

**SUPPORTING STATEMENT**  
**For the Paperwork Reduction Act Information Collection Submission for**  
**Rule 498A**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

Section 5(b)(2) of the Securities Act of 1933 (the “Securities Act”)<sup>1</sup> makes it unlawful for any person, directly or indirectly, to carry or cause to be carried through the mails or in interstate commerce securities for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus meeting the requirements of section 10 of the Securities Act.<sup>2</sup> Section 10(a) of the Securities Act describes the type of information required to be included in a statutory prospectus.<sup>3</sup> Sections 10(b) of the Securities Act and 24(g) of the Investment Company Act of 1940 (the “Investment Company Act”)<sup>4</sup> permit the Securities and Exchange Commission (the “Commission”) to allow the use of a prospectus that omits or summarizes information required by section 10(a).<sup>5</sup>

On March 11, 2020, the Commission adopted rule and form amendments designed to help investors make informed investment decisions regarding variable

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<sup>1</sup> 15 U.S.C. 77a *et seq.*

<sup>2</sup> 15 U.S.C. 77e(b)(2). A “prospectus,” as defined by the Securities Act, is any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security, with certain exceptions. 15 U.S.C. 77b(a)(10).

<sup>3</sup> 15 U.S.C. 77j. For purposes of this supporting statement, a prospectus meeting the requirements of a section 10(a) prospectus is referred to as a “statutory prospectus.”

<sup>4</sup> 15 U.S.C. 80a-1 *et seq.*

<sup>5</sup> 15 U.S.C. 77j(b); 15 U.S.C. 80a-24(g).

annuity and variable life insurance contracts (together, “variable contracts”). The rules use a layered disclosure approach that would permit a person to satisfy its prospectus delivery obligations under the Securities Act for a variable contract by sending or giving a summary prospectus that presents key information about a variable contract’s terms, benefits, and risks, with access to more detailed information available online and electronically or in paper format on request.<sup>6</sup>

Specifically, rule 498A under the Securities Act permits a person to satisfy its prospectus delivery obligations under Section 5(b)(2) of the Securities Act for a contract by: (1) sending or giving to new investors key information contained in a variable contract statutory prospectus in the form of an initial summary prospectus; (2) sending or giving to existing investors each year a brief description of certain changes to the contract, and a subset of the information in the initial summary prospectus, in the form of an updating summary prospectus, in the form of an updating summary prospectus; and (3) providing the statutory prospectus and other materials online.<sup>7</sup> Rule 498A considers a person to have met its prospectus delivery obligations for any portfolio companies associated with a variable contract if the portfolio company prospectuses are posted online.<sup>8</sup> Under the new rule, a registrant (or the financial intermediary distributing the variable contract) relying on the rule must send the variable contract statutory prospectus (that statutory prospectus must be filed as part of registration statement on Form N-3, N-4, or N-6, as applicable) and other materials to an investor in paper or electronic format

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<sup>6</sup> Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Investment Company Act Release No. 33814 (Mar. 11, 2020), available at <https://www.sec.gov/rules/final/2020/33-10765.pdf> (“Adopting Release”).

<sup>7</sup> Rule 498A(b) and (c).

<sup>8</sup> Rule 498A(j).

upon request.<sup>9</sup> A summary prospectus that complies with rule 498A would be deemed to be a prospectus that is authorized under section 10(b) of the Securities Act and section 24(g) of the Investment Company Act.<sup>10</sup>

## **2. Purpose and Use of the Information Collection**

The purpose of rule 498A is to provide investors with a summary prospectus to help them make informed investment decisions regarding variable contracts. Unlike many other federal information collections, which are primarily for the use and benefit of the collecting agency, this information collection is primarily for the use and benefit of investors.

## **3. Consideration Given to Information Technology**

The Commission has provided guidance noting that electronic delivery may be used to satisfy prospectus delivery requirements under certain circumstances.<sup>11</sup> Rule 498A requires additional information (*i.e.*, the variable contract's statutory prospectus, summary prospectuses, statement of additional information, and in the case of a registrant on Form N-3, the registrant's most recent annual and semi-annual reports to shareholders under rule 30e-1) to be publicly accessible, free of charge, at a website address specified on or hyperlinked in the cover of the summary prospectus. The new rule also provides an optional method for satisfying portfolio company prospectus delivery obligations by

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<sup>9</sup> Rule 498A(i)(1) and (j)(1)(iii).

<sup>10</sup> Rule 498A(b) and (c).

<sup>11</sup> *See, e.g.*, Securities Act Release No. 7233 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)]; Securities Act Release No. 7856 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)].

making additional information (*i.e.*, the portfolio company's statutory prospectus, summary prospectus, statement of additional information, and the most recent annual and semi-annual reports to shareholders under rule 30e-1) available online at the website address specified on or hyperlinked in the variable contract summary prospectus.

