least one state which has jurisdiction of law over the petitioner. If more than one state is named as a respondent, the petitioner is required to provide additional copies of the petition and attachments. The Office of the Administrative Law Judges' policy for the preparation and distribution of copies to multiple parties is governed by the Federal Rules of Civil Procedure.

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 published a notice in the Federal Register, as required by 5 CFR 1320.8 (d), on November 27, 2012 (77 FR 70828), soliciting comments on the request for extension of approval of this ICR and providing the public with 60 days for submitting such comments. No 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.*

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.*

For the majority of plans, the documents relevant to a petition for an administrative hearing will have either been generated in the usual course of business or prepared for pre-hearing discussions with the state or other authority that has asserted jurisdiction over the plan, giving rise to the right to a hearing under the Department's procedures. With respect to preparation of the petition itself, the Department believes that a plan or other arrangement seeking an administrative hearing will contract with a third party service provider to prepare the petition and supplementary documentation for the Administrative Law Judge (ALJ). Thus, the bulk of the hour burden is not borne by the plan. However, the Department does believe that there will be some discussion with the third-party service provider concerning the documents. This work is assumed to be done by a financial manager who would be an expert on the details of the plan and the underlying arrangements. The Department assumes that this will involve approximately 5 hours of work for a financial manager at an hourly labor rate of \$117.88.<sup>1</sup> With an estimated 10 petitions per year,<sup>2</sup> this amounts to a 50 hour burden for plans with an equivalent cost of \$5,894.

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).*

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<sup>1</sup> The Department estimates 2013 hourly labor rates include wages, other benefits, and overhead based on data from the National Occupational Employment Survey (June 2012, Bureau of Labor Statistics) and the Employment Cost Index (September 2012, Bureau of Labor Statistics); the 2011 estimated labor rates are then inflated to 2013 labor rates.

<sup>2</sup> The Department has decided to use a conservative estimate of 10 petitions per year. Historically, the number of petitions has been de minimis.

In order to obtain an ALJ hearing, a petitioner is required to file a petition and supporting documents with the Chief Docket Clerk of the Office of Administrative Law Judges. The collection of information includes the initial pleadings required by the court for review at the hearing. Because of the expertise required in drafting the documents, the Department believes the entities will purchase services from a third party service provider, such as an attorney, rather than perform this work in-house.

The Department's estimate of plans that will file petitions under the regulations is decreased from prior submissions and should be considered an upward bound, since both the number of MEWAs and the number of collectively bargained plans has trended downward in recent years.

The Department assumes, for purposes of this ICR, that 10 entities will petition for an administrative hearing under the Department's procedures in a given year and that each plan will require 30 hours of attorney time to prepare the required documents. The cost burden of employing third-party professional assistance to prepare and submit the required petition and supporting information is estimated based on an hourly rate of \$126.07 per hour. An additional two hours of clerical time is expected for filing, organizing and mailing the document at a cost of \$29.14/hour.<sup>3</sup> The mailing costs are estimated at \$5/petition and thus \$50.50 for total mailing costs.<sup>4</sup> The resulting total annual cost burden for this information collection is estimated to be \$38,454.

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.*

This information collection is prepared by a plan or other arrangement for the purpose of petitioning the ALJ to open a case file for a hearing at some future date. There is no cost to the Federal government for the petitioner to file a petition, except for the filing costs, which are estimated at \$60.<sup>5</sup> Additional actions following establishment of a proceeding by the ALJ are

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<sup>3</sup> Utilizing the same sources as those used for the benefits manager numbers in Question 12

<sup>4</sup> This is based on the cost of USPS priority mail.

<sup>5</sup> This estimate is based upon the wage of a GS-6 step 5 Federal Government Secretary in the Washington DC area, which results in a \$20.63/hr hourly wage rate. The Department estimates that the Department uses a 1.2 overhead multiplier for clerical workers. The Bureau of Labor Statistics estimates that wages and salaries comprise 68.6% of total compensation for clerical workers. Thus, the average hourly cost of secretarial work here is estimated to be \$36.09/hour. In order to file and organize these files and distribute them, it is estimated that 10 minutes are required for each petition.

excepted from paperwork analysis and approval requirements under the provisions of 5 CFR 1320.4(a)(2).

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

The estimated number of respondents and rate of response have been adjusted to reflect improved data collection and decreases in the number of applicable entities. The burden estimates have been adjusted to take into account higher wage rates and higher costs of mailing documents.

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.*

The results of the collection of information will not be published.

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 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. Collection of Information Employing Statistical Methods**

Not applicable. The use of statistical methods is not relevant to this collection of information.