

**SUPPORTING STATEMENT**  
**OMB CONTROL NUMBER: 1235-0013**

The Department of Labor (Department) proposes to extend its information collection request (ICR) Requirements of a Bona Fide Thrift or Savings Plan (29 CFR part 547) and Requirements of a Bona Fide Profit-Sharing Plan or Trust (29 CFR part 549). The Department submits this ICR as an extension.

**Part 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.**

Bona Fide Thrift or Savings Plan: Regulations 29 CFR part 547 contain the requirements for a “bona fide thrift or savings plan” under section 7(e)(3)(b) of the Fair Labor Standards Act (FLSA). *See* 29 U.S.C. 207(e)(3)(b); 29 CFR 547.0-.2. To compute the amount of overtime due to an individual, it is necessary to first compute the “regular rate” that the individual earned. *See* 29 U.S.C. 207(a); 29 CFR 778.107-.109. When computing the regular rate, it is not necessary to include any sums paid to or on behalf of an employee pursuant to a bona fide thrift or savings plan, as defined in these regulations. *See* 29 U.S.C. 207(e)(3)(b); 29 CFR 547.0. Employers are required to communicate, or make available to the employees, the terms of the bona fide thrift or savings plan. 29 CFR 547.1(b).

Bona Fide Profit-Sharing Plan or Trust: Regulations 29 CFR part 549 contain the requirements for a “bona fide profit-sharing plan or trust” under section 7(e)(3)(b) of the FLSA. *See* 29 U.S.C. 207(e)(3)(b); 29 CFR 549.0-.3. To compute the amount of overtime due to an individual, it is necessary to first compute the “regular rate” that the individual earned. *See* 29 U.S.C. 207(a); 29 CFR 778.107-.109. When computing the regular rate, it is not necessary to include any sums paid to or on behalf of an employee pursuant to a bona fide profit-sharing plan or trust as defined in these regulations. *See* 29 U.S.C. 207(e)(3)(b); 29 CFR 549.0. Employers are required to communicate, or make available to the employees, the terms of the bona fide profit-sharing plan or trust. 29 CFR 549.1(b).

FLSA section 11(c) requires all employers covered by the FLSA to make, keep, and preserve records of employees and of wages, hours, and other conditions and practices of employment. *See* 29 U.S.C. 211(c). An FLSA-covered employer must maintain such records for a specified period of time and make such reports as prescribed by regulations issued by the Secretary of Labor. *Id.*

- 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 third-party disclosure requirements covered by this information collection provide transparency to employees about their remuneration. 29 CFR 547.1(b), 549.1(b). Records detailing the specifics of a thrift or savings plan, as well as a profit-sharing plan or trust, provide evidence of an employer's compliance or non-compliance with the FLSA. Employer maintenance of those records enables Department investigators to determine, upon inspection, whether such employers are in compliance with section 7(e)(3)(b) of the FLSA. Without these records, an investigator cannot make such a determination.

- 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 of using information technology to reduce burden.**

The Department accepts third-party disclosures in electronic format as complying with the requirements of this information collection. The only information these regulations require employers to maintain is that information necessary to support the plan's qualifications as a bona fide thrift or savings plan or profit-sharing plan or trust. The regulations do not mandate how records are to be maintained by the employer or transmitted to the Department.

- 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 accepts information disclosed and records maintained pursuant to the Employee Retirement Income Security Act, 29 U.S.C. 2021 *et seq.*, (or any other statutory or regulatory requirement) as satisfying the requirements of this information collection, where there is an overlap in the requirements. *See e.g.*, OMB Control Number 1210-0110. The Department must maintain the separately stated requirements of this information collection in order to meet the FLSA expectation that the agency clarify what constitutes a "bona-fide" plan or trust under either part 547 or 549.

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

Small businesses choosing to establish a thrift or savings plan or profit-sharing plan or trust are impacted by this information collection. The Department estimates that 98.7 percent of employers subject to this information collection are small businesses. (Calculations are provided in a separate document). In order to fulfill contractual obligations under a chosen plan or trust, prudent management practice dictates that the disclosures and records maintained by a business pursuant to the regulations be kept even if the requirement to do so did not exist. Thus, no alternative means exist to reduce this burden but for the acceptance of information collected pursuant to identical requirements. Moreover, no particular order or form of record is required by the regulations.

**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.**

There is no regular collection of the information required by the regulations. The regulations require only that the terms of the plan be “in writing” and “communicated or made available” to the employees. See 29 CFR 547.1(b); 549.1(b). No further information collection is required. If the information were collected less frequently or not at all, a determination regarding FLSA compliance could not be made.

**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 secrets, 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 required in the conduct of these information collections.

**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 published a Notice in the *Federal Register* inviting public comments about these information collections on 10/30/20. The agency received 0 comments in response to the Notice. See 85 FR 68934.

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

The Department offers no payments or gifts to respondents in connection with these information collections.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If the collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.**

The Department makes no assurances of confidentiality to respondents. As a practical matter, the Department would only disclose information collected under these requests in accordance with the provisions of the Freedom of Information Act, 5 U.S.C 552; the Privacy Act, 5 U.S.C. 552a; and their respective regulations, 29 CFR parts 70, 71.

**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.**

These information collections ask no sensitive questions.

**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 under ‘Annual Cost to Federal Government’.**

The Department estimates that there are 5,996,900 private firms in the United States (<https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html>). Of those 5,996,900 firms, the Department estimates that 53 percent provide access to retirement plans ([https://www.pewtrusts.org/-/media/assets/2017/09/employer\\_barriers\\_to\\_and\\_motivatio ns.pdf](https://www.pewtrusts.org/-/media/assets/2017/09/employer_barriers_to_and_motivatio ns.pdf)).

