

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSION

The Department of Labor, Employee Benefits Security Administration requests a control number for this new information collections.

**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.*

Title I of the Employee Retirement Income Security Act of 1974 (ERISA) establishes minimum standards for the operation of private-sector employee benefit plans and includes fiduciary responsibility rules governing the conduct of plan fiduciaries. In connection with proxy voting, the Department's longstanding position is that the fiduciary act of managing plan assets includes the management of voting rights (as well as other shareholder rights) appurtenant to shares of stock, and that fiduciaries<sup>1</sup> must carry out their duties relating to the voting of proxies prudently and solely for the economic benefit of plan participants and beneficiaries.

The Department is concerned that responsible plan fiduciaries, in their efforts to decide whether or how to vote plan shares—and where applicable, to vote them—and exercise other shareholder rights, may sometimes impose on plans costs that exceed the consequent economic benefits to the plans. Moreover, the Department has reason to believe that responsible fiduciaries may sometimes rely on third-party advice without taking sufficient steps to ensure that the advice is impartial and rigorous, and thereby risk failing to satisfy ERISA's standards of fiduciary care and loyalty in exercising plans' shareholder rights. Both of these concerns point to the risk that a plan's proxy voting activity sometimes will impair rather than advance participants' economic interest in their benefits. This rule aims to ensure that the costs plans incur to vote proxies and exercise other shareholder rights are economically justified and that responsible fiduciaries' use of third-party advice supports rather than jeopardizes their adherence to ERISA's fiduciary requirements.

It has long been the view of the Department that the duty to monitor necessitates proper documentation of the activities that are subject to monitoring.<sup>2</sup> The Information Collection (IC) requires that plan fiduciaries maintain records that demonstrate the basis for particular proxy votes and exercises of shareholder rights. This IC aims to ensure that

---

<sup>1</sup> Throughout this supporting statement, the Department's discussion of plan fiduciaries includes named fiduciaries under the plan, along with any persons that named fiduciaries have designated to carry out fiduciary responsibilities as permitted under ERISA § 405(c)(1).

<sup>2</sup> See, e.g., Interpretive Bulletin 2016-01 (IB 2016-01), published in the Federal Register at 81 FR 95879 (Dec. 29, 2016), and codified at 29 CFR § 2509.2016-01. IB 2016-01 updated and replaced Interpretive Bulletin 2008-2 (IB 2008-2), and IB 2008-2 in turn updated and replaced Interpretive Bulletin 94-2. The IBs all reflect interpretive positions on ERISA plan fiduciaries exercise of shareholder rights, including proxy voting, and written statements of investment policy.

Fiduciary Duties Regarding Proxy Voting and Shareholder Rights  
1210-NEW  
August 2020

the costs plans incur to vote proxies and exercise other shareholder rights are economically justified.

***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 IC requires that the named plan fiduciary maintain records on proxy voting activities and other exercises of shareholder rights, including records that demonstrate the basis for particular proxy votes and exercises of shareholder right. Where the authority to vote proxies or exercise shareholder rights has been delegated to an investment manager, or a proxy voting firm or other person performs advisory services as to the voting of proxies, plan fiduciaries shall require such investment manager or proxy voting or advisory firm to document the rationale for proxy voting decisions or recommendations sufficient to demonstrate that the decision or recommendation was based on the expected economic benefit to the plan, and that the decision or recommendation was based solely on the interests of participants and beneficiaries in obtaining financial benefits under the plan.

This is required of all plans with investments and includes those that have shareholder rights and proxy votes that must be exercised. Much of the documentation needed to fulfill this requirement is generated in the normal course of business. Plans may need additional time to maintain the proper documentation.

***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.***

Use of electronic methods of compliance is neither required nor precluded by the terms of this IC. This information collection constitutes recordkeeping. The Department has assumed that the information collection requirements under this rule will be performed by sophisticated financial entities that act on behalf of employee benefit plans in connection with the proper management and voting of securities and that the plans and fiduciaries involved will establish and maintain recordkeeping systems, and comply with disclosure requests, by electronic means. The Department's estimates therefore take account of the use of electronic recordkeeping in establishing the burden of this information collection.

***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 Department notes that as part of its ongoing proxy reform initiative, the SEC has issued guidance and adopted rule amendments that address some of the Department's concerns in ensuring that ERISA fiduciaries subject to SEC regulation properly discharge their duties with respect to proxy voting activities and appropriately select and oversee

proxy advisory firms. On August 21, 2019, the SEC issued guidance regarding the proxy voting responsibilities of investment advisers.<sup>3</sup> The guidance directed a number of steps investment advisers must take where the investment adviser has assumed the authority to vote proxies on behalf of a client to demonstrate that it is making voting determinations in a client's best interest and in accordance with the investment adviser's proxy voting policies and procedures. Among other things, the investment adviser must conduct a reasonable investigation into matters on which the adviser votes and vote in the best interest of each client for whom the adviser performs proxy voting services, and should consider reasonable measures to determine that it is casting proxy votes on behalf of its clients consistently with the adviser's voting policies and procedures and in its client's best interest. The Department believes that proxy advisers' efforts to satisfy new SEC requirements might ease responsible fiduciaries' efforts to comply with the Department's proposal. The requirements of this IC and the SEC's initiatives are not duplicative.

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

This collection of information is unlikely to adversely affect small employee benefit plans. Small employee benefit plans may rely on third-party service providers, such as asset managers, to act as responsible fiduciaries or otherwise assist with the exercise of plans' shareholder rights and full-fill the requirements. Small plans additionally stand to benefit most from the economies of scale that specialized service providers, such as asset managers and proxy advisers, can provide.

