

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995
SUBMISSIONS: ERISA TECHNICAL RELEASE 91-1

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 subject information collection requirements arise from section 101(e) of the Employee Retirement Income Security Act of 1974 (ERISA), which establishes notice requirements that must be satisfied before an employer may transfer excess assets from a defined benefit pension plan to a retiree health benefit account, as permitted under the conditions set forth in section 420 of the Internal Revenue Code of 1986, as amended (the Code).

The notice requirements of ERISA section 101(e) are two-fold. First, subsection (e)(1) requires plan administrators to provide advance written notification of such transfers to participants and beneficiaries. Second, subsection (e)(2)(A) requires employers to provide advance written notification of such transfers to the Secretaries of Labor and the Treasury, the plan administrator, and each employee organization representing participants in the plan. Both notices must be given at least 60 days before the transfer date. The two subsections prescribe the information to be included in each type of notice and further give the Secretary of Labor the authority to prescribe how notice to participants and beneficiaries must be given, and how any additional reporting requirements are deemed necessary.

Although the Department of Labor (the Department) has not issued regulations under section 101(e), on May 8, 1991, the Department published ERISA Technical Release 91-1, to provide guidance on how to satisfy the notice requirements prescribed by this section. (An advance copy of the Technical Release appeared in the Federal Register on March 14, 1991, at 56 FR 109271).

The Technical Release made two changes in the statutory requirements for the second type of notice. First, it required the notice to include a filing date and the intended asset transfer date. Second, it simplified the statutory filing requirements by providing that

ERISA Technical Release 91-1
OMB Number 1210-0084

filing with the Department of Labor would be deemed sufficient notice to both the Department and the Department of the Treasury as required under the statute.

- 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 information collection involves third-party disclosures and reporting to the federal government. First, information must be disclosed to plan participants and beneficiaries by plan administrators. This requirement is designed to protect the rights of participants and beneficiaries in their retirement benefits by providing them with advance notice of any anticipated transfer of defined benefit plan assets (under section 420 of the Code). Second, advance notification must also be provided by employers to plan administrators, employee organizations that represent participants, and the Department. Plan administrators and employee organizations have an interest in protecting the interests of plan participants and beneficiaries with their retirement benefits. The Department also has the duty to enforce the protections provided to participants and beneficiaries under ERISA. These notice requirements are statutorily mandated by ERISA section 101(e).

- 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

ERISA Technical Release 91-1
OMB Number 1210-0084

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 Technical Release does not impose any duplication of effort. The Department is not aware of any similar information collection imposed under Title I of ERISA or otherwise under federal law. The Department has eliminated the duplication inherent in the statutory provision by permitting a single notification to suffice as notice to both the Department and the Department of the Treasury.

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

The collection of information required by section 101(e) affects small and large businesses and plans equally. The statutory requirement itself does not differentiate between large and small entities. In issuing Technical Release 91-1, the Department determined that these notifications would be as important to participants and beneficiaries in small plans as they would be to those in large plans and therefore chose not to provide different rules for small entities. The information collections apply only when a plan sponsor-employer itself chooses to transfer excess assets as permitted under Code section 420. The Technical Release reduces the compliance burden for both small and large plans and employers by deeming a single notification satisfactory for the filing requirements for both Departments.

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.

ERISA Technical Release 91-1
OMB Number 1210-0084

The notice requirements described in the Technical Release apply only if a defined benefit pension plan sponsor decides to transfer assets from a defined benefit pension plan to a retiree health benefit account. The frequency of such notification is dependent on the occurrence of a transaction, not on a regular or predetermined period or on a period imposed by the Department. Failure to provide the required notices would affect the ability of a variety of entities, including plan administrators, employee organizations, and the Department, to protect the interests of the affected plan participants and beneficiaries.

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 would cause the collection to be conducted in a manner described 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 published the notice required by 5 CFR 1320.8(d) soliciting comments on the information collection 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 comments were received.

In finalizing this Technical Release, the Departments of Labor and Treasury collaborated to simplify the notice requirements of ERISA section 101(e)(2) by agreeing to permit the filing of one notice with the Department of Labor to satisfy the requirement to notify both Departments.

