

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995:
NOTICE OF BLACKOUT PERIOD UNDER ERISA**

This information collection request (ICR) seeks approval for an extension without change of an existing control number.

A. JUSTIFICATION

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

The Sarbanes-Oxley Act (SOA), enacted on July 30, 2002, amended the Employee Retirement Income Security Act (ERISA) to add, in subsection 101(i), the requirement that plan administrators of individual account pension plans (e.g., a profit sharing plan, 401(k) type plan or money purchase pension plan) must provide at least 30 days advance written notice to affected participants and beneficiaries in advance of any “blackout period” during which their existing rights to direct or diversify their investments under the plan, or obtain a loan or distribution from the plan will be temporarily suspended. The term “blackout period” is generally defined as any period of more than three consecutive business days during which time the ability of plan participants and beneficiaries to direct or diversify investments or to obtain loans or distributions is suspended, limited or restricted. Under 306(b)(2) of SOA, the Secretary of Labor was directed to issue interim final rules necessary to implement the SOA amendments. The Department’s regulation for this purpose is codified at 29 CFR 2520.101-3. The specific information collection provisions of the regulation are found in paragraphs (a), (b)(1), (b)(2)(i), (b)(2)(ii)(A) and (B), (b)(2)(iv), (b)(4), and (c)(1).

- 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 collection.**

The blackout notice requirement is intended to provide participants and beneficiaries with advance warning about any impending “blackout” period in which their ability to redirect/diversify the way in which their account balances are invested or obtain loans or a distribution from the plan will be temporarily suspended. These notices also inform participants about the rights that are to be suspended. The Department believes it is important for plan participants to have this information so that they may make informed decisions on how to manage their investments and protect their rights under the plan. The regulation does not require plan sponsors or their representatives to inform the Department about blackouts, and, as a result, the information collection is only a third-party disclosure requirement.

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- 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.**

ERISA and regulations thereunder provide general standards for the delivery of all information required to be furnished to participants, beneficiaries, and other individuals under Title I of ERISA (29 C.F.R. § 2520.104b-1(b)). Plan administrators must use delivery methods reasonably calculated to ensure actual receipt of information by participants, beneficiaries, and other individuals (29 C.F.R. § 2520.104b-1(b)(1)). For example, in-hand delivery to an employee at his or her workplace is acceptable, as is material sent by first class mail. In response to developing internet, email, and similar technologies, the Department first amended ERISA's delivery standards in 2002 by establishing a safe harbor for the use of electronic media to furnish disclosures (the 2002 safe harbor; 29 C.F.R. § 2520.104b-1(c)). The 2002 safe harbor was not and is not the exclusive means by which a plan administrator may use electronic media to satisfy the general standard. However, plan administrators who satisfy the conditions of the safe harbor are assured that the general delivery requirements have been satisfied.

In 2020, the Department issued a final regulation providing an additional safe harbor for plan administrators to use electronic media, as a default, to furnish disclosures to participants and beneficiaries of pension benefit plans subject to ERISA (29 C.F.R. § 2520.104b-31). The 2020 safe harbor allows plan administrators who satisfy specified conditions to provide participants and beneficiaries with a notice that certain disclosures will be made available on a website, or to furnish disclosures via email. Individuals who prefer to receive disclosures on paper can request paper copies of disclosures and opt out of electronic delivery entirely. The 2020 safe harbor does not supersede the 2002 safe harbor; the 2002 safe harbor remains in place as another option for plan administrators.

Section 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

- 4. Describe efforts to identify duplication. Show specifically why similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

This information is not available to individual account plan participants and beneficiaries from any other source.

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

The statutory provision applies equally to small and large businesses and plans, and the Department did not fashion any special treatment for such small entities because participants and beneficiaries in small plans have the same need for the disclosure as do those in large plans. A response is required only when a blackout period is imposed, which is generally under the control of the plan administrator.

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 plan administrator controls the frequency of this information collection because the notice requirement applies only when a plan administrator decides to implement a blackout period. This Department is required by statute to implement this information collection. Failure to do so would be in contravention of a stated statutory requirement. The notice requirement ensures that individual plan participants and beneficiaries are aware of significant impending events that could affect their pension benefits and restrict their rights under the plan. Failure to conduct this information collection activity would undermine this important policy objective.

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 result 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.

There are no special circumstances in this information collection.

