

Supporting Statement
Internal Revenue Service
Annual Return/Report of Employee Benefit Plan
OMB # 1545-1610

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

This collection is a joint venture between the Department of Labor (DOL) and the Internal Revenue Service. The DOL's 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), requires 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 (DOL). Section 104(a)(2) of ERISA, provides that the 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 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. Finally, 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). Specifically, sections 6057(b) and 6058(a) of the Internal Revenue Code (Code) require the plan administrator or employer who maintain retirement plans to file annual information returns with respect to the qualification, financial conditions and operation of the plans; Section 6059 of the Code requires the plan administrator to file an actuary report; Section 6039D of the Code requires certain fringe benefit plans to file annual information returns; and section 6047(e) of the Code requires certain employee stock ownership plans (ESOP) to file annual information returns.

Provisions in Title IV require certain annual reports to be filed for employee benefit plans with the Pension Benefit Guaranty Corporation (PBGC).

Since enactment of ERISA, DOL has cooperated with the IRS and the PBGC to produce the Form 5500 Annual Return/Report, through which the regulated public can satisfy the combined reporting/filing requirements applicable to employee benefit plans. On November 16, 2007, the three agencies 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, Section 1 (PPA).¹ A final rule was published contemporaneously with the revisions including an amendment to the Electronic Filing Rule (72 FR 64710). Specifically, that final rule amends the DOL regulation at 29 CFR 2520.104a-2 to provide that the electronic filing requirement is applicable only for plan years beginning on or after January 1, 2009.

The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 ((Pension Relief Act), Pub. L. No. 111-192, section 201), enacted June 25, 2010, amended the Code to allow sponsors of defined benefit pension plans to elect funding relief, including on a retroactive basis. The IRS issued funding relief guidance for multiemployer plans in Notice 2010-83 on November 26, 2010 and for single-employer plans in Notice 2011-03 on December 17, 2010. The IRS Notices include technical revisions to the Form 5500 to conform the actuarial information required to be reported on the Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information) and Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information) to reflect the funding relief alternatives retroactively available to defined benefit pension plans in connection with their 2008, 2009, and 2010 plan years. The retroactive availability of the funding relief under the Pension Relief Act for sponsors of defined benefit plans created an immediate need for changes to the Schedules MB and SB reporting requirements. Without these changes, filers would be unable to file accurate and complete Schedules MB and SB. In accordance with the IRS Notices, affected filers must provide the required information either as an attachment to the 2011 Annual Return/Report or by way of amendment of the 2008 or 2009 Annual Return/Report. Only a relatively small number of Form 5500 filers, comprised of only those defined benefit plan filers that elect the optional relief offered under the Pension Relief Act for 2008, 2009, or 2010 plan years, are affected by the Schedule MB and SB changes.

In 2013, 2014, and 2015, the Internal Revenue Service has submitted substantive and non-substantive change requests for the Form 5500 instructions for these years, which were approved by OMB. These requests reflect the changes made by the Pension Relief Act and the IRS guidance after receiving OMB approval.

2013 Revision

The IRS submitted this request to update the cost and hour burden estimates as a non-material/non-substantive change request for the 2013 Form 5500 and instructions.

2014 Revision

The IRS submitted this request to update the hour and cost burden associated with the ICR to reflect its most recent data on Form 5500 filings and wage rates.

2015 Revision

The 2015 changes, as outlined in the notice dated December 23, 2014, (79 FR 77088), generate an increase in burden by 21,000 hours and increase the estimated number of responses by 36,000 per year. Form 5500-SUP is a paper-only form filed with the IRS that is used by the sponsors and administrators of retirement plans to satisfy the reporting requirements of section 6058 of the Code. Form 5500-SUP should only be used if certain IRS compliance questions are not answered electronically on the Form 5500 or Form 5500-SF. The paper submission of this form increased the estimated number of responses by 500 and the estimated annual burden by 208 hours.

2016 Revision

The proposed form revisions are intended to streamline and simplify the questions that were proposed in the 2015 draft. The 2016 questions are almost identical to the ones proposed in 2015. Changes were made to retain only those that were deemed critical and to account for the public comments received in 2015. This resulted in the deletion of some questions and modification of a few others. Form 5500-SUP should only be used if certain IRS compliance questions are not answered electronically on the Form

5500 or Form 5500-SF, and only by plans not subject to the e-filing mandate (the Treasury Department and IRS issued the final regulations mandating electronic filing for certain employee benefit plans on September 29, 2014, thereby enabling IRS to collect IRS compliance questions electronically starting in 2015²).

