

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995:  
REVISIONS TO THE FORM 5500 ANNUAL RETURN / REPORT OF EMPLOYEE  
BENEFIT PLANS AND FORM 5500-SF SHORT FORM ANNUAL RETURN/REPORT  
OF SMALL EMPLOYEE BENEFIT PLANS**

DOL is submitting this revision in connection with the publication of a final rule that implements changes to the 2023 Form 5500, to go live 1/1/24.

**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 Employee Retirement Income Security Act of 1974 (ERISA) contains three separate sets of provisions—in Title I (Labor provisions), Title II (Internal Revenue Code provisions), and Title IV (Pension Benefit Guaranty Corporation provisions)—requiring administrators of employee benefit pension and welfare plans (collectively referred to as employee benefit plans) to file returns or reports annually with the federal government.

Title I of ERISA, specifically sections 101(b)(1) and 104(a)(1)(A), require the administrator of an employee benefit plan to file an annual report containing the information described in section 103 of ERISA with the Department of Labor (the Department). Section 104(a)(2) of ERISA, provides that the Secretary of Labor (Secretary) may, by regulation, prescribe simplified annual reporting for pension plans that cover fewer than 100 participants. Section 109(a) of ERISA provides that, with certain exceptions, the Secretary may prescribe that information required in an annual report be submitted on forms. Sections 104(a)(3) and 110 of ERISA authorize the Secretary to prescribe exemptions and simplified reporting for welfare plans and alternative methods of compliance for pension plans, respectively, if certain findings with respect to such plans can be made by the Secretary. Section 505 of ERISA provides the Secretary with general authority to prescribe such regulations as are “necessary and appropriate” to carry out the provisions of Title I of ERISA.

Provisions in Title II of ERISA require an annual return to be filed on behalf of specified tax-qualified retirement plans with the Internal Revenue Service (IRS). Provisions in Title IV require certain annual reports to be filed for employee benefit plans with the Pension Benefit Guaranty Corporation (PBGC).

Since the enactment of ERISA, the Department has cooperated with the IRS and the PBGC to produce the Form 5500 Annual Return/Report, through which the regulated

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public generally can satisfy the reporting requirements applicable to employee benefit plans for all three agencies, as applicable.

*November 2007 Revision*

On November 16, 2007, the three agencies, including the Department, adopted revisions to the Form 5500 Annual Return/Report, including the establishment of a new Form 5500-SF (Short Form 5500) for certain small plans, in order to update and streamline the annual reporting process in conjunction with establishing a wholly electronic processing system for receipt of the Form 5500 Annual Return/Reports and to conform the forms to the Pension Protection Act of 2006, Pub. L. No. 109-280 (PPA).<sup>1</sup> A final rule (72 FR 64710) was published contemporaneously with the revisions, including an amendment to the Department's regulation at 29 CFR 2520.104a-2 to mandate an electronic filing requirement, applicable for plan years beginning on or after January 1, 2009.

*January 2013 Revision*

The Department finally amended the Form 5500, its instructions, and the Department's implementing regulations to require all welfare plans, including those plan MEWAs and Entities Claiming Exemption (ECEs) that are subject to the M-1 filing requirements to prove compliance with such requirements in order to satisfy the Form 5500 annual reporting requirements. The Department added a new Part III to the Form 5500, which requires plan administrators to report whether an employee welfare benefit plan is a MEWA subject to the Form M-1 requirements. Plan administrators that indicate the plan is required to file the Form M-1 also are required to enter the receipt confirmation code for the most recent Form M-1 filed with the Department. Failure to answer the questions on the Form 5500 regarding Form M-1 compliance can result in rejection of the Form 5500 as incomplete and civil penalties under ERISA section 502(c)(2) may be assessed. This enhances the Department's ability to enforce the Form M-1 requirements by subjecting plan MEWAs that fail to file Form M-1 to the ERISA section 502(2) civil penalty for failure to file a complete Form 5500.<sup>2</sup>

*2014 CSEC Act Revision*

The Department revised this ICR to reflect changes made to the Form 5500 reporting requirements by the Cooperative and Small Employer Charity Pension Flexibility Act

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<sup>1</sup> 72 FR 63731.

<sup>2</sup> Although ERISA sections 505 and 734 give the Secretary the authority to require MEWAs that are group health plans to comply with the Form M-1 requirements, there is, however, no corresponding ERISA civil penalty for a failure to comply with those requirements.

(the “CSEC Act”).<sup>3</sup> The CSEC Act requires that annual reports of multiple employer plans include “a list of participating employers” and, with respect to each participating employer “a good faith estimate of the percentage of total contributions made by such participating employers during the plan year.”

