

Defined Benefit Plan Annual Funding Notice
OMB Control Number 1210-0126
September 2019

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995
SUBMISSIONS

This ICR seeks to revise the Defined Benefit Plan Annual Funding Notice reflecting an increase in the number of notices sent electronically due to the Department's proposed new safe harbor for the use of electronic media by administrators of retirement plans covered by ERISA. This amendment enables plan administrators to furnish documents to plan participants and beneficiaries by means of electronic delivery if they have electronic addresses and if they do not opt out of electronic delivery.

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 101(f) of ERISA generally requires single and multiemployer defined benefit plan administrators to furnish a plan funding notice annually to each participant and beneficiary, each labor organization representing such participants or beneficiaries, each employer that has an obligation to contribute under the plan, and the Pension Benefit Guaranty Corporation (PBGC).

The defined benefit plan funding notice provision were enacted amid concerns about persisting low interest rates and declines in equity values, each of which has an increasing effect on contribution requirements and a decreasing effect on the funding levels of defined benefit plans. Increasing the transparency of information about the funding status of defined benefit plans for participants and beneficiaries, the labor organizations representing them, contributing employers, and PBGC affords all parties interested in the financial viability of these plans with a greater opportunity to monitor the funding status of defined benefit pension plans.

On February 2, 2015, the Department published final rules implementing ERISA section 101(f).¹ As required by statute, the final rule requires the plan administrator of a defined benefit pension plan that is subject to the Pension Benefit Guaranty Corporation's Insurance Program to furnish a funding notice annually to participants, beneficiaries, labor organizations representing such participants or beneficiaries, employers obligated to make contributions to a multiemployer plan, and the Pension Benefit Guaranty Corporation (PBGC). Large plans must furnish the notice by the 120th day following the end of the plan year to which the notice relates. A small plan may furnish a funding notice on or before the due date, with extensions, of the plan's Form 5500 Annual Return/Report filed with the Department.

¹ 80 Fed. Reg. 5626.

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2012 MAP-21 Revision

In 2012, Congress enacted the Moving Ahead for Progress in the 21st Century Act (MAP-21). The law provides funding interest rate stabilization for single employer defined benefit (DB) plans, effective for plan years beginning on and after January 1, 2012. To counter the current low interest rates that are triggering significantly larger pension contributions for many plan sponsors, MAP-21 sets a floor (or ceiling) for the interest rates that single employer defined benefit plan administrators generally are required to use to calculate contributions. Under the rules, the generally required interest rates are limited to rates that are within a specified range, or corridor, above or below a 25-year average for the rates.

Section 40211(b)(2)(A) of MAP-21 amended ERISA section 101(f)(2) by adding a new subparagraph (D), which requires single-employer defined benefit plan administrators to disclose additional information in the annual funding notice for a plan year beginning after December 31, 2011, and before January 1, 2015, regarding the effect of the MAP-21 segment rate stabilization rules on plan liabilities and the plan sponsor's minimum required contributions to the plan. Section 40211(b)(2)(B) of MAP-21 requires the Department to modify the model annual funding notice required under section 501(c) of the Pension Protection Act of 2006 (PPA), to prominently include the supplemental information required under new ERISA section 101(f)(2)(D). The MAP-21 supplement requirement, as modified by the Highway and Transportation and Funding Act of 2014 and the Bipartisan Budget Act of 2015, continues through the 2022 plan year.

Multiemployer Pension Reform Act of 2014 (MPRA) Revision

The Multiemployer Pension Reform Act of 2014 (MPRA), Pub. L. 113-235 (2014), added new disclosure requirements to section 101(f)(2)(B) of ERISA relating to the new multiemployer funding classification of "critical and declining status." A plan is in critical and declining status if it is in critical status and is projected to become insolvent with 15 years (or within 20 years if a special rule applies). The plan sponsor of a plan in critical and declining status may submit an application to the Treasury Department showing that proposed pension benefit reductions are necessary to keep the plan from running out of money. Participants and beneficiaries will be notified of any application to reduce benefits and provided with an estimate of the reduction in their own benefits and the opportunity to comment on the application.

MPRA requires the annual funding notice of critical and declining status plans to include the projected date of insolvency; a clear statement that such insolvency may result in benefit reductions; and a statement describing whether the plan sponsor has taken legally permitted actions to prevent insolvency. These requirements were added to the final regulation and the multiemployer plan model notice to reflect the MPRA amendments to

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ERISA section 101(f) and are included in the hour burden to complete that notice as discussed in Item 12, below.

