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.

Pursuant to section 1510(a) of the Taxpayer Relief Act of 1997 (TRA '97), the Secretary of Labor and the Secretary of the Treasury were directed to issue guidance designed to interpret the notice, election, consent, disclosure, time requirements, and related recordkeeping requirements of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code, respectively, as applied to the use of new technologies by sponsors and administrators of retirement plans.

While electronic disclosure was not precluded by existing regulations, the Department of Labor (the Department) had not previously issued guidance with respect to electronic delivery of disclosure documents. On January 28, 1999, the Department published a notice of proposed rulemaking on electronic disclosure and recordkeeping issues (64 FR 4506). Where, previously, only group health plans had specifically been provided with a safe harbor for electronic disclosure, the proposal expanded the use of electronic disclosure to include all pension and welfare benefit plans covered by Title I of ERISA. In addition, the proposal added summary annual reports to the list of disclosure documents included in the safe harbor provisions.

On April 9, 2002, the Department published a notice of final rulemaking on electronic disclosure and recordkeeping issues (67 FR 17264) to establish a "safe harbor" for the use of electronic media to satisfy the general furnishing requirement. Based on public comments, the final regulation expanded the list of disclosures addressed by the safe harbor to disclosures under Title I generally. The final regulation also provided for the receipt of required disclosures at locations other than the workplace. For those participants and beneficiaries offered the opportunity and wishing to receive disclosures via electronic information systems outside the workplace, the final regulation required advance affirmative consent on the part of the recipient. This requirement is incorporated at 29 CFR 2520.104b-1(c)(2)(ii)(A), (B), and (C). Prior to consenting, the plan administrator must provide a participant or beneficiary with a clear and conspicuous statement indicating: the types of documents to which the consent would apply; that consent may be withdrawn at any time; the procedures for withdrawing consent and updating necessary information; the right to obtain a paper copy free of charge; and any hardware and software requirements.

The final regulations under 29 CFR 2520.104b-1 and 2520.107-1 do not affect the substantive disclosure provisions of Title I and related regulations. These regulations provide guidance on the circumstances in which the substantive requirements will be deemed met when electronic technologies are used.

An additional information collection request provision is incorporated at 2520.104-b-1(c)(1)(iii), but it is not discussed, nor is the burden accounted for separately, because it is understood that this clarifying requirement is already incorporated in the usual and customary business practices of plan administrators in providing disclosures.

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 is a third party disclosure. The consent serves to demonstrate to the plan administrator that an individual has the ability to access information in the electronic form that will be used for disclosure purposes. Such confirmation will ensure the compatibility of the hardware and software between the individual and the plan, and will also serve to demonstrate that the administrator has taken appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents results in actual receipt, as required under ERISA. Lastly, where applicable, the consent provides a means for the individual to provide the plan with the correct e-mail address to facilitate the efficiencies that may arise from the use of electronic technologies where appropriate.

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.

Under 29 C.F.R. § 2520.104b-1(b) of ERISA, "where certain material, including reports, statements, and documents, is required under Part I of the Act 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.

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.*

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. ERISA establishes the manner in which disclosures made through electronic media will be deemed to satisfy the statutory disclosure requirements and the standards concerning the use of electronic media for maintenance and retention of records. There are no other rules that facilitate the use of electronic media for ERISA plans.

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

A plan administrator that manages several plans is considered likely to develop a single consent that will satisfy the requirements for all plans. In addition, because a majority of small plans use a service provider for recordkeeping and disclosure purposes, it is likely that the service provider will develop a consent process for all plan clients, thereby minimizing the cost to small plans. The final rule does not require any plan or other entity to make use of electronic media for disclosure or recordkeeping; if the plan administrator chooses to provide electronic disclosures, obtaining consent is a one-time occurrence. Finally, much of the information required to be included as part of the consent process is specifically outlined in the provisions of the rule. For the foregoing reasons, the Department believes that the rule will not have a significant impact on small 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 purpose of the consent is to ensure that participants and beneficiaries have agreed to receive disclosures about their employee benefit plan(s) by electronic means and, if the information is to be disseminated outside the workplace, that they have the necessary hardware and software for receiving the disclosures. The general purpose is to ensure that electronic dissemination is likely to result in actual receipt, as required by ERISA. Offering electronic disclosure methods, and acceptance by participants and beneficiaries, are entirely voluntary, and consent generally needs to be obtained once unless specifically enumerated changes occur subsequently.