#### *SECURE Act Revisions*

In December 2021, the Department published a final forms revisions rulemaking that set forth a narrow set of changes to the instructions for the Form 5500 and Form 5500–SF, effective for plan years beginning on or after January 1, 2021, 86 FR 73976 (Dec. 29, 2021). The revisions relate to statutory amendments to ERISA and the Code enacted as part of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act).<sup>4</sup> These changes to the instructions were included in a broader proposal published on September 15, 2021. The limited instruction changes implement annual reporting changes for multiple-employer plans (including pooled employer plans).

The 2021 Form 5500 modifications, added text that: (1) notes that a pooled employer plan operated by a pooled plan provider that meets the definition under ERISA section 3(43) is a multiple employer plan that files a single Form 5500 Annual Return/Report; (2) requires multiple employer defined contribution pension plans to report aggregate account balance information by employer as part of an existing non-standard attachment that such plans use to report ERISA section 103(g) participating employer information; and (3) requires “pooled employer plans” to indicate whether the pooled plan provider sponsoring the plan is in compliance with the Form PR registration requirements and provide the AckID number for the pooled plan provider’s latest Form PR filing, also as part of a non-standard attachment. The instructions retain an existing requirement that welfare plans that file a Form 5500 must include participating employer information under our general Form 5500 and regulatory authorities notwithstanding that the SECURE Act amended ERISA section 103(g) to limit that section to retirement plans. No changes to the text of DOL’s implementing regulations are required for these instruction changes.

In May 2022, a second final forms revisions was published effective for plan years beginning on or after January 1, 2022. Those forms and instruction revisions generally implemented annual reporting changes for defined benefit plans on Schedules MB, SB and R, but also added certain plan characteristics codes for MEPs, including one to specifically identify pooled employer plans, to the list of plan characteristics the plans must use to describe the plan on their annual report.

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<sup>3</sup> P.L. 113-97, 128 Stat. 1101, enacted on April 7, 2014

<sup>4</sup> The SECURE Act was enacted on December 20, 2019, as Division O of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116-94).

These final forms revisions add a new multiple-employer pension plan (MEP) schedule (Schedule MEP) to the list of schedules and attachments required to be included with the Form 5500 as a unified vehicle to report information related to SECURE Act provisions for MEPs and PEPs. These final revisions also introduce a consolidated Form 5500 filing option that would satisfy the annual reporting obligations for the defined contribution pension plans participating in a DCG reporting arrangement, as well as the introduction of a new schedule for these purposes, Schedule DCG. This final rule also redefines the method of counting participants for purposes of determining when a defined contribution pension plan may file as a small plan (generally those with fewer than 100 participants) and whether the plan may be exempt from the IQPA audit requirements generally applicable to large plans (generally those with 100 or more participants) by providing that filers should look to the number of participants/beneficiaries with account balances as of the beginning of the plan year (the first plan year would use an end of year measure) when determining plan size and filing requirements instead of the previous method which used employees eligible to participate to determine if an audit is required. Lastly, this final rule includes adding certain tax compliance questions, as well as making a limited number of further improvements to Schedule MB, SB and R reporting and enhancing transparency of Schedule H administrative expense reporting by providing additional break-out categories.

**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 Form 5500 return/reports are the principal source of information and data available to the Department, the IRS, and the PBGC (the Agencies) concerning the operation of employee benefit plans. For this reason, the Form 5500 constitutes an integral part of the Agencies' enforcement, research, and policy formulation programs. The annual report also provides a means by which the Agencies can effectively and efficiently identify actual and potential violations of ERISA, thereby minimizing the Agencies' investigatory contacts with the vast majority of plans and enabling the Agencies to make the best use of their limited resources. The annual report also provides a fundamental tool for investigators in reviewing the operations and activities of employee benefit plans and identifying potential violations of the statute and regulations. Furthermore, public disclosure of the annual reports is intended to serve as a deterrent to non-compliance with the statutory duties imposed on plan fiduciaries.

With regard to research and policy formulation, the Form 5500 represents the primary source of data available to federal agencies, Congress, and the private sector for the development and implementation of national pension policy.

In addition to providing the Agencies with important enforcement, research, and policy information, the Form 5500 represents the only source of detailed financial information available to plan participants and beneficiaries who, upon written request, must be furnished a copy of the plan's latest annual report by the plan administrator (ERISA section 104(b)(1)(B)(4)). Moreover, the annual report serves as the basis for the summary annual report, which administrators are generally required to furnish to each participant and beneficiary annually, except those covered by defined benefit plans.