2019 Proposed E-Disclosure Rule

In response to Executive Order 13847, entitled “Strengthening Retirement Security in America,” which was issued by President Trump on August 31, 2018, the Department is issuing a proposed rule with a new safe harbor for retirement plan administrators to use electronic media to furnish required pension disclosures to plan participants and beneficiaries. Specifically, the proposal, would allow plan administrators who satisfy specified conditions to provide participants and beneficiaries with a notice that the pension disclosures will be made available on a website. The Annual Funding Notice disclosures are among the disclosures plan administrations could furnish under the proposed safe harbor. The framework of the proposal is similar to the approach the Securities and Exchange Commission takes for certain investor disclosures and also aligns with Internal Revenue Service rules about delivering retirement plan disclosures electronically.

In order to use the safe harbor, retirement plan administrators must:

- Furnish covered individuals with a notice of internet availability delivered to their electronic addresses, for example to the covered individual’s email address. The notice must include, among other things, a brief description of the document being posted online, a website address where the document is posted, and instructions for requesting a free paper copy or electing paper delivery in the future. It must sent each time a retirement plan disclosure is posted to the internet website. To prevent “email overload,” the proposal allows a notice of internet availability to incorporate or combine other notices of internet availability in limited circumstances.
- Furnish covered individuals, free of charge, with a paper copy of a covered document, as soon as possible after receiving the covered individual’s request (2520.104b-31(f)(1)).
- Provide covered individuals with the ability to opt out of electronic delivery and receive only paper versions of some or all covered documents (2520.104b-31(f)(2)). In the event that a plan administrator becomes aware of an invalid or inoperable electronic address, such as if an email is returned as undeliverable, the administrator must treat the covered individual as if he or she had elected to opt out of electronic delivery if the problem is not promptly cured (2520.104b-31(f)(4)). This provision is intended to ensure that covered individuals actually receive their pension documents by guarding against invalid or inoperable electronic addresses.

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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 final rule provides guidance and model annual funding notices. Administrators of single and multiemployer defined benefit plans can use the guidance provided in the final rule (and the included model notices) to furnish an annual notice of the plan's funded status to the plan's participants and beneficiaries and other specified interested parties (each labor organization representing such participants or beneficiaries, each employer that has an obligation to contribute under the plan, and the PBGC) as required by ERISA 101(f).

The Department assumes that the availability of model notices in the appendices lessen the time that otherwise would be required for plan administrators to draft the required notice.

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). The interim final rule assumes that 38 percent of the notices will be sent electronically.

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.

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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.*

Much of the information required to be furnished in the notice is maintained in the normal business records of pension plans. In addition, much of the information required to be included in the notice is provided on the Form 5500 Annual Return/Report and associated schedules, and the Summary Plan Description. The annual notice requirement is not duplicative, because it is required to be provided to participants and beneficiaries, while the Form 5500 is not (it is filed electronically with the Department and contains much information other than the funding information required to be disclosed on the notice). Congress required defined benefit plan administrators to provide participants and beneficiaries with the funding notice so they will have immediate access to sufficient information to access the funding status of their plans.

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

In the final regulations, the Department provides model notices for both single-employer and multiemployer plans that will help reduce the burden on small plan administrators.

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. Without this information collection, plan administrators would not have sufficient guidance from the Department regarding acceptable methods to comply with the statutory requirement to provide an annual funding notice pursuant to ERISA section 101(f).

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;*

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- *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 of the special circumstances apply.

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.

In addition to requesting public comment on the proposed regulation, the NPRM solicits public comment on the paperwork burden of the proposed regulation. It provides the public with 60 days for that purpose, as required by 5 CFR 1320.8(d).

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.

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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.*

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.*
 - *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.*

In order to estimate the potential costs of the notice provisions of section 101(f) of ERISA and the final rule, the Department estimated the number of single-employer and multiemployer defined benefit plans, and the numbers of participants, beneficiaries receiving benefits, labor organizations representing participants, and employers with an obligation to contribute to these plans.

