

Definition of Plan Assets -- Participant Contributions
OMB Number 1210-0100
Expiration Date: 04/30/2022

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995:
DEFINITION OF PLAN ASSETS -- PARTICIPANT CONTRIBUTIONS

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 Department of Labor's (the Department's) regulation at 29 CFR 2510.3-102 states that monies that a participant pays to, or has withheld by, an employer for contribution to an employee benefit plan become "plan assets" for purposes of Title I of ERISA and the related prohibited transaction provisions of the Internal Revenue Code (the Code) as of the earliest date on which such monies can be reasonably segregated from the employer's general assets. The regulation also establishes specific maximum time limits for contributions becoming plan assets that apply to employee pension benefit plans (with a special rule for SIMPLE IRA plans) and employee welfare benefit plans.

Under ERISA, "plan assets" cannot be held by the employer as part of its general assets, but must be contributed to the employee benefit plan to which they belong and, with few exceptions, held in trust. With respect to small plans (those with less than 100 participants), a safe harbor period exists under which participant contributions will be deemed to comply with the law if those amounts are deposited with the plan within seven business days of receipt or withholding.

With respect to employee pension benefit plans, the regulation sets a maximum time limit of 15th business days following the end of the month in which the participant contribution amounts are received or withheld by the employer. The regulation includes a procedure through which an employer receiving or withholding participant contributions for an employee pension benefit plan may obtain a 10-business-day extension of the 15-day maximum time period for contributions received or withheld in a single month if certain requirements, including information collection requirements, are met. The regulation requires, among other things, that the employer provide written notice to plan participants, within five business days after the end of the extension period and the employer's transfer of the contributions to the plan, which the employer elected to take the extension for that month. The notice must explain why the employer could not transfer the participant contributions within the maximum time period, state that the participant contributions in question have in fact been transmitted to the plan, and provide

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the date on which this was done. The employer must also provide a copy of the participant notice to the Secretary, along with a certification that the notice was distributed to participants and that the other requirements under the extension procedure were met, within five business days after the end of the extension period.

- 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 collections imposed under the regulation include third-party disclosures and disclosures to the government. The information collection is intended to requiring employers to make the disclosures to ensures that they follow the regulation's protective requirements that are part of an extension procedure for pension plans that are unable to meet the otherwise applicable time limits.

- 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.**

Under the Department's regulation at 29 CFR 2520.104b-1, plans and plan sponsors may satisfy disclosure requirements under Title I of ERISA, including the notices to participants and beneficiaries under the extension procedure, through electronic media subject to conditions. It is possible that plans and plan sponsors will use electronic media to distribute notices to participants and beneficiaries; however, when calculating the burden estimates below, the Department assumes that plans and plan sponsors will not use electronic media.

- 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.**

This information collection does not duplicate any other information collection requirement. Under the extension procedure, the employer must provide written notice to participants and to the Department within 5 business days after the end of the extension period. Such information is not available from any other publicly available source.

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

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Respondents are required to provide the extension notice only if they elect to take an extension of the regulatory time limit. The information collection includes the information necessary to inform plan participants and the Department of the employer's failure to transmit assets with the prescribed regulatory time limit. As such, although the Department has made distinctions between small and large plans with respect to other aspects of the regulation, no burden distinction is made concerning the information provided to participants and beneficiaries of small and large 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.

The Department has imposed this information collection in order to allow employers a reasonable opportunity to obtain an extension of time for transferring participant contributions to the pension plans for which they are intended, without advance approval, while safeguarding participants' rights. Each information collection relates only to a plan sponsor's voluntary reliance on the extension procedure and thus cannot be conducted "less frequently." Failure to require this information collection would increase the risk that employers would fail to properly transmit participants' contributions.

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**

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- **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.**

The extension procedure for this regulation accommodates employers that, on limited occasions, need more time than the regulatory maximum period to transmit amounts that a participant or beneficiary pays to an employer, or that an employer withholds from a participant's wages, to employee pension benefit plans. In order to comply with the extension procedure an employer or plan sponsor must, among other conditions, within five business days of the expiration of the extension period provide an explanatory notice to plan participants and provide a copy of the notice to the Secretary.

Delays in the transmittal of funds to a pension plan can result in lost earnings to participants. Because the use of the extension period to delay the deposit of contributions to the plan will not be subject to prior approval of the Department and because participant contributions that have not yet been deposited to a trust are at risk, the Department has provided for a 5-day time period for providing notice to both the participants and the Department. The Department believes that the notice/certification time period is necessary so that both participants and the Department will be able to adequately monitor employers' contribution patterns and to ensure that there is no loss to the participants and beneficiaries.

