

Multiemployer Plan Information Available Upon Request
OMB Control Number 1210-0131
August 2019

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995
SUBMISSIONS

The Department of Labor, Employee Benefits Security Administration requests an extension without change for the information collections currently approved under OMB Control Number 1210-0131.

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 502(a)(1) of the Pension Protection Act of 2006, Pub. L. 109-280, 120 Stat. 780, (PPA), which was enacted on August 17, 2006, amended the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), by adding section 101(k). Section 101(k)(1) of ERISA requires multiemployer plan administrators to furnish certain documents to any plan participant, beneficiary, employee representative, or any employer that has an obligation to contribute to the plan upon written request. Section 502(a)(3) of the PPA provides that the Secretary of Labor shall prescribe regulations under section 101(k)(2)..

The Department issued a final rule that implements the disclosure requirements of ERISA section 101(k) on March 2, 2010 (75 FR 9334). The documents that may be requested are: (1) a copy of any periodic actuarial report (including sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days; (2) a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor or other fiduciary that has been in the plan's possession for at least 30 days; and (3) a copy of any application filed with the Secretary of the Treasury requesting an extension under section 304 of ERISA (or section 431(d) of the Internal Revenue Code of 1986) and the determination of such Secretary pursuant to such application.

The information collection provisions of this final regulation are found in 29 C.F.R. § 2520.101-6(a), which requires multiemployer defined benefit and defined contribution pension plan administrators to furnish copies of certain actuarial and financial documents to plan participants, beneficiaries, employee representatives, and contributing employers upon request. This information constitutes a third-party disclosure from the administrator to participants, beneficiaries, employee representatives, and contributing employers for purposes of the PRA. Pursuant to § 2520.101-6(d)(5), the documents required to be disclosed shall not contain any information that the plan administrator reasonably

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determines to be either: (i) Individually identifiable information regarding any plan participant, beneficiary, employee, fiduciary, or contributing employer, except that such limitation shall not apply to an investment manager or adviser, or with respect to any other person (other than an employee of the plan) preparing a financial report described in paragraph § 2520.101-6(c)(2); or (ii) proprietary information regarding the plan, any contributing employer, or entity providing services to the plan. The plan administrator must inform the requester if any such information is withheld.

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 guidance provided in the final rule is used by the administrators of multiemployer defined benefit pension plans to furnish actuarial and financial reports and amortization extension requests to plan participants and beneficiaries, employee representatives, and any employer that has an obligation to contribute to the plan. By clarifying certain terms used in section 101(k) of the Act, this regulation also helps multiemployer plan administrators fulfill their disclosure responsibilities under this section with greater certainty. The increase in transparency of plan operations may also contribute to an atmosphere of greater accountability on the part of plan officials.

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 information collection is a third-party disclosure. Respondents may determine the extent to which use of electronic methods of communication is appropriate pursuant to pertinent regulations at 29 CFR 2520.104b-1 concerning meeting EBSA's disclosure requirements through electronic media. The burden estimates in this supporting statement take projected levels of usage of electronic technologies into account.

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 required to be disclosed pursuant to section 101(k) of the Act and the interim final rule is maintained in the normal course of the business operations of multiemployer pension plans. The regulation permits respondents to satisfy the

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information collections with documents that are already in existence due to ordinary and customary business operations.

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

Forthcoming data from the EBSA Private Pension Bulletin of 2010 show that only 143 multiemployer pension plans, or five percent of all multiemployer pension plans are small entities. The Department has determined that an employee benefit plan shall be considered a small entity if it has fewer than 100 participants. Based on this information, the final rule will not have a significant impact on a substantial number of small entities.

While the regulation does not directly minimize the burden on small entities by its operation, the Department expects the burden on small entities will be minimal, because these entities should receive fewer requests for documents than larger entities. The Department expects the number of people in each of the four categories of requestors to be roughly proportionate to the size of the plan. Small plans may also have fewer investment managers, and therefore, fewer financial reports to disclose.

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.*

This information collection does not involve reporting to the Federal government, and as such, does not affect Federal programs.

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*

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- *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.*

There are no special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.5.

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 soliciting comments on the extension of the information collection, as required by 5 CFR 1320.8(d), was published in the Federal Register on March 27, 2019 (84 FR 11573). The public was provided with 60 days to comment on the submission, and no public comments were received.

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

No payments or gifts were provided to respondents.

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.

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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.*

There are no questions of a sensitive nature.

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.*

Based on data derived exclusively from the Form 5500 for the 2016 plan year, which is the most recent year for which complete data are available, the Department estimates that there are 1,412 multiemployer defined benefit plans and 1,224 multiemployer defined contribution plans that would be subject to this disclosure requirement resulting in a total of 2,636 respondents. The final regulation limits requested disclosures to reports or documents that have been in a plan's possession for not more than six years prior to the date of a written request. See § 2520.101-6(c)(1). Therefore, for purposes of the analysis, the Department has assumed that plans will disclose both existing and newly created periodic actuarial reports ("actuarial reports"), quarterly, semiannual, or annual financial reports ("financial reports"), and amortization extension requests filed with the IRS (hereafter "extension requests").

