

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995:
ELECTRONIC DISCLOSURE BY EMPLOYEE BENEFIT**

This information collection request (ICR) seeks approval for an extension without change 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.

Pursuant to section 1510(a) of the Taxpayer Relief Act of 1997 (TRA '97), the Secretary of Labor and the Secretary of the Treasury were directed to issue guidance designed to interpret the notice, election, consent, disclosure, time requirements, and related recordkeeping requirements of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code, respectively, as applied to the use of new technologies by sponsors and administrators of retirement plans.

While electronic disclosure was not precluded by existing regulations, the Department of Labor (the Department) had not previously issued guidance with respect to electronic delivery of disclosure documents. On January 28, 1999, the Department published a notice of proposed rulemaking on electronic disclosure and recordkeeping issues (64 FR 4506). Where, previously, only group health plans had specifically been provided with a safe harbor for electronic disclosure, the proposal expanded the use of electronic disclosure to include all pension and welfare benefit plans covered by Title I of ERISA. In addition, the proposal added summary annual reports to the list of disclosure documents included in the safe harbor provisions.

2002 Safe Harbor

On April 9, 2002, the Department published a notice of rulemaking on electronic disclosure and recordkeeping issues (67 FR 17264) to establish a "safe harbor" for the use of electronic media to satisfy the general furnishing requirement. Based on public comments, the regulation expanded the list of disclosures addressed by the safe harbor to disclosures under Title I generally. The regulation also provided for the receipt of required disclosures at locations other than the workplace. For those participants and beneficiaries offered the opportunity and wishing to receive disclosures via electronic information systems outside the workplace, the regulation required advance affirmative consent on the part of the recipient. This requirement is incorporated at 29 CFR 2520.104b-1(c)(2)(ii)(A), (B), and (C). Prior to consenting, the plan administrator must provide a participant or beneficiary with a clear and conspicuous statement indicating:

the types of documents to which the consent would apply; that consent may be withdrawn at any time; the procedures for withdrawing consent and updating necessary information; the right to obtain a paper copy free of charge; and any hardware and software requirements.

The regulations under 29 CFR 2520.104b-1 and 2520.107-1 do not affect the substantive disclosure provisions of Title I and related regulations. These regulations provide guidance on the circumstances in which the substantive requirements will be deemed met when electronic technologies are used.

2020 Safe Harbor

In 2019, the Department issued a rule providing a safe harbor for plan administrators who wish to satisfy ERISA's delivery requirements for retirement plan documents by posting them on a website and notifying workers of the online availability of such documents. The preamble to the proposal included, in a separate section, a request for information (RFI) about whether, and how, any additional changes to the design, delivery, and content of ERISA disclosures could further improve their effectiveness. The rule responded to Executive Order 13847, Strengthening Retirement Security in America, in which the Secretary of Labor was directed to explore the potential for broader use of electronic delivery as a way to improve the effectiveness of retirement documents and to reduce the costs and burdens they impose on employers and other plan fiduciaries responsible for their production and distribution.

In order to use the 2020 safe harbor, retirement plan administrators must:

- Furnish covered individuals with a notice of internet availability delivered to their electronic addresses, for example to the covered individual's email address. The notice must include, among other things, a brief description of the document being posted online, a website address where the document is posted, and instructions for requesting a free paper copy or electing paper delivery in the future. It must send each time a retirement plan disclosure is posted to the internet website. To prevent "email overload," the rule allows a notice of internet availability to incorporate or combine other notices of internet availability in limited circumstances.
- Furnish covered individuals, free of charge, with a paper copy of a covered document, as soon as possible after receiving the covered individual's request (2520.104b-31(f)(1)).
- Provide covered individuals with the ability to opt out of electronic delivery and receive only paper versions of some or all covered documents (2520.104b-31(f)(2)). In the event that a plan administrator becomes aware of an invalid or inoperable electronic address, such as if an email is returned as undeliverable, the administrator

must treat the covered individual as if he or she had elected to opt out of electronic delivery if the problem is not promptly cured (2520.104b-31(f)(4)). This provision is intended to ensure that covered individuals actually receive their pension documents by guarding against invalid or inoperable electronic addresses.

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.**

2002 Safe Harbor

The information is a third-party disclosure. The consent serves to demonstrate to the plan administrator that an individual has the ability to access information in the electronic form that will be used for disclosure purposes. Such confirmation will ensure the compatibility of the hardware and software between the individual and the plan and will serve to demonstrate that the administrator has taken appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents results in actual receipt, as required under ERISA. Lastly, where applicable, the consent provides a means for the individual to provide the plan with the correct e-mail address to facilitate the efficiencies that may arise from the use of electronic technologies where appropriate.