**5,996,900 × 53% = 3,178,357 firms**

67 percent of those firms offer a defined contribution plan in the private sector. (See National Compensation Survey: Employee Benefits in Private Industry in the United States, 2020, DOL, Bureau of Labor Statistics (BLS) <https://www.bls.gov/news.release/ebs2.t01.htm>). The Department now uses a BLS source with the most current numbers to calculate the disclosure rate as opposed to Census Data.

**3,178,357 × 67% = 2,129,499 firms**

Of the estimated 2,129,499 firms with defined contribution plans, 74 percent of defined contribution plan participants had savings and thrift plans in 2015. (<https://www.bls.gov/opub/ted/2016/74-percent-of-private-industry-workers-participated-in-saving-and-thrift-plans-in-2015.htm>).

**2,129,499 × 74% = 1,575,829 (rounded) potential respondents**

The Department estimates the median establishment size to be 5 employees . Private sector workers above the age of 16, based on the most recent data from BLS, remain at a job for 3.7 years. (<https://www.bls.gov/news.release/tenure.t05.htm>). This corresponds to an annual turnover rate of about 27 percent.<sup>1</sup> Thus, the average employer makes 1.35 disclosures per year ( $5 \times 27\% = 1.35$ ).<sup>2</sup>

**1,575,829 × 1.35 = 2,127,369 (rounded) annual responses.**

These regulations would typically not impose any third-party disclosure or recordkeeping burdens on employers beyond what would be common under prudent business practices or required under information collections administered by other agencies. A prudent

employer establishing a savings or thrift plan or profit-sharing plan or trust would set forth the plan in writing, describe eligibility requirements, a definite formula for saving, and the amount of the employer’s contributions, even if not required to do so by regulation.

**The annual burden is estimated to equal two seconds (one second for disclosure and one second for recordkeeping) per new employee.**

$$2,127,369 \times 2 \text{ seconds}/60 \text{ seconds}/60 \text{ minutes} = 1,182 \text{ hours (rounded).}$$

Employers from a wide variety of businesses, from small firms or retail stores to large manufacturing plants, have employee profit-sharing plans or trusts. Absent specific wage data regarding such employers, respondent costs are estimated using \$29.91 per hour, which is the seasonally adjusted average hourly rate of production for non-supervisory workers for December 2020. (See *Employment Situation*, Table B-3, DOL, BLS, <https://www.bls.gov/news.release/empsit.t19.htm>).

In addition, a 46 percent benefits cost and 17 percent overhead cost is factored in to the wage rate.<sup>3</sup>

$$\$29.91 \times 46\% = \$13.76(\text{rounded})$$

$$\$29.91 \times 17\% = \$5.08 \text{ (rounded)}$$

$$\$29.91 + \$13.76 + \$5.08 = \$48.75$$

$$\$48.75 \times 1,182 = \$57,623 \text{ (rounded).}$$

<b>Firms</b>	<b>Percentage of Private Sector Firms Offering Defined Contribution Plans</b>	<b>% Savings and Thrift Plans</b>	<b>Potential Respondent</b>	<b>Responses</b>
3,178,357	67%	74%	1,575,829	2,127,369
<b>Annual Burden Hours</b>	<b>Hourly Rate</b>	<b>Benefits and Overhead</b>	<b>Total Hourly Rate</b>	<b>Total Respondent Costs</b>

1,182	\$29.91	\$29.91 × 46%	\$13.76	\$48.75	\$57.623
		\$29.91 × 17%	\$5.08		
		\$13.76 + \$5.08	\$18.84		

**13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).**

- **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 services 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 collections 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.**

The requirements merely direct employers to maintain in their files a copy of the plan, describing its provisions. Therefore, there are no annual cost burdens to record keepers.

In the extremely rare situation (*i.e.*, three occurrences since 1970) where an employer must post a notice as required by 29 CFR 549.1(d)(2), there would be some burden on the

employer to meet this requirement (approximately one hour). However, because this occurs so infrequently, this burden figure has not been calculated.

- 14. Provide estimates of annualized costs 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 may also aggregate cost estimates from Items 12, 13, and 14 in a single table.**

There are no costs for the federal government.

- 15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.**

There is an increase in burden due to an increase in the number of firms as well as an increase in the number of firms offering defined contribution plan retirement benefits and an increase in the percentage of those defined contribution plans that come in the form of savings or thrift plans since the last reporting period. In addition, there was an increase in wages and a 17 percent overhead cost factored in. Another reason for the increase in burden is due to a change in data source – the Department now uses a BLS source with the most current numbers to calculate the disclosure rate as opposed to Census Data.

- 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.**

The Department does not publish the results of this information 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 Department does not seek an exception to the requirement to display the expiration date on these information collections.

## **Part B: COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.

<sup>1</sup> If average tenure is 3.7 years, turnover per year is  $(1/3.7)=27$  percent.

<sup>2</sup> 5 is the number of employees at the median establishment size. If the turnover rate is 27 percent per year, 1.35 employees are expected to turnover each year for an establishment of median establishment size. This is inferred from the SUSB. 47% of establishments fall in the <5 employees group. Therefore, you can infer that the median of 50% would be 5 employees per establishment. See [https://www2.census.gov/programs-surveys/susb/tables/2017/us\\_state\\_totals\\_2017.xlsx](https://www2.census.gov/programs-surveys/susb/tables/2017/us_state_totals_2017.xlsx).

<sup>3</sup> The benefits-earnings ratio is derived from the Bureau of Labor Statistics' Employer Costs for Employee Compensation data using variables CMU1020000000000D and CMU1030000000000D." The 17 percent for overhead costs was agreed upon with OIRA.