

Alternative Reporting Methods for Apprenticeship and Training Plans and Top Hat Plans
OMB Number 1210-0153
February 2018

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 2520.104-22 provides an exemption to the reporting and provision of Part 1 of Title I of ERISA for employee welfare benefit plans that provide exclusively apprenticeship and training benefits if the plan administrator meets the following requirements: (1) files a notice with the Secretary that provides the name of the plan, the plan sponsor's Employer Identification Number, the plan administrator's name, and the name and location of an office or person from whom interested individuals can obtain certain info about courses offered by the plan; and (2) take steps reasonably designed to ensure that the information required to be contained in the notice is disclosed to employees of employers contribution to the plan who may be eligible to enroll in any course of study sponsored or establish by the plan; (3) and make the notice available to employees upon request. The Department has published a Notice of Proposed Rulemaking that, if finalized, would require the notices to be filed electronically with the Department.

Under 2520.14-23, the Department provides an alternative method of compliance with the reporting and disclosure of Title I of ERISA for unfunded or insured plan established for a select group of management of highly compensated employees (i.e., top hat plans). In order to satisfy the alternative method of compliance, the plan administrator must file a statement with the Secretary of Labor that includes the name and address of the employer, the employer EIN, a declaration that the employer maintains a plan or plans primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees, and a statement of the number of such plans and the employees covered by each. Plan documents must be made available to the Secretary upon request, and only one statement needs to be filed for each employer maintaining one or more of the plans. The Department has published a Notice of Proposed Rulemaking that, if finalized, would require the statements to be filed electronically with the Department.

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 information collection serves as an alternative method of compliance with the reporting and disclosure requirements of Title I of ERISA. These reporting and disclosure requirements constitute an integral part of the Department's enforcement, research, and policy formulation programs. They provide a means by which the Department can effectively and efficiently identify actual and potential violations of ERISA, thereby minimizing the investigatory contacts with the vast majority of plans, and enabling the Department to make the best use of its limited resources. This information collection, through public disclosure, is intended to serve as a deterrent to non-compliance with the statutory duties imposed on plan fiduciaries.

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 has published a Notice of Proposed Rulemaking that, if finalized, would require the information collection to be submitted electronically through the Department's electronic submission system. Currently, the online submission system is operational but optional.

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.*

EBSA has reviewed all of its currently approved information collections and determined that it does not already receive any similar information that can be used or modified for the purpose set forth in Item 2 above.

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

Only identifying information that is readily available to the plan administrator is required to be included on the notices and statements, and filing them electronically will result in little burden. Therefore, the Department has certified that the proposed rule will not have a significant economic impact a substantial number of small entities.

6. *Describe the consequence to Federal program or policy activities if the collection is not*

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conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Title I of ERISA includes statutory requirements that plans make reports to the Department. This information collection is intended to serve as an alternative method of compliance to reduce burden for a subset of plans. Without this information collection, these plans will experience an increase in burden because they would be required to submit a full Form 5500, under OMB Control Number 1210-0110.

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.*

Not applicable.

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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 Federal Register notice, as required by 5 CFR 1320.8(d), soliciting comments on the information collection was published in the Federal Register on May 22, 2017 (82 FR 23303), 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.*

There is no promise of confidentiality of the information.

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.*

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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*

The Department annually receives 57 apprenticeship and training plan notices and approximately 1,815 top hat plan statement filings. The Department estimates that each filing will require 15 minutes of a compensation and benefits manager's time, at an equivalent cost of \$121.91 per hour,¹ and 3 minutes of a clerical worker's time, at an equivalent cost of \$52.09 per hour, for a total of 17 hours for apprenticeship and training plan notice filings and 545 hours of top hat plan statement filings and an overall total of 562 hours of burden. The total equivalent cost for this burden is \$61,930 (\$1,886 for apprenticeship and training plan notice filings and \$60,044 for top hat plan statement filings).

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).*

¹ For more information on how the Department calculates labor costs see:
<https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-july-2017.pdf>

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The total cost burden results from paper, copying and mailing costs. The Department estimates that 64.9 percent of apprenticeship and training plan notices will be completed electronically at no cost.² The Department estimates that the remaining 35.1 percent will cost \$0.05 for copying and paper and \$5.45 to mail using certified mail with return receipt³ for an annual total cost of \$110 (57 notices x 35.1 percent x (\$5.45 + \$0.05) = \$110). The Department also estimates that 54.4 percent of top hat plans filing will be done electronically at no cost.⁴ The Department estimates that the remaining 45.6 percent will cost \$0.05 for copying and paper and \$5.45 to mail using certified mail with return receipt for an annual total cost of \$4,549 (1,815 filings x 45.6 percent x (\$5.45 + \$0.05) = \$4,549). The total annual cost for apprenticeship and training plan notices and top hat plan filings will be \$4,659.

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.*

As discussed above, the Department has issued a Notice of Proposed Rulemaking announcing its intent to require all submissions to be made electronically. Although the rule has not been finalized at this time, the electronic submission system is operational and electronic submissions are being accepted. The Department has contracted with Blue Mountain Data Systems to maintain the online system at a cost of approximately \$3,000 per year. EBSA's Office of Outreach, Education, and Assistance staff maintains the website associated with the online system as part of their normal programmatic activities. Therefore, no additional costs will be incurred.

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

The hour burden decreased due to updated data regarding the number of submissions received, which has declined from three years ago. The cost burden increased because the Department erroneously assumed three years ago that all submissions would be made

2 The Department estimates that 64.9 percent will be done electronically based on the average number of electronic submissions from 2015 to 2017

3 The Department believes prudent plan administrators would use certified mail with return receipt in order to keep a record that a timely notice was submitted to the Department.

4 The Department estimates that 54.4 percent will be filed electronically based on the average number of electronic submissions from 2015-2017.

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electronically. Such an assumption will be accurate if the Department's Proposed Rule requiring electronic submission is finalized; however, for this submission, the Department has taken into account the costs of materials and postage for paper submissions, which is consistent with the Department's current rule.

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.*

This is not a collection of information for statistical use and there are no plans to publish the results of this collection.

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 Department will communicate the expiration date to the public after OMB approval.

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.