

**Annual Return of One-Participant  
(Owners and Their Spouses) Retirement Plan (Form 5500-EZ)  
OMB Number 1545-0956  
October 2016**

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSIONS

**A. Justification**

13. *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 Employee Retirement Income Security Act of 1974 (ERISA) contains three separate sets of provisions—in Title I (Labor provisions), Title II (Internal Revenue Code provisions), and Title IV (Pension Benefit Guaranty Corporation provisions)—requiring administrators of employee benefit pension and welfare plans (collectively referred to as employee benefit plans) to file returns or reports annually with the federal government.

Title I of ERISA, specifically sections 101(b)(1) and 104(a)(1)(A), requires the administrator of an employee benefit plan to file an annual report containing the information described in section 103 of ERISA with the Department of Labor (DOL). Section 104(a)(2) of ERISA, provides that the Secretary may by regulation prescribe simplified annual reporting for pension plans that cover fewer than 100 participant. Section 109(a) of ERISA, provides that, with certain exceptions, the Secretary may prescribe forms. Sections 104(a)(3) and 110 of ERISA authorize the Secretary to prescribe exemptions and simplified reporting for welfare plans and alternative methods of compliance for pension plans, respectively, if certain findings with respect to such plans can be made by the Secretary. Finally, section 505 of ERISA provides the Secretary with general authority to prescribe such regulations as are “necessary and appropriate” to carry out the provisions of Title I of ERISA.

Provisions in Title II of ERISA require an annual return to be filed on behalf of specified tax-qualified retirement plans with the Internal Revenue Service (IRS). Provisions in Title IV require certain annual reports to be filed for employee benefit plans with the Pension Benefit Guaranty Corporation (PBGC).

Since enactment of ERISA, DOL has cooperated with the IRS and the PBGC to produce the Form 5500 Annual Return/Report, through which the regulated public can satisfy the combined reporting/filing requirements applicable to employee benefit plans. On November 16, 2007, the three agencies adopted revisions to the Form 5500 Annual Return/Report, including the establishment of a new Form 5500-SF (Short Form 5500) for certain small plans, in order to update and streamline the annual reporting process in conjunction with establishing a wholly

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electronic processing system for receipt of the Form 5500 Annual Return/Reports and to conform the forms to the Pension Protection Act of 2006, Pub. L. No. 109-280 (PPA).<sup>1</sup>

Form 5500-EZ is used by one-participant plans and foreign plans that are not subject to the requirements of section 104(a) of the Employee Retirement Income Security Act of 1974 (ERISA) and that do not file Form 5500-SF electronically to satisfy certain annual reporting and filing obligations imposed by the Code. This collection covers these plans that are not required to file electronically through DOL.

14. *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 Form 5500 return/reports are the principal source of information and data available to DOL, the IRS, and the PBGC (the Agencies) concerning the operation of employee benefit plans. For this reason, the Form 5500 constitutes an integral part of the Agencies' enforcement, research, and policy formulation programs. The annual report also provides a means by which the Agencies can effectively and efficiently identify actual and potential violations of ERISA, thereby minimizing the Agencies' investigatory contacts with the vast majority of plans, and enabling the Agencies to make the best use of their limited resources. The annual report also provides a fundamental tool for investigators in reviewing the operations and activities of employee benefit plans and identifying potential violations of the statute and regulations. Furthermore, public disclosure of the annual reports is intended to serve as a deterrent to non-compliance with the statutory duties imposed on plan fiduciaries.

With regard to research and policy formulation, the Form 5500 represents the primary source of data available to federal agencies, Congress, and the private sector for the development and implementation of national pension policy. Form 5500-EZ has been created for those taxpayer with tax compliance requirements, but unable to use the automated system from DOL.

15. *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 IRS currently use an automated processing system, the ERISA Filing Acceptance System 2 or EFAST2, to process the electronic Form 5500-EZ filings. The combined effect of the transition to electronic filing, the implementation of the EFAST2 processing system, and the

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<sup>1</sup> 72 FR 63731.

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revised Form 5500 return/reports has reduced the paperwork burden imposed by the reporting requirements that are the basis for this information collection.

16. *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 Agencies have developed and use a consolidated annual report that allows filers to satisfy the information collection requirements of all three agencies through a single filing, without duplication of effort or information collection. This eliminates the duplicative reporting that would otherwise result from application of the statutory provisions as written. In addition, while certain information concerning assets (including employee benefit plan assets) held by banks, insurance companies and other investment entities may be separately reported to state and Federal regulatory authorities, those reports are not structured to provide meaningful information about those assets specifically attributable to any employee benefit plan, or to employee benefit plan investors as a group distinct from other types of investors. Therefore, there is no similar information gathered or maintained by any state or Federal agency or other source that the Agencies would consider adequate for effectively monitoring the activities of employee benefit plans.