2020 Safe Harbor

Retirement plan administrators may satisfy their obligation to furnish ERISA-required disclosures by making the information accessible online and furnishing a notice of internet availability of these disclosures to covered individuals. The notice of internet availability must be sent to the electronic address of the participant, for example to the participant's email address and include, among other things, a brief description of the document being posted online, a website address where the document is posted, and instructions for requesting a free paper copy or electing paper delivery in the future. It must be sent each time a retirement plan disclosure is posted to the internet website. To prevent "email overload," the rule allows a notice of internet availability to incorporate or combine other notices of internet availability in limited circumstances.

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.**

2002 Safe Harbor

Under 29 C.F.R. § 2520.104b-1(b) of ERISA, “where certain material, including reports, statements, and documents, is required under Part I of the Act and this part to be furnished either by direct operation of law or an individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries.” Section 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b). Section 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

2020 Safe Harbor

Under the 2020 safe harbor, plan administrators who satisfy specified conditions may provide covered individuals with a notice stating that required pension disclosures will be made available on a website. Individuals who prefer to receive disclosures on paper will be able to request paper copies and to opt out of electronic delivery entirely. These changes reduce burden for pension plans by lowering the cost to deliver required notices.

- 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.**

Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards. ERISA establishes the manner in which disclosures made through electronic media satisfy the statutory disclosure requirements and the standards concerning the use of electronic media for maintenance and retention of records. There are no other rules that facilitate the use of electronic media for ERISA plans.

The framework of the 2020 safe harbor is similar to the approaches taken by the Securities and Exchange Commission for certain investor disclosures and the Internal Revenue Service rules about delivering retirement plan disclosures electronically.

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

2002 Safe Harbor

A plan administrator that manages several plans is considered likely to develop a single consent that will satisfy the requirements for all plans. In addition, because a majority of

small plans use a service provider for recordkeeping and disclosure purposes, it is likely that the service provider will develop a consent process for all plan clients, thereby minimizing the cost to small plans. In 29 CFR 2520.104b-1(c)(2)(ii)(A), (B), and (C), the rule does not require any plan or other entity to make use of electronic media for disclosure or recordkeeping; if the plan administrator chooses to provide electronic disclosures, obtaining consent is a one-time occurrence. Finally, much of the information required to be included as part of the consent process is specifically outlined in the provisions of the rule. For the foregoing reasons, the Department believes that the rule will not have a significant impact on small plans.

2020 Safe Harbor

The rule lowers costs for small businesses and small plans by reducing the costs to delivery required notices.

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.**

2002 Safe Harbor

The purpose of the consent is to ensure that participants and beneficiaries have agreed to receive disclosures about their employee benefit plan(s) by electronic means and, if the information is to be disseminated outside the workplace, that they have the necessary hardware and software for receiving the disclosures. The general purpose is to ensure that electronic dissemination is likely to result in actual receipt, as required by ERISA. Offering electronic disclosure methods, and acceptance by participants and beneficiaries, are entirely voluntary, and consent generally needs to be obtained once unless specifically enumerated changes occur subsequently.

2020 Safe Harbor

The rule removes legal obstacles to electronic disclosure allowing pension plans to provide disclosures on a website after notifying covered individuals of the availability of the disclosure and providing them with the opportunity to request paper disclosures.

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.**

None of the specified special circumstances apply.

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Department published a Federal Register notice on February 8, 2023, (88 FR 8317), as required by 5 CFR 1320.8(d), soliciting comments on the information collection and providing the public with 60 days to comment on the submission. 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 was provided.

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. General, 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.**
- **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.**

2002 Safe Harbor

Employee benefit plan administrators will be deemed to satisfy their disclosure obligations under the 2002 safe harbor when furnishing documents electronically only if a participant who does not have access to the employer's electronic information system in

the normal course of his duties, or a beneficiary or other person entitled to documents, affirmatively consents to receive the disclosure documents. Prior to consenting, the participant or beneficiary must be provided with a clear and conspicuous statement indicating the types of documents to which the consent would apply and other information about procedures and obligations on the part of both the plan administrator and the recipient. New plans are expected to incur a one-time start-up cost with regards to the acquisition of materials used to seek and verify consent.

