

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995  
SUBMISSIONS

The Department of Labor, Employee Benefits Security Administration requests a revision to the information collection currently approved under OMB Control Number 1210-0040.

**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.***

Section 104(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA) generally requires employee benefit plan administrators that are required to file a Form 5500 annual return/report to annually furnish a Summary Annual Report (SAR) to each plan participant and to certain beneficiaries. Section 503(c)(1) of the Pension Protection Act of 2006 (Pub. L. No. 109-280) amended ERISA section 104(b)(3) to exempt defined benefit pension plans that are required to provide annual funding notices to participants and beneficiaries under ERISA section 101(f) from the SAR requirement.

The Department's regulation under section ERISA section 104(b)(3), codified at 29 C.F.R. § 2520.104b-10, prescribes the timing and format of the SAR. Plan administrators must furnish a copy of the SAR to each participant and to each beneficiary who is receiving benefits under the plan (other than welfare plan beneficiaries) within 9 months after the close of the plan year or, if the plan files its annual report under an extension of time, within 2 months after the close of the extension period.

To ease the administrative burdens of preparing the SAR, the regulation provides forms for the SAR, one for pension plans and one for welfare plans. The forms were designed to allow information from specific line items on the plan's annual report (Form 5500) to be transferred directly to the SAR. A guide that correlates the SAR items to the annual report line items is included in an appendix to the regulation. Also, the regulation and the forms require plans to state that specified additional information, such as the full annual report and a statement of the plan's assets and liabilities, will be provided to participants and beneficiaries upon request.

A separate regulation, codified at 29 C.F.R. § 2520.104b-1(b), specifies the standards for distribution of the SAR. Examples of permissible delivery methods provided in the regulation include in-hand delivery, mail, or inclusion of the SAR as a special insert in a periodical distributed to all employees, such as a union newspaper or company

publication. As further discussed in the answer to question 3, below, the regulation at 29 C.F.R. §§ 2520.104b-1(c) and 2520.104b-31 (in the case of pension plans) allow plan administrators to distribute SARs electronically if certain requirements are met.

### *SECURE Act*

The DOL proposes updating 29 C.F.R. § 2520.104b–10 in light of the new filing option for DCG reporting arrangements and the addition of the new Schedule MEP and Schedule DCG to the 5500 Annual Report/Return. The proposal includes adding to the existing language in the DOL’s regulation new text that plans would use to provide a brief description of the plan based on the plan characteristic codes listed for the plan on the Form 5500, including whether it is a defined contribution or defined benefit plan, and whether the plan is a pooled employer plan, another type of multiple employer plan, a single employer plan, or a plan participating in a DCG reporting arrangement, respectively. The proposed new regulatory language also includes text for plans to use that states a copy of the Schedule DCG and the Schedule MEP are available on request, as applicable. For plans participating in a DCG reporting arrangement, a new text is added to parallel the requirements for plan filers, which would advise participants and beneficiaries in the plans covered by the DCG consolidated annual report that a statement of the aggregate assets and liabilities of all the plans in the DCG reporting arrangement and accompanying notes, a statement of aggregate income and expenses of the DCG reporting arrangement and accompanying notes, and a copy of the audit report filed for the trust of the DCG reporting arrangement are available on request. The new SAR language also would state that a copy of the Form 5500 annual report filed for the plan or DCG is available online from EBSA via a DOL website at [www.efast.dol.gov](http://www.efast.dol.gov).

- 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 SAR provides participants and beneficiaries with a summary of the annual report filed with the government that describes their plan’s financial condition. The participants and beneficiaries who receive the SAR can determine whether they have concerns with the operation of the plan based on the information in the SAR and whether to contact the Department when they believe problems with the plan are identified. Concerned calls from participants and beneficiaries are a critical component of the Department’s compliance assistance and enforcement efforts.

- 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.***

The Department's regulation, codified at 29 C.F.R. § 2520.104b-1(c) and 2520.104b-31 (in the case of pension plans), allows plan administrators to use electronic media to make disclosures required under Title I of ERISA, including the information collection requirements of this ICR, provided certain conditions are met. These conditions generally are designed to ensure that participants and beneficiaries are able to receive the required disclosures electronically from plan administrators, and that plan administrators take measures to verify that the electronic system results in actual receipt of the disclosures.

