

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSIONS

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*

Section 502(a)(1) of the Pension Protection Act of 2006, Pub. L. 109-280, 120 Stat. 780, (PPA), which was enacted on August 17, 2006, amended the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), by adding section 101(k). Section 101(k)(1) of ERISA requires that the administrator of a multiemployer plan, upon written request, furnish certain documents to any plan participant, beneficiary, employee representative, or any employer that has an obligation to contribute to the plan. The documents that may be requested are (A) a copy of any periodic actuarial report (including sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days; (B) a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor or other fiduciary which has been in the plan's possession for at least 30 days; and (C) a copy of any application filed with the Secretary of the Treasury requesting an extension under section 304 of the Act (or section 431(d) of the Internal Revenue Code of 1986) and the determination of such Secretary pursuant to such application.

Section 502(a)(3) of the PPA provides that the Secretary of Labor shall prescribe regulations under section 101(k)(2) not later than one year after the date of enactment of the PPA. Section 502(d) of the PPA provides that section 101(k) shall apply to plan years beginning after December 31, 2007.

This disclosure provision of ERISA was enacted, because more complete disclosures were considered an important element of measures enacted in PPA to strengthen the long-term health of the multiemployer pension plan system. Providing participants and beneficiaries, the labor organizations representing them, contributing employers, and PBGC with greater access to actuarial and financial information regarding their plans will increase the transparency of the operation of multiemployer pension plans and afford all parties interested in the financial viability of these plans greater opportunity to monitor their funding and financial status.

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2. *Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.*

The guidance provided in the interim final rule will be used by the administrators of multiemployer defined benefit pension plans to furnish actuarial and financial reports and amortization extension requests to plan participants and beneficiaries, employee representatives, and any employer that has an obligation to contribute to the plan. By clarifying certain terms used in section 101(k) of the Act, this regulation also will help multiemployer plan administrators to fulfill their disclosure responsibilities under this section with greater certainty. The increase in transparency of plan operations may also contribute to an atmosphere of greater accountability on the part of plan officials.

3. *Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration for using information technology to reduce burden .*

The information collection is a third-party disclosure. Respondents may determine the extent to which use of electronic methods of communication is appropriate pursuant to pertinent regulations at 29 CFR 2520.104b-1 concerning meeting EBSA's disclosure requirements through electronic media. The burden estimates in this supporting statement take projected levels of usage of electronic technologies into account.

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

The information required to be disclosed pursuant to section 101(k) of the Act and the interim final rule is maintained in the normal course of the business operations of multiemployer pension plans. The regulation permits respondents to satisfy the information collections with documents that are already in existence due to ordinary and customary business operations.

5. *If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.*

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Forthcoming data from the EBSA Private Pension Bulletin, 2004 show that only 291 multiemployer pension plans or 10% of all multiemployer pension plans are small entities. The Department has determined that an employee benefit plan shall be considered a small entity if it has fewer than 100 participants. Based on this information, the interim final rule will not have a significant impact on a substantial number of small entities.

While the regulation does not directly minimize the burden on small entities by its operation, the Department expects the burden on small entities will be minimal, because these entities should receive less requests for documents than larger entities. The Department expects the number of person in each of the four categories of requestors to be roughly proportionate to the size of the plan. Small plans may also have fewer investment managers, and therefore, fewer financial reports to disclose.

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.*

This information collection does not involve reporting to the Federal government, and as such, does not affect Federal programs.

7. *Explain any special circumstances that would cause an information collection to be conducted in a manner:*
 - *requiring respondents to report information to the agency more often than quarterly;*
 - *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
 - *requiring respondents to submit more than an original and two copies of any document;*
 - *requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;*
 - *in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;*

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- *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.*

Not applicable.

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 will publish a Notice of Interim Final Rulemaking on multiemployer plan information available upon request in the Federal Register soliciting public comment on the information collections contained in the rule and providing the public and affected parties with an opportunity to comment.

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

Not applicable.

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

No assurance of confidentiality has been provided.

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.*

Not applicable.

12. *Provide estimates of the hour burden of the collection of information. The statement should:*

- *Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.*
- *If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.*

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- *Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.*

Based on data derived exclusively from the Form 5500 for the 2004 plan year, which is the most recent year for which complete data are available, the Department estimates that there are 1,533 multiemployer defined benefit plans and 1,372 multiemployer defined contribution plans that would be subject to this disclosure requirement. Because section 101(k) of the Act and the interim final regulation generally do not limit the class of documents that can be requested in any way by date of creation or receipt, the Department has assumed for purposes of this estimate that each multiemployer defined benefit and defined contribution pension plan will disclose both an existing inventory and newly created periodic actuarial reports (“actuarial reports”), quarterly, semiannual, or annual financial reports (“financial reports”), and amortization extension requests filed with the IRS (hereafter “extension requests”).¹

In developing burden estimates, the Department has taken into account the total estimated hours required to copy, mail, and redact individually identifiable and proprietary information from the reports.