The Department assumes that because significant cost savings can be achieved by limiting distribution expenses, most sponsors of new plans will choose to avail themselves of the opportunity to deliver plan documents electronically and will therefore develop a procedure for consent and document delivery. As noted above, a plan sponsor that manages several plans is considered likely to develop a single consent that will satisfy the requirements for all plans. The Department assumes that pension plans will utilize the 2020 safe harbor due to its reduced costs associated with electronic disclosure. Thus, the Department estimates that the 2002 safe harbor will be primarily used by welfare benefit plans, and that the burden of developing new consent forms will primarily fall on new welfare plans that have to file a form 5500. These plans are the mostly likely to need to develop their own consent forms. The Department expects that fully insured welfare plans that do not file a Form 5500 will utilize existing consent forms developed by the issuer of the plan's coverage or their third-party administrator. Data from the 2020 Form 5500, the most recent year data are available, indicate that there were 13,975 new welfare benefit plan sponsors that year. We have taken the conservative view that each of these sponsors will seek to use the consent materials.

Each sponsor is expected to use on average 10 minutes of in-house legal professional time to develop consent materials. Thus, the estimated hour burden for the preparation of disclosure materials for this regulation is 2,329 hours. The Department assumes an hourly wage rate of approximately \$159.34 for a legal professional.¹ Thus, the estimated equivalent cost of the development hour burden is \$371,129.²

Assuming that all of the 13,975 new plan sponsors will require 15 minutes for photocopying and organizing the materials, 3,494 burden hours will be required for distributing the consent materials. Assuming an hourly rate of \$63.45 per hour for clerical time, the equivalent cost of the distribution hour burden is approximately \$221,678.³

¹ For more information regarding how the Department estimates labor costs, 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 13,975 new plan sponsors x 10 minutes per plan x \$159.34 per hour for legal professionals = \$371,129

³ 13,975 new plan sponsors x 15 minutes per plan x \$63.45 per hour for clerical professionals = \$221,678

Overall, the total hour burden for the existing ICR is approximately 5,823 hours with an equivalent cost of approximately \$592,808.

2020 Safe Harbor

While the Department expects the 2020 safe harbor to reduce costs associated with distributing covered disclosures by eliminating material, printing, and mailing costs, these cost reductions are partly offset by costs incurred by administrators to meet the new safe harbor's requirements. The safe harbor requires plan administrators to: (1) furnish a notice of internet availability to covered individuals; (2) ensure the existence of a website at which a covered individual is able to access, free of charge, one or more covered documents; and (3) furnish an initial notification of default electronic delivery and right to opt out in paper to each person, before he or she becomes a covered individual.

The purpose of the initial notice was to alert covered individuals to the coming change and of their rights under the new disclosure framework. Covered individuals, however, will continue to be informed of these rights in all future notice of internet availability, discussed below. Accordingly, plans will not incur costs related to this notice after the first year.

Notice of Internet Availability

Plan administrators are generally required to send a notice of internet availability each time a retirement plan disclosure is posted to the internet website. To prevent "email overload," paragraph (k) of the 2020 safe harbor allows a notice of internet availability to incorporate or combine other notices of internet availability in limited circumstances. A notice of internet availability must include, among other things, a brief description of the document being posted online, a website address where the document is posted, and instructions for requesting a free paper copy or electing paper delivery in the future. The Department estimates that this notice will affect plans in different ways based on whether or not they have a website. The first subgroup of interest will be participant directed plans, which are required to have a website under the fee disclosure requirements of ERISA 404(a)(5). Non-participant directed plans and defined benefit plans are not required to have a website, but many still choose to have one. Plans without a website, and plans that voluntarily provide a website will make up the second and third subgroups of interest.⁴ Accounting for this, and the required annual disclosures of each subgroup,

⁴ Participant directed plans are required to have a website by the fee disclosure requirements of ERISA 404(a)(5). According to data from the 2020 form 5500, 619,650 defined contribution plans are fully or partially participant directed. There were 46,577 defined benefit plans and 80,383 non-participant directed defined contribution plans that would not be. The Plan Sponsor Council of America's 2022 survey reported that 6.9% of plans provide no services via the internet. Thus, the department estimates that 6.9% of the 126,960 plans not under the 404(a)(5) requirement will not have a website. This is calculated as $126,960 \text{ plans} \times 6.9\% = 8,760$. This is approximated as 9,000 in the text of this document.

the Department estimates that Plan administrators will incur an estimated annual burden to prepare the notice of 279,348 hours with an equivalent cost of \$17,724,599.⁵

