

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

A. JUSTIFICATION

1. Necessity for the Information Collection

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

The Commission recently adopted rule and form amendments to provide a tailored form to register the offerings of registered index-linked annuities (“RILAs”). In

¹ 15 U.S.C. 77a *et seq.*

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

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

⁴ 15 U.S.C. 80a-1 *et seq.*

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

the same rulemaking, the Commission also adopted amendments to extend the registration, filing, and disclosure approach for RILAs to annuity contracts that offer fixed investment options and apply market-value adjustments (“MVAs”) to amounts withdrawn from a fixed option before the end of the fixed option’s term, where the offering is required to be registered with the Commission because of the MVA (“registered MVA annuities” and, collectively with RILAs, “non-variable annuities” or “non-variable annuity contracts”). In connection with the adoption of these rule and form amendments, the Commission amended rule 498A to permit insurance companies registering offerings of non-variable annuities, as well as issuers of “combination contracts” offering a combination of variable and non-variable options, to use a summary prospectus to satisfy statutory prospectus delivery obligations. The use of summary prospectuses for non-variable annuities is voluntary, but the rule’s requirements are mandatory for issuers that elect to send or give a summary prospectus in reliance upon rule 498A. The rules use a layered disclosure approach that would permit a person to satisfy its prospectus delivery obligations under the Securities Act for a non-variable annuity contract by sending or giving a summary prospectus that presents key information about a non-variable annuity contract’s terms, benefits, and risks, with access to more detailed information available online and electronically or in paper format on request.⁶

⁶ Registration for Index-Linked Annuities and Registered Market Value Adjustment Annuities; Amendments to Form N-4 for Index-Linked Annuities, Registered Market Value Adjustment Annuities, and Variable Annuities; Other Technical Amendments, Investment Company Act Release No. 35273 (June. [], 2024), available at <https://www.sec.gov/rules-regulations/2024/07/rila#33-11294final> (“Adopting Release”).

Specifically, as amended, rule 498A under the Securities Act permits a person to satisfy its prospectus delivery obligations under Section 5(b)(2) of the Securities Act for a contract by: (1) sending or giving to new investors key information contained in a variable or non-variable annuity contract (“annuity contract”) statutory prospectus in the form of an initial summary prospectus; (2) sending or giving to existing investors each year a brief description of certain changes to the contract, and a subset of the information in the initial summary prospectus, in the form of an updating summary prospectus; and (3) providing the statutory prospectus and other materials online.⁷ Rule 498A considers a person to have met its prospectus delivery obligations for any portfolio companies associated with an annuity contract if the portfolio company prospectuses are posted online.⁸ Under the rule, a registrant (or the financial intermediary distributing the annuity contract) relying on the rule must send the annuity contract statutory prospectus (that statutory prospectus must be filed as part of registration statement on Form N-3, N-4, or N-6, as applicable) and other materials to an investor in paper or electronic format upon request.⁹ A summary prospectus that complies with rule 498A is deemed to be a prospectus that is authorized under section 10(b) of the Securities Act and section 24(g) of the Investment Company Act.¹⁰

⁷ Rule 498A(b) and (c).

⁸ Rule 498A(j).

⁹ Rule 498A(i)(1) and (j)(1)(iii).

¹⁰ Rule 498A(b) and (c).

2. Purpose and Use of the Information Collection

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

3. Consideration Given to Information Technology

The Commission has provided guidance noting that electronic delivery may be used to satisfy prospectus delivery requirements under certain circumstances.¹¹ Rule 498A requires additional information (*i.e.*, the annuity contract's statutory prospectus, summary prospectuses, statement of additional information, and in the case of a registrant on Form N-3, the registrant's most recent annual and semi-annual reports to shareholders under rule 30e-1) to be publicly accessible, free of charge, at a website address specified on or hyperlinked in the cover of the summary prospectus. The rule also provides an optional method for satisfying portfolio company prospectus delivery obligations by making additional information (*i.e.*, the portfolio company's statutory prospectus, summary prospectus, statement of additional information, and the most recent annual and semi-annual reports to shareholders under rule 30e-1) available online at the website address specified on or hyperlinked in the variable contract summary prospectus. The final amendments require insurers to disclose, for each index-linked option, current limits