2020 Revision

Form 5500-EZ is an annual return filed by a one-participant (owners/partners and their spouses) retirement plan or a foreign plan to satisfy certain annual reporting and filing requirements imposed by the Code. Unlike the 5500 and 5500-SF, which are forms shared by IRS, DOL, and PBGC, the 5500-EZ is an IRS-only form. Currently, if one-participant or foreign plans are required to – or choose to – satisfy their 5500-EZ filing requirements by filing electronically, they must answer a subset of questions of the 5500-SF and file it through the EFAST2 system. Beginning with filing for the 2020 plan year, 5500-EZs may now be filed directly through EFAST2, thereby eliminating any confusion that might have been caused by the use of the (partial) 5500-SF as the vehicle for electronic filing of the Form 5500-EZ information since the 2009 plan year. Ideally, it will increase the use of electronic filing. Giving “EZ filers” the ability to file electronically directly through EFAST2 means they will no longer use the “work-around” of filing the 5500-SF and, therefore, the “one-participant” and “foreign plan” checkboxes are being removed from the 5500-SF; and the 5500, 5500-SF, and 5500-EZ instructions are being updated to reflect this streamlined way of electronically filing the 5500-EZ.

The Form 5500 and Form 5500-SF are currently filed electronically through the web-based EFAST2 system. The Form 5500-EZ is currently filed on paper with the IRS or by answering a subset of questions on the Form 5500-SF, which is then filed electronically through EFAST2. The IRS plans to make the Form 5500-EZ available on the EFAST2 system for direct electronic filing instead of using Form 5500-SF. The Form 5500-EZ was covered separately under OMB Number 1545-0956, but is now being consolidated under this OMB Number (1545-1610) alongside the Form 5500 and Form 5500-SF. The Form 5500-EZ would still be available to be filed on paper with the IRS. The addition of the Form 5500-EZ to the EFAST2 system necessitates changes to the forms and instructions to eliminate “one-participant plan” and “foreign plan” check boxes from the Form 5500-SF and modifying instructions language so that it describes electronic filing of the Form 5500-EZ directly through the EFAST2 system rather than using the Form 5500-SF.

2021 Revision

SECURE Act section 201 amends section 401(b) of the Internal Revenue Code to allow an employer who adopts a retirement plan after the close of a taxable year but before the due date of filing its return for the taxable year (including extensions) to treat the plan as having been adopted as of the last day of the taxable year.

Section 6058(a) of the Code requires every employer who maintains a retirement plan to file an annual return stating such information with respect to the qualification, financial condition, and operation of the plan as provided by the Secretary.

To implement the changes made by the SECURE Act, IRS proposes adding a new checkbox to Forms 5500, 5500-SF, and 5500-EZ and modify the instructions for a plan sponsor if the annual return is being filed for an initial plan retroactively adopted pursuant to SECURE Act section 201. However, IRS requires an initial annual return only for a plan that has participants and plan assets as of the end of the initial plan year.

Currently, electronic filing is mandatory if taxpayers have 250 or more tax returns to file. Section 2301 of the Taxpayer First Act of 2019 requires all Form 5500 series filers to submit their return electronically if they file more than 10 annual returns after calendar year 2021. Since the threshold has been significantly reduced, IRS believes most filers will be subject to this regulatory mandate and will no longer be able to submit paper forms after calendar 2021. Consequently, IRS has decided Form 5500-SUP, paper form, is no longer needed and will not be released.

A plan can get an extension of time to file a Form 5500 using the Form 5558, *Application for Extension of Time To File Certain Employee Plan Returns*, or using the employer's extension of time to file its federal income tax return if certain conditions are met; or using a special extension as the IRS may announce under certain circumstances, such as an extension for Presidential declared disasters authorized in IRC 7805A. Accordingly, there are three checkboxes for extension of time on Form 5500 and Form 5500-SF. However, there is only one extension of time checkbox on the Form 5500-EZ. Therefore, we are proposing adding three checkboxes to the Form 5500-EZ to mirror Part I of the Form 5500 and Form 5500-SF because Form 5500-EZ filers can no longer use Form 5500-SF beginning in the 2020 plan year. The proposed change will streamline the plan sponsors' ability to identify the correct extension for which they are applying, and be consistent with Form 5500 and Form 5500-SF.