Plan administrators also would incur costs to remedy failed delivery of internet availability notices. The Department assumes plan administrators would resolve failed delivery by attempting to redeliver bounced emails or by reaching out to covered employees to obtain updated electronic addresses. However, it may be difficult for plan administrators to remedy failed delivery for certain covered individuals, such as those who have separated from service. For these individuals, the Department expects plan administrators will treat them as if they had opted out of electronic delivery. Although the Department acknowledges that plan administrators would spend time attempting to correct failed delivery as provided in paragraph (f)(4) of the 2020 safe harbor, it does not have sufficient data to quantify associated costs. The Department, however, assumes that plan administrators always would select the least costly and most efficient option. Therefore, if locating covered individuals and obtaining updated electronic addresses were too burdensome, the Department assumes that the plans would furnish covered documents identified in the undelivered notice of internet availability to those covered individuals by mail.

The annual burden to prepare a list of bounced emails and include them in database for mailing is estimated to be 419,021 hours with an equivalent cost of \$26,586,898.⁶ Actual costs for delivery are included in the ICRs for the respective notices.

Therefore, the Department estimates that retirement plans would incur a total burden for this requirement of 698,369 hours with an equivalent cost of \$44,311,497.

Website

Paragraph (e) of the 2020 safe harbor would require administrators to ensure the existence of a website at which plan covered individuals can access covered disclosures free of charge. The Department estimates that approximately 9,000 plans currently do not have, directly or indirectly through a plan service provider, a website where they can post the covered documents.⁷

5 (Plans without a website—on average email twice a year: 8,760 plans x 10 minutes per plan = 1,460 hours) + (Plans already have a website- on average post twice a year: 118,200 plans x 10 minutes per plan = 19,700 hours) + (Plans already have a website- on average post five times a year: 619,650 plans x 25 minutes = 258,187.5 hours) = 279,347.5 hours x \$63.45 for a clerical worker = \$17,724,599)

6 (Plans without a website—on average email twice a year: 8,760 plans x 15 minutes per plan = 2,190 hours) + (Plans already have a website- on average post twice a year: 118,200 plans x 15 minutes per plan = 29,550 hours) + (Plans already have a website- on average post five times a year: 619,650 plans x 37.5 minutes = 387,281.25 hours) = 419,021.25 hours x \$63.45 for a clerical worker = \$26,586,898)

7 According to Private Pension Plan Bulletin 2020 there were approximately 127,000 defined benefit plans and non-participant-directed defined contribution plans. Applying an assumption of 6.9 percent, the Department estimates approximately 8,760 (126,960 x 6.9) plans currently lack websites. This estimate may understate the total number

Although approximately 9,000 plans only have a website to satisfy the requirements of this rule, the Department expects the impact of paragraph (e) of the rule to be minimal, in part, because paragraph (k) of the rule allows plans to furnish covered documents by email. The direct delivery option will likely ease the burden on small plans, as they are less likely to have, or have access to, a website. All plans will incur a burden to post disclosures on the website. This annual burden is estimated to be 277,888 hours with an equivalent cost of \$36,972,932.⁸

This requirement results in an hour burden of 277,888 hours with an equivalent cost of \$36,972,932.

Summary Hour Burden and Equivalent Cost for the 2020 Safe Harbor

In total, the rule is expected to increase the burden 976,256 hours with an equivalent cost of \$81,284,429.

Total Hour Burden

The annual total hour burden for the ICR is 982,079 hours with an equivalent cost of \$81,877,237.

Estimated Annualized Respondent Hour Burden and Equivalent Cost of Hour Burden

Activity	No. of Respondents	No. of Responses per Respondent	Total Responses	Average Burden (Hours)	Total Burden (Hours)	Hourly Wage Rate	Equivalent Cost of Hour Burden
Legal professional develops disclosure materials for pre-2019 ICR	13,975	1	13,975	10/60	2,329	\$159.34	\$371,129
Clerical professional photocopies	13,975	1	13,975	15/60	3,494	\$63.45	\$221,678

of plans that lack websites because the PSCA study examined profit-sharing plans and 401(k) plans. As discussed, most 401(k) plans are expected to have their own websites. Therefore, the fraction of defined benefit plans and nonparticipant-directed DC plans that lack websites would be likely higher than 6.9 percent.