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

on index losses and gains (along with a statement that the current limit will not change during an index-linked option's crediting period) by posting the information to a website that is publicly accessible, free of charge, and specifically incorporating this information by reference into the prospectus.¹²

4. Duplication

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

5. Effect on Small Entities

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

The Commission staff considered special requirements for small entities. The Commission staff believes, however, that rule 498A will not have a significant economic

¹² See Adopting Release at Section II.C.4.a.

impact on a substantial number of small entities.¹³ Generally, an investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of \$50 million or less as of the end of its most recent fiscal year. The analysis is slightly different for insurance company separate accounts. Because state law generally treats separate account assets as the property of the sponsoring insurance company, rule 0-10 aggregates each separate account's assets with the assets of the sponsoring insurance company, together with assets held in other sponsored separate accounts.¹⁴ As a result, the Commission staff expects few, if any, separate accounts to be treated as small entities,¹⁵ and no small entities currently file registration statements on Forms N-3, N-4, or N-6.

Furthermore, based on a review of EDGAR filings of existing non-variable annuity issuers, the Commission does not expect any non-variable annuity issuers to be treated as small entities. Additionally, non-variable annuity issuers are not investment companies. For these reasons, we believe that the final amendments, as adopted, would not have a significant economic impact on a substantial number of small entities.

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

¹³ See Adopting Release, *supra* footnote 1, at Section V; Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Investment Company Act Release No. 33814 (Mar. 11, 2020) [85 FR 25964 (May 1, 2020)] (“VASP Adopting Release”).

¹⁴ 17 CFR 270.0-10(b).

¹⁵ See Adopting Release, *supra* footnote 1, at Section VI.

6. Consequences of Not Conducting Collection

Section 5(b)(2) of the Securities Act makes it unlawful for any person, directly or indirectly, to carry or cause to be carried through the mails or in interstate commerce securities for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus meeting the requirements of section 10 of the Securities Act. Section 10(a)(3) of the Securities Act generally requires that when a prospectus is used more than nine months after the effective date of the registration statement, the information in the prospectus must be as of a date not more than sixteen months prior to such use.¹⁶ The effect of these provisions is that persons are required to update their annuity contract statutory prospectuses at least annually to reflect current cost, performance, and other financial information. This legal requirement prevents the Commission from specifying less frequent distribution of a prospectus—including any summary prospectus that issuers relying on rule 498A will use—to investors when offering securities for sale.

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

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

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

¹⁶ See 15 U.S.C. 77j(a)(3).

8. Consultation Outside the Agency

Before adopting the final amendments to rule 498A, the Commission solicited and evaluated public comments on the proposal and its collection of information requirements. Specifically, the public was given the opportunity to comment on the Commission's estimates for the burden of Form rule 498A as proposed and as compared to the existing approved burden inventory in the proposing release for the amendments.¹⁷ The Commission did not receive any comments regarding the PRA estimates for rule 498A. The Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the insurance industry through public conferences, meetings, and informal exchanges. These various forums provide the Commission and the staff with a means of ascertaining and acting upon the paperwork burdens confronting the industry. The Commission requested public comment on the information collection requirements of rule 498A before it submitted this request for revision and approval to OMB. The Commission received no comments in response to its request. The Commission's solicitation of public comments included estimating and requesting public comments on the burden estimates for all information collections under this OMB control number (i.e., both changes associated with the rulemaking and other burden updates).

¹⁷ See Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked and Variable Annuities, Investment Company Act Release No. 35028 (Sept. 29, 2023) ("Proposing Release"), available at <https://www.sec.gov/files/rules/proposed/2023/33-11250.pdf>.

9. Payment or Gift

No payment or gift to respondents was provided.

10. Confidentiality

No assurance of confidentiality was provided.