**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 Agencies currently use an automated processing system, the ERISA Filing Acceptance System 2 or EFAST2, to process the Form 5500 filings. The combined effect of the transition to electronic filing, the implementation of the EFAST2 processing system, and the revised Form 5500 return/reports has reduced the paperwork burden imposed by the reporting requirements that are the basis for this information collection.

**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 Agencies have developed and use a consolidated annual report that allows filers to satisfy the information collection requirements of all three agencies through a single filing, without duplication of effort or information collection. This eliminates the duplicative reporting that would otherwise result from application of the statutory provisions as written. In addition, while certain information concerning assets (including employee benefit plan assets) held by banks, insurance companies and other investment entities may be separately reported to state and Federal regulatory authorities, those reports are not structured to provide meaningful information about those assets specifically attributable to any employee benefit plan, or to employee benefit plan investors as a group distinct from other types of investors. Therefore, there is no similar information gathered or maintained by any state or Federal agency or other source that the Agencies would consider adequate for effectively monitoring the activities of employee benefit plans.

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

For purposes of the Paperwork Reduction Act (PRA) and for other purposes, the Employee Benefit Security Administration (EBSA) defines a “small entity” as an employee benefit plan that has fewer than 100 participants. Support for this definition can be found in section 104(a)(2) of ERISA which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for simplified annual reporting and disclosure if the statutory requirements of part 1 of Title I of ERISA would otherwise be inappropriate for welfare plans. Some large employers may have small plans, but in general, most small plans are maintained by small employers.

Pursuant to the authority of section 104(a)(3), the Department has created simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans that cover fewer than 100 participants and satisfy certain other requirements. For example, under these exemptions, and subject to certain other requirements, over 6 million small pension and welfare plans are relieved of the requirement to file an annual return/report and most small plans are not required to engage an independent qualified public accountant (IQPA) to audit their assets for their annual return/reports.

In the past, the Agencies have taken a number of other steps intended to ease small plans’ burdens and costs attributable to the annual return/report. For example, the Agencies currently allow plans with between 80 and 120 participants to continue filing the same category of annual report that was filed the previous year in order to provide administrative flexibility at the small/large plan threshold. In 2009, a simplified reporting option for small plans—the Form 5500-SF—was added to provide simplified reporting for certain small plans (e.g., plans with fewer than 100 participants with easy to value investment portfolios).

The final revisions change the current method of counting covered participants for purposes of determining when a defined contribution plan may file as a small plan and whether the plan may be exempt from the audit requirement from the current requirement. Specifically, the final revisions allow defined contribution pension plans to count the number of participants/beneficiaries with account balances, as compared to the current rule that counts all the employees eligible to participant in the plan when determining plan size and what forms to file.

Additionally, small plans for which the reporting requirements will be covered by a DCG filing, including a schedule DCG specific to each plan, will no longer need to file a

separate Form 5500 or Form 5500-SF. There also may be some cases in which sponsors will decide to participate in a pooled employer plan instead of continuing to maintain a single employer plan, which would also result in a number of small plans either being terminated or possibly merged into the pooled plan and no longer filing a separate Form 5500 or Form 5500-SF.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

ERISA and the Code specifically require the annual filing of reports or returns by employee benefit plans. A less frequent information collection could contravene statutory requirements and would also impair the oversight and enforcement functions of the respective Agencies under ERISA and the Code.

**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.**

This information collection implicates none of the special circumstances.

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.**

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.

The Agencies received 114 comments on the NPFR and NPRM. The comments generally were focused on the proposed changes for the 2022 and later plan year forms and generally focused on four areas relevant to the current rule:

- *Audit requirements associated with DCGs.* When, and at what level, a plan and/or group would be required to provide audit opinions was a frequent topic of comment. The Department considered the comments in arriving at a final decision, attempting to balance the costs to plans and safeguarding plan assets.
- *Consolidated Form 5500 for Defined Contribution Retirement Plan Groups.* Some conditions originally proposed were eliminated or adjusted in response to comments expressing concerns about operational complexity and costs. Examples of conditions which were eliminated due to the concerns expressed include the use of a single trust

and limits on the types of investment plans may have if they participate in a DCG.<sup>5</sup>

- *Reporting by PEPs and other MEPs.* This final rule includes modifications to the Form 5500 to further implement SECURE Act changes that establish PEPs as a new type of retirement plan. These steps would be accomplished primarily by new Schedule MEP (Multiple-Employer Retirement Plan Information). As with DCG, some aspects of the proposed Schedule MEP have been streamlined based on commenters' input, mainly relating to PEP-specific questions.
- *Change in Participant-Count Methodology to Reduce Plan Expenses.* There was near universal support for the revision to the counting methodology for determining the 100-participant threshold for small plan simplified filing alternatives, including conditional waiver of the IQPA annual audit. Under this final rule, that counting methodology for defined contribution retirement plans will be based on the number of participants with account balances, rather than the current method which counts as participants for this purpose to include those who are eligible to participate but who have not in fact elected to participate. This change is intended to help reduce expenses for small plans and encourage more small employers to offer workplace retirement savings plans to their employees.

