

Code § 408(k) was amended pursuant to the Small Business Job Protection Act of 1996 (SBJPA), which repealed elective or salary reduction SEPs (SAR-SEPs). The SBJPA provides that employers cannot establish new SAR-SEPs for tax years beginning after December 31, 1996. However, SAR-SEPs established before January 1, 1997, can continue to receive contributions under present-law rules, and new employees of an employer with a pre-existing (prior to January 1, 1997) SAR-SEP hired after December 31, 1996, can participate in the SAR-SEP in accordance with such rules. The ICR applies therefore, to on-going SAR-SEPs, new participants in these SAR-SEPs, and to current and new non-model SEPs and their participants. Because only a small number of SEPs are SAR-SEPs, all SEPs and SEP participants are referred to as non-model SEPs for purposes of this ICR.

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 alternative disclosure arrangement provided through this regulation relieves sponsors of non-model SEPs of most of the reporting and disclosure requirements under Title I of ERISA. Also, the disclosure requirements set forth in the regulation ensure that administrators of non-model SEPs provide participants with specific written information concerning SEPs. This ICR generally requires timely written disclosure to employees eligible to participate in non-model SEPs, including specific information concerning: participation requirements; allocation formulas for employer contributions; designated contact persons for further information; and, for employer recommended IRAs, specific terms of the IRAs such as rates of return and any restrictions on withdrawals. Moreover, general information is required that provides a clear explanation of: the operation of the non-model SEP; participation requirements and any withdrawal restrictions; and the tax treatment of the SEP-related IRA. Furthermore, statements must be provided that inform participants of: any other IRAs under the non-model SEP other than that to which employer contributions are made; any options regarding rollovers and contributions to other IRAs; descriptions of IRS disclosure requirements to participants and information regarding social security integration (if applicable); and timely notification of any amendments to the terms of the non-model SEP.

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.

ERISA and regulations thereunder provide general standards for the delivery of all information required to be furnished to participants, beneficiaries, and other individuals under Title I of ERISA (29 C.F.R. § 2520.104b-1(b)). Plan administrators must use delivery methods reasonably calculated to ensure actual receipt of information by participants, beneficiaries, and other individuals (29 C.F.R. § 2520.104b-1(b)(1)). For example, in-hand delivery to an employee at his or her workplace is acceptable, as is material sent by first class mail. In response to developing internet, email, and similar technologies, the Department first amended ERISA's delivery standards in 2002 by establishing a safe harbor for the use of electronic media to furnish disclosures (the 2002 safe harbor; 29 C.F.R. § 2520.104b-1(c)). The 2002 safe harbor was not and is not the exclusive means by which a plan administrator may use electronic media to satisfy the general standard. However, plan administrators who satisfy the conditions of the safe harbor are assured that the general delivery requirements have been satisfied.

On May 27, 2020, the Department issued a final regulation providing a new, additional safe harbor for plan administrators to use electronic media, as a default, to furnish disclosures to participants and beneficiaries of pension benefit plans subject to ERISA (29 C.F.R. § 2520.104b-31). The rule allows plan administrators who satisfy specified conditions to provide participants and beneficiaries with a notice that certain disclosures will be made available on a website, or to furnish disclosures via email. Individuals who prefer to receive disclosures on paper can request paper copies of disclosures and opt out of electronic delivery entirely. The Department expects the rule to enhance the effectiveness of ERISA disclosures and significantly reduce the costs and burden associated with furnishing many of the recurring and most costly pension plan disclosures. The new, additional safe harbor does not supersede the 2002 safe harbor; the 2002 safe harbor remains in place as another option for plan administrators.

Also, 29 CFR § 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records.

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 disclosure requirement set forth in this regulation is not duplicated in any other Federal statute or regulation. Also, this disclosure requirement is the only method of ensuring that administrators of non-model SEPs provide participating employees with specific written information concerning SEPs.

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

The alternative disclosure arrangement provided through this regulation is an effort on the part of the Department to assure that small businesses receive the most extensive relief consistent with ERISA. This regulation will minimize the impact of existing reporting and disclosure requirements on these businesses.

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 is not applicable because this information is not collected by the Federal government.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has**

instituted procedures to protect the information's confidentiality to the extent permitted by law.

There are no special circumstances that require the collection to be conducted in a manner inconsistent with the above.

