

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSIONS

**A. Justification**

13. *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 Employee Retirement Income Security Act of 1974 (ERISA) contains three separate sets of provisions – in Title I (Labor provisions, Title II (Internal Revenue Code (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.

Since enactment of ERISA, the Pension Benefit Guaranty Corporation (PBGC), the Internal Revenue Service (IRS), and the Department of Labor (DOL) (collectively, the Agencies) have worked together (under