With respect to an existing inventory of reports, the Department estimates that multiemployer defined benefit plans will receive 169,000² requests to disclose existing financial reports (an average of 110 per plan), 76,000 requests for existing actuarial reports (an average of 50 per plan), and 340 requests for existing amortization requests (an average of .22 per plan), and defined contribution plans will receive 96,000 requests for existing financial reports (an average of 70 per plan). Therefore, the Department estimates that multiemployer pension plans would receive a total of 341,000 requests for disclosures from the existing inventory of reports.

The Department estimates that the total hour burden associated with disclosing existing documents upon request over the 2008-2010 period will be 66,000 hours. This would include 61,000 clerical hours to log requests and to locate, copy, and mail paper disclosures³ and 5,000 of

¹ For purposes of this estimate, the Department assumes that plans will receive no requests for documents in existing inventory for years prior to 2002.

² All dollar or hour numbers in this burden analysis have been rounded to either the nearest thousand or the nearest hundred, as appropriate.

³ This is the product of the total documents disclosed times the percentage of documents disclosed on paper times

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legal hours (1.8 hours per plan for financial reports, .7 hours for actuarial reports, and 0 hours for extension requests)⁴ to redact individually identifiable and proprietary information.⁵ The equivalent costs of these hours are \$2.1 million.⁶

For purposes of this analysis, the Department assumes that 40% of the existing documents would be requested in the year of implementation, 30% in the second year, and 15% in the third year, with the remaining 15% of disclosures of existing documents occurring after 2010.⁷ Based on this allocation, the first year hour burden for all affected plans is estimated to be 56,000 hours (\$1.7 million equivalent cost), the second year hour burden would be 49,000 hours (\$1.5 million equivalent cost), and the third year burden would be 37,000 hours (\$1.1 million equivalent cost).

With respect to newly created reports, the Department estimates that multiemployer defined benefit plans will receive 107,000 requests to disclose newly created financial reports (an average of 70 per plan), 32,000 requests for newly created actuarial reports (an average of 21 per plan), and 1,600 requests for newly created amortization requests (an average of 1 per plan), and defined contribution plans will receive 82,000 requests for newly created financial reports (an average of 60 per plan). Therefore, the Department estimates that multiemployer pension plans would receive a total of 223,000 requests for disclosures of newly created reports.

The Department estimates that the total hour burden associated with disclosing newly created documents upon request is 25,000 hours. This includes 24,000 clerical hours to copy and mail paper disclosures and 1,200 legal hours to redact individually identifiable and proprietary

15 minutes (to locate, copy, and mail paper documents).

4 The Department estimates that 70% of the requested documents will be redacted by outside legal counsel, and that 30% of financial reports and 25% of actuarial reports will require redaction if requested.

5 The Department estimates that 20% of existing financial reports and actuarial reports for defined benefit plans will be available electronically, 50% of existing extension requests for such plans will be available electronically, and 20% of existing defined contribution plan financial reports will be available electronically. The Department invites comments on this estimate. Documents are assumed to be disclosed on paper unless the requester has access to email and requests a document that already exists in paper form.

6 Hourly wage estimates were based on data from the Bureau of Labor Statistics Occupational Employment Survey (November 30, 2004) and the 2005 Employment Cost Trends. Total labor costs (wages plus benefits plus overhead) for clerical staff were estimated to average \$25 per hour over the period based on metropolitan wage rates for Executive Secretaries and Administrative Assistants. Total labor cost for legal staff were estimated to average \$109 per hour based on metropolitan wage estimates for Attorneys.

7 This assumption is based on the expectation that interest in receiving existing documents will be high in the initial year of implementation and gradually decrease in subsequent years.

information. The equivalent costs of these hours are \$744,000.

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 costs arising from this information collection derive from the direct costs of distributing the reports. As discussed above, the Department believes that a substantial number of the existing documents only will be available in paper form; therefore, costs will be incurred to copy and to distribute the reports by mail.⁸ Some plans also will incur costs to hire a service provider to review the reports and redact individually identifiable and proprietary information from them.