- 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, as required by 5 CFR 1320.8(d), soliciting comments on the information collection was published in the Federal Register on October 20, 2020 (85 FR 66580), providing the public 60 days to comment on the submission. 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 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.**

The information collection is a third-party disclosure and as such is not intended to be confidential.

- 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 pertaining to sexual behavior and attitudes, religious beliefs, or other matters that are commonly considered private.

- 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.**

The Department estimates the total annual hour burden required to complete this disclosure is 21,227. Every SEP must prepare a disclosure and distribute copies of the disclosure to its participants. The Department assumes that the employer will perform these services themselves, so this work will be measured in burden hours. The cost of materials, copying, and postage is presented in Item 13.

For the paper work renewal in 2005, the Securities Industry Association (SIA), provided the Department with the results of an informal survey of a number of their members,

regarding the number of SEP accounts, and the number of participants in those accounts.¹ The data provided by SIA (now called SIFMA) indicates that in 2004, there were approximately 356,600 employers sponsoring non-model SEPs, and approximately 679,300 participants in those SEPs. No update of this information is available.

Since the alternate method of compliance, which is the subject of this ICR, has been in effect for over 30 years, the Department believes that the most SEP sponsors have already compiled the disclosures that they are required to distribute to plan participants. The Department estimates that each disclosure statement takes 30 minutes to prepare, and will only be prepared by administrators of new SEPs. The Department does not collect information regarding the number of new SEPs, and has estimated that about 35,660 new SEP plans are created each year. The total preparation burden is estimated to be 17,830 hours (35,660 x 1/2 hour = 17,830 hours).

The Department estimates that each year, there are approximately 67,930 new SEP participants who must receive a disclosure statement.² The Department estimates that it takes 3 minutes per participant to distribute the disclosure statements. The distribution burden is estimated to be 3,397 hours (67,930 participants x 3 minutes = 3,397 hours).

The total hour burden to prepare and distribute the disclosures is estimated to be 21,227 hours.

The equivalent cost of the hour burden is approximately \$2,580,275. The Department assumes that the preparation would be done by a benefits manager at \$134.21/hour,³ for a total of \$2,173,655 (17,830 hours x \$134.21/hour = \$2,392,964). The Department assumes that the distribution would be done by a clerical staff member at \$55.14/hour, for a total of about \$176,950 (3,397 hours x \$55.14/hour = \$187,311).

Estimated Annualized Respondent Cost and Hour Burden

¹SIA is now part of the Securities Industry and Financial Markets Association (SIFMA)

²The Department estimates that approximately 10 percent of SEP participants began investing in their SEP within the last year 679,300*.1=67,930 .

³For more information on how labor costs are calculated see: <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf>

Activity	No. of Respondents	No. of Responses per Respondent	Total Responses	Average Burden (Hours)	Total Burden (Hours)	Hourly Wage Rate	Total Burden Cost
Preparation of Disclosures	35,660	1	35,660	0.5	17,830	\$134.21	\$2,392,964
Distribution of Disclosures	35,660	1.904935	67,930	0.05	3,397	\$55.14	\$187,311
Unduplicated Total	35,660	1.904935	67,930		21,227	--	\$2,580,275

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 estimate should be split into two components: (a) a total capital and start up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of service component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.
- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

As a result of the final Default Electronic Disclosure regulation issued by the Department on May 27, 2020 (85 FR 31884), the Department increased the percent of required disclosures that will be sent electronically for DC plans from 56.4 percent to 92.7 percent.

The total cost burden results from paper, copying and mailing costs. The Department estimates that 92.7 percent of the disclosures will be done electronically at no cost. The Department estimates that the remaining 7.3 percent of disclosures cost \$0.10 for copying and paper and \$0.55 to mail for an annual total of approximately \$3,223 (67,930 disclosures x 7.3 percent x (\$0.55 + \$0.10) = \$3,223).

- 14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

There is no reporting to the Federal government and consequently no cost to the government.

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

The cost burden has decreased as a result of final Default Electronic Disclosure regulation issued by the Department on May 27, 2020 (85 Fed. Reg. 31884). EBSA has revised the electronic disclosure assumption from 56.4 to 92.7 percent for DC plans.

- 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.

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

Alternative Compliance for Certain SEPs Pursuant to 29 CFR § 2520.104-49
OMB Number 1210-0034
Expiration Date: 2/28/2021

18. Explain each exception to the certification statement identified in Item 19.

Not applicable; no exceptions to the certification statement.

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

Statistical methods are not used in these collections of information.