***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 SAR contains selected information from the more comprehensive financial data required to be included in the plan's most recent annual report, which is filed with the Department using the Form 5500 annual return/report series (forms and schedules jointly developed by the Department, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation and approved under OMB Control Number 1210-0110). The plan is not required to send the entire annual report to all participants and beneficiaries, although these individuals can request a copy of the annual report under ERISA section 104(b)(4). The SAR summarizes, rather than duplicates, the annual report information and provides the summary information in a simpler format.

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

For purposes of this information collection (and more generally for purposes of economic analysis under ERISA), the Department considers "small entities" to be employee benefit plans with fewer than 100 participants (i.e., "small plans"). In fashioning reporting and disclosure regulations, including the SAR regulation, the Department has modified the statutory requirements to reduce burden on small plans. Some small plans are exempt from the requirement to file an annual report, and therefore, are not required to distribute an SAR, e.g., certain small unfunded or fully insured single employer welfare benefit plans are exempt under regulation 2520.104-20. The SAR regulation at § 2520.104b-10 includes a list of exemptions that cover large and small plans that meet certain conditions. Further, small plans that must file annual reports normally are required to enter fewer data elements on the SAR form and therefore their SARs are simpler. The Department estimates approximately 672,268 pension plans will be subject to the SAR requirements. Of these, approximately 607,445 will be small plans.

**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 information collection is a third-party disclosure, and there is no automatic requirement to file the SAR to the Federal government, although the government can ask individual plans for copies of the SAR, for example, as part of an investigation. Failure to impose the information collection requirement would mean that participants and beneficiaries would not receive important financial information about their plans in a format designed to be understandable for them, and they would be less likely to be aware of the plan's financial condition and to be able to effectively protect their benefits and exercise their rights under their plans and ERISA. Furthermore, the Department's compliance assistance and enforcement efforts would likely be adversely affected because the Department would receive fewer calls from participants and beneficiaries about potential problems with their plans. These participant and beneficiary contacts are a critical component of the Department's compliance assistance and enforcement program.

**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 guidelines in 5 CFR 1320.5.

- 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 C.F.R. § 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.*

DOL published a Notice of Proposed Rulemaking that proposes amendments to regulations relating to annual reporting requirements under Title I of ERISA. DOL, Treasury/IRS, and PBGC also published in the Federal Register a separate Notice of Proposed Forms Revision containing proposed form changes and these proposed regulatory amendments. Both notices were published in the Federal Register on September 15, 2021. The Federal Register citations are 86 FR 51284 and 86 FR 51488 respectively. Comments are due by November 1, 2021. To avoid unnecessary duplication of effort, the Agencies also will treat public comments submitted in response to this notice of proposed rulemaking as public comments on the Notice of Proposed Forms Revisions to the extent they include information relevant to the proposed regulatory amendments.

- 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.**

There is no assurance of confidentiality provided to respondents.

**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.

**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 in Item 13.**
- **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 information collection provisions of this regulation consist of three separate requirements: (1) preparing the SAR; (2) distributing the SAR to the specified participants and beneficiaries; and (3) responding to requests from participants and beneficiaries for any of the additional information specified in the regulation.

In estimating paperwork burden for this regulation, the Department estimated the time that would be required to comply with its information collection requirements, assuming

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that all disclosures will be prepared and distributed in-house by the plans. Because most of the information that must be included in the SAR is derived directly from the Form 5500 annual report, the plans' professional and clerical staffs need only transfer the pertinent information from the Form 5500 to the SAR form and, per the regulation, add an additional explanation section if the plan administrator determines that additional information is necessary to fairly summarize the annual report. Additional time is required to reproduce and distribute the SAR to each participant and/or beneficiary.

Although the Department believes that a number of plans will use the plan's third-party recordkeepers or other service providers to comply with these information collection requirements, the Department has decided, for purposes of this burden estimate, to assume that all affected plans will use their own resources to do so. The burden of preparation of the notices, therefore, is reported solely as an hour burden.<sup>1</sup>

In order to develop estimates of the paperwork burden associated with this regulation, the Department first developed an estimate of the number of plans that will have to comply with the information collection requirements. Based on Form 5500 data for the 2018 plan year, the latest research file for the Form 5500 data that provides the most reliable information available, the Department estimates that approximately 761,170 plans<sup>2</sup> annually must provide an SAR under the regulation. Next, the Department developed an estimate of the number of participants and beneficiaries to whom the SAR must be provided. Based on 2018 Form 5500 data, the Department estimates that each year a total of 177 million participants and beneficiaries will receive an SAR.