The interim final rule allows plans to charge requesters for the reasonable costs of furnishing documents in an amount that does not exceed the lesser of the actual cost to the plan to furnish the document, or 25 cents per page plus the cost of mailing or otherwise delivering the requested document. The interim final rule does not allow plans to charge for redaction costs. The extent to which plans will impose such charges has not been estimated, but the Department has estimated the amount these charges would reimburse plans for their direct dollar cost if plans were to consistently charge requesters for all allowable charges. Because copy costs will generally not exceed 25 cents per page, the proceeds from these charges, if imposed, would reimburse plans for all mailing cost, for nearly all copy costs, and for an estimated 60 percent of the total dollar burden expected over the 2008-2010 period.

With respect to the plan's existing inventory of documents for multiemployer defined benefit plans, the Department estimates copying costs of \$791,000 for the existing inventory of financial reports,⁹ \$171,000 for the existing inventory of actuarial reports, \$41 for the existing inventory of extension requests. For multiemployer defined contribution plans, estimated copying costs for existing financial reports is \$455,000. Therefore, the total copying costs for the existing

⁸ See footnote 5 above.

⁹ The copying cost estimate is based on an \$5.84 average per document cost of disclosure of financial reports (estimated 40 pages per document times \$0.15 average copying cost per page), \$2.80 for actuarial reports (estimated 50 pages per document times \$0.06 average copying costs per page), \$0.24 for extension requests (estimated 12 pages per document times \$0.02 average copying cost per page), and \$5.84 for defined contribution plan financial reports (estimated 50 pages per document times \$0.15 average copying cost per page). The average copying costs per page takes into account the estimated percentage of documents that are in color, and will, therefore, require more expensive color copying. The Department assumes that 70% of financial reports and 20% of actuarial reports are in color, and that 0% of extension requests are in color.

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inventory of all reports would be \$1.4 million.

The Department estimates mailing costs of \$271,000 to deliver the existing inventory of financial reports, \$152,000 to deliver the existing actuarial reports, and \$129 to deliver existing extension requests.¹⁰ Multiemployer defined contribution plans will incur an estimated \$157,000 of mailing costs to deliver existing financial reports. Therefore, the total mailing costs for the existing inventory of all reports is estimated to be \$581,000.

The estimated costs to redact individually identifiable and proprietary information from the existing inventory of financial reports are \$702,000 and from the existing inventory of actuarial reports is \$263,000. The Department estimates no costs will be incurred for redacting information from the existing inventory of amortization extensions. For multiemployer defined contribution plans, the redaction costs for existing financial reports are \$628,000. Therefore, the total redaction costs for the existing inventory of all reports is are \$1.6 million.

With respect to newly created reports for multiemployer defined benefit plans, the Department estimates that the annual cost for all plans to copy the newly created financial reports would be \$212,000, the newly created actuarial reports would be \$30,000, and the newly created amortization extension requests would be \$21.¹¹ For multiemployer defined contribution plans, the copy cost for newly created financial reports would be \$176,000. Therefore, the total copying costs for all newly created reports would be \$416,000.

The costs to mail the newly created financial reports are \$73,000, newly created actuarial reports would be \$27,000, and newly created amortization extension requests would be \$66. For multiemployer defined contribution plans, the mailing costs for newly created financial reports are \$55,000. Therefore, the total mailing costs for newly created reports are \$155,000.

The estimated costs of contract work¹² to redact individually identifiable and proprietary information for newly created financial reports are \$140,000, and \$44,000 for newly created actuarial reports. The Department estimates that no costs will be incurred for redacting information from newly created amortization extension requests. For multiemployer defined

10 The negligible cost for all plans to mail extension requests results from the interaction of various assumptions regarding these documents – a low request rate, a high rate of electronic disclosure, and a relatively low mailing cost arising from the modest length of these documents.

11 The negligible cost for all plans to copy amortization requests results from a combination of assumptions about these documents – a low request rate, a high rate of electronic disclosure, and a low cost of copying a modest number of black and white pages.

12 The Department has assumed that 70% of redaction work will be contracted.

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contribution plans, the redaction cost for newly created financial reports is estimated to be \$126,000. Therefore, the total annual redaction costs for all newly created reports are estimated to be \$310,000.

14. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.*

Not applicable.

15. *Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.*

This is a regulation and information collection requirement that was issued by the Department to implement the requirements of ERISA section 101(k), which was added by section 502(a)(1) of the Pension Protection Act of 2006.

16. *For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.*

There are no plans to publish the results of this collection of information.

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 OMB expiration date will be published in the Federal Register following OMB approval.

18. *Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.*

Not applicable; no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

Not applicable. The use of statistical methods is not relevant to this collection of information.