#### **4. Duplication**

The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication, and reevaluates them whenever it proposes a rule or a change in a rule. Certain reporting requirements of rule 498A are duplicated by the requirements of Forms N-3, N-4, and N-6. In particular, under the new rule, certain disclosures may appear in both the summary prospectus and the statutory prospectus, but this is necessary in light of the policy goals of the proposal and parallels the approach to summary prospectus disclosure in the context of mutual funds and ETFs.

#### **5. Effect on Small Entities**

The information collection requirements of rule 498A do not distinguish between funds that are small entities and other funds. To the extent that smaller entities would rely on rule 498A, their burden to comply with its requirements may be greater than for larger entities due to economies of scale.

The Commission staff considered special requirements for small entities. The Commission staff believes, however, that rule 498A will not have a significant economic impact on a substantial number of small entities.<sup>12</sup> Generally, an investment company is

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<sup>12</sup> See Adopting Release, *supra* footnote 1, at section V.

a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of \$50 million or less as of the end of its most recent fiscal year. The analysis is slightly different for insurance company separate accounts. Because state law generally treats separate account assets as the property of the sponsoring insurance company, rule 0-10 aggregates each separate account's assets with the assets of the sponsoring insurance company, together with assets held in other sponsored separate accounts.<sup>13</sup> As a result, the Commission staff expects few, if any, separate accounts to be treated as small entities,<sup>14</sup> and no small entities currently file registration statements on Forms N-3, N-4, or N-6.

The Commission staff reviews all rules periodically, as required by the Regulatory Flexibility Act, to identify methods to minimize reporting or recordkeeping requirements affecting small businesses.

## **6. Consequences of Not Conducting Collection**

Section 5(b)(2) of the Securities Act makes it unlawful for any person, directly or indirectly, to carry or cause to be carried through the mails or in interstate commerce securities for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus meeting the requirements of section 10 of the Securities Act. Section 10(a)(3) of the Securities Act generally requires that when a prospectus is used more than nine months after the effective date of the registration statement, the information in the prospectus must be as of a date not more than sixteen months prior to

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<sup>13</sup> 17 CFR 270.0-10(b).

<sup>14</sup> See Adopting Release, *supra* footnote 1, at section V.

such use.<sup>15</sup> The effect of these provisions is that persons are required to update their variable contract statutory prospectuses at least annually to reflect current cost, performance, and other financial information. This legal requirement prevents the Commission from specifying less frequent distribution of a prospectus—including any summary prospectus that issuers relying on rule 498A will use—to investors when offering securities for sale.

The requirement that funds using a summary prospectus must respond to an investor's request for additional information within three business days ensures that investors who wish to review additional information before making an investment decision will be able to do so.

#### **7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)**

The collection is not inconsistent with 5 CFR 1320.5(d)(2).

#### **8. Consultation Outside the Agency**

Before adopting rule 498A, the Commission solicited and evaluated public comments on the proposed rule and its collection of information requirements. Specifically, the public was given the opportunity to comment on the Commission's estimates for the burdens of rule 498A as proposed and as compared to the burden set forth in the proposing release. Generally, comments were received from filers, investors and other market participants, and were considered by the Commission as discussed in

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<sup>15</sup> See 15 U.S.C. 77j(a)(3).

the Adopting Release.<sup>16</sup> The Commission did not provide an estimate for any external costs associated with printing and mailing the initial and updating summary prospectuses in the proposing release. However, in response to the Commission's solicitation for public comment, one commenter provided such an estimate and, as a result, the Commission is now estimating a burden regarding the external costs for registrants to print and mail the summary prospectuses.<sup>17</sup>

In addition, the Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the variable contract industry through public conferences, meetings, and informal exchanges. These various forums provide the Commission and the staff with a means of ascertaining and acting upon the paperwork burdens confronting the industry.

#### **9. Payment or Gift**

No payment or gift to respondents was provided.

#### **10. Assurance of Confidentiality**

No assurance of confidentiality was provided.

#### **11. Sensitive Questions**

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection does not collect personally identifiable information (PII). The agency has determined that a system of

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<sup>16</sup> See, e.g., Adopting Release, *supra* footnote 1, at 432.

<sup>17</sup> *Id.*

records notice (SORN) and privacy impact assessment (PIA) are not required in connection with the collection of information.

## **12. Burden of Information Collection**

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995<sup>18</sup> and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Rule 498A contains collection of information requirements. The likely respondents to this information collection are variable contract separate accounts registered or registering with the Commission. Under rule 498A, use of the summary prospectus is voluntary, but the rule's requirements are mandatory for variable contract separate accounts that elect to send or give a summary prospectus in reliance upon rule 498A. The information provided under rule 498A will not be kept confidential.