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

For purposes of the Paperwork Reduction Act (PRA) and for other purposes, the Employee Benefit Security Administration (EBSA) defines “small entity” as an employee benefit plan that has fewer than 100 participants. Support for this definition can be found in section 104(a)(2) of ERISA permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for simplified annual reporting and disclosure if the statutory requirements of part 1 of Title I of ERISA would otherwise be inappropriate for welfare plans. Some large employers may have small plans, but in general, most small plans are maintained by small employers.

Pursuant to the authority of section 104(a)(3), DOL has created simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans that cover fewer than 100 participants and satisfy certain other requirements. For example, under these exemptions, and subject to certain other requirements, over 6 million small pension and welfare plans are relieved of the requirement to file an annual return/report and most small plans are not required to engage an independent qualified public accountant (IQPA) to audit their assets for their annual return/reports.

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18. *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.*

ERISA and the Code specifically require the annual filing of reports or returns by employee benefit plans. A less frequent information collection could contravene statutory requirements and would also impair and inhibit the administration and enforcement of the statute by the Agencies.

19. *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;*
  - *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.*

This information collection implicates none of the special circumstances.

20. *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,*

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*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.*

Part 1 of Title I and Title IV of the Employee Retirement Security Act of 1974, as amended (ERISA), and the Internal Revenue Code (Code), require administrators of pension and welfare benefit plans (collectively referred to as employee benefit plans) to file return/reports annually concerning, among other things, the financial condition and operation of plans. These annual reporting requirements are satisfied generally by filing the annual return/report forms (Form 5500 Series) in accordance with its instructions and related regulations.

Internal Revenue Code (IRC) sections 6057 and 6058 require all plans of deferred compensation described in Part I of Subchapter D of the IRC to file annual information returns. IRC section 6039D requires certain fringe benefit plans to file annual information returns. IRC section 6047e requires certain employee stock ownership plans (ESOP) to file annual information returns.

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding Form 5500, 5500-EZ, and schedules.

In response to the Federal Register Notice dated July 27, 2016, we received no comments during the comment period regarding Form 5500-EZ.

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

The Form 5500 Series filings are required by law to be made available for inspection at the Agencies and at the offices of the plan administrators. Accordingly, the Agencies provide no assurance of confidentiality to respondents.

23. *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.*

This information collection poses no questions of a sensitive nature.

24. *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 13.*

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The burden estimate for the paper filed Form 5500-EZ is as follows:

	<b>Number of Responses</b>	<b>Time per Response</b>	<b>Total Hours</b>
<b>Form 5500-EZ</b>	250,000	27.02	7,005,000

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

The methodology used to calculate the total annual cost burden for the Form 5500 Series was developed by DOL and included, in item 12, of the supporting statement to the 2016 OMB submission for the Form 5500 (1545-1610).

Including burden attributed to the Internal Revenue Service and the Pension Benefit Guaranty Corporation, the aggregate tri-agency cost burden for the entire Form 5500 Annual Return/Report is estimated at \$351.3 million annually. IRS estimates of the annualized cost to respondents for the hour burdens of Form 5500 Series and schedules is \$120,611,000.

26. *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 total annual processing cost for all Form 5500 Series filings during the period is estimated to average \$ 13.1 million annually (including oversight), in accordance with the terms of the EFAST2 vendor contracts and reported under OMB approval number 1545-1610. These costs are allocated among the agencies (DOL, PBGC, and IRS) according to the EFAST2 Cost Allocation Model, which was approved by the agencies at the beginning of EFAST2 operations in 2010, and updated most recently in 2015, as the methodology that would be used for identifying agencies' shares of EFAST2 costs. Under the model, the agencies pay for their relative share of the total filing volume. Based on the model, IRS's share of the total cost is approximately \$5.25 million, which includes EFAST2 Production System costs such as EFAST2 Operations (Steady-State, Modifications, and Change Maintenance) and Contract Administration (Technical Oversight, System Transition, and Capital Planning).

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27. *Explain the reasons for any program changes or adjustments reported in Items 12 or 13.*

There is no change to the paperwork burden previously approved by OMB.

We are making this submission to renew the OMB approval.

28. *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 Form 5500-EZ, is not a collection of information for statistical use. Once collected, however, the information is available to the Agencies and the public, and it is used for purposes other than enforcement and disclosure. The Form 5500 dataset on EBSA's website is updated once a month to reflect that most recent filings that are received.

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

OMB previously granted approval for the IRS to omit the expiration date from the Form 5500, because the Form 5500 is a multi-agency form and it is difficult to maintain the expiration dates for three separate agencies. The IRS requests continued approval to omit the expiration date. See attached.

30. *Explain each exception to the certification statement identified in the "Certification for Paperwork Reduction Act Submission."*

The IRS seeks no exceptions to the certification statement.

**Note:** The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.