2022 Revision

From the Tri-Agency notice of proposed forms revisions published on September 15, 2021, the DOL, PBGC, and IRS received numerous comments. As a result, IRS is postponing the implementation of their planned 2022 revisions. IRS is submitting this ICR to reflect the updated burden figures due to better agency estimates and to document the revisions implemented by DOL and PBGC.

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.

This revision includes additional changes for the 2022 Form 5500 instructions, including new plan characteristic codes to identify pooled employer plans, association retirement plans, and PEO plans, along with a residual category code for all other defined contribution MEPs. Changes are also made to the Schedules MB, SB, and R, and to the respective instructions, that are designed to improve reporting by defined benefit plans subject to Title IV of ERISA.

2023 Revisions

Interagency revisions:

After consideration of the written comments received, the Agencies have determined to adopt various elements of the proposed forms and instructions changes with some modifications as set forth below. The forms and instructions changes fall into seven major categories: (1) adding a DCG consolidated reporting option; (2) adding Schedule MEP to collect MEP information; (3) adding certain new Code compliance questions; (4) changing the methodology for counting participants in defined contribution plans for purposes of determining eligibility for small plan reporting options; (5) additional defined benefit plan reporting improvements; (6) adding new breakout categories to the “Administrative Expenses” category of the Income and Expenses section of the Schedule H balance sheet; and (7) miscellaneous and conforming changes to forms and instructions. The DOL is also concurrently publishing a separate final rule that adds new regulations at 29 CFR 2520.103-14 and 2520.104-51, pursuant to section 110 of ERISA, and revises existing reporting regulations as needed to conform the Title I annual reporting regulations to the forms and instructions changes being adopted in this notice.

IRS only revisions:

The final forms revisions include an additional question on the Form 5500-EZ, which asks whether the employer is an adopter of a pre-approved plan that received a favorable IRS opinion letter, and the date and serial number of the favorable IRS opinion letter. This question will help the IRS identify whether an employer has adopted a pre-approved plan and to determine whether the plan was timely adopted and amended.

Additionally, IRS is making revisions to the Form 5558, *Application for Extension of Time To File Certain Employee Plan Returns*, to remove the item about the extension of time to file Form 5330, *Return of Excise Taxes Related to Employee Benefit Plan*, to allow for electronic filing with the Department of Labor’s (DOL) ERISA Filing Acceptance System (EFAST2).

2. USE OF DATA

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.

Form 5500-EZ is an annual return filed by a one participant (owners/partners and their spouses) retirement plan or a foreign plan to satisfy certain annual reporting and filing requirements imposed by the Internal Revenue Code. IRS uses this form to verify compliance with qualification, reporting/disclosure, excise and income tax matters.

Form 5558 will be used by the IRS to solely grant extension request for filing the Form 5500 series and the Form 8955-SSA. The IRS uses this data to determine if the plan appears to be operating properly as required under the Code or whether the plan should be audited.

3. USE OF IMPROVED 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. Adding the Form 5500-EZ to the EFAST2 system will allow for direct electronic filing of the form through the EFAST2 system rather than using Form 5500-SF, thereby streamlining electronic filing for one-participant and foreign plans.

Form 5558 is an IRS extension form used for a filer to apply for a one-time extension of time to file the Form 5500 series, Form 8955-SSA, or Form 5330. Currently, the Form 5558 must be filed with the IRS on paper. IRS revised Form 5558 to enable electronic filing of Form 5558 through EFAST2. Adding Form 5558 to EFAST2 will reduce administrative costs, time, and inefficiencies. The IRS will continue to have a paper Form 5558 in place so that the plan sponsor can file Form 5558 electronically through the DOL EFAST2 system or file a paper Form 5558 with the IRS.

4. EFFORTS TO IDENTIFY DUPLICATION

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. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

For purposes of the Paperwork Reduction Act (PRA) and for other purposes, the Employee Benefit Security Administration (EBSA) defines “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 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), DOL 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).

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

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 and inhibit the administration and enforcement of the statute by the Agencies.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

Interagency 2023 Revisions

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 Revisions 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, with only 11 comments relating to the proposed changes for the 2021 plan year forms. However, the NPFR proposed 2022 form changes, are not being included in these amendments to the 2022 forms and instructions; instead the 2021 revisions are being continued and improved along with a few other changes.