A more detailed description and response to the comments received can be found in the final rule and final forms documents found at [XX FR XXXX](#) and [XX FR XXXX](#).

**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.**

The Form 5500 filings made under Title I of ERISA are required by law to be made available for public inspection at the Department and at the offices of the plan

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<sup>5</sup> SECURE Act section 202 directed the DOL and IRS to modify the Form 5500 Annual Return/Report so that members of a group of defined contribution plans that satisfy certain criteria in the statute may file a single consolidated annual return or report. The statute included a deadline of December 31, 2021, for adoption of a new consolidated report option. The Agencies' Phase II Federal Register notice explained that, instead of rushing consideration of the issues presented by the public comments, and in light of the significance of the changes to annual reporting requirements involved, the Agencies decided that they needed more time to consider the range of public comments and develop a final approach to the DCG option.

administrators. Accordingly, the Department provides no assurance of confidentiality 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.**

Because the Form 5500 Series combines the information collection requests of three federal agencies (the Department, the IRS, and the PBGC) into a single return/report, each of the Agencies submits its own ICR and maintains its own OMB approval for the portion of the paperwork burden arising out of the Form 5500 reporting that pertains to its own information collections. However, since 1999, the Agencies have adopted a unified approach and methodology for estimating paperwork burden. This ICR requests approval of only the portion of the total paperwork burden of the Form 5500 reporting that is attributed to the Department, although it includes information on the other portions of the total paperwork burden. The

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discussion below, describes the unified methodology underlying the Agencies' estimates of the aggregate burden imposed by the forms revisions as a whole, but requests approval only of the Department's portion of that burden.

The Department has adopted several assumptions in performing this burden estimation. First, the methodology used for this ICR excludes certain types of activities from the calculation of "burden." If an activity is performed for any reason other than compliance with the applicable federal tax administration system or the Title I annual reporting requirements, it is not counted as part of the paperwork burden. For example, most businesses or financial entities maintain, in the ordinary course of business, detailed accounts of assets and liabilities and income and expenses for the purposes of operating the business or entity. The Department has not attributed any recordkeeping burden to the Form 5500 Annual Return/Report because it believes that plan administrators' practice of keeping financial records necessary to complete the Form 5500 Annual Return/Report arises from usual and customary management practices that would be used by any financial entity and is not the result of any ERISA or Code annual reporting and filing requirements.

This burden analysis includes only the time needed for gathering and processing information associated with compliance with the tax return/annual reporting requirements. In addition, an activity that must be performed for any combination of the three Agencies purposes is counted once for burden analysis purposes.

The Agencies also have designed the instruction package for the Form 5500 Annual Return/Report so that filers generally will be able to complete the Form 5500 Annual Return/Report by reading the instructions without needing to refer to the statutes or regulations. The Agencies, therefore, have included in their PRA calculations a burden for reading the instructions and have assumed that there is no additional burden for research.

An updated burden estimating model, initially based on the Form 5500 Burden Model that a contractor, Mathematica Policy Research, Inc. (MPR), had used for estimating burdens in October 2004, has been developed for purposes of this burden analysis by Actuarial Research Corporation (ARC). ARC assembled a simplified model by drawing on implied burdens associated with subsets of filer groups represented in the MPR model. The updated model uses a level of detail consistent with reflecting burden differences associated with the various proposed Forms revisions, as described below.<sup>6</sup>

The types of plans that have similar reporting requirements were grouped together to estimate aggregate burdens for this submission. Calculations were prepared for different subsets of types

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<sup>6</sup> The new burden model developed by ARC has been used to calculate burdens for the paperwork reduction burdens of the Notice of Proposed Rulemaking, the Proposed Forms Revisions, and the Notice of Supplemental Proposed Forms Revisions. This burden model was further updated for the Final Forms Revisions and Final Rules.