The PBGC Pension Insurance Data Tables 2015 indicates that there are 1,338 multiemployer defined benefit plans with approximately 10,300,000 participants and beneficiaries receiving benefits. These estimates are based on premium filings with PBGC for fiscal year 2015 the most recent information currently available. This total has been adjusted slightly to reflect the exception from the requirement to furnish annual funding notices to plans that are receiving financial assistance from PBGC.² The PBGC

² According to the PBGC Pension Insurance Data Tables 2015, there were 1,396 multiemployer defined benefit plans in 2015. This number was reduced by 58 in order to account for the 58 plans that received financial assistance

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Pension Insurance Data Tables 2015 also indicates that there are approximately 22,137 single-employer defined benefit plans with approximately 29,576,449 participants.

The Department is not aware of a direct source of information for the number of notices that must be sent to labor organizations that represent participants of multiemployer defined benefit plans and that would be entitled to receive notice under section 101(f). The Department has relied on data from the 1998 Form 5500 which collected information on plans that are collectively bargained to approximate the distribution of the number of unions per plan. This leads to an estimated 1,761 labor organizations for the 1,338 multiemployer plans and 29,621 labor organizations for the 22,137 single employer plans (a total of 31,382 labor organizations).

There are currently 207,906 employers obligated to contribute to multiemployer defined benefit plans that are required to receive a funding notice.

For purposes of paperwork burden estimates, the Department has assumed that each plan will develop a notice and that each year approximately 40,139,212 notices will be prepared and sent. The 40,139,212 breaks down as follows: 10,300,000 notices to participants and beneficiaries of 1,338 multiemployer defined benefit plans; 29,576,449 notices to participants and beneficiaries of 22,137 single employer plans; 31,382 notices to labor organizations; 207,906 notices to contributing employers of multiemployer plans; and 23,475 notices to the PBGC.

Estimates of notice preparations are based on the assumption that plan service providers, actuaries, lawyers, and financial professionals will produce the notices. It is assumed that the availability of a model notice will lessen the time otherwise required by a plan administrator to draft a required notice. The Department assumes actuaries will spend 2.5 hours for single-employer plans and two hours for multi-employer plans³ making specific calculations for information that must be provided in the notice; legal professionals will spend 0.5 hours; and financial professionals will spend one hour drafting the notice. The final preparation and distribution of the notice will be done by a clerical professional using an estimate of two minutes per notice mailed.

Assuming 40,139,212 notices are distributed, and 53.7 percent of notices are transmitted electronically,⁴ the burden hours are 58,135 actuarial hours, 23,533 financial professional

and are not required to furnish an annual funding notice.

³ This estimate includes the time for plans in critical and declining status to include the projected date for insolvency, a clear statement that such insolvency may result in benefit reductions, and a statement describing whether the plan sponsor has taken legally permitted actions to prevent insolvency as required by the MPRA amendments to ERISA section 101(f).

⁴ According to data from the National Telecommunications and Information Agency (NTIA), 36.0 percent of individuals age 25 and over have access to the Internet at work. According to a Greenwald & Associates survey, 84 percent of plan participants find it acceptable to make electronic delivery the default option, which is used as the proxy for the number of participants who will not opt-out of electronic disclosure that are automatically enrolled (for

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hours, and 11,767 legal professional hours. Total clerical professional hours are calculated based on the total number of notices mailed and the preparation time of two minutes per notice resulting in 619,482 hours. The total annual hour burden is 712,917 hours.

Calculations of the 2018 hourly labor costs were \$52.09 for a clerical professional, \$157.90 for a financial professional, \$134.57 for an actuary, and \$133.29 for a legal professional.⁵

Based on the foregoing, the total equivalent cost is \$7,823,160 for actuarial services, \$32,268,809 for clerical services, \$3,715,861 for financial professional services, and \$1,568,357 for legal professional services. The total equivalent cost is approximately \$45,376,186.

Total number of respondents: 32,548 (23,533 Annual Notice Respondents + 9,015 MAP-21 Respondents)

Total number of responses: 69,453,490 (40,139,212 Annual Notice Respondents + 29,314,278 MAP-21 Respondents)

Total annual time burden: 712,917 (All Annual Notice)

Frequency of responses: Once a year

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 cost of mailing the notices was based on the assumption that each notice would be seven pages for single-employer plans and six pages for multiemployer plans, with printing costs of 5 cents per page and postage of 50 cents resulting in an estimated 85 cent cost per paper notice for single-employer plans and a 80 cent cost per paper notice for multiemployer plans. It was further assumed that 53.7 percent of notices would be sent electronically. The Department has not estimated any additional burden for preparation or distribution of notices via electronic means, because the Department

a total of 30.2 percent receiving electronic disclosure at work). Additionally, the NTIA reports that 38.5 percent of individuals age 25 and over have access to the internet outside of work. According to a Pew Research Center survey, 61 percent of internet users use online banking, which is used as the proxy for the number of internet users who will affirmatively consent to receiving electronic disclosures (for a total of 23.5 percent receiving electronic disclosure outside of work). Combining the 30.2 percent who receive electronic disclosure at work with the 23.5 percent who receive electronic disclosure outside of work produces a total of 53.7 percent who will receive electronic disclosure overall.

