

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 498A

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 5(b)(2) of the Securities Act of 1933 (the “Securities Act”)¹ makes it unlawful for any person, directly or indirectly, to carry or cause to be carried through the mails or in interstate commerce securities for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus meeting the requirements of section 10 of the Securities Act.² Section 10(a) of the Securities Act describes the type of information required to be included in a statutory prospectus.³ Sections 10(b) of the Securities Act and 24(g) of the Investment Company Act of 1940 (the “Investment Company Act”)⁴ permit the Securities and Exchange Commission (the “Commission”) to allow the use of a prospectus that omits or summarizes information required by section 10(a).⁵

Rule 498A under the Securities Act permits a person to satisfy its prospectus delivery obligations under Section 5(b)(2) of the Securities Act for variable annuity and variable life insurance contracts (together, “variable contracts”) by: (1) sending or giving

¹ 15 U.S.C. 77a *et seq.*

² 15 U.S.C. 77e(b)(2). A “prospectus,” as defined by the Securities Act, is any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security, with certain exceptions. 15 U.S.C. 77b(a)(10).

³ 15 U.S.C. 77j. For purposes of this supporting statement, a prospectus meeting the requirements of a section 10(a) prospectus is referred to as a “statutory prospectus.”

⁴ 15 U.S.C. 80a-1 *et seq.*

⁵ 15 U.S.C. 77j(b); 15 U.S.C. 80a-24(g).

to new investors key information contained in a variable contract statutory prospectus in the form of an initial summary prospectus; (2) sending or giving to existing investors each year a brief description of certain changes to the contract, and a subset of the information in the initial summary prospectus, in the form of an updating summary prospectus; and (3) providing the statutory prospectus and other materials online.⁶ Rule 498A considers a person to have met its prospectus delivery obligations for any portfolio companies associated with a variable contract if the portfolio company prospectuses are posted online.⁷ Under the rule, a registrant (or the financial intermediary distributing the variable contract) relying on the rule must send the variable contract statutory prospectus (that statutory prospectus must be filed as part of registration statement on Form N-3, N-4, or N-6, as applicable) and other materials to an investor in paper or electronic format upon request.⁸ A summary prospectus that complies with rule 498A is deemed to be a prospectus that is authorized under section 10(b) of the Securities Act and section 24(g) of the Investment Company Act.⁹

On September 29, 2023, the Commission issued a release proposing amendments to several rules and forms that would modify the registration, offering, and communications process for registered index-linked annuities (“RILAs”) under the Securities Act.¹⁰ Specifically, the Commission is proposing to amend rule 498A to permit

⁶ Rule 498A(b) and (c).

⁷ Rule 498A(j).

⁸ Rule 498A(i)(1) and (j)(1)(iii).

⁹ Rule 498A(b) and (c).

¹⁰ Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked and Variable Annuities, Investment Company Act Release No. 35028 (Sep. 29, 2023), [88 FR 71088 (Oct. 13, 2023)], available at <https://www.sec.gov/files/rules/proposed/2023/33-11250.pdf>.

RILA issuers, as well as issuers of “combination contracts” offering a combination of index-linked options and variable options, to use a summary prospectus to satisfy statutory prospectus delivery obligations. Consistent with current rule 498A, the proposed use of summary prospectuses for RILAs would be voluntary, but the rule’s requirements would be mandatory for issuers that elect to send or give a summary prospectus in reliance upon proposed rule 498A. The proposed amendments to rule 498A are part of a layered disclosure approach that is designed to provide investors with a summary prospectus to help them make informed investment decisions regarding RILAs.

2. Purpose and Use of the Information Collection

The purpose of rule 498A is to provide investors with a summary prospectus to help them make informed investment decisions regarding variable contracts. Unlike many other federal information collections, which are primarily for the use and benefit of the collecting agency, this information collection is primarily for the use and benefit of investors.

3. Consideration Given to Information Technology

The Commission has provided guidance noting that electronic delivery may be used to satisfy prospectus delivery requirements under certain circumstances.¹¹ Rule 498A requires additional information (*i.e.*, the variable contract’s statutory prospectus, summary prospectuses, statement of additional information, and in the case of a registrant

¹¹ *See, e.g.*, Securities Act Release No. 7233 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)]; Securities Act Release No. 7856 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)].

on Form N-3, the registrant's most recent annual and semi-annual reports to shareholders under rule 30e-1) to be publicly accessible, free of charge, at a website address specified on or hyperlinked in the cover of the summary prospectus. The rule also provides an optional method for satisfying portfolio company prospectus delivery obligations by making additional information (*i.e.*, the portfolio company's statutory prospectus, summary prospectus, statement of additional information, and the most recent annual and semi-annual reports to shareholders under rule 30e-1) available online at the website address specified on or hyperlinked in the variable contract summary prospectus.