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of plans, as appropriate, based on the specific reporting requirements. The universe of filers was first divided into three basic plan types: defined benefit pension plans, defined contribution pension plans, and welfare plans. Each of these major plan types was further subdivided into multiemployer and single-employer plans. Since filing requirements differ substantially for small and large plans, the plan types were also divided by plan size. For large plans (100 participants or more), defined benefit plans were further divided into very large (1,000 participants or more) and other large (at least 100 but less than 1,000 participants). For each of these sets of respondents, burden hours per respondent were estimated for the Form 5500 Annual Return/Report itself and for each of the eight schedules, where applicable.

In addition to separating plans by type and size, costs were estimated separately for the form and for each schedule. The burden for the Form 5500-SF, as well as the simplified filing requirements for certain small plans was built from the estimated current burden associated with the various line items included in it. When items on a schedule are required by more than one Agency, the estimated burden associated with that schedule was allocated among the Agencies. This allocation was based on whether only a single item on a schedule is required by more than one Agency or whether several or all of the items are required by more than one Agency. Because filers must read not only the instructions for particular items but also instructions pertaining to the general filing requirements, the burden associated with reading the instructions was tallied and allocated accordingly.

The burden for a specific type of plan has been estimated in light of the specific items and schedules that type of plan must complete, as well as its size, funding method, and investment structures. For example, the annual report for a large fully insured welfare plan would consist of the Form 5500 and the Schedule A (Insurance Information), and Schedules C and G, where applicable. By contrast, a large defined benefit pension plan that is intended to be tax-qualified and that uses a trust fund and invests in insurance contracts and direct filing entities would be required to submit an annual report completing the Form 5500, plus Schedule A (Insurance Information), Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information), or MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information), whichever one is applicable, Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), possibly Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), and Schedule R (Retirement Plan Information), and would be required to submit an IQPA's report and opinion. The methodology used to develop the aggregate burden estimates attempts to capture, through its categorization, these different reporting burdens, thereby providing meaningful estimates of significant differences in the burdens placed on different categories of filers.

The aggregate baseline burden for the Form 5500 is the sum of the burden estimates per form and schedule filed multiplied by the estimated aggregate number of forms and schedules. The simplified model developed by ARC draws on Form 5500 Annual Return/Report data

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representing each plan's filing for plan year 2020 (the most recent year for which complete data is available).

Table 1 summarizes the Department's estimates of the aggregate time needed to complete each of the forms, reflecting the combined information collection requirements of the IRS, the Department, and the PBGC. The estimates are averages, since the actual time needed for any particular respondent plan to complete any of these forms will vary depending on individual circumstances. The estimated average times for each form for all of the information elements of the three Agencies are:

|                     | Pension Plans                              |                                                                                     |                       |
|---------------------|--------------------------------------------|-------------------------------------------------------------------------------------|-----------------------|
|                     | Large                                      | Small, Filing Form 5500                                                             | Small, Filing 5500-SF |
| <b>Form 5500</b>    | 1 hr, 50 min.                              | 1 hr, 19 min.                                                                       | -                     |
| <b>Sch A</b>        | 2 hr, 52 min.                              | 2 hr, 52 min.                                                                       | -                     |
| <b>Sch MB</b>       | 8 hr, 52 min.                              | 8 hr, 40 min.                                                                       | 8 hr, 40 min.         |
| <b>Sch SB</b>       | 6 hr, 38 min.                              | 6 hr, 49 min.                                                                       | 6 hr, 49 min.         |
| <b>Sch C</b>        | 2 hr, 51 min.                              | -                                                                                   | -                     |
| <b>Sch D</b>        | 1 hr, 39 min.                              | 20 min.                                                                             | -                     |
| <b>Sch G</b>        | 14 hr, 49 min.                             | -                                                                                   | -                     |
| <b>Sch H</b>        | 7 hr, 40min.                               | -                                                                                   | -                     |
| <b>Sch I</b>        | -                                          | 2 hr, 6 min.                                                                        | -                     |
| <b>Sch R</b>        | 1 hr, 43 min.                              | 1 hr, 7 min.                                                                        | -                     |
| <b>Sch MEP</b>      | 11 min.                                    |                                                                                     |                       |
| <b>Form 5500-SF</b> | -                                          | -                                                                                   | 2 hr, 35 min.         |
|                     | Welfare plans that include health benefits |                                                                                     |                       |
|                     | Large                                      | Small, unfunded, combination unfunded/fully insured, or funded with a trust 5500-SF |                       |
| <b>Form 5500</b>    | 1 hr, 45 min.                              | 1 hr, 14 min.                                                                       |                       |
| <b>Sch A</b>        | 3 hr, 40 min.                              | 2 hr, 43 min.                                                                       |                       |
| <b>Sch C</b>        | 3 hr, 38 min.                              | -                                                                                   |                       |