- 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.

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The Department's notice of the proposed extension of the information collection was published in the Federal Register on November 9, 2021 (86 FR 62208) and allowed the required 60-day public comment period. No comments were received.

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

No payments or gifts are provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

No assurance of confidentiality is made in connection with this information collection request.

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**

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categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.

The Department has reviewed its records for the past three years and has determined that it has not received any employer notices under the extension procedure during that time period. However, for purposes of preparing an estimate for this Supporting Statement, the Department continues to estimate that one respondent may seek to take advantage of this extension procedure in any given year. For purposes of this estimate, the Department has assumed that the respondent will sponsor a medium-sized pension plan with 250 participants.

The Department has assumed that a respondent relying on the extension procedure will not prepare extension notices in-house, but will contract with a service provider, such as an attorney, accountant, or third-party administrator, to prepare the notice. The burden of preparation of the notice, therefore, is estimated as a cost burden under item 13, below.

The Department further assumes that the distribution of the notice will be completed by the employer using its own resources, rather than by a third-party preparer. Although the Department believes that a substantial percentage of employee benefit plans and employers communicate with their participants and beneficiaries through electronic media, because the Department is estimating that only one employer per year will take an extension under the extension procedure, the Department has not undertaken to reduce its burden estimates to account for electronic distribution. It is possible, however, that an employer who takes an extension will use electronic media to provide the participant notice; in that case, the distribution burden, in both hours and costs, will be negligible. For purposes of this burden estimate, the Department has assumed that the time needed to prepare individual notices for the Department and for the 250 participants and beneficiaries (for a total of 251 individual notices) is two minutes of clerical time per notice. The annualized hour burden to respondents for this information collection is therefore estimated at 8.36 hours of clerical time at a labor rate of \$55.23 per hour.¹ These estimates result in an equivalent cost of \$462.²

¹ Internal DOL calculation based on 2020 labor cost data. For a description of the Department's methodology for calculating wage rates, see <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf>
² 251 notices x 2 minutes = 8.36 hours; 8.36 hours x \$55.23 = \$462

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Burden Table

Activity	Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Time Per Response	Total Annual Burden (Hours)	Hourly Rate	Monetized Value of Respondent Time
Notices	250	1	250	2/60	8.33 hours	\$55.23	\$460
Reporting to EBSA	1	1	1	2/60	.03 hours	\$55.23	\$2
Unduplicated Totals	251	1	251	0.0333	8.36 hours	-	\$462

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.

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The Department has assumed that a respondent will pay an attorney, accountant, or third party administrator to prepare the notices required by the regulation to be furnished to the participants and to the Department. Notification to the Secretary includes the provision of a copy of the notice to the participants along with a certification that the notice was actually distributed and that a performance bond or irrevocable letter of credit was obtained. The Department estimates that preparing the notice to participants and the certification for the Secretary will take four hours of an attorney's time at \$381 per hour³ for an annual cost burden to respondents of \$1,524.⁴ In addition, the distribution costs, in material and postage, for the 251 notices is estimated at \$161,⁵ which includes \$0.63 per notice for materials and postage⁶ for the 250 participant notices and \$3.80 for the notice to the Secretary (\$0.05 for print and \$3.75 for mailing cost) which is likely to be sent by certified mail. The total annual cost burden for this information collection is therefore estimated at \$1,685.⁷

- 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.**

The annualized cost to the Federal government for this ICR is \$0.

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

The estimate has been revised to reflect increases in clerical and legal professional labor rates, and postage costs, since the last submission, resulting in an increase in the equivalent cost of the hour burden and an increase in the cost burden of the information collection.

- 16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be**

³ According to the Laffey Matrix (<http://www.laffeymatrix.com/see.html>), the billing rate of an entry-level attorney is \$381 per hour.

⁴ $\$381 \times 4 \text{ hours} = \$1,524$

⁵ $(250 \text{ notices} \times \$0.63) + \$3.75 + \$0.05 = \$161.30$.

⁶ This assumes the notice will be one page at a cost of \$0.05 per page plus \$0.58 for first class postage and \$3.75 for the certified mail. For more information on mailing rates, see at https://pe.usps.com/text/dmm300/Notice123.htm?_gl=1*1e2kxda*_ga*MzY1MzQ2NTE0LjE2Mjc2NDg3MDY.*_ga_3NXP3C8S9V*MTY0MTkxMjc5MC45LjEuMTY0MTkxMzE1MC4w#_c037.

⁷ $\$1,524 + \$161 = \$1,685$.

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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 results of the collection of information will not be published.

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

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

There are no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

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