4. Duplication

The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication, and reevaluates them whenever it proposes a rule or a change in a rule. Certain reporting requirements of rule 498A are duplicated by the requirements of Forms N-3, N-4, and N-6. In particular, under the rule, certain disclosures may appear in both the summary prospectus and the statutory prospectus, but this is necessary in light of the policy goals of the rule and parallels the approach to summary prospectus disclosure in the context of mutual funds and ETFs.

5. Effect on Small Entities

The information collection requirements of rule 498A do not distinguish between funds that are small entities and other funds. To the extent that smaller entities would rely on rule 498A, their burden to comply with its requirements may be greater than for larger entities due to economies of scale.

The Commission staff considered special requirements for small entities. The Commission staff believes, however, that rule 498A will not have a significant economic impact on a substantial number of small entities.¹² Generally, an investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of \$50 million or less as of the end of its most recent fiscal year. The analysis is slightly different for insurance company separate accounts. Because state law generally treats separate account assets as the property of the sponsoring insurance company, rule 0-10 aggregates each separate account's assets with the assets of the sponsoring insurance company, together with assets held in other sponsored separate accounts.¹³ As a result, the Commission staff expects few, if any, separate accounts to be treated as small entities,¹⁴ and no small entities currently file registration statements on Forms N-3, N-4, or N-6.

The Commission staff reviews all rules periodically, as required by the Regulatory Flexibility Act, to identify methods to minimize reporting or recordkeeping requirements affecting small businesses.

6. Consequences of Not Conducting Collection

Section 5(b)(2) of the Securities Act makes it unlawful for any person, directly or indirectly, to carry or cause to be carried through the mails or in interstate commerce securities for the purpose of sale or for delivery after sale, unless accompanied or

¹² See Proposing Release, *supra* footnote 1, at section V.

¹³ 17 CFR 270.0-10(b).

¹⁴ See Proposing Release, *supra* footnote 1, at section V.

preceded by a prospectus meeting the requirements of section 10 of the Securities Act. Section 10(a)(3) of the Securities Act generally requires that when a prospectus is used more than nine months after the effective date of the registration statement, the information in the prospectus must be as of a date not more than sixteen months prior to such use.¹⁵ The effect of these provisions is that persons are required to update their variable contract statutory prospectuses at least annually to reflect current cost, performance, and other financial information. This legal requirement prevents the Commission from specifying less frequent distribution of a prospectus—including any summary prospectus that issuers relying on rule 498A will use—to investors when offering securities for sale.

The requirement that funds using a summary prospectus must respond to an investor's request for additional information within three business days ensures that investors who wish to review additional information before making an investment decision will be able to do so.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

The collection is not inconsistent with 5 CFR 1320.5(d)(2).

8. Consultation Outside the Agency

The Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the variable contract industry through public conferences, meetings, and informal exchanges. These various forums provide the Commission and the staff with a means of ascertaining and acting upon the

¹⁵ See 15 U.S.C. 77j(a)(3).

paperwork burdens confronting the industry. In addition, the Commission has requested public comment on the proposed amendments to rule 498A, including the collection of information requirements resulting from the proposed amendments. The Commission's solicitation of public comments included estimating and requesting public comments on the burden estimates for all information collections under this OMB control number (i.e., both changes associated with the rulemaking and other burden updates). All comments on the proposal are available at <https://www.sec.gov/comments/s7-16-23/s71623.htm>.

Before adopting these amendments, the Commission will receive and evaluate public comments on the proposed amendments and their associated collection of information requirements as required by 5 CFR 1320.11(f).

9. Payment or Gift

No payment or gift to respondents was provided.

10. Confidentiality

No assurance of confidentiality was provided.

11. Sensitive Questions

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection does not collect personally identifiable information (PII). The agency has determined that a system of records notice (SORN) and privacy impact assessment (PIA) are not required in connection with the collection of information.

12. Burden of Information Collection

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995¹⁶ and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

The respondents to these collections of information would be RILA issuers and registered variable contract separate accounts. The information provided under rule 498A will not be kept confidential.