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|                     |                                                   |                         |                            |
|---------------------|---------------------------------------------------|-------------------------|----------------------------|
| <b>Sch D</b>        | 1 hr, 52 min.                                     | 20 min.                 |                            |
| <b>Sch G</b>        | 11 hr, 0 min.                                     | -                       |                            |
| <b>Sch H</b>        | 8 hr, 36 min.                                     | -                       |                            |
| <b>Sch I</b>        | -                                                 | 1 hr, 56 min.           |                            |
| <b>Form 5500-SF</b> | -                                                 | 2 hr, 35 min.           |                            |
|                     | Welfare plans that do not include health benefits |                         |                            |
|                     | Large                                             | Small, Filing Form 5500 | Small, Filing Form 5500-SF |
| <b>Form 5500</b>    | 1 hr, 45 min.                                     | 1 hr, 14 min.           | -                          |
| <b>Sch A</b>        | 3 hr, 40 min.                                     | 2 hr, 43 min.           | -                          |
| <b>Sch C</b>        | 3 hr, 38 min.                                     | -                       | -                          |
| <b>Sch D</b>        | 1 hr, 52 min.                                     | 20 min.                 | -                          |
| <b>Sch G</b>        | 11 hr, 0 min.                                     | -                       | -                          |
| <b>Sch H</b>        | 8 hr, 36 min.                                     | -                       | -                          |
| <b>Sch I</b>        | -                                                 | 1 hr, 56 min            | -                          |
| <b>Form 5500-SF</b> | -                                                 | -                       | 2 hr, 35 min.              |

|                  | Direct Filing Entities |               |               |               |               |               |
|------------------|------------------------|---------------|---------------|---------------|---------------|---------------|
|                  | Master Trusts          | CCTs          | PSAs          | 103-12 IEs    | GIAs          | DCGs          |
| <b>Form 5500</b> | 1 hr, 50 min.          | 1 hr, 29 min. | 1 hr, 24 min. | 1 hr, 33 min. | 1 hr, 22 min. | 1 hr, 50 min. |
| <b>Sch A</b>     | 2 hr, 54 min.          | 2 hr, 48 min. | 2 hr, 46 min. | 2 hr, 52 min. | 2 hr, 53 min. | 2 hr, 52 min. |
| <b>Sch C</b>     | 3 hr, 1 min.           | 1 hr, 1 min.  | 29 min.       | 1 hr, 22 min. | 51 min.       | 2 hr, 42 min. |
| <b>Sch D</b>     | 1 hr, 30 min.          | 47 min.       | 34 min.       | 49 min.       | 41 min.       | 1 hr, 39 min. |
| <b>Sch G</b>     | 12 hr, 32 min.         |               |               | 5 hr, 42 min. |               | 11 hr, 6 min. |
| <b>Sch H</b>     | 8 hr, 7 min.           | 7 hr, 36 min. | 7 hr, 33 min. | 8 hr, 17 min. | 7 hr, 38 min. | 8 hr, 36 min. |
| <b>Sch DCG</b>   |                        |               |               |               |               | 1 hr, 33 min  |

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Before revisions, the aggregate hour burden for the entire Form 5500 Annual Return/Report (including schedules and Short Form 5500) is estimated to be 4.4 million hours, of which the Department's allocated share is 2,869,027 hours, with an equivalent cost of \$309,969,651 million.<sup>7</sup>

*January 2013 Revision*

As stated in Item 1, above, the January 2013 finalized amendment requires an ERISA-covered plan that is subject to Form M-1 requirements to include proof of filing the Form M-1 as part of the Form 5500. Plan administrators that indicate the plan is subject to the Form M-1 requirements would be required to enter the receipt confirmation code for the most recent Form M-1 filed with the Department. The Department believes that the burden associated with this requirement is minimal, because plan administrators will know whether they are subject to and in compliance with the Form M-1 requirements and will have the receipt confirmation code for the most recent Form M-1 filing readily available.

The finalized amendment provides that plans subject to the Form M-1 requirements are not eligible for the exemption from filing the Form 5500 for small welfare benefit plans that are unfunded or insured and have fewer than 100 participants. Following the methodology used to calculate the burden in the Form 5500 regulations, the Department estimates that small plan MEWAs and ECEs, using service providers, filing a Form 5500 and completing Schedule A and Part III of Schedule G would incur an annual burden of 4.5 hours to prepare the form and schedules for submission. The Department does not have sufficient data to determine the number of small plan MEWAs or ECEs that would be required to file the Form 5500 under the final rule.

