

**Furnishing Documents To The Secretary of Labor on Request Under ERISA Section
104(a)(6)
OMB Number 1210-0112
February 2015**

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.*

Prior to the enactment of the Taxpayer Relief Act of 1997 (Pub. L. 105-34, August 5, 1997) (TRA '97), section 104(a) of the Employee Retirement Security Act of 1974 (ERISA) required administrators of employee benefit plans automatically to file the plan's summary plan description (SPD) and any summaries of material modification (SMMs) with the Secretary of the Department of Labor (the Department). TRA '97 eliminated the requirement that these documents be filed automatically with the Department, but added ERISA section 104(a)(6), requiring a plan administrator to furnish documents related to an employee benefit plan to the Department upon request. The requirement that administrators furnish the Department requested plan documents other than SPDs and SMMs was part of section 104(a) prior to enactment of TRA '97; that requirement was moved by TRA '97 to section 104(a)(6) and consolidated with the new furnishing requirement pertaining to SPDs and SMMs. The rule implementing the requirement to furnish SPDs and SMMs on request was finalized on January 7, 2002 (67 FR 777, 784), and has not been amended since that time. See 29 CFR 2520.104a-8.

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 SPD, SMM, and other plan documents covered by the rule provide information to participants and beneficiaries about their rights and benefits under their employee benefit plans. Although Congress, in TRA '97, eliminated the requirement to file the SPD and SMMs automatically with the Department, Congress simultaneously added section 104(a)(6) to ERISA, authorizing the Department to request from an employee benefit plan "any documents relating to the employee benefit plan" that describe how the plan is established or operated. Pursuant to its regulation, the Department requests documents under Section 104(a)(6) when a participant or beneficiary has previously requested the documents directly from the plan administrator and the administrator has failed or refused to provide them. The Department therefore uses the requested information to respond to participants' requests to the Department for documents that the participants were unable to obtain from their plan administrators. Prior to elimination of the filing requirement, the Department was able to satisfy many of these public requests for assistance with plan documents by supplying copies of the SPDs filed with the Department and maintained in the Public Disclosure Room.

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*

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burden.

The collection of this information may be satisfied electronically if the plan maintains the documents electronically and the participants are able to receive the documents electronically. Most plan administrators maintain printed copies of these documents even if they normally distribute them electronically. The Department encourages and accepts electronic furnishing of requested documents and has assumed for purposes of this burden estimation that 38 percent of plan administrators will supply electronic copies of requested documents. The remaining 62 percent of plan administrators are assumed to prefer for their own recordkeeping purposes to continue to supply printed documents to the Department from their existing printed stock. The Department expects to continue to promote the use of information technology as a means of increasing the timeliness of responses and to reduce the cost and time burdens for respondents.

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.*

This request for documents is not duplicated in any other Federal statute or regulation. Employee benefit plans are required by other statutory provisions to disclose certain plan information to participants. Section 104(a)(6) and the related regulation therefore contemplate that respondents will need merely to provide copies of documents that were previously prepared and are available pursuant to other statutory or regulatory requirements. The Department requests documents pursuant to 104(a)(6) and this rule when a participant or beneficiary requests assistance from the Department because he or she has been unable to obtain the document directly from the plan administrator.

5. *If the collection of information impacts small businesses or other small entities describe any methods used to minimize burden.*

Not applicable.

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 Department collects documents related to the establishment or operation of an employee benefit plan in order to provide participants and beneficiaries with plan information that they have requested and to which they are entitled under the disclosure requirements of ERISA. The collection is conducted as frequently as is necessary to provide technical assistance to plan participants and beneficiaries.

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;*

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- *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;*
- *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 Notice of Proposed Extension of Information Collection Request for Furnishing Documents to the Secretary of Labor on Request Under ERISA Section 104(a)(6) was published in the Federal Register on October 15, 2014 (79 FR 61903). 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.

