

SUPPORTING STATEMENT
OMB CONTROL NUMBER: 1235-0013

1. Bona Fide Thrift or Savings Plan: Regulations 29 C.F.R. Part 547 contain the requirements for a “bona fide thrift or savings plan” under section 7(e)(3)(b) of the Fair Labor Standards Act (FLSA). See 29 U.S.C. § 207(e)(3)(b); 29 C.F.R. §§ 547.0-.2. To compute the amount of overtime due to an individual, it is necessary to first compute the “regular rate” that the individual earned. See 29 U.S.C. § 207 (a); 29 C.F.R. §§ 778.107-.109. When computing the regular rate, it is not necessary to include any sums paid to or on behalf of an employee pursuant to a bona fide thrift or savings plan, as defined in these regulations. See 29 U.S.C. § 207(e)(3)(b); 29 C.F.R. § 547.0. Employers are required to communicate, or make available to the employees, the terms of the bona fide thrift or savings plan. 29 C.F.R. § 547.1(b).

Bona Fide Profit-Sharing Plan or Trust: Regulations 29 C.F.R. Part 549 contain the requirements for a “bona fide profit-sharing plan or trust” under section 7(e)(3)(b) of the FLSA. See 29 U.S.C. § 207(e)(3)(b); 29 C.F.R. §§ 549.0-.3. To compute the amount of overtime due to an individual, it is necessary to first compute the “regular rate” that the individual earned. See 29 U.S.C. § 207 (a); 29 C.F.R. §§ 778.107-.109. When computing the regular rate, it is not necessary to include any sums paid to or on behalf of an employee pursuant to a bona fide profit-sharing plan or trust as defined in these regulations. See 29 U.S.C. § 207(e)(3)(b); 29 C.F.R. § 549.0. Employers are required to communicate, or make available to the employees, the terms of the bona fide profit-sharing plan or trust. 29 C.F.R. § 549.1(b).

- FLSA section 11(c) requires all employers covered by the FLSA to make, keep, and preserve records of employees and of wages, hours, and other conditions and practices of employment. See 29 U.S.C. § 211(c). An FLSA-covered employer must maintain such records for a specified period of time and make such reports as prescribed by regulations issued by the Secretary of Labor. *Id.*
2. The third-party disclosure requirements covered by this information collection provide transparency to employees about their remuneration. 29 C.F.R. §§ 547.1(b), 549.1(b). Records detailing the specifics of a thrift or savings plan, as well as a profit-sharing plan or trust, provide evidence of an employer’s compliance or non-compliance with the FLSA. Employer maintenance of those records enables Department of Labor (DOL) investigators to determine, upon inspection, whether such employers are in compliance with section 7(e)(3)(b) of the FLSA. Without these records, no determination could be made.
 3. The Department accepts third-party disclosures in electronic format as complying with the requirements of this information collection. The only information employers are required by these regulations to maintain is that information necessary to support the plan’s qualifications as a bona fide thrift or savings plan, profit-sharing plan or trust. Use of improved information technology is at the discretion of the record keeper.

4. The DOL accepts information disclosed and records maintained pursuant to the Employee Retirement Income Security Act, 29 U.S.C. § 2021 *et seq.*, (or any other statutory or regulatory requirement) as satisfying the requirements of this information collection, where there is an overlap in the requirements. *See e.g.*, OMB Control Number 1210-0110. The DOL must maintain the separately stated requirements of this information collection in order to meet the FLSA expectation that the agency clarify what constitutes a “bona-fide” plan or trust under either Part 547 or 549.
5. Small businesses choosing to establish a thrift or savings plan, profit-sharing plan or trust are impacted by this information collection. The DOL estimates that 86 percent of employers subject to this information collection are small businesses. (*See Census, Statistics about Business Size-including Small Business*, Table-2a, U.S. Department of Commerce, Bureau of the Census, <http://www.census.gov/econ/smallbus.html>). In order to fulfill contractual obligations under a chosen plan or trust, prudent management practice dictates that the disclosures and records maintained by a business pursuant to the regulations be kept even if the requirement to do so did not exist; thus, no alternative means exist to reduce this burden, but for the acceptance of information collected pursuant to identical requirements. Moreover, no particular order or form of record is required by the regulations.
6. There is no regular collection of the information required by the regulations. The regulations require only that the terms of the plan be “in writing” and “communicated or made available” to the employees. *See* 29 C.F.R. §§ 547.1(b); 549.1(b). No further information collection is required. If the information were collected less frequently or not at all, a determination regarding FLSA compliance could not be made.
7. There are no special circumstances required in the conduct of these information collections.
8. The DOL published a Notice in the *Federal Register* inviting public comments about these information collections on 05/23/2017. (82 FR 23613). The agency received no comments in response to the Notice.
9. The DOL offers no payments or gifts to respondents in connection with these information collections.
10. The DOL makes no assurances of confidentiality to respondents. As a practical matter, the DOL would only disclose information collected under these requests in accordance with the provisions of the Freedom of Information Act, 5 U.S.C § 552; the Privacy Act, 5 U.S.C. § 552a; and their respective regulations, 29 C.F.R. Parts 70, 71.
11. These information collections ask no sensitive questions.