- 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's Federal Register Notice soliciting comments on the extension of the information collection, as required by 5 CFR 1320.8(d), was published in the Federal Register on February 5, 2024 (89 FR 7732). The public was provided with 60 days to comment on the submission, and no public comments were received.

- 9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

There are no payments or gifts in this information collection.

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

There are no questions of sensitive nature in this information collection, and thus there is no assurance of confidentiality provided 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 person from whom**

the information is requested, and any steps to be taken to obtain their consent.

There are no questions of sensitive nature in this information collection.

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 difference 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.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collection 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.**

Estimates of the number of plans and participants and beneficiaries used in this burden analysis are based on Department of Labor tabulations of the 2021 Form 5500 data. The Department estimates that there will be 718,736 affected defined contribution plans with 114,931,000 affected participants and beneficiaries.¹

The blackout notice requirement applies in any case in which the plan will suspend a participant's or beneficiary's right to direct investments, diversify assets, obtain a plan loan, or request a distribution. Because all individual account plans must provide for the opportunity to request a distribution, for purposes of this analysis, the Department has assumed that all individual account plans will be required to comply with the blackout notice regulation. The total number of individual account plans has been adjusted to reflect the fact that only a subset of all plans will impose a blackout period in any given year. Based on the best available evidence, the Department has estimated that approximately seven percent of all individual account plans will impose a blackout period during any one year.² Assuming an even distribution of such blackout periods across plan size, the Department estimates that about 50,132 plans (718,736 DC plans x 7

¹ See Table A1 of Employee Benefits Security Administration, *Private Pension Plan Bulletin: Abstract of 2021 Form 5500 Annual Reports*, (September 2023), <https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2021.pdf>.

² Estimates of the number of blackouts were obtained from the Society of Professional Administrators and Recordkeepers, January 2006.

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percent) and 8,045,170 participants (114,931,000 participants and beneficiaries x 7 percent) will be affected annually by the blackout notice regulation.

The Department assumes that clerical staff, legal professional, and financial professional (plan administrator) will prepare and distribute blackout notice disclosure. For this calculation, the Department uses the hourly wages of \$177.97 for legal professionals, \$205.16 for plan administrators, and \$69.41 for clerical staffs.³

The final rule includes a model notice at paragraph (e) that is designed to facilitate compliance and lessen the burden otherwise required for notice preparation. The estimated burden hours include one half hour for the plan administrator, or similar person to edit the model notice by adding plan-specific information. See Table 1 for calculations and burden totals.

The Department also assumes that plans instituting a blackout period will have the required notice reviewed by a legal professional of the plan or assisting service provider. The Department has allotted one hour for this review. See Table 1 for calculations and burden totals.

Table 1. Hour Burden of Preparing and Distributing Notices

Activities	Number of Responses	Number of Hours per Response	Total Hour Burden	Wage Rate	Dollar Equivalent of Hour Burden
	(A)	(B)	(A × B)	(C)	(A × B × C)
Prepare notices	50,312	0.5	25,156	\$205.16	\$5,160,956
Legal professionals r notices	50,312	1	50,312	\$177.97	\$8,953,941
Clerical staff distributes notices	313,762	0.03	10,459	\$69.41	\$725,940
Total	-	-	85,926	-	\$14,840,837

The Department also expects that there will be an hourly burden arising from the distribution of the notices to participants of affected plans. The Department assumes that 96.1 percent of notices will be delivered electronically and remaining 3.9 percent will use mailing services.⁴ The Department estimates that

³ Internal DOL calculation based on 2024 labor cost data. For a description of DOL’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>

⁴ The Department estimates approximately 96.1 percent of participants receive disclosures electronically under the combined effects of the 2002 electronic disclosures safe harbor and the 2020 electronic safe

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313,762 notices (3.9 percent of 8,045,170 notices) will be distributed by mail and the remaining 7,731,408 notices will be distributed electronically (96.1 percent of 8,045,170 million notices).

The distribution of the notices to participants by mail is expected to require two minutes per notice for copying and mailing. See Table 1 for calculations and burden totals. The materials, printing, and mailing costs of paper notices are accounted for in Item 13.

No burden is estimated to be associated with paragraph (c) because it is assumed that the notice used for this provision is the same notice that has already been prepared and made available for distribution to participants.

In summary, this information collection results in an hour burden of 85,926 hours with an equivalent cost of \$14,840,837.