In our most recent Paperwork Reduction Act submission for rule 498A, we estimated for rule 498A total aggregate annual hour burden of 14,688 hours, and a total aggregate annual external cost burden of \$11,559,420.¹⁷ We estimate that 90 RILAs would be registered using Form N-4 if the proposal was adopted and that there are 419 registrants on current Form N-4 that would be impacted by the proposed amendments.¹⁸ The summary prospectus is voluntary, so the percentage of RILA issuers that will choose to utilize it is uncertain. Given this uncertainty, we have assumed that insurance companies will choose to use a summary prospectus for 90% of all RILAs, which is the same as our current estimate for variable contract separate accounts. The table below

¹⁶ 44 U.S.C. 3501 *et seq.*

¹⁷ On Nov. 13, 2020, the Office of Management and Budget approved this collection of information estimate for rule 498A.

¹⁸ The RILA estimate is based on a review of RILA registration statements filed with the Commission as of May 2023 and the current Form N-4 registrants estimate is based on Form N-CEN reports through Apr. 15, 2023.

summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to rule 498A.

Table 1: Rule 498A PRA Estimates

	Internal initial burden hours	Internal annual burden hours	Wage rate ²	Internal time costs	Annual external cost burden
PROPOSED ESTIMATES					
Separate Account Registrants					
Proposed Amendments	9 ¹	6 ¹	\$425 (compliance attorney)	\$2,550	-
Number of registrants³		x 419		x 419	-
Total annual burden		2,514		\$1,068,450	-
Use of summary prospectus		x 90%		x 90%	-
Total new annual burden for Reliance on Rule 498A		2,262.60		\$961,605	-
RILA Registrants					
Preparation and filing of Initial Summary Prospectus/Updating Summary Prospectus	40	24.67 ⁴	\$313 (blended rate) ⁵	\$7,709.38	\$5,000 ⁸
Online Posting of Contract Documents	2	2.67 ⁶	\$289 (webmaster)	\$771.63	-
Total burden per registrant	-	27.34	-	8,481.01	\$5,000
Number of registrants⁷	-	x 90	-	x 90	x 90
Total annual burden	-	2,460.60	-	\$763,290.90	\$405,000
Use of summary prospectus		x 90%		x 90%	x 90%
Total new annual burden for Reliance		2,214.54		\$686,961.81	\$364,500

on Rule 498A

ESTIMATES FOR PRINTING AND MAILING BY RILA REGISTRANTS⁹

Initial Summary Prospectus	\$120,000
Updating Summary Prospectus	\$1,048,000
Total annual burden	\$1,168,000
Use of summary prospectus	x 90%
Total new annual burden for Reliance on Rule 498A	\$1,051,200

Total Burdens

	Responses	Internal Hour Estimate	Internal Hour Cost Estimate	External Cost Estimate
Current aggregate annual burden estimates	676	14,688	\$3,900,193	\$11,559,420
Aggregate proposed additional annual burden estimates	+83 ¹⁰	+4,477.14	+1,648,566.81	+\$1,415,700
Revised aggregate annual burden estimates	=759	=19,165.14	=5,548,759.81	=\$12,975,120

As summarized above, in our most recent Paperwork Reduction Act submission for rule 498A, Commission staff estimated that the annual compliance burden to comply with the collection of information requirements of rule 498A is 14,688 hours, with an internal cost of about \$3.9 million. We estimate that the total internal burden associated with rule 498A will be 19,165.14 hours per year, at a cost of about \$5.5 million.

13. Costs to Respondents

Cost burden is the cost of goods and services purchased to prepare, submit, and disseminate documents using rule 498A. The cost burden does not include the hour burden discussed in Item 12 above. The Commission staff estimates for rule 498A a total

annual external cost burden of \$12,975,120, which includes the costs associated with the printing and mailing of summary prospectuses.

14. Costs to Federal Government

The annual cost of reviewing and processing registration statements, post-effective amendments, proxy statements, shareholder reports, and other filings of funds amounted to approximately \$29 million in fiscal year 2022 based on the Commission staff's computation of the value of staff time devoted to this activity and related overhead.

15. Changes in Burden

As summarized in Table 1 above, the estimated hourly burden associated with rule 498A has increased from 14,688 hours to 19,165.14 hours (an increase of 4,477.14 hours). In addition, the cost burden associated with rule 498A has increased from \$11,599,420 to \$12,975,120 (an increase of \$1,415,700). The amendments proposed by the Commission would result in a change in our estimate of the burden associated with this collection of information, specifically to account for additional requirements for issuers that use rule 498A currently and to add RILAs.

These changes in burden also reflect the Commission's revision and update of burden estimates for all information collections under this OMB control number (whether or not associated with rulemaking changes), and the Commission requested public comment on all information collection burden estimates for this OMB control number.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

Not applicable.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

The Commission is not seeking an exception to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of information will not employ statistical methods.