In developing burden estimates, the Department has taken into account the total estimated hours required to copy, mail, and redact reports eligible for disclosure.

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Redaction may be required to remove individually identifiable and proprietary information from certain reports.

With respect to an existing inventory of reports, the Department estimates that multiemployer defined benefit plans will receive 93,192 requests to disclose existing financial reports (an average of approximately 66 per plan), 69,894 requests for existing actuarial reports (an average of approximately 50 per plan), and 1,398 requests for existing extension requests (an average of approximately one per plan), and defined contribution plans will receive 51,408 requests for existing financial reports (an average of approximately 42 per plan). Therefore, the Department estimates that multiemployer pension plans would receive a total of 215,892 requests for disclosures of existing inventory of reports.

For purposes of this analysis, the Department assumes that 15 percent of the existing documents would be requested in each year resulting in 32,384 requests per year for disclosures of existing inventory of reports. The Department estimates that the annual hour burden associated with disclosing existing documents will be 7,342. This includes 6,772 clerical hours to log requests and to locate, copy, and mail paper disclosures and 570 legal hours (1.1 hours per plan for financial reports, .7 hours for actuarial reports, and 0 hours for extension requests) to redact individually identifiable and proprietary information. The equivalent costs of these hours are \$428,728 (6,772 hours at an hourly rate of \$52.09 plus 570 hours at an hourly rate of \$133.29).¹

With respect to newly-created reports, the Department estimates that multiemployer defined benefit plans will receive 98,840 requests to disclose newly created financial reports (an average of approximately 70 per plan), 29,652 requests for newly created actuarial reports (an average of approximately 21 per plan), and 1,483 requests for newly created extension requests (an average of approximately one per plan), and defined contribution plans will receive 73,440 requests for newly created financial reports (an average of approximately 60 per plan). Therefore, the Department estimates that multiemployer pension plans would receive a total of 203,415 requests annually for disclosures of newly created reports.

The Department estimates that the total hour burden associated with disclosing newly created documents upon request is 23,037 hours annually. This estimate includes 21,930 clerical hours to copy and mail paper disclosures and 1,108 legal hours to redact individually identifiable and proprietary information. The equivalent cost of these hours is estimated to be \$1,289,971 (21,930 hours at an hourly rate of \$52.09 plus 1,108 hours

¹ For a description of the Department's methodology for calculating wage rates, 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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at an hourly rate of \$133.29).

Based on the foregoing, the Department estimates that a total hour burden of 30,379 hours is associated with this information collection with an equivalent cost of \$1,718,682.

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 main costs arising from this information collection derive from the direct costs of redacting individually identifiable and proprietary information from the reports. The Department assumes no additional costs for copying and mailing documents, because the rule allows plans to charge requesters for the reasonable costs of furnishing documents in an amount that does not exceed the lesser of the actual cost to the plan to furnish the document, or 25 cents per page plus the cost of mailing or otherwise delivering the requested document.

The estimated total costs to redact individually identifiable and proprietary information from the existing inventory of financial reports over the three-year period 2019-2021 are \$71,142 annually and from the existing inventory of actuarial reports are \$44,464 annually. The Department estimates that no costs will be incurred for redacting information from the existing inventory of extension requests. For multiemployer defined contribution plans, estimated redaction costs for existing financial reports are \$61,670 annually. Therefore, the total redaction costs for the existing inventory of all reports are estimated to be \$177,275 annually.

The Department assumes that 70 percent of contract work will be done by third parties, and the estimated annual costs of contract work to redact individually identifiable and proprietary information for newly-created financial reports would be \$158,093. The estimated annual costs of contract work to redact individually identifiable and proprietary information for newly-created actuarial reports would be \$49,404 for newly created actuarial reports. The Department estimates that no costs will be incurred for redacting information from newly created extension requests. For multiemployer defined contribution plans, the annual redaction costs for newly created financial reports are estimated to be \$137,043.

Based on the foregoing, the total annual cost attributable to this ICR is \$521,815.

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),*

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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 are no costs to the Federal government.

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

There are no program changes associated with this submission. The Department has updated its burden estimates to reflect more current labor costs rates and postage rates. A minor revision to the Department's methodology for estimating labor costs produced a small reduction in estimated labor costs compared with the last submission. Additionally, the Department updated its estimates to reflect the most current data available on the number of multiemployer pension plans. The net effect of all of these updated data inputs is a 6,202 decrease in the number of responses, a 621 hour decrease in the hour burden, and a \$15,185 decrease in the cost burden relative to the prior submission.

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 OMB expiration date will be published in the Federal Register following OMB approval.

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

There are no exceptions to the certification statement.