In the 2019 calendar year, there were 715 MEWAs that filed a Form M-1; however, the 2019 Form M-1 does not contain sufficient information to determine which of these MEWAs or ECEs would be subject to the requirements of final rule. The Department has nonetheless estimated there are 140 small plan MEWAs. If these 140 small plan MEWAs were subject to the rule, the additional burden would be 630 hours (140\*4.5), at an equivalent cost of approximately \$63,403.

*2014 CSEC Act Amendment*

As stated in Item 1 above, the CSEC Act revision only applies to multiple employer plans. In 2020, there were 4,791 multiple employer plans, of which 182 were defined benefit plans and

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<sup>7</sup> The Department uses a labor rate of accountants and auditors of \$108.4. 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>

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4,609 were defined contribution plans.<sup>8</sup> Additionally, there were 715 total plan MEWAs that filed a Form M-1 in 2019.<sup>9</sup> Accordingly, the Department estimates that 5,506 (4,791 +715) multiple employer plans are subject to the requirements of the CSEC Act Amendment. The Department assumes that plan administrators will comply with the new requirements; therefore, the entire burden is hour burden.

Reporting the basic information about participating employers required by the CSEC Act should not be burdensome for multiple employer plan administrators, because multiple employer plans already are required to maintain a list of participating employers and records of the contributions made by each employer. The Department's regulation on content requirements for summary plan descriptions (SPDs), 29 CFR 2520.102-3, requires, in the case of a plan established or maintained by two or more employers, that the SPD contain a statement that a complete list of the employers sponsoring the plan may be obtained by participants and beneficiaries on request and a statement that the list is available for examination by participants and beneficiaries at the plan administrator's office.

In addition, the Form 5500 currently requires plans to report information on employer contributions as part of the financial information required to be filed. Section 107 of ERISA requires the plan administrator to keep records in sufficient detail to allow the information on the Form 5500 to be "verified, explained, or clarified, and checked for accuracy and completeness." In the Department's view, this would require the plan to keep records sufficient to identify the individual participating employers that made contributions and the amount of the contributions attributable to each individual employer.

Therefore, the Department assumes that on average, it will take a financial professional thirty (30) minutes to comply with the CSEC Act amendments by creating an attachment containing the list of participating employers, their EIN, and their percentage of total plan contributions. Based on the foregoing, the Department estimates that 5,506 multiple employer plan administrators will spend approximately 2,753 hours complying with the CSEC Act requirements at an equivalent cost of approximately \$274,546.<sup>10</sup>

### *SECURE Act Revisions*

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<sup>8</sup> Employee Benefits Security Administration. "Private Pension Plan Bulletin, Abstract of 2020 Form 5500 Annual Reports." (September 2022).

<sup>9</sup> These calculations are based on internal Department calculations based on 2019 M-1 filings.

<sup>10</sup> 2,753 hours times the labor rate of accountants and auditors of \$108.4 per hour. 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>

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The final form revisions primarily relate to statutory amendments to ERISA and the Code enacted as part of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act).

The final regulations and forms revisions involve changes in filing burden by: (1) implementing the SECURE Act requirement to develop consolidated annual reporting for groups of defined contribution retirement plans by establishing a new type of direct filing entity, the Defined Contribution Group (DCG) Reporting Arrangement (which includes adding a new schedule named schedule DCG); (2) implementing SECURE Act changes to MEP reporting of participating employer information by introducing Schedule MEP which will be filed by all MEPs, including PEPs, which includes participating employer information as well as limited specific reporting requirements for PEPs; and (3) changing the participant count methodology for determining eligibility for small plan simplified reporting option for defined contribution pension plans and eligibility for a waiver of the requirement to obtain and attach an IQPA report to the plan's annual report.

The new Schedule MEP will be filed by all MEPs, including PEPs. The DOL estimates the burden of Schedule MEP to be 10/60 hours for MEPs and approximately 14/60 hours for PEPs. Further, the DOL assumes there will be a total of 202 PEPs together with the existing MEPS resulting in a direct decrease of 3,369 defined contribution Form 5500–SF filers and a decrease of 563 Form 5500 defined contribution filers. This decrease in filers alone would result in a reduction of individual filers from 864,100 to 860,100 filers, even considering an increase in filings by the PEP themselves.

The DOL also estimates that 142 DCGs will be created with a total of 20,827 small plans having their annual return/report filing obligation satisfied with the filing of a Schedule DCG. This would result in a decrease in the number of individual filers from 864,100 to 843,300, assuming the current definition of large and small plans.