***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.***

Named fiduciaries or authorized investment manager or a proxy voting firm or other person performs advisory services must maintain proper documentation on proxy voting activities and other exercises of shareholder rights, including records that demonstrate the basis for particular proxy votes and exercises of shareholder right. This requirement helps ensure that plan assets are protected, and that named fiduciaries compliance can be monitored by the Department.

***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;***

---

<sup>3</sup> See Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, 84 FR 47420 (Sept. 10, 2019) (2019 SEC Guidance).

***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.***

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 C.F.R. § 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. The Office of Management and Budget has 60 days to review the information, but must allow at least 30 days for public comment. Therefore, the PRA section of the proposed rule requests the public to send comments within 30 days to ensure their consideration. (5 CFR 1320.11(c); 5 CFR 1320.11(e))

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

No payments or gifts are provided to respondents.

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

There is no assurance of confidentiality provided to respondents.

**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.**

NA

**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)**

Fiduciary Duties Regarding Proxy Voting and Shareholder Rights  
1210-NEW  
August 2020

It has long been the view of the Department that the duty to monitor necessitates proper documentation of the activities that are subject to monitoring.<sup>4</sup> Accordingly, the Department’s proposal requires that plan fiduciaries maintain records on proxy voting activities and other exercises of shareholder rights, including records that demonstrate the basis for particular proxy votes and exercises of shareholder rights. This requirement applies to all pension plans with investments, including those that have shareholder rights and proxy votes that may need to be exercised. Fiduciaries’ proxy voting decisions may only involve consideration of those factors economically relevant to the plan.

Plan fiduciaries that have followed prior guidance, or good business practices, are already performing much if not all of the recordkeeping actions the proposal would require. While the incremental burden of the proposal is generally small, perhaps even *de minimis*, the full burden of the requirements will be included below to allow for full evaluation of the requirements in the information collection.

As shown in Table 1 below, 34,906 pension plans hold stocks and would have shareholder rights they may need to exercise.<sup>5</sup> Additionally, 597 health and other welfare plans file the schedule H and report holding either common stocks or employer stocks. The Department lacks information on the number of small plans that hold stock. Small plans are significantly less likely to hold stock than larger plans. For purposes of estimating the burden, five percent of small plans are presumed to hold stock resulting in 30,946 small plans needing to comply with the information collection. Therefore, a total of 66,449 plans will need to comply with this information collection.

**Table.1 Number of Pension Plans Holding Common Stocks or Employer Stocks by Type of Plan, 2017**

Common Stock <sup>b</sup>	Defined		Total Plans
	Benefit	Contribution	
Direct Holdings	60	41	101
Indirect Holdings	35	01	36
Direct and Indirect Holdings	82	64	146
<b>Total</b>	<b>76</b>	<b>6</b>	<b>82</b>
<b>Employer Securities</b>		57	57
<b>Common Stock and Employer Securities</b>		34	34

<sup>4</sup> 29 CFR 2509.08-2 (2010).

<sup>5</sup> As a description of the total universe of pension and health and welfare. According to the most recent Form 5500 data there are 709,527 pension plans (90,604 large plans and 618,923 small plans) and 8,475 health or welfare plans (5,626 large plans filing a schedule H, and 2,849 small plans filing a schedule I). While the Schedule H collects information on a plan’s stock holdings, Schedule I lacks the specificity to determine if small plans hold stocks. EBSA estimates using 2017 Form 5500 filing data.

Fiduciary Duties Regarding Proxy Voting and Shareholder Rights  
1210-NEW  
August 2020

---

	5,4	29,43	34,9
<b>Total Plans Holding Stocks</b>	76	0	06

---

<sup>a</sup> DOL calculations from the 2017 Form 5500 Pension Research Files.

<sup>b</sup> Direct Holdings are stock holdings reported in a plan's Schedule H of the 5500 form. Indirect Holdings are stock holdings reported by a servicing Direct Filing Entity's Schedule H of the 5500 form.

---

*Maintain Documentation*

The proposed rule requires that the named plan fiduciary must maintain records on proxy voting activities and other exercises of shareholder rights, including records that demonstrate the basis for particular proxy votes and exercises of shareholder rights. Where the authority to vote proxies or exercise shareholder rights has been delegated to an investment manager pursuant to ERISA section 403(a)(2), or a proxy voting firm, or another person perform advisory services as to the voting of proxies, plan fiduciaries must require such investment manager, proxy voting firm or other person to document the rationale for proxy voting decisions or recommendations. This is required of all plans with investments and includes plans that may exercise shareholder rights.

Much of the information needed to fulfill this requirement is generated in the normal course of business. Plans may need additional time to maintain the proper documentation, but this burden is likely to be reduced by the adoption of policies by plan fiduciaries that incorporate one or more of the proposed rule's permitted practices. The Department estimates that plan fiduciaries or investment managers will require a half hour annually and a half hour of help from clerical staff to maintain or document the required information. This is likely an overestimate, because many, if not most, plans use investment managers. These investment managers provide similar services for many plans. This results in an annual cost burden estimate of \$6,291,078.<sup>6</sup>

***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 are no ongoing costs to the Federal government.

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

This is a new information collection.

---

<sup>6</sup> The burden is estimated as follows: 66,449 plans \* 0.5 hours = 33,224.6 hours for both a plan fiduciary and clerical staff. A labor rate of \$134.21 is used for a plan fiduciary and a labor rate of \$55.14 for clerical staff (33,224.6 \* \$134.21 = \$4,459,074 and 33,224.6 \* \$55.14 = \$1,832,004).

**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 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.”**

There are no exceptions to the certification statement.