In December 2021, the DOL published a final forms revisions rulemaking (2021 Final Forms Revisions) 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). Those instruction changes generally implemented annual reporting changes for MEPs, including pooled employer plans (PEPs), that were described in the September 2021 proposal. The DOL noted in that publication that other changes to the Form 5500 Annual Return/Report would be the subject of one or more separate and

later final notices to address other elements of the September 2021 proposal. That rule is also referred to herein as Final Rule Phase I.

After considering comments from the public, the Agencies published a second final forms revisions rulemaking on May 23, 2022 effective for plan years beginning on or after January 1, 2022. Those forms and instructions revisions generally implemented annual reporting changes for defined benefit plans that includes: (1) to Schedules MB, SB, and R, and to the respective instructions, that are designed to improve reporting by defined benefit plans subject to Title IV of ERISA, (2) to the Form 5500 and Form 5500-SF instructions that further implement section 101 of the SECURE Act in ways that expand and improve transparency of MEP reporting, including for pooled employer plans. The changes to the 2022 Form 5500 Series impose only a small increase in reporting burden as the changes impact a limited number of plans and require reporting of information the plans already possess. This 2022 rule is referred to as Final Rule Phase II.

The DOL final rulemaking and the Tri-Agency final form revisions (herein referred to as Final Rule Phase III) were published in the Federal Register on February 24, 2023 addresses the remaining subjects included in the September 2021 proposal, including DCG reporting arrangements, Schedule DCG and related audit issues, Schedule MEP and related reporting requirements regarding MEPs, financial statement improvements to the Schedule H and Schedules of Assets, changes in participant counting methodology for determining eligibility for small plan reporting purposes, including the conditional waiver of the Independent Qualified Public Accountant (IQPA) audit requirements, and additional questions on pension plan compliance with certain Code requirements. Some changes in those areas are being adopted in final form and others that were included in the September 2021 proposal are being deferred for further development and public input as part of a more general Form 5500 improvement project listed on DOL's semi-annual regulatory agenda.

See Appendix A for the DOL, IRS and PBGC public comments, comment summary and interagency response.

IRS only 2023 Revisions

For the IRS only changes (detailed in question 1), IRS solicited public feedback separately. In response to the Federal register notice dated October 5, 2022 (87 FR 60436), IRS received 8 comments regarding Form 5500 and schedules.

See Appendix B for the public comment summary for IRS only changes and IRS response.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payments or gifts are provided to respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103. The Form 5500 Series filings are required by law to be made available for inspection at the Agencies and at the offices of the plan administrators. Accordingly, the Agencies provide no assurance of confidentiality to respondents.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

This information collection poses no questions of a sensitive nature.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Interagency Burden

Form 5500 Series combines the information collection requests of three federal agencies (DOL, 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 Series 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 Series that is attributed to the Internal Revenue Service, although it includes information on the other portions of the total paperwork burden. The IRS has been advised by the DOL and the PBGC that they intend to submit separate requests to OMB for a revision of the ICR. The discussion below, therefore, 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 IRS' portion of that burden.

DOL has adopted several assumptions in performing this burden estimation. First, the methodology used for this ICR excludes certain types of activities entirely 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. DOL 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 both IRS and Departmental 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.

A new 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 new model uses a level of detail consistent with reflecting burden differences associated with the various proposed Forms revisions, as described below.³

³ 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.

The types of plans that have similar reporting requirements were grouped together to estimate aggregate burdens for this submission. Thus, calculations were prepared for different subsets of types 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 up to seven schedules.

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 only 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, or MB (Actuarial Information), whichever one is applicable, Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), possibly the 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 representing each plan's filing for plan year 2007 (the most recent year for which complete data is available).

Estimated time needed to complete the forms listed below reflects the combined requirements of the IRS, the DOL, and the PBGC. The times will vary depending on individual circumstances. The estimated average times are:

Table 1 – Estimated Average Time per Response by Form and Respondent Type

	Pension Plans		Welfare Plans	
	Large	Small	Large	Small
Form 5500	1 hr., 50 min.	1 hr., 19 min.	1 hr., 45 min.	1 hr., 14 min.
Schedule A	2 hr., 52 min.	2 hr., 52 min.	3 hr., 40 min.	2 hr., 43 min.

Schedule C	2 hr., 51 min.		3 hr., 38 min.	
Schedule D	1 hr., 39 min.	20 min.	1 hr., 52 min.	20 min.
Schedule G	14 hr., 49 min.		11 hr.	
Schedule H	7 hr., 40 min.		8 hr., 36 min.	
Schedule I		2 hr., 6 min.		1 hr., 56 min.
Schedule MB	8 hr., 52 min.	8 hr., 40 min.		
Schedule R	1 hr., 43 min.	1 hr., 7 min.		
Schedule SB	6 hr., 38 min.	6 hr., 49 min.		