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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 persons 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 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.*
- *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 burden hours attributable to this collection consist of those hours necessary for a plan administrator to assemble existing information when requested by the Department on behalf of an employee benefit plan participant or beneficiary and to forward the information to an address specified in the request. The information generally consists of plan documents such as SPDs or SMMs, which have been prepared previously to comply with other statutory requirements, such as ERISA disclosure provisions. The annual burden of complying with the Department's request is estimated at 41 hours with an equivalent cost of \$1,677.

According to EBSA's Office of Outreach, Education, and Assistance, the Department has recovered an average of 558 SPDs and SMMs under section 104(a)(6) of ERISA over the last three years. Thus, the Department estimates that 558 respondents may be required annually to provide responses for purposes of this ICR.

The Department assumes that 98 percent of the respondents (547 respondents) will

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respond promptly and fully to the Department's request when it is first received, that 38 percent of those 547 respondents (208 respondents) will provide the requested documents electronically, and the remaining 339 timely respondents will mail paper documents. Because such requests pertain only to existing plan documents, the Department estimates that assembling the documents will take two minutes for electronic distribution and five minutes for paper distribution. This results in an hour burden of seven hours for electronic distribution¹ and 28 hours for paper distribution.² Assuming clerical staff prepare the documents at an hourly rate³ of \$30.42,⁴ this will result in \$211 in equivalent cost burden for electronic distribution⁵ and \$859 in equivalent cost burden for paper distribution.⁶

The remaining 2 percent of respondents (11 respondents) who do not respond to a Departmental request in a timely fashion, either intentionally or for reasons beyond their control, will choose instead to supply an explanation and file a penalty waiver request. The Department estimates that it will require 30 minutes of each of these respondents' time to prepare such an explanation and waiver request and assemble it for mailing, creating an annual hourly burden of six hours.⁷ It is assumed that a benefits manager will prepare the documentation at a cost of \$110.30/hour,⁸ thus generating an equivalent cost burden of \$607 on plans that do not respond in a timely fashion.⁹

The total annual hour burden estimated for employee benefit plans is thus approximately 41 hours¹⁰ at an equivalent cost of \$1,677.¹¹

13. *Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information.*

1 208 electronic respondents x 2 minutes/respondent = 7 hours.

2 339 paper respondents x 5 minutes/respondent = 28 hours.

3 The Department's estimated 2015 hourly labor rates include wages, other benefits, and overhead are calculated as follows: mean wage from the 2013 National Occupational Employment Survey (April 2014, Bureau of Labor Statistics <http://www.bls.gov/news.release/pdf/ocwage.pdf>); wages as a percent of total compensation from the Employer Cost for Employee Compensation (June 2014, Bureau of Labor Statistics <http://www.bls.gov/news.release/ecec.t02.htm>); overhead as a multiple of compensation is assumed to be 25 percent of total compensation for paraprofessionals, 20 percent of compensation for clerical, and 35 percent of compensation for professional; annual inflation assumed to be 2.3 percent annual growth of total labor cost since 2013 (Employment Costs Index data for private industry, September 2014 <http://www.bls.gov/news.release/eci.nr0.htm>).

4 Secretaries, Except Legal, Medical, and Executive (43-6014): \$16.35(2013 BLS Wage rate)/0.675(ECEC ratio) *1.2(Overhead Load Factor) *1.023(Inflation rate) ^2(Inflated 2 years from base year) = \$30.42.

5 7 hours x \$30.42/hour = \$211.

6 28 hours x \$30.42/hour = \$859.

7 11 respondents x 30 minutes = 6 hours.

8 Compensation and Benefits Manager (11-3041): \$53.87(2013 BLS Wage rate) /0.69(ECEC ratio) *1.35(Overhead Load Factor) *1.023(Inflation rate) ^2(Inflated 2 years from base year) = \$110.30.

9 6 hours x \$110.30/hour = \$607.

10 7 hours for timely electronic responses + 28 hours for timely paper responses + 6 hours for untimely responses = 41 hours.

