

Requirements of a Bona Fide Thrift or Savings Plan and Requirements of a Bona Fide Profit Sharing Plan or Trust
OMB Control Number: 1235-0013
OMB Expiration Date: 07/31/2024

SUPPORTING STATEMENT FOR

REQUIREMENTS OF A BONA FIDE THRIFT OR SAVINGS PLAN (29 CFR PART 547) AND REQUIREMENTS OF A BONA FIDE PROFIT-SHARING PLAN OR TRUST (29 CFR PART 549)

OMB CONTROL NO. 1235-0013

The U.S. Department of Labor (Department) proposes to extend its information collection request (ICR), Requirements of a Bona Fide Thrift or Savings Plan (29 CFR part 547) and Requirements of a Bona Fide Profit-Sharing Plan or Trust (29 CFR part 549), OMB Control No. 1235-0013. This ICR expires July 31, 2024. The Department submits this ICR as an extension without change to existing requirements.

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.

To compute the amount of overtime due to an individual, it is necessary to first compute the individual's "regular rate" for their hours worked. *See* 29 U.S.C. 207(a); 29 CFR 778.107–.109. When computing the regular rate, it is not necessary to include any sums paid to or on behalf of an employee pursuant to a bona fide thrift or savings plan or a bona fide profit-sharing plan or trust, as defined in the regulations. *See* 29 U.S.C. 207(e)(3)(b); 29 CFR 547.0; 29 CFR 549.0.

The regulations at 29 CFR part 547 contain the requirements for a "bona fide thrift or savings plan," and 29 CFR part 549 contains the requirements for a "bona fide profit-sharing plan or trust," under section 7(e)(3)(b) of the Fair Labor Standards Act (FLSA). *See* 29 U.S.C. 207(e)(3)(b); 29 CFR 547.0–.2; 29 CFR 549.0–.3.

Employers are required to communicate, or make available to the employees, the terms of the bona fide thrift or savings plan and/or the terms of the bona fide profit-sharing plan or trust. 29 CFR 547.1(b).29 CFR 549.1(b).

FLSA section 11(c) requires all employers covered by the FLSA to make, keep, and preserve records of employees and of wages, hours, and other conditions and practices of employment. *See* 29 U.S.C. 211(c). An FLSA-covered employer must maintain such records for a specified period of time and make such reports as prescribed by regulations issued by the Secretary of Labor. *Id.*

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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 third-party disclosure requirements covered by this information collection provide transparency to employees about their remuneration. 29 CFR 547.1(b), 549.1(b). Records detailing the specifics of a thrift or savings plan, as well as a profit-sharing plan or trust, provide evidence of an employer's compliance or non-compliance with the FLSA. Employer maintenance of those records enables the Department's Wage and Hour Division investigators to determine, upon inspection, whether such employers are in compliance with section 7(e)(3)(b) of the FLSA. Without these records, an investigator cannot make such a determination.

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 of using information technology to reduce burden.

The Department accepts third-party disclosures in electronic format to comply with the requirements of this information collection. The regulations require employers to maintain the information necessary to support the plan's qualifications as a bona fide thrift or savings plan or profit-sharing plan or trust. The regulations do not mandate how to maintain records or how to transmit records to the Department.

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 A.2 above.

Where there is an overlap in the requirements, the Department accepts information disclosed and records maintained pursuant to the Employee Retirement Income Security Act, 29 U.S.C. 2021 *et seq.*, (or any other statutory or regulatory requirement) to satisfy the requirements of this information collection. *See e.g.*, OMB Control Number 1210-0110. The Department must maintain the separately stated requirements of this information collection to meet the FLSA expectation that the agency clarify what constitutes a "bona-fide" plan or trust under either part 547 or 549.

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

This information collection impacts small businesses choosing to establish a thrift or savings plan or profit-sharing plan or trust. The Department estimates that 98.7 percent of employers subject to this information collection are small businesses. To fulfill contractual obligations under a chosen plan or trust, prudent management practice dictates businesses maintain records of their third-party disclosures, employee records, and records of wages, hours, and other conditions and practices of employment even if the regulations did not so require. Thus, no alternative means exist to reduce this burden but for the acceptance of information collected pursuant to identical requirements. In addition, the regulations require no particular order or form of record.

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

The regulations do not require regular collection of the information. They require only that the terms of the plan be “in writing” and “communicated or made available” to the employees. *See* 29 CFR 547.1(b); 549.1(b). This information may also be collected through the course of a Wage and Hour investigation. If the information were collected less frequently or not at all, WHD would be unable to determine FLSA compliance.

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 statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special circumstances required in the conduct of these information collections.

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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 notice in the Federal Register on December 20, 2023 (88 FR 88126) and invited public comment as part of the proposed extension. No comments were received.

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

The Department offers no payments or gifts to respondents in connection with this information collection.

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

The Department makes no assurances of confidentiality to respondents. As a practical matter, the Department would only disclose information collected under these requests in accordance with the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552; and the attendant regulations, [29 CFR part 70](#), and the Privacy Act, 5 U.S.C. 552a; and related regulations, [29 CFR part 71](#).

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.

The Department does not request sensitive information in these information collections.

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

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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.

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.

For the purposes of the calculations in this response, all numbers are rounded to the nearest whole number.