Simplified Filing Option for Certain Small Plans

	Pension Plans	Welfare Plans
Form 5500-SF	2 hr., 35 min.	2 hr., 35 min.
Schedule A		2 hr., 43 min.
Schedule MB	8 hr., 40 min.	
Schedule D		20 min.
Schedule I		1 hr., 56 min.
Schedule SB	6 hr., 49 min.	

IRS-only Burden

There are two components of the Form 5500 Series burden that are attributable to IRS under this control number:

1. Paper Form 5500-EZ, 5558 Filings

While the Form 5500, 5500-SF, and some 5500-EZ filings are filed electronically through EFAST2 (and are accounted for in the DOL-provided estimates), the IRS also directly receives paper Form 5500-EZ filings, which are not included in the DOL models. The DOL models do, however, capture the 5500-SFs that are partially completed by one-participant and foreign plans to satisfy their EZ filing requirement electronically.

The current paper Form 5558, *Application for Extension of Time To File Certain Employee Plan Returns*, is the IRS Form used by a plan sponsor to apply for an extension of time to file a Form 5500 series return, Form 8955-SSA, and Form 5330, Return of Excise Taxes Related to Employee Benefit Plans. Any taxes due for Form 5330 filers must be paid with the Form 5558 for the application for an extension of time to file Form 5330.

2. Electronic Form 5558 Filings

Additionally, IRS made revisions to the Forms 5558 to allow for electronic filing with the Department of Labor's (DOL) ERISA Filing Acceptance System (EFAST2). Since DOL EFAST2 system will not take the IRS Form 5330 excise tax payment, the IRS removed the items about the extension of time to file Form

5330. This will allow DOL to electronically collect the form. The Form 5558 will be used to solely request extensions on the Form 5500 series Form 8955-SSA.

Total Burden Numbers

The IRS is accountable for a portion of the total burden for electronic filing of the Form 5500 and schedules, which is shared with DOL and PBGC. DOL uses models to calculate the total burden and then assigns a portion to each agency annually. The table below reflects the IRS share of the electronic filing burden and the IRS only burden totals.

Table 2: Total Burden Summary

Description	Number of Responses	#Responses per Respondent	Annual Responses	Hours per Response (Average)	Total Burden	Time Value (Hourly Rate)	Total Monetized Labor Burden
Form 5500, 5500-SF, 5500-EZ, and associated schedules (electronic only)	984,008	1	984,008	1.91	1,878,544	\$102.90	\$193,302,177
Form 5500- EZ (Paper Filing)	10,200	1	10,200	5.85	59,670	\$102.90	\$6,140,043
Form 5558 (paper filing)	5,250	1	5,250	1.33	6,983	\$102.90	\$718,551
Form 5558 (electronic filing)	472,500	1	472,500	0.41	193,725	\$102.90	\$19,934,303
Total	1,471,958		1,471,958		2,138,922		\$220,095,074

Note: Totals may not sum due to rounding.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

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. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

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. REASONS FOR CHANGE IN BURDEN

The revisions to the information collection requests are detailed in question 1.

Interagency Agency Burden Changes:

DOL, IRS, and PBGC are updating the number of respondents and burden estimates to reflect changes to annual reporting requirements. Using the most recent available data, the Departments estimated 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 Departments also estimated 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 Departments is also took into account the added burden that the newly introduced Schedule MEP and Schedule DCG into the total hour burden.

IRS Only Changes:

IRS is merging the OMB approval for Form 5558 into 1545-1610. Additionally, IRS is revising the form to allow respondents to request a filing extension via DOL EFAST2 system. To allow DOL to intake the form, IRS needs to remove the payment of excise taxes from Form 5558. The IRS only changes have increased the burden due to Agency discretion by 477,750 responses and by 200,708 hours.

Additionally, IRS anticipates more respondents will be filing electronically; therefore, have reduced the number of respondents for Form 5500-EZ paper submissions. This is reducing the burden by 91,800 respondents and 537,030 hours.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

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 the most recent filings that are received. The Form 5500-EZ, 5558 are only used by the IRS and the data received is not published on EBSA's website.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

OMB previously granted approval for the IRS 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 IRS requests continued approval to omit the expiration date.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

The IRS seeks no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

Statistical methods are not used in these collections of information.