

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995:
NOTICE OF BLACKOUT PERIOD UNDER ERISA**

This ICR seeks approval for an extension of an existing control number.

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.**

The Sarbanes-Oxley Act (SOA), enacted on July 30, 2002, amended the Employee Retirement Income Security Act (ERISA) to add, in subsection 101(i), the requirement that plan administrators of individual account pension plans (e.g., a profit sharing plan, 401(k) type plan or money purchase pension plan) must provide at least 30 days advance written notice to affected participants and beneficiaries in advance of any “blackout period” during which their existing rights to direct or diversify their investments under the plan, or obtain a loan or distribution from the plan will be temporarily suspended. The term “blackout period” is generally defined as any period of more than three consecutive business days during which time the ability of plan participants and beneficiaries to direct or diversify investments or to obtain loans or distributions is suspended, limited or restricted. Under 306(b)(2) of SOA, the Secretary of Labor was directed to issue interim final rules necessary to implement the SOA amendments. The Department’s regulation for this purpose is codified at 29 CFR 2520.101-3. The specific information collection provisions of the regulation are found in paragraphs (a), (b)(1), (b)(2)(i), (b)(2)(ii)(A) and (B), (b)(2)(iv), (b)(4), and (c)(1).

- 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 collection.**

The blackout notice requirement is intended to provide participants and beneficiaries with advance warning about any impending “blackout” period in which their ability to redirect/diversify the way in which their account balances are invested or obtain loans or a distribution from the plan will be temporarily suspended. These notices also inform participants about the rights that are to be suspended. The Department believes it is important for plan participants to have this information so that they may make informed decisions on how to manage their investments and protect their rights under the plan. The regulation does not require plan sponsors or their representatives to inform the Department about blackouts, and, as a result, the information collection is only a third-party disclosure requirement.

- 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 similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

This information is not available to individual account plan participants and beneficiaries from any other source.

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

The statutory provision applies equally to small and large businesses and plans, and the Department did not fashion any special treatment for such small entities because participants and beneficiaries in small plans have the same need for the disclosure as do those in large plans. A response is required only when a blackout period is imposed, which is generally under the control of the plan administrator.

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.

The plan administrator controls the frequency of this information collection because the notice requirement applies only when a plan administrator decides to implement a blackout period. This Department is required by statute to implement this information collection. Failure to do so would be in contravention of a stated statutory requirement. The notice requirement ensures that individual plan participants and beneficiaries are aware of significant impending events that could affect their pension benefits and restrict their rights under the plan. Failure to conduct this information collection activity would undermine this important policy objective.

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 result 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.**

None.

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 soliciting comments on the extension of the information collection, as required by 5 CFR 1320.8(d), was published in the Federal Register on March 31, 2021 (86 FR 16787). The public was provided with 60 days to comment on the submission, and no public comments were received.

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.**

Not applicable.

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 person 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 difference 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.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collection 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.**

Estimates of the number of plans and participants and beneficiaries used in this burden analysis are based on Department of Labor tabulations of the 2018 Form 5500 data. The Department estimates that there will be 675,007 affected defined contribution plans with 105.846 million affected participants and beneficiaries.¹

The blackout notice requirement applies in any case in which the plan will suspend a participant's or beneficiary's right to direct investments, diversify assets, obtain a plan loan, or request a distribution. Because all individual account plans must provide for the opportunity to request a distribution, for purposes of this analysis, the Department has assumed that all individual account plans will be required to comply with the blackout notice regulation. The total number of individual account plans has been adjusted to reflect the fact that only a subset of all plans will impose a blackout period in any given year. Based on the best available evidence, the Department has estimated that approximately seven percent of all individual account plans will impose a blackout period during any one year.² Assuming an even distribution of such blackout periods across plan size, the Department estimates that about 47,250 plans (675,007* 7%) and 7.409

¹ See Table A1 of "Private Pension Plan Bulletin: Abstract of 2018 Form 5500 Annual Reports," US Department of Labor, Employee Benefits Security Administration, January 2018. <https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2018.pdf>

² Estimates of the number of blackouts were obtained from the Society of Professional Administrators and Recordkeepers, January 2006.

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million participants (105.846 million * 7%) will be affected annually by the blackout notice regulation.

The final rule includes a model notice at paragraph (e) that is designed to facilitate compliance and lessen the burden otherwise required for notice preparation. The estimated burden hours include one half hour for the plan administrator to edit the model notice by adding plan-specific information. Preparation of the notice therefore accounts for 23,625 hours (47,250 plans * 0.5 hours per plan).

The Department also assumes that plans instituting a blackout period will have the required notice reviewed by a member of its in-house legal staff. The Department has allotted one hour for this review. This results in an hour burden estimate of 47,250 hours (47,250 plans * 1 hour per plan).

The Department also expects that there will be an hourly burden arising from the distribution of the notices to participants of affected plans. The Department estimates that 540,873 notices (7.3% of 7.409 million notices) will be distributed by mail and the remaining 6.868 million notices will be distributed electronically (92.7% of 7.409 million notices)³. Distribution of the notices to participants by mail is expected to require two minutes per notice for copying and mailing, for a total of 18,029 hours (7.409 million notices * 2/60 hours per notice * 7.3% received by mail). The direct costs of paper notice distribution are accounted for in Item 13.