11. Sensitive Questions

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

12. Burden of Information Collection

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995¹⁸ and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Rule 498A contains collection of information requirements. Variable annuity contract separate accounts registered or registering with the Commission, or insurance companies registered or registering offerings of non-variable annuity contracts registered or registering with the Commission (collectively, “registrants”), are the likely

¹⁸ 44 U.S.C. 3501 *et seq.*

respondents to this information collection. Under rule 498A, use of the summary prospectus is voluntary, but the rule's requirements are mandatory for registrants that elect to send or give a summary prospectus in reliance upon rule 498A. The information provided under rule 498A will not be kept confidential. In our most recent Paperwork Reduction Act submission for Rule 498A, we estimated for rule 498A a total aggregate annual hour burden of 7,634 hours, and a total aggregate annual external cost burden of \$9,094,866.¹⁹

We have historically estimated the paperwork burden of rule 498A based on the number of variable annuity and variable life insurance separate account registrants, and our estimates of the updated burden resulting from the final amendments are similarly based on the number of non-variable annuity issuers.²⁰ We estimate that there are 38 insurance companies that issue RILAs, registered MVA annuities, or annuity contracts offering index-linked options and MVA options, and that there are 416 separate account registrants on current Form N-4 that would be impacted by the proposed amendments.²¹ The summary prospectus is voluntary, so the percentage of registrants that will choose to utilize it is uncertain. Given this uncertainty, we have assumed that insurance companies registering offerings of non-variable annuities will choose to use a summary prospectus for 90% of all non-variable annuities, which is the same as our current estimate for

¹⁹ On January 9, 2024, the Office of Management and Budget (OMB) approved this collection of information estimate for rule 498A. The Proposing Release discussed a prior burden estimate, which the Office of Management and Budget approved on November 13, 2020. *See* Proposing Release at n.494.

²⁰ VASP Adopting Release at Section V.E.

²¹ The non-variable annuity issuer estimate is based on a review of non-variable annuity registration statements filed with the Commission as of May 2024. The estimate of variable annuity separate accounts is based on Form N-CEN data as of December 31, 2023. As mentioned above, OMB approved the burden estimate for rule 498A on January 9, 2024.

variable annuity separate accounts. The table below summarizes our PRA initial and ongoing annual burden estimates associated with the final amendments to rule 498A.

Rule 498A – PRA Estimates

	Internal initial burden hours	Internal annual burden hours	Wage rate ¹	Internal time costs	Annual external cost burden
FINAL ESTIMATES					
Separate Account Registrants					
Final Amendments	9	6 ²	\$425 (compliance attorney)	\$2,550	-
Number of separate account registrants		x 416 ³		x 416	-
Total annual burden		2,496		\$1,060,800	-
Use of summary prospectus		x 90%		x 90%	-
Total new annual burden for Reliance on Rule 498A		2,246		\$954,720	-
Non-Variable Annuity Registrants					
Preparation and filing of Initial Summary Prospectus/Updating Summary Prospectus	40	24 ⁴	\$313 (blended rate) ⁵	\$7,512	\$5,000 ⁶
Online Posting of Contract Documents	2	3 ⁷	\$299 (webmaster)	\$897	-
Total burden per registrant	-	27	-	\$8,409	\$5,000
Number of non-variable annuity issuers	-	x 38 ⁸	-	x 38	x 38
Total annual burden	-	1026	-	\$319,542	\$190,000
Use of summary prospectus		x 90%		x 90%	x 90%
Total new annual burden for Reliance on Rule 498A		923		\$287,588	\$171,000
FINAL ESTIMATES FOR PRINTING AND MAILING BY NON-VARIABLE ANNUITY REGISTRANTS⁹					
Initial Summary Prospectus					\$57,000
Updating Summary Prospectus					\$456,000

Total annual burden	\$513,000
Use of summary prospectus	x 90%
Total new annual burden for Reliance on Rule 498A	\$461,700

Total Final Estimated Burdens				
	Responses	Internal Hour Estimate	Internal Hour Cost Estimate	External Cost Estimate
Current aggregate annual burden estimates	663	7,634	\$2,337,471	\$9,094,866
Aggregate proposed additional annual burden estimates	+35	+3,169 (2,246 + 923)	+\$1,242,308 (\$954,720+ \$287,588)	+\$632,700 (\$171,000 + \$461,700)
Revised aggregate annual burden estimates	=698	=10,803	=\$3,579,779	=\$9,727,566

Notes:

1. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated wage figures are modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013 (as adjusted to account for inflation, the "SIFMA Wage Report").