11 \$211 for timely electronic responses + \$859 for timely paper responses + \$607 for untimely responses = \$1,677.

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The documents that the Department requests pursuant to this rule have previously been created and maintained by the plan administrator in order to fulfill other statutory provisions, such as ERISA reporting or disclosure requirements. Therefore, there are no start-up costs ascribed to the collection of the information under section 104(a)(6). The only additional cost for providing this information to the Department is the cost for assembling and mailing to the Department the requested plan documents. The Department has assumed that 38 percent of all timely respondents (208 respondents) will file plan documents electronically and that the remaining 350 respondents will choose to provide the requested documents by mail. The Department has not attributed any additional cost burden to electronic transmission of the documents. For the 339 timely mailings, the Department estimates that each package will cost \$7.80.¹² for a total cost of \$2,644.¹³ The respondents who did not respond in a timely fashion are all expected to submit paper documents. These 11 plans are expected to require an additional four pages to file an explanation and penalty waiver (costing \$0.20 more for those plans) for a total cost of \$88.¹⁴

Overall, for the Department's 558 annual requests to plan administrators, the annual cost burden to respondents for distribution is approximately \$2,732.¹⁵

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 annualized cost to the Federal government has been estimated based on the expected number of requests that the Department will make annually for plan documents (558) and the current processes in place to make and handle such requests. It is assumed that the Department will use form letters to make all of its initial requests for plan documents and conduct all interactions by mail.¹⁶ Based on current procedures, the form letters require an average of ten minutes of clerical staff time at GS-6 (step 5) level, whose wage, salary and overhead costs are estimated at \$37.02/hour in Washington, DC.¹⁷ Thus, 558 letters will be sent at a cost of \$0.54 per mailing¹⁸ for a total cost of \$295.¹⁹ The letters will also require \$3,443 in labor costs.²⁰

12 \$5.75 for priority mail postage and \$2.05 to print a 40 page SPD and cover sheet at a cost of \$0.05/page.

13 339 respondents x \$7.80/respondent = \$2,644.

14 11 respondents x (\$7.80/respondent + \$0.20/respondent) = \$88.

15 \$2,644 for timely responses + \$88 for untimely responses = \$2,732.

16 This is a high estimate. Increasingly, analogous interactions are being done electronically.

17 GS-6, Step 5: \$21.04 (2015 Washington, DC wage rate) /0.682(Wages and Salaries ratio) *1.2(Overhead Load Factor) = \$37.02.

18 \$0.49 for a first class stamp + \$0.05 for one sheet of paper = \$0.54 per mailing.

19 558 mailings x \$0.54/mailing = \$295.

20 558 mailings x 10 minutes/mailing x \$37.02/hour = \$3,443.

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For the 11 respondents who do not promptly and fully respond to the Department's initial request, the Department will send additional follow-up correspondence addressing the issue of noncompliance, which will also take 10 minutes of the secretary's time. This amounts to an additional 11 letters which will cost \$6 for material and postage costs²¹ and \$68 in labor costs.²²

The total annual labor and material costs to the Federal government is therefore estimated at \$3,818.²³

15. *Explain the reasons for any program changes or adjustments reporting in Items 13 or 14.*

The estimated number of requested SPDs and SMMs has been adjusted to incorporate updated recovery data from EBSA's Office of Outreach, Education, and Assistance. The 2011 estimate for requested documents was 300, but recoveries for the last three years averaged 558 SPDs and SMMs. The estimates above also reflect updated postage and material costs and wage rates.

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.*

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.*

Not applicable.

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.

²¹ 11 mailings x \$0.54/mailing = \$6.

²² 11 mailings x 10 minutes/mailing x \$37.02/hour = \$68.

²³ \$295 for initial request materials and postage + \$3,443 for initial request labor + \$6 for follow-up materials and postage + \$68 for follow-up labor = \$3,818.