Lastly, the DOL estimates that because of the changes to the method of counting participants for purposes of determining when a defined contribution plan may file as a small plan, there would be a reduction of 18,699 defined contribution large plans. These plans would be now eligible to file as small plans and therefore have a reduction in their overall filing costs.

Additionally, this final rule revises the Schedule H to collect more detailed information on plan expenses to allow for more transparency, accountability, and increase the usefulness of the data in regulating employee benefit plans. These revisions to Schedule H filing do not cause changes to the filing burden calculations.

In total, as a result of the changes described above borne out of the SECURE Act, the estimate of the number of plans filing the Form 5500 and Form 5500–SF decreases relative to previous submissions. Under the new final regulation, the hour burden attributed to the DOL for plans

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filing Form 5500 and Form 5500–SF, and corresponding schedules, amounts to 2.9 million hours, with an equivalent cost of approximately \$310 million.<sup>11</sup>

Presented below is a chart showing the total hour and cost burden of the revised Form 5500 Annual Return/Report allocated to the DOL.

| Table 2: Time Burden Summary      |                    |                                 |                 |                        |                      |                          |                                  |
|-----------------------------------|--------------------|---------------------------------|-----------------|------------------------|----------------------|--------------------------|----------------------------------|
| Activity                          | No. of Respondents | No. of Responses per Respondent | Total Responses | Average Burden (Hours) | Total Burden (Hours) | Time Value (Hourly Rate) | Monetized Burden Hours (Rounded) |
| Form 5500 (5500-SF and Schedules) | 839,382            | 1                               | 839,382         | 3.42                   | 2,869,027            | \$108.4                  | \$310 million                    |
| January 2013 Revision             | 140                | 1                               | 140             | 4.5                    | 630                  | \$108.4                  | \$68,292                         |
| 2014 CSEC Revision                | 5,506              | 1                               | 5,506           | 0.5                    | 2,753                | \$108.4                  | \$274,546                        |
| <i>Unduplicate d Totals</i>       | 839,382            |                                 | 845,028         | 3.4                    | 2,872,410            |                          | \$310 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).**

- **The cost estimate should be split into two components: (a) a total capital and startup 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;**

<sup>11</sup> 2,753 hours times the labor rate of accountants and auditors of \$108.4 per hour. 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>

- 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.

Note that to reflect OMB's guidance that burden incurred by service providers be reported as hour burden instead of cost burden, burden that has historically been included as cost burden has been included here as hour burden.

- 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 total annual processing cost for all Form 5500 Series and Form PR filings during the period covered by this ICR extension request is estimated to average \$14.2 million annually.

This includes Federal FTE costs estimated at approximately \$0.8 million. This is the estimate of the three agencies' total employee time dedicated to EFAST2. Each agency pays for its own FTE costs.

The remaining \$13.4 million is allocated to DOL contractor costs, which include EFAST2 Operations & Maintenance and Independent Oversight. These costs are allocated among the agencies (DOL, PBGC, and IRS) according to the EFAST2 Cost Allocation Model, which was approved by the agencies as the methodology that would be used for identifying agencies' share

of EFAST2 costs. Based on the model, the Department's share of the contractor cost is approximately \$6.6 million.

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

The Department is updating the number of respondents and burden estimates to reflect changes to annual reporting requirements. Using the most recent available data, the DOL is estimating the number of PEPs and DCGs that will be formed, and their impact on the number of single employer filers estimated to join either one of these arrangements, thereby reducing the total number of single filers. The DOL also estimates the reduction in Form 5500 filers, and an increase in Form 5500-SF filers, because of the new methodology to determine whether a plan is large or small. In total, there will be a reduction in filers that will be reflected in a reduction in the number of respondents and the total hour burden. Lastly the DOL is also taking into account the added burden that the newly introduced Schedule MEP and Schedule DCG into the total hour burden.

**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.**

The Form 5500 is not a collection of information for statistical use. Once collected, however, the information is available to the Agencies and the public, and it is used for purposes other than enforcement and disclosure. The Form 5500 dataset on EBSA's website is updated once a month to reflect that most recent filings that are received.

**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.**

OMB previously granted approval for the Department to omit the expiration date from the Form 5500, because the Form 5500 is a multi-agency form, and it is difficult to maintain the expiration dates for three separate agencies. The Department requests continued approval to omit the expiration date.

**18. Explain each exception to the certification statement identified in Item 19.**

There are no exceptions to the certification statement.

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**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS.**

Not applicable.