A one-time transition cost is included to reflect additions to the SAR in response to the new filing option for DCG reporting arrangements and the addition of the new Schedule MEP and Schedule DCG to the 5500 Annual Report/Return the SECURE Act. The Department estimates there will be 4,805 plans using the Schedule MEP for reporting purposes (4,730 MEPs and 75 PEPs), and 15,350 plans associated with a DCG.

The total burden is described as hour burden below.

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<sup>1</sup> This method has been chosen for several reasons. First, the Department does not presently have a reliable source of information to estimate how many plans would hire service providers for this purpose. Second, the Department does not have adequate information on which to base an estimate of the cost to plans of purchasing these services, particularly since the Department has reason to believe that the pricing of such services will be based on competitive factors and bundled with other related services. Finally, the Department believes that this method will provide a more accurate estimate of the paperwork burden by relying solely on the Department's estimate of the time necessary to create and distribute the disclosures and eliminating the artificial and arbitrary distinction between tasks performed by the respondents and tasks performed by a service provider. Translation of the total hour burden into dollars, with appropriate allocation between professional and clerical time, provides a reliable cost comparison.

<sup>2</sup> This number includes 67,268 pension plans and 88,902 welfare plans.

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Preparation. The Department assumes that preparing the SAR will take each plan 30 minutes of a benefit specialist time. The Department estimates that 761,170 plans (672,268 pension plans and 88,902 welfare benefit plans) will prepare SARs annually. The annual hour burden estimate for this recurrent preparation is therefore 380,585 hours of a benefit specialist time. The equivalent cost of these hours, at \$102.9 per hour for a benefit specialist's time,<sup>3</sup> would be \$39.1 million.

The Department estimates a one-time transition cost corresponding to the proposed requirement of adding new text to the existing form language in the DOL's regulation. Plans would use this text to provide a brief description of the plan based on the plan characteristic codes, which are listed for the plan on the Form 5500, including whether it is a defined contribution or defined benefit plan, and whether the plan is a pooled employer plan, another type of multiple employer plan, a single employer plan, or a plan participating in a DCG reporting arrangement, respectively. Making this addition will take 5 minutes of a benefit specialist time for each plan, making a total annual hour burden of 63.431 hours of a benefit specialist time. The equivalent cost of these hours, at \$102.9 per hour for a benefit specialist's time, would be \$6.5 million.

The Department estimates a one-time transition cost of \$131,624 corresponding to the proposed requirement of adding new regulatory language described above. The Department estimates that making this addition will take 5 minutes of a benefit specialist time for each plan. The Department estimates there will be 4,805 plans using the Schedule MEP for reporting purposes, and 15,350 plans associated with a DCG. In total, adding this one time transition cost, the Department estimates the overall annual hour burden for the preparation of the SAR, for the first year, is 445,695 hours of a benefit specialist time, which at \$102.9 per hour for a benefit specialist's time is equivalent to \$45.8 million.

Distribution. The Department estimates that 177 million policyholders will receive SARs annually. The Department has assumed that 83.3 percent of these individuals (147.5 million individuals) annually will receive SARs through electronic means in accordance with the Department's standards for electronic communication of required information under 29 C.F.R. § 2520.104b-1(c) and 2520.104b-31 (in the case of pension plans). The Department believes that plans will use their existing electronic communications systems for these purposes. The process of preparation and distribution will require each of the

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<sup>3</sup> 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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761,170 plans to use an additional two minutes of clerical time per plan to distribute the electronically provided SARs. This will result in an annual burden estimate of 25,372 hours. The equivalent cost of these hours, at \$55.23 per hour for a mail clerical staff person’s time, would be \$1.40 million.

The Department assumes that the remaining 29.6 million participants and beneficiaries (16.7 percent of 177 million individuals) will annually receive SARs by mail. Reproduction and distribution of each SAR is estimated to take one minute of clerical time. Therefore, the Department estimates an additional annual hour burden for mail distribution of 492,739 hours. The equivalent cost of these hours, at \$55.23 per hour, is \$27 million.

Providing Information on Request. Plans subject to the SAR requirement must be prepared to provide certain information upon request. The Department believes that such requests are rare in general. Although not all plans will receive such requests each year, the Department has assumed for calculating burden that each plan subject to the SAR requirement will be required to respond to one request for information per year and will need to devote, on average, 15 minutes of clerical time per year to meet such requests. This includes the preparation as well as the distribution of the requested materials. For the estimated 761,170 affected plans, this creates an additional hour burden of 190,293 hours of clerical time, with an equivalent cost, at \$55.23 per hour, of \$10.5 million.