2. Internal annual burden hours represents initial burden estimates annualized over a three-year period (9 hours / 3 = 3 hours) plus 3 hours of ongoing annual burden hours.

3. Estimate is based on a review of Form N-CEN reports through December 31, 2023. In its most recently approved PRA submission, the Commission estimated that 419 registrants on Form N-4 would be subject to the information collection burden under current rule 498A. For the estimated burden of the amendments to rule 498A, we have taken into account updated data regarding the number of registrants on Form N-4.

4. Represents initial burden estimates annualized over a three-year period plus 11 hours of ongoing annual burden hours ((40 hours / 3 = approximately 13 hours) + 11 hours = approximately 24 hours).

5. Represents a blended wage rate of a compliance attorney (\$425 per hour) and an intermediate accountant (\$200 per hour). \$313 is based on the following calculation: $(\$425 + \$200)/2 = \$313$ rounded to the nearest whole dollar.

6. We estimate that each insurance company that chooses to rely on rule 498A with regards to a non-variable annuity will incur a one-time collective external cost burden of \$10,000 per registration statement to prepare both a new initial summary prospectus and a new updating summary prospectus for offerings on Form N-4. We also estimate an on-going collective burden of \$2,500 per registration statement during each subsequent year to prepare updates to these materials. The three-year average cost of these estimates is \$5,000.

7. Represents initial burden estimates annualized over a three-year period plus two hours of ongoing annual burden hours ((2 hours / 3 = approximately 1 hour) + 2 hours = approximately 3 hours).

8. This estimate is based on the number of insurance companies issuing non-variable annuities. The proposal reflected an estimate of the number of RILA s, as opposed to the number of insurance companies issuing RILAs. We have updated this approach to better reflect the way that the burden for rule 498A has historically been calculated (reflecting the number of variable annuity separate accounts relying on rule 498A—thus, reflecting the registrants that rely on the rule, not the number of contracts with summary prospectuses under the rule).

9. Costs associated with printing and mailing for separate account registrants are already accounted for in the currently approved burdens for rule 498A. Estimates for non-variable annuity issuers printing and mailing costs are based on the currently approved burdens for printing and mailing costs under rule 498A (approximately \$1,500 per registrant for initial summary prospectuses and approximately \$12,000 per registrant for updating summary prospectuses).

10. The estimated number of new responses is based on the total of the number of non-variable annuity responses under the proposed amendments (38 responses) and the difference between the number of responses for registered separate accounts under the current aggregate annual burden estimate (419 responses) and the final additional annual burden estimates (416 responses). (38 non-variable annuity issuer responses subtracted by 3 registered separate account responses).

The table above summarizes the Commission staff's PRA annual burden estimates associated with rule 498A. In the aggregate, the Commission staff estimates the total annual hour burden to comply with rule 498A to be 10,803 hours, at an internal time cost equivalent of \$3,579,779.

13. Costs to Respondents

Cost burden is the cost of goods and services purchased to prepare, submit, and disseminate documents using rule 498A. The cost burden does not include the hour burden discussed in Item 12 above. The Commission staff estimates for rule 498A a total annual external cost burden of \$9,727,566, which includes the costs associated with the printing and mailing of summary prospectuses.

14. Costs to Federal Government

The annual cost of reviewing and processing registration statements, post-effective amendments, proxy statements, shareholder reports, and other filings of funds amounted to approximately \$33 million in fiscal year 2023 based on the Commission staff's computation of the value of staff time devoted to this activity and related overhead.

15. Changes in Burden

The estimated aggregate total hour burden for preparing and filing summary prospectuses increased 3,169 hours, from 7,634 hours to 10,803 hours, and external costs increased from \$9,094,866 to \$9,727,566. This increase in burden hours and external costs is attributable primarily to an estimated increase in the number of responses as a

result of the final amendments to rule 498A and the effects of inflation. These changes in burden also reflect the Commission's revision and update of burden estimates for all information collections under this OMB control number (whether or not associated with rulemaking changes), and the Commission requested public comment on all information collection burden estimates for this OMB control number.

16. Information Collection Planned for Statistical Purposes

The results of any information collection will not be published.

17. Approval to Omit OMB Expiration Date

Not applicable.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

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

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of information will not employ statistical methods.