8 (Plans already have a website- on average post twice a year: 118,200 plans x 10 minutes per plan x \$133.05 for a computer programmer = \$2,621,085) + (Plans already have a website- on average post five times a year: 619,650 plans x 25 minutes x \$133.05 for a computer programmer = \$34,351,847) = \$36,972,932

and organizes materials for pre-2019 ICR							
Clerical professional prepare disclosure materials for notice of internet availability	746,610	4.49	3,352,170	5/60	279,348	\$63.45	\$17,724,599
Clerical professional prepares a list of bounced emails	746,610	4.49	3,352,170	8/60	419,021	\$63.45	\$26,586,898
Programming professional reviews posting requirements and disclosures on website	746,610	4.47	3,334,650	5/60	277,888	\$133.05	\$36,972,932
Unduplicated Total	760,585*	72.39	55,055,864**		982,079		\$81,877,237
<p>*Respondents is the number of new plan sponsors + total number of plans (13,975 + 746,610 = 760,585)</p> <p>** Responses is the number of participants in new plans + (total number of participants who have an internet description, and currently do not receive e-disclosures) + total number of plans (3,580,890 + 50,728,364 + 746,610 = 55,055,864)</p>							

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 and 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.**

2002 Safe Harbor

The Department assumes that all of the affected participants and beneficiaries will receive paper consent materials either on their job site or as an insertion into other material received through the mail, thus there are no mailing costs associated with delivery of the opt-out notifications. The per page photocopy costs are assumed to be five cents. Form 5500 data from 2020 indicate that there are 3,580,890 participants in new plans, who will receive paper opt-out notifications. The associated cost burden for generating paper copies of the opt-out notification to participants under the regulation is estimated to be approximately \$179,045.⁹

2020 Safe Harbor

Notice of Internet Availability

Paragraph (f)(4) of the 2020 safe harbor requires plan administrators to take certain actions if they are alerted that a covered individual's electronic address has become invalid or inoperable, such as if a notice of internet availability sent to that address is returned as undeliverable. In such circumstances, the administrator must (1) promptly take reasonable steps to cure the problem (for example, by furnishing a notice of internet availability to the covered individual's secondary electronic address that is valid and operable, if available, or obtaining a new valid and operable electronic address for the covered individual), or (2) treat the covered individual as if he or she made an election to opt out of electronic disclosure under paragraph (f)(2) of the 2020 safe harbor. To satisfy

⁹ 3,580,890 participants in new plans x \$0.05 per notice = \$179,045

this requirement, plan administrators would incur costs associated with monitoring for invalid or inoperable electronic addresses. The Department believes, however, that most plan administrators already have such features built into their electronic delivery systems.

The Department assumes that approximately 9,000 plans only have such features built in to their systems because of the rule, and thus, incur annual subscription costs to purchase software to allow them to monitor whether electronic notices are delivered, bounced back, opened, and clicked through.¹⁰ The Department estimates these plan administrators would incur \$2.9 million in aggregate annual costs to purchase such software.¹¹

Website

Although the Department estimates that about 9,000 plans only have website a website because of the safe harbors' requirement, the Department expects the impact of paragraph (e) of the final rule to be minimal, in part, because paragraph (k) of the rule allows plans to furnish covered documents by email.

Summary Cost for the 2020 Safe Harbor

The annual total cost burden for the 2020 safe harbor would be \$2,922,336.

Total Cost Burden

The annual total cost burden for the ICR would be \$3,101,381.

- 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 is no cost to the Federal government associated with this information collection.

¹⁰ The Department understands that software is commercially available to monitor emails to produce a list of email addresses that have bounced back with the owners' name, export the list into different formats, and, in certain circumstances, remove invalid email addresses from the list. Such software also generates and reports relevant statistics such as bounce rate, open rate and click-through rate. Some software has the capability to automatically re-attempt delivery depending on the reasons of failed delivery.

¹¹ The Department gathered pricing information for five commercial software packages that ranged from \$10 per month to \$320 per month, depending on the volume and sophistication of features available. Taking the average of basic level price of these five products, the Department assumes that it would cost \$27.80 per month (\$333.60 per year) to subscribe. Assuming 8,760 plans would purchase this type of product, the Department estimates that the aggregate costs will total \$2.9 million (8,760 plans x \$334.60 = \$2,922,336).

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

The number of plans and participants have been updated. Wages, postage costs, the percent of Americans with an internet subscription, the percent of plans without a website, and electronic disclosure rates were also updated. Additionally, one-time costs have been removed. As a result, the number of respondents increased by 51,058, the number of responses decreased by 27,797,968, and the cost burden increased by \$18,340,473. The hour burden decreased by 585,462.

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.

There are no plans to publish the results of this collection of information.

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 statement identified in Item 19.

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.