Recordkeeping. The SAR requirement does not specify any recordkeeping requirement; however, plans may, at times, be required to demonstrate that they have fulfilled the SAR requirements. The Department believes that maintaining any records necessary to demonstrate compliance with the SAR requirements would be a regular and customary business practice. As such, the Department has not assessed any additional burden for recordkeeping.

In total, the ICR is estimated to have a burden of 1,154,099 hours with an equivalent cost of \$ \$84,984,118 in the first year, and 1,088,989 hours with an equivalent cost of \$ \$78,284,371 in subsequent years. The three-year average burden is 1,110,692 hours with an equivalent cost of \$ \$80,517,620.

Activity	Number of Respondents	Frequency	Total Annual Responses	Time Per Response (Hours)	Total Annual Burden (Hours)	Hourly Rate*	Monetized Value of Respondent Time
Preparation of SAR	761,170	1	761,170	0.5	380,585	\$102.9	\$39.1 million

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(Benefit Specialist) – Recurrent							
Preparation of SAR (Benefit Specialist) – One-time Transition cost, Descriptive text	761,170	1	761,170	0.08	63,431	\$102.9	\$6.5 million
Preparation of SAR (Benefit Specialist) – One-time Transition cost, Schedule MEP availability text	4,805	1	4,805	0.08	400	\$102.9	\$41,202
Preparation of SAR (Benefit Specialist) – One-time Transition cost, Schedule DCG availability text	15,350	1	15,350	0.08	1,279	\$102.9	\$131,624
Production and Distribution of SAR (Electronic Copies)	761,170	193.8	147.5 million	0.0333	25,372	\$55.23	\$1.40 million
Production and Distribution of SAR (Paper Copies)	761,170	38.8	29.6 million	0.017	492,738	\$55.23	\$27 million
Information on Request (Clerical)	761,170	1	761,170	0.25	190,293	\$55.23	\$10.5 million

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<i>Total (First Year)</i>	761,170		179 million		1.15 million		\$84.6 million
<i>Total (Subsequent Years)</i>	761,170		178 million		1 million		\$78 million
<i>Total (Three-Year Average)</i>	761,170		178 million		1.11 million		\$80.2 million

**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)**

As explained in the answer to question 12, above, the Department has decided to assume that all affected plans will use their own resources to comply with these information collection requirements. Costs reported in this answer to question 13 relate to costs for materials and postage. The Department has estimated the total annual cost burden for this information collection at \$20.3 million, calculated as follows:

Distribution of SAR. We have assumed that each plan’s SAR will consist of two pages based on the form in the SAR regulation. As explained in the answer to question 12, above, we have assumed that 29.6 million policyholders will receive notices by mail and 147.5 million policyholders will receive these disclosures electronically. With standard postage costing \$0.65 per notice and reproduction costs of \$0.10 (\$0.05 per page), aggregate annual costs to provide the SAR amount to \$19.2 million.

Information on Request. The regulation requires plans to provide certain information on request. The Department’s knowledge and experience indicates that such requests are rare. Therefore, for purposes of this burden analysis, the Department has assumed that each plan will be required to respond to only one request for information per year. The Department assumes that the documentation responding to a request is, on average, 25 pages of material with a postage cost of \$1.45 per request. This information collection results in an estimated additional annual cost burden of \$1.1 million (1 request x 761,170 plans x \$1.45). The Department assumes no additional cost for materials for this information collection because the plan is permitted, under the regulation, to charge the requesting participant or beneficiary for copying costs.

Activity	Number of Responses	Average Cost per Response	Total Cost
Summary Annual Report (Paper)	29.6 million	\$0.65	\$19.2 million
Summary Annual Report (Electronic)	147.5 million	\$0.00	\$0
Information on Request	761,170	\$1.45	\$1.1 million

<i>Unduplicated Totals</i>			\$20.3 million
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**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 are no ongoing costs to the Federal government.

**15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14.**

Adjustments to the burden estimates result from updated estimates on the number of plans and policyholders affected by the regulations and increases in wage rates. These new estimates are also the result of adjustments to the estimate of the share of SARs assumed to be distributed electronically. Furthermore, these estimates also consider a one-time burden to make changes to the SAR reflecting requirements resulting from changes made in response to the SECURE Act.

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

**18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission."**

There are no exceptions to the certification statement.