12. The Department estimates that 3,062,462 private firms provide access to retirement plans. This number is derived by taking total firms (5,825,458) and further defining the group by those firms with fewer than 100 workers (5,718,819) and those with 100 or more workers (106,639). This data is taken from Census data at this link:

<https://www.census.gov/data/tables/2014/econ/susb/2014-susb-annual.html>.

Fifty eight percent of those firms offer a defined contribution plan in the private sector. (See National Compensation Survey: Employee Benefits in Private Industry in the United States, March 2016, DOL, Bureau of Labor Statistics (BLS).

<http://www.bls.gov/ncs/ebs/benefits/2016/ownership/civilian/table02a.pdf>.

$$3,062,462 \times 58\% = 1,776,228$$

Of the estimated 1,776,228 firms with defined contribution plans, 74 percent of defined contribution plan participants had savings and thrift plans in 2015. See, <https://www.bls.gov/opub/ted/2016/74-percent-of-private-industry-workers-participated-in-saving-and-thrift-plans-in-2015.htm>.

$$1,776,228 \times 74\% = 1,314,409 \text{ potential respondents.}$$

The DOL estimates average establishment size to be 5 employees, and the typical worker remains employed for the same employer for seven years (based on an average turnover rate of 15 percent); thus, the average employer makes 0.75 disclosures per year. (1,314,409 x .75). See *Census, Statistics about Business Size-including Small Business*, Table-3, U.S. Department of Commerce, Bureau of the Census, www.census.gov/econ/smallbus.html. 985,807 Annual Responses.

These regulations would typically not impose any third-party disclosure or recordkeeping burdens on employers beyond what would be common under prudent business practices or required under information collections administered by other agencies. A prudent employer establishing a savings or thrift plan, profit-sharing plan or trust would set forth the plan in writing, describe eligibility requirements, a definite formula for saving, and the amount of the employer's contributions, even if not required to do so by regulation.

The annual burden is estimated to equal two seconds (one second for disclosure and one second for recordkeeping) per new employee.

$$985,807 \text{ respondents} \times 2 \text{ seconds}/60 \text{ seconds}/60 \text{ minutes} = \mathbf{548 \text{ hours (rounded)}}.$$

Total annual disclosure and recordkeeping burden hours = 548 hours

Employers from a wide variety of businesses, from small firms or retail stores to large manufacturing plants have employee profit-sharing plans or trusts. Absent specific wage

data regarding such employers, respondent costs are estimated utilizing \$26.25 per hour, which is the seasonally adjusted average hourly rate of production for non-supervisory workers for June 2017. (See *Employment Situation, June 2017*(released July 7, 2017), Table B-3, DOL, BLS, https://www.bls.gov/news.release/archives/empsit_07072017.pdf).

The Department adds 40% to the hourly wage to account for benefit costs. $\$26.25 \times 40\% = \10.50 . $\$26.25 + \$10.50 = \$36.75$.

$\$36.75 \times 548 \text{ hours} = \$20,139$.

DATA Year	Number of Employers	% firms private sector offering defined contribution plan	% Savings and Thrift Plans	Potential Respondent	Responses
2013	2.3 million	55%	54%	698,000	523,500
2016	3.06 million	58%	74%	1,314,409	985,807

- Note that all data categories increased. Employers increased by a third, increase in percentage of firms offering and significant increase in savings and thrift.

- The requirements merely direct employers to maintain in their files a copy of the plan, describing its provisions; therefore, there are no annual cost burdens to record keepers.

In the extremely rare situation (*i.e.*, three occurrences since 1970) where an employer must post a notice as required by 29 C.F.R. § 549.1(d)(2), there would be some burden on the employer to meet this requirement (approximately one hour); however, because this occurs so infrequently, this burden figure has not been calculated.

- There are no costs for the Federal government.
- There is an increase in burden due to the change in BLS estimates between 2013 data and 2016 data. There is an increase in the number of firms due to the progressive improvement of the overall economy. There is also an increase in the number of firms offering defined contribution plan retirement benefits and an increase in the percentage of those defined contribution plans that come in the form of savings or thrift plans since the last reporting period.

16. The DOL does not publish the results of this information collection.
17. The DOL does not seek an exception to the requirement to display the expiration date on these information collections.
18. The DOL is not requesting an exception to the certification requirements for this information collection.

B. Employment of Statistical Methods

Not applicable.