- 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.**

**ERISA Technical Release 91-1
OMB Number 1210-0084**

There is no assurance of confidentiality attached to this information collection. The statute that imposes the information collection provides no assurance of confidentiality to respondents. Section 101(e)(2)(A) provides that a copy of the plan sponsor's notice must be made available for inspection in its principal office; the Department also makes the notices it receives available for public inspection.

- 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.**

The information collection does not present any 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.

The Department estimates, based on the average number of 101(e) notices received annually by the Department from 2018 through 2020, that on average two defined benefit pension plan sponsors will transfer plan assets from pension plans with an average of 6,137 participants and beneficiaries per plan to retiree health benefit accounts during each of the next three years. Because this information collection imposes two separate notice requirements, one on the plan sponsor and one on the plan administrator, the Department has estimated that the information collection will affect a total of four respondents annually. In addition to the 18,410 participants and beneficiaries who are estimated annually to receive notices,¹ this estimate assumes that for each asset transfer a notice will be sent to the Department, to the plan administrator (by the plan sponsor) and to one employee organization, for a total annual estimate of 18,419 responses.

The Department further assumes that these plan sponsors and plan administrators will use in-house resources, specifically financial professional and clerical staff, to prepare and distribute the two notices required under section 101(e) in-house. The paperwork burden for the preparation and distributions of the two notices is therefore described in this answer as an hour burden; the additional costs attributable to the information collection are described in the answer to question 13, below, as a cost burden.

Preparation of Notices. The Department assumes that drafting the “model” for each of the two notices (the employer’s notice to the Department et al. and the plan administrator’s notice to participants and beneficiaries) for each plan asset transfer will require one hour of professional time devoted largely to the collection and integration of the different sets of information necessary for each of the three notices. Thus, for the 3 filings, the Department estimates that there will be a total of 6 hours of professional time

¹ 6,137 participants and beneficiaries per plan x three (3) plans = 18,410 participants and beneficiaries total.

ERISA Technical Release 91-1
OMB Number 1210-0084

devoted to these notices (3 plans x (1 professional hour/plan administrator +1 professional hour/plan sponsor)).

In addition to drafting time, preparation of the plan administrators' notices to participants and beneficiaries will require individualization of the model to reflect the specified accrued benefits of each participant and beneficiary to whom the notice must be provided. The Department has assumed that this individualization will require 30 minutes of clerical time for each asset transfer (This equals 1.5 total hour for crafting the notices sent by plan administrators for each of the 3 asset transfers). The time will be used to insert individual-specific benefit information appropriately into the already prepared notice. The Department assumes that this information will already reside in an existing electronic database and that the actual insertion of information will be done automatically by the appropriate database and word processing software. The employer's notice, which goes to the Department, the plan administrator, and any employee organization representing employees of the plan sponsor, is estimated to need 1 hour of additional clerical preparation time (.33 hours of employer's clerical time x 3 asset transfers) , since the addressees of these notices are not assumed to be part of an existing database and the additional 1 hour is assumed necessary to produce individualized copies of the model addressed to each of these parties. Total preparation time for the notices, therefore, is estimated at 8.5 hours.² The equivalent cost of this part of the hour burden,³ with financial professional time valued at \$121.78 /hour and clerical time at \$55.23/hour is \$869 (($\$121.78$ /professional hour x 6 hours) + $\$55.23$ x (1.5 hour of plan administrator clerical time + 1 hour of plan sponsor clerical time)).

Distribution of Notices. The Department assumes that 92.7 percent of the plan administrator's notices will be distributed to participants and beneficiaries by electronic means.⁴ This estimate is based on the current experience and understanding of the Department's program analysts of the degree to which employers have generally adopted

² This total is derived as follows: 2 hour professional time x 1 notices x 3 asset transfers = 6 hours (professional preparation time). 0.5 hours clerical time x 1 notice x 3 asset transfers = 1.5 hour (individual notices). 0.33 hours clerical time x 1 notice x 3 asset transfers = 1 hour (DOL, etc. notices). 6 + 1.5 + 1 = 8.5 total annual hour burden for preparation. Any calculation discrepancies are a byproduct of rounding.

³ 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.

⁴ 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.

ERISA Technical Release 91-1
OMB Number 1210-0084

electronic means of communication, pursuant to the Department’s regulation at 29 CFR 2520.104b-1, to provide such notices. The Department estimates that it will take two minutes to distribute the notices, whether electronically or by mail.