Table 2. Estimated Annualized Respondent Cost and Hour Burden

Activity	Number of Respondents	Number of Responses per Respondent	Total Responses	Average Burden (Hours)	Total Burden (Hours)	Hourly Wage Rate	Equivalent Cost of Hour Burden
Plan administrators prepare notices	50,312	1	50,312	30/60	23,625	\$205.16	\$5,160,956
Legal professionals prepare notices	50,312	1	50,312	1	50,312	\$177.97	\$8,953,941
Clerical staff	313,762	1	313,762	2/60	10,459	\$69.41	\$725,940

harbor. The Department estimates that 58.3 percent of participants will receive electronic disclosures under the 2002 safe harbor. According to the National Telecommunications and Information Agency (NTIA), 37.4 percent of individuals age 25 and over have access to the Internet at work. According to a Greenwald & Associates survey, 84.0 percent of plan participants find it acceptable to make electronic delivery the default option, which is used as the proxy for the number of participants who will not opt-out of electronic disclosure that are automatically enrolled (for a total of 31.4 percent receiving electronic disclosure at work). Additionally, the NTIA reports that 44.1 percent of individuals age 25 and over have access to the internet outside of work. According to a Pew Research Center survey, 61.0 percent of internet users use online banking, which is used as the proxy for the number of internet users who will affirmatively consent to receiving electronic disclosures (for a total of 26.9 percent receiving electronic disclosure outside of work). Combining the 31.4 percent who receive electronic disclosure at work with the 26.9 percent who receive electronic disclosure outside of work produces a total of 58.3 percent. The remaining 41.7 percent of participants are subject to the 2020 safe harbor. According to the 2022 American Community Survey, 91.2 percent of the population has an internet subscription. The Department estimates that 0.5 percent of electronic disclosures will bounce back and will need to be sent a paper disclosure. Accordingly, for the 41.7 percent of participants not affected by the 2002 safe harbor, 90.7 percent, or an additional 37.8 percent (41.7 percent x 90.7 percent), are estimated to receive electronic disclosures under the 2020 safe harbor. In total, the Department estimates that 96.1% (58.3 percent + 37.8 percent) would receive electronic disclosures.

distributes notices							
Total	50,312*	-	8,045,170*	-	85,926	-	\$14,840,837

Note:

*As discussed in Question 12, the Department estimates that about 50,132 plans (718,736 DC plans x 7 percent) and 8,045,170 participants (114,931,000 participants and beneficiaries x 7 percent) will be affected annually by the blackout notice regulation.

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 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.**

Annual cost burden for this information collection arises from materials and postage for distribution of the blackout notices. The Department assumes the postage cost to be \$0.73,⁵ and the materials and printing cost to be \$0.05. Thus,

⁵ <https://www.stamps.com/usps/current-postage-rates/>.

the total mailing cost is estimated to be \$0.78.⁶ The annual cost to respondents for distribution of the notices has been calculated below. See Table 3 for calculations and burden totals.

Table 3. Mailing Cost of Notices

	Number of Responses	Mailing Cost per Response	Cost Burden
	(A)	(B)	(A x B)
Mailing notices	313,762	\$0.78	\$244,734
Total	313,762	-	\$244,734

In summary, this information collection results in a cost burden of \$244,734.

- 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, operations 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.**

Because the SOA does not require any entity to file notices with the Department, there are no direct costs involved for the Department.

- 15. Explain any reasons for any program changes or adjustments.**

The Department has revised its estimate, as compared to the 2021 submission, to reflect the current number of defined contribution plans, and the current number of defined contribution plan participants and beneficiaries. Labor rates and mailing and materials costs have also been updated. In addition, there was a change to EBSA’s assumption regarding electronic transmission of the disclosures for DC plans and IRAs from 92.7 percent to 96.1 percent.

As a result, the number of responses has increased, while the hour and cost burden has decreased from the previous submission due to the change in percent sent electronically. Specifically, the number of responses has increased by 635,950, while the hour burden decreased by 2,979 hours and the cost burden decreased by \$79,790 .

- 16. For collection 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.**

⁶ The total mailing cost is calculated in the following manner: \$0.73 + \$0.05 = \$0.78.

This is not a collection of information for statistical use and there are no plans to publish the results of this collection.

- 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 expiration date will be displayed.

- 18. Explain each exception to the certification statement.**

There are no exceptions to the certification statement identified in Item 19.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

There are no statistical methods used in this information collection.