The Department estimates that there are 6,140,612 private firms in the United States. See <https://www.census.gov/data/datasets/2020/econ/susb/2020-susb.html>. The Department further estimates that 50 to 53 percent of firms provide access to retirement benefits. See <https://www.adp.com/tools-and-resources/adp-research-institute/research-and-trends/~media/RI/pdf/Retirement%20Savings%20Trends.ashx>; see also https://www.pewtrusts.org/-/media/assets/2017/09/employer_barriers_to_and_motivations.pdf. For purposes of this information collection, the Department will use the more conservative estimate of 53 percent of firms:

Respondents: $6,140,612 \times 53\% = 3,254,524$ firms offering retirement plans

Employers are required to communicate, or make available to the employees, the terms of a bona fide thrift or savings plan, and a bona fide profit-sharing plan or trust. See 29 CFR 547.1(b) and 29 CFR 549.1(b). Employee benefits are most commonly communicated to employees in digital formats such as online enrollment materials, postings to private intranets, and online newsletters. See <https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/communicating-leveraging-benefits.aspx>. For purposes of this analysis, the Department assumes that all employers communicate these benefits to their employees at least once per year.

Employers also communicate these benefit plans to new hires. Based on the most recent data from BLS, workers above the age of 16 in the private sector remain at a job for 3.7 years. See <https://www.bls.gov/news.release/tenure.t05.htm>. The Department estimates the median establishment size to be five employees,¹ which corresponds to an annual employee turnover rate

¹ The 2020 Statistics of U.S. Businesses (SUSB) dataset indicates that 62% of establishments have 5 or fewer employees. The Department infers from this dataset that the median establishment size is 5 employees. See <https://www.census.gov/data/tables/2020/econ/susb/2020-susb-annual.html>.

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of approximately 27 percent.² The Department accounts for one disclosure made digitally to all employees once per year and increases this number to account for additional disclosures made to new hires. Thus, the average employer makes 1.35 disclosures per year:

5 employees × 27% = 1.35 disclosures per year per firm

Responses: 3,254,524 respondents × 1.35 disclosures per year = 4,393,607 total annual disclosures

The Department's regulations do not impose any third-party disclosure or recordkeeping burdens on employers beyond what would be common under prudent business practices or required under information collections administered by other agencies. A prudent employer establishing or providing a savings or thrift plan or profit-sharing plan or trust would set forth the plan in writing, describe eligibility requirements, a definite formula for saving, and the amount of the employer's contributions, even if not required to do so by regulation.

The annual burden is estimated to equal two seconds (one second for disclosure and one second for recordkeeping) per firm. The Department estimates a disclosure burden of 2,441 hours per year:

Burden hours: 4,393,607 responses × 2 seconds per disclosure ÷ 60 seconds ÷ 60 minutes = 2,441 hours per year

Employers from a wide variety of businesses, from small firms or retail stores to large manufacturing plants, have employee profit-sharing plans or trusts. Absent specific wage data regarding such employers, respondent costs are estimated using \$34.57 per hour, which is the seasonally adjusted average hourly rate of production for non-supervisory workers for February 2024. See *Employment Situation*, Table B-3, Average hourly and weekly earnings of all employees on private nonfarm payrolls by industry sector, seasonally adjusted, BLS. This document is added to ROCIS.

In addition, a 46 percent benefits cost³ and 17 percent overhead cost⁴ is factored into the wage rate.

Hourly rate: \$34.57

Benefits cost: \$34.57 × 46% = \$ 15.90

Overhead cost: \$34.57 × 17% = \$5.88

Total hourly wage rate: \$34.57 + \$15.90 + \$5.88 = \$56.35

² If average tenure is 3.7 years, turnover per year is $(1 \div 3.7) = 27$ percent.

³ The benefits-earnings ratio is derived from the BLS's Employer Costs for Employee Compensation (ECEC) data using variables CMU1020000000000D and CMU1030000000000D.

⁴ The 17 percent for overhead costs was agreed upon with the Office of Management and Budget, Office of Information and Regulatory Affairs.

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Total cost burden: \$56.35 total hourly wage rate × 2,441 hours = \$137,550.35

Activity	No. of Respondents	No. of Responses per Respondent	Total Responses	Average Burden (Hours)	Total Burden (Hours)	Hourly Wage Rate	Total Burden Cost
29 CFR 547.1(b); 29 CFR 549.1(b) Disclosure and Recordkeeping	3,254,524	1.35	4,393,607	0.00056 (2 seconds)	2,441	\$56.35	\$137,550
TOTALS			4,393,607		2,441		\$137,550

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.**

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The Department associates no respondent costs with the subject information collections other than the value of time.

14. Provide estimates of the 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), 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 into a single table.

This information collection does not currently result in annualized costs to the federal government.

15. Explain the reasons for any program changes or adjustments.

The Department notes an increase in number of workers eligible for the plans and therefore an increase in the number of burden hours.

16. For collections of information whose results will be published, outline plans for tabulations, 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 Department will not publish the results of these information collections.

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 Department does not seek an exception to the requirement to display the expiration date for OMB approval of these information collections.

18. Explain each exception to the certification statement.

The Department is not requesting an exception to any of the certification requirements for these information collections.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS.

This information collection does not employ statistical methods.