

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 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 406 of the Employee Retirement Income Security Act¹ (ERISA) contains prohibited transaction rules, which categorically prohibit certain classes of transactions between a plan and a party in interest. Under these rules, parties in interest described in section 3(14) of ERISA, such as plan fiduciaries, sponsoring employers, unions, service providers and affiliates, are prohibited from engaging in certain transactions described in section 406 of ERISA.

Section 406(a)(1)(B) of ERISA prohibits the lending of money or other extensions of credit between a plan and a party in interest. A statutory exemption is provided in ERISA section 408(b)(1), which exempts plan loans made to participants and beneficiaries from the prohibited transaction provisions of sections 406(a), (b)(1), and (b)(2) of ERISA if the loans: (A) are made available to all participants and beneficiaries on a reasonably equivalent basis; (B) are not made available to highly compensated employees, officers, or shareholders in an amount greater than the amount made available to other employees; (C) are made in accordance with specific provisions regarding such loans set forth in the plan; (D) bear a reasonable rate of interest; and (E) are adequately secured.

For purposes of this information collection, section 408(b)(1)(C) of ERISA requires plan loans to be made in accordance with specific provisions set forth in the plan document. The Department's regulation at 29 CFR § 2550.408b-1(d) prescribes eight specific provisions that must be included in the plan documents, including: (1) an explicit authorization for the plan fiduciary responsible for investing plan assets to establish such a loan program; (2) the identity of the person or position authorized to administer the program; (3) a procedure for applying for loans; (4) the basis on which loans will be approved or denied; (5) limitations (if any) on the types and amounts of loans offered; (6) the procedure for determining a reasonable rate of interest; (7) types of collateral that

¹ Parallel prohibited transaction provisions are provided under section 4975(c) of the Internal Revenue Code of 1986 (the Code). Under Reorganization Plan No. 4 of 1978, effective December 31, 1978, (5 U.S.C. App. 214 (2000)), the authority of the Secretary of the Treasury to issue regulations under section 4975 of the Code was transferred, with certain exceptions not here relevant, to the Secretary of Labor, and the Secretary of the Treasury is bound by the interpretations of the Secretary of Labor pursuant to such authority.

may secure a participant loan; and (8) the events constituting default and the steps that will be taken to preserve plan assets in the event of such default.

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 information will be used by plan participants and beneficiaries wishing to obtain plan loans. It also will be used by plan administrators in administering their plans' loan program. The Department of Labor also will use the information in any enforcement proceedings regarding plan loans.

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 at 29 C.F.R. § 2520.104b-1(b) of ERISA provides that, "where certain material, including reports, statements, and documents, is required under Part I of and this part to be furnished either by direct operation of law or an individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries." Section 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b). Section 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

The Government Paperwork Elimination Act (GPEA) requires agencies to allow customers the option to submit information or transact with the government electronically, when practicable. Where feasible, and subject to resource availability and resolution of legal issues, EBSA has implemented the electronic acceptance of information submitted by customers to the federal government.

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 information collection requirements are not duplicated in any other Federal statute or regulation.

Plans that anticipate operating participant loan programs may already have some of the information required by the regulation incorporated in their plan documents, summary plan descriptions, or other related documents. Nevertheless, the regulation requires the information to be set forth in the plan document such that the rights of participants and beneficiaries are fully explained, including the right to impartial treatment, reasonable rates of interest, and the name of the person or position authorized to administer the loan is provided.

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

Only employee benefit plans that wish to offer a loan program are required to comply with the Department's regulation at 29 C.F.R. 2550.408b-1. The information collection includes only basic descriptive information about a loan program and is intended to protect participants and beneficiaries of both large and small plans that wish to take advantage of an employee benefit plan loan program by providing them with sufficient information about the terms under which loans are made and the procedures for applying for a loan. As such, no burden distinction is made concerning the information provided to participants and beneficiaries of small and large 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.*

The information collection requirements of the regulation are mandatory only for employee benefit plans that choose to offer a loan program to participants and beneficiaries. Once the information has been included in the plan document, no modifications are required unless there are changes to the terms of the loan program. As such, the information collection cannot be conducted any less frequently than one time.

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;*
- *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 published a notice in the Federal Register on October 28, 2016 (81 FR 75157), providing the public 60 days to comment on the submission. 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.*

No assurance of confidentiality has been provided.

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 in Item 13.*
- *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.*

Generally, because of the specialized knowledge required, attorneys and professional administrators acting as service providers to plans are most likely to draft amendments that would describe or modify a loan program. Therefore, the burden for the information collection burden is accounted for as a cost burden and explained in Question 13 below.

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).*

To estimate the number of pension plans with participant loan provisions, we identified the number of plans reporting loans to participants on the 2015 Form 5500 Annual Report, the latest date for which data is available. In all, 255,552 plans reported having participant loans. It is assumed that only a very small portion of existing plans are likely to add or substantially change a participant loan program in any one year. Assuming one percent of plans will add or amend a loan program, 2,556 plans will incur costs for the information collection.

Professional plan administrators or attorneys are assumed to use standardized plan language to incorporate information into plan documents, significantly lowering the average time required to prepare plan amendments. The Department estimates that it will take three hours of legal professional time to complete plan amendments. The cost burden for the 2,556 plans assumed to add or modify their loan programs each year, at \$133.50 per hour for three hours of a legal professional's time,² is estimated to total \$1,023,678.

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.*

There is no reporting to the federal government and, consequently, no cost to the federal government.

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

There are no program changes for this submission. The number of respondents and responses has been updated to reflect 2015 Form 5500 filings. The cost burden has been updated to reflect current 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.*

There are no plans to publish the results of this collection of information.

² For a description of the Department's methodology for calculating wage rates, see <http://www.dol.gov/ebsa/pdf/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-august-2016.pdf>.

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 collection of information will display a currently valid OMB control number.

18. *Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission."*

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 this collection of information.