The summary prospectus is voluntary, so the percentage of variable contract separate accounts that will choose to utilize it is uncertain. Given this uncertainty, the Commission staff has assumed that 90% of all separate accounts will choose to use a summary prospectus under rule 498A.<sup>19</sup>

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<sup>18</sup> 44 U.S.C. 3501 *et seq.*

<sup>19</sup> The Commission staff believes this assumption is appropriate due to a variety of factors, including: (1) expressed industry support for layered disclosure with summary prospectuses (*see, e.g.*, the Adopting Release at n.1219); (2) our estimate that approximately 93% of open-end registered investment companies rely on Securities Act rule 498 to use summary prospectuses (*see, e.g.*, the Adopting Release at n.21 and accompanying text); and (3) our expectation that the new rule will provide costs savings to insurers (*see, e.g.*, the Adopting Release at section IV).

The table below summarizes the final PRA estimates for internal and external burdens associated with rule 498A for Forms N-3, N-4, and N-6:

RULE 498A PRA ESTIMATES

Internal Hour Burden	Wage Rate	Internal Time Costs	Annual External Cost Burden
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**FINAL ESTIMATES FOR FORM N-3**

		\$269		
Preparation of ISP/USP	38 hours	(blended rate for compliance attorney and intermediate accountant)	\$10,222	\$9,500
Online Posting of Contract Documents	2 hours	\$248 (webmaster)	\$496	\$500
Online Posting of Portfolio Company Documents	--	--	--	--
<b>Total Burden per Registrant</b>	<b>40 hours</b>		<b>\$10,718</b>	<b>\$10,000</b>
Number of registrants	× 6		× 6	× 6
<b>Total annual burden</b>	<b>240 hours</b>		<b>\$64,308</b>	<b>\$60,000</b>

### FINAL ESTIMATES FOR FORM N-4

		\$269		
Preparation of ISP and USP	20 hours	(blended rate for compliance attorney and intermediate accountant	\$5,380	\$5,000
Online Posting of Contract Documents	2 hours	\$248 (webmaster)	\$496	\$500
Online Posting of Portfolio Company Documents	2 hours	\$248 (webmaster)	\$496	\$500
<b>Total Burden per Registrant</b>	<b>24 hours</b>		<b>\$ 6,372</b>	<b>\$6,000</b>
Number of registrants	× 426		× 426	× 426
<b>Total annual burden</b>	<b>10,224 hours</b>		<b>\$ 2,714,472</b>	<b>\$2,556,000</b>

### FINAL ESTIMATES FOR FORM N-6

		\$269		
Preparation of ISP and USP	20 hours	(blended rate for compliance attorney and intermediate accountant	\$5,380	\$5,000
Online Posting of Contract Documents	2 hours	\$248 (webmaster)	\$496	\$500

Online Posting of Portfolio Company Documents	2 hours	\$248 (webmaster)	\$496	\$500
Total Burden per Registrant	24 hours		\$ 6,372	\$6,000
Number of registrants	× 244		× 244	× 244
Total annual burden	5,856 hours		\$ 1,554,768	\$1,464,000

### ESTIMATES FOR PRINTING AND MAILING

Initial Summary Prospectus	--	--	--	\$898,800
Updating Summary Prospectus	--	--	--	\$7,865,000
Total annual burden	--	--	--	\$8,763,800

### TOTAL ESTIMATED BURDENS (INCLUDING PRINTING AND MAILING)

Total Annual burden	16,320 hours		\$4,333,548	\$12,843,800
Use of summary prospectus	x 90%		x 90%	x 90%

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Total Annual Burden	14,688		\$11,559,4
for New Collection of Information	hours	\$3,900,193	20

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The table above summarizes the Commission staff's PRA initial and ongoing annual burden estimates associated with Rule 498A. In the aggregate, the Commission staff estimates the total annual hour burden to comply with Rule 498A to be 14,688 hours, at an internal time cost equivalent of \$3,900,193.

### **13. Costs to Respondents**

Cost burden is the cost of goods and services purchased to prepare, submit, and disseminate documents using Rule 498A. The cost burden does not include the hour burden discussed in Item 12 above. The Commission staff estimates for Rule 498A a total annual external cost burden of \$11,559,420 which includes the costs associated with the printing and mailing of summary prospectuses.

### **14. Costs to Federal Government**

The annual cost of reviewing and processing registration statements, post-effective amendments, proxy statements, shareholder reports, and other filings of funds amounted to approximately \$21.2 million in fiscal year 2019 based on the Commission staff's computation of the value of staff time devoted to this activity and related overhead.

**15. Changes in Burden**

The Commission asks that a collection of information for rule 498A be created. As a result of rule 498A, the aggregate total hour burden for preparing and filing summary prospectuses will be 14,688 hours, and the cost burden will be \$3,900,193.

**16. Information Collection Planned for Statistical Purposes**

The results of any information collection will not be published.

**17. Approval to Omit OMB Expiration Date**

Not applicable.

**18. Exceptions to Certification for Paperwork Reduction Act Submissions**

The Commission is not seeking an exception to the certification statement.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

The collection of information will not employ statistical methods.