⁵ For more information on 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>

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assumes that plans will utilize pre-existing electronic communications systems and e-mail lists for these purposes and the process of preparation and distribution involves only a de minimis additional effort, e.g., a few computer key strokes or the equivalent. This assumption will result in a total of 21,554,757 notices being sent electronically by multiemployer and single-employer plans. Single-employer plans will mail out 13,717,860 paper notices and multiemployer plans will mail out 4,866,595 notices. Total annual paper mailing costs are estimated to be \$15,553,457.

2012 MAP-21 Amendment: The amendments to ERISA by MAP-21 affect only single employer defined benefits plans with more than 50 participants. The 2015 PBGC Databook⁶ reports that there are 22,344 single-employer defined benefit plans covering approximately 30,900,000 participants and beneficiaries. The PBGC Databook does not include a breakdown of plans by plan size. Therefore, the Department used data from the 2014 Form 5500 to estimate the percent of plans with 50 or more participants and participants and beneficiaries covered by such plans. These percentages were then applied to the PBGC data to estimate that 9,015 plans with 50 or more participants covering a total of 29,314,278 participants are subject to the MAP-21 disclosure requirements. Based on conversation with industry experts, the Department expects that the calculations necessary to prepare the MAP-21 supplement to the annual funding notice will be performed by third-party service providers, primarily actuaries, at an average cost of \$500 per respondent.⁷ The Department estimates that the 46.3 percent of plans that mail the annual funding notice will incur an incremental cost of five cents per notice to mail the one-page MAP-21 supplement with the notice.

Therefore, the Department estimates that the aggregate cost burden associated with this revision to the information collection is \$5,186,139 including \$4,507,514 to prepare the MAP-21 supplement (\$500 x 9,015 respondents), and \$678,626 of additional mailing cost to distribute the supplement (29,314,278 notices x \$0.05 x 46.3% of annual funding notices sent by mail).

Based on the foregoing, the total cost burden associated with the information collection is \$20,739,596.

TABLE.-- Summary of Burden

Annual Funding Notice

Number of respondents (Plans)

Number of responses

Total hour burden

Equivalent costs of total hour
burden

⁶ <http://www.pbgc.gov/res/data-books.html>

⁷ The hour burden required to distribute the annual funding notice already has been accounted for and is not impacted by the MAP-21 Amendment to the information collection.

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Total cost burden

MAP-21

Number of respondents (Plans)

Number of responses

Total hour burden

Equivalent costs of total hour
burden

Total cost burden

This results in a total cost prior to the proposed regulation of \$20,739,596.

2019 Electronic Disclosure Proposed Regulation: The proposed changes would provide plan administrators with more flexibility to deliver pension plan disclosures electronically. Expanded electronic disclosure would lower the cost associated with delivering the annual funding notice disclosure by mail.

The Department estimates that in the first year, 81.5 percent of participants and beneficiaries currently receiving the annual funding notice disclosure by mail in the base year would begin receiving the annual funding notice disclosure electronically. This percentage would increase to 83.3 percent in the second year and 84.9 percent in the third year resulting in a cost burden reduction of \$13.38 million in year one, \$13.77 million in year two and \$14.14 million in year three. The total cost burden would total \$7.51 million in year one, \$7.12 million in year two, and \$6.76 million in year three with a three-year average cost of \$7.13 million.

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.*

None. The requirements for this information collection are third-party disclosures.

15. *Explain the reasons for any program changes or adjustments reporting in Items 12 or 13.*

In accordance with Executive Order 13847, the Department proposed a new safe harbor for the use of electronic media by administrators of retirement plans covered by ERISA. This amendment enables plan administrators to furnish documents to plan participants and beneficiaries by means of electronic delivery if they have electronic addresses and if they do not opt out of electronic delivery. This rule creates cost savings by increasing the number of electronically delivered documents, thereby reducing printing and mailing

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costs. This cost savings is reflected in the lower estimated costs for materials and postage reflected in Item 13 above.

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 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.