Using as a basis the average number of participants and beneficiaries in the plans for which the Department received section 101(e) notices during the years 2018 to 2020, the Department estimates that 18,410 plan administrator’s notices will be sent annually of which 1,344 will be on paper and 17,066 will be sent electronically.⁵ In addition to the plan administrator’s notices, the Department has estimated that, for each asset transfer, three plan sponsor’s notices will be sent: one to the Department, one to the plan administrator, and one to an employee organization. For the annual distribution of the estimated 18,419 plan administrator’s notices (18,410 to participants + 3 to plan administrators + 3 to employee organizations + 3 to the Department of Labor), the Department estimates an additional total annual hour burden of 614 hours of clerical time.⁶ The equivalent cost of this part of the hour burden is estimated at \$33,908 (614 hours x \$55.23/hour).

Based on the above-described estimates, the total annual hour burden for this information collection is estimated at 623 hours (9 hours for preparation and 614 hours for distribution). The cost equivalent of the hour burden is \$34,777 (\$869 for preparation and \$33,908 for distribution).

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
Benefit Manager prepares plan administrator’s notice	3	1	3	1	3	\$121.78	\$365
Clerical staff prepares plan administrator’s notice	3	1	3	30/60	1.5	\$55.23	\$83
Clerical staff distributes plan	1,344	13.7	18,410	2/60	614	\$55.23	\$33,892

⁵ 18,410 plan administrator’s notices x 0.073 percent paper = 1,344 paper plan administrator’s notices; 18,410 plan administrator’s notices x 0.927 percent electronically = 17,066 electronic plan administrator’s notices

⁶ 18,410 plan administrator’s notices x 2 minutes per notice = 614 hours.

ERISA Technical Release 91-1
OMB Number 1210-0084

administrator's notice							
Benefit Manager prepares employer's notice	3	1	3	1	3	\$121.78	\$365
Clerical staff prepares employer's notice	3	1	3	20/60	1	\$55.23	\$55
Clerical staff distributes employer's notice	9	1	9	2/60	0.3	\$55.23	\$17
Unduplicated Total	6		18,419		623 (rounded)	-	\$34,777

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**

ERISA Technical Release 91-1
OMB Number 1210-0084

practices.

As explained in the answer to question 12, the Department has assumed that all work to prepare and distribute notices will be done in-house by the respondents. The paperwork burden of those activities is therefore accounted for as hour burden. The additional costs that will be paid by respondents to satisfy this information collection, which consist of paper copying and mailing costs, are described here.

This estimate assumes that 92.7 percent of the plan administrator's notices will be provided to participants and beneficiaries electronically.⁷ Because the respondents will utilize pre-existing electronic communications systems and e-mail lists, the Department has assumed that the additional costs of distributing the notices will be so small as to be insignificant. No additional cost has been estimated for electronic distribution. For the remaining 7.3 percent of these notices, the Department has assumed a mailing cost of \$0.60 per notice (\$0.55 postage, \$0.05 material and printing costs), for a total annual cost of \$806 (18,410 notices x .073 sent by mail x \$0.60/notice) to mail an estimated 1,344 notices.

The Department has assumed, based on current practices, that none of the plan sponsor's notices will be sent electronically and that all of these notices, to the Department, plan administrators and employee organizations, will be sent by some form of certified mail. Accordingly, the Department has estimated a cost of \$3.65 per notice (\$3.60 postage, \$0.05 material and printing costs). Therefore, the annual cost burden of distributing the plan sponsor's notices is estimated at \$33 (\$3.65 x 9 notices).

Based on these estimates, the total annual cost burden of this information collection is \$839.

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.

We continue to estimate that the cost to the federal government of this information collection is minimal, consisting only of the clerical time needed to receive and file an

⁷ 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.

ERISA Technical Release 91-1
OMB Number 1210-0084

average of 5 notices per year. The Department estimates that the cost to the Federal government is \$0.

15. Explain the reasons for any program changes or adjustments

The Department has revised its estimate, as compared to the 2018 submission, to reflect current experience regarding the frequency of asset transfers under section 101(e) of ERISA and section 420 of the Code. More recent data suggest a reduction in the number of such asset transfers. The resulting paperwork burden estimate presents a more accurate, up-to-date picture of the impact of this information collection. Wages, overhead and mailing costs have been updated for 2021.

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 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

Not applicable; no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable. The use of statistical methods is not relevant to this collection of information.