Although preparation time for each blackout notice prepared by a plan is accounted for regardless of the distribution method, no additional time has been estimated for distribution of electronic notices because it is assumed that notices are drafted in electronic form, plan administrators use existing infrastructure to communicate electronically, and the cost/time required for electronic transmission is negligible.

The equivalent cost for the burden hours attributed to preparation of the notice itself is estimated at \$3.909 million.⁴ This is based on an hourly labor rate of \$165.45 for a financial professional multiplied by one-half hour (estimated time required) and then multiplied by the number of plans instituting a blackout (\$3.909 million = \$165.45 per hour * ½ hour * 47,250 plans). Equivalent cost for

³ 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.

⁴ DOL estimates of labor costs by occupation reflect estimates of total compensation and overhead costs. Estimates for total compensation are based on mean hourly wages by occupation from the 2020 Occupational Employment Statistics and estimates of wages and salaries as a percentage of total compensation by occupation from the 2020 National Compensation Survey's Employee Cost for Employee Compensation. Estimates for overhead costs for services are imputed from the 2017 Service Annual Survey. To estimate overhead cost on an occupational basis, OPR allocates total industry overhead cost to unique occupations using a matrix of detailed occupational employment for each NAICS industry. All values are in 2020 dollars.

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burden hours attributed to the review of the notice by legal staff is estimated at \$6.660 million. The hourly labor rates for in-house legal staff is estimated at \$140.96, and the review is expected to require one hour for each of the plans that prepare a notice (\$6.660 million = \$140.96 per hour * 1 hour * 47,250 plans). Finally, the equivalent cost for the burden hours attributed to distribution of the notices is \$0.996 million. Mailing each notice is expected to require 2 minutes to prepare the notice for mailing with a labor cost for clerical staff of about \$55.23 per hour and there are 540,873 notices requiring mailing (\$0.996 million = \$55.23 per hour * 2/60 hours * 540,873 notices).

Based on the above assumptions and calculations, the Department estimates that the total annual hourly burden arising from this Notice requirement is 88,905 hours (23,625 + 47,250 + 18,029), and the equivalent cost of these burden hours is estimated at \$11.565 million (\$3.909 million for preparing the notice + \$6.660 million for reviewing the notice + \$0.996 million for preparing the notices for mailing). Any discrepancies in the calculations above are a result of rounding.

No burden is estimated to be associated with paragraph (c) because it is assumed that the notice used for this provision is the same notice that has already been prepared and made available for distribution to participants.

Estimated Annualized Respondent Cost and Hour Burden

Activity	No. of Respondents	No. of Responses per Respondent	Total Responses	Average Burden (Hours)	Total Burden (Hours)	Hourly Wage Rate	Total Burden Cost
Plan administrator prepares disclosures	47,250	1	47,250	30/60	23,625	\$165.45	\$3,908,797
Legal staff prepares disclosures	47,250	1	47,250	1	47,250	\$140.96	\$6,660,429
Clerical staff distributes disclosures	47,250	11.44693	540,873	2/60	18,029	\$55.23	\$995,747
Unduplicated Total	47,250	156.80726	7,409,220*	0.011999	88,905 (rounding)	-	\$11,564,973

* As discussed in Question 12, the Department estimates that there will be 105,846,000 affected participants and beneficiaries. Additionally, the Department estimates that approximately seven percent of all individual account plans will impose a blackout period during any one year. Thus, the total number of responses is 7,409,220 participants (105,846,000 participants x 0.07).

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.**

Annual cost burden for this information collection arises from materials and postage for distribution of the blackout notices. The annual cost to respondents for distribution of the notices is expected to be \$324,524. This cost comprises postage and materials cost for the notices provided in paper form, at \$0.60⁵ per notice for 540,873 notices. It is assumed that electronic distribution of the remaining notices imposes no direct additional cost on plans.

14. **Provide estimates of annualized cost to the federal government. Also, provide an description of the method used to estimate cost, which should include quantification of hours, operations expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not**

⁵ Consisting of \$0.55 per notice for postage and an additional \$.05 per notice for materials (paper, ink, amortization of equipment).

have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items, 12, 13, and 14 in a single table.

Because the SOA does not require any entity to file notices with the Department, there are no direct costs involved for the Department.

15. Explain any reasons for any program changes or adjustments.

The Department has revised its estimate, as compared to the 2018 submission, to reflect the current number of defined contribution plans, and the current number of defined contribution plan participants and beneficiaries. Labor rates and mailing and materials costs have also been updated.

In addition, there was a change to EBSA's assumption regarding electronic transmission of the disclosures for DC plans and IRAs. 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.

16. For collection 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.

Not applicable.

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 control number and expiration date will be published in the Federal Register following OMB approval.

18. Explain each exception to the certification statement.

None.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS.

Not applicable.