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.

Attached is a copy of the Department's notice for the Federal Register, as required by 5 CFR 1320.8(d), soliciting comments on the information collection. This notice was published in the Federal Register on October 12, 2017 (82 Fed. Reg. 47581) and provided the public with 60 days to comment on the ICR. No comments were received.

9. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

None.

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

None.

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. Instead, this cost should be included in Item 14.*

Employee benefit plan administrators will be deemed to satisfy their disclosure obligations when furnishing documents electronically only if a participant who does not have access to the employer's electronic information system in the normal course of his duties, or a beneficiary or other person entitled to documents, affirmatively consents to receive the disclosure documents. Prior to consenting, the participant or beneficiary must

be provided with a clear and conspicuous statement indicating the types of documents to which the consent would apply and other information about procedures and obligations on the part of both the plan administrator and the recipient. New plans are expected to incur a one-time start-up cost with regards to the acquisition of materials used to seek and verify consent.

The Department assumes that because significant cost savings can be achieved by limiting distribution expenses, most sponsors of new plans will choose to avail themselves of the opportunity to deliver plan documents electronically, and will therefore develop a procedure for consent and document delivery. As noted above, a plan sponsor that manages several plans is considered likely to develop a single consent that will satisfy the requirements for all plans. Data from the 2014 Form 5500, the most recent year data are available, indicate that there were approximately 47,302 new plan sponsors that year. We have taken the conservative view that each of these sponsors will seek to use the consent materials.

Although the Department believes that a number of plans will hire service providers to comply with these information collection requirements, the Department has decided, for purposes of this burden estimate, to assume that all affected plans will use their own resources to do so. The burden of preparation of the notices, therefore, is reported solely as an hour burden.[1] Each sponsor is expected to use on average ten minutes of in-house legal professional time to develop consent materials. Thus the hour burden for the preparation of disclosure materials for this regulation is approximately 7,884 hours. The Department assumes an hourly wage rate of approximately $133.29 for a legal professional.[2] Thus, the equivalent cost of the development hour burden is approximately $1,050,814.

Assuming that all of the 47,302 respondents will require fifteen minutes for photocopying and organizing the materials, 11,826 burden hours will be required for distributing the consent materials. Assuming an hourly rate of $52.09 per hour for clerical time, the equivalent cost of the distribution hour burden is approximately $615,990.

Overall, the total hour burden is approximately 19,709 hours with an equivalent cost of approximately $1,666,804.

1 This method has been chosen for several reasons. First, the Department does not presently have a reliable source of information for an estimate of how many plans may hire service providers for this purpose. Second, the Department does not have adequate information on which to base an estimate of the cost to plans of purchasing these services, particularly since the Department has reason to believe that the pricing of such services will be based on competitive factors and bundling with other related services. Finally, the Department believes that this method will provide a more accurate estimate of the paperwork burden by relying solely on the Department's estimate of the time necessary to create and distribute the disclosures and eliminating the artificial and arbitrary distinction between tasks performed by the respondents and tasks performed by a service provider. Translation of the total hour burden into dollars, with appropriate allocation between professional and clerical time, provides a reliable cost comparison.

2 For more information regarding how the Department estimates 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

Table 1: Hour Burden

	New Sponsors	Hours	Hour Burden	Labor Rate	Equivalent Cost
Development	47,302	0.167	7,884	$133.29	$1,050,814
Distribution	47,302	0.250	11,826	$52.09	$615,990
TOTAL			19,709		$1,666,804

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).*

The Department assumes that all of the participants and beneficiaries will receive paper consent materials either on their job site or as an insertion into other material received through the mail, thus there are no mailing costs associated with delivery of the opt-out notifications. The per page photocopy costs are assumed to be five cents. Form 5500 data from 2014 show that there are 4,792,744 participants in new plans, who will receive paper opt-out notifications. The associated cost burden for generating paper copies of the opt-out notification to participants under the regulation is estimated to be approximately $239,637 in the first year.

Table 2: Cost Burden

Participants	Cost per Notice	Cost Burden
4,792,744	$0.05	$239,637

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 cost to the Federal government associated with this information collection.

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

Labor burdens have been updated to incorporate 2017 Departmental estimates for wages and overhead. Plan sponsor counts and participant counts have been updated to reflect the most current Form 5500 data available.

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.

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.

B. Collections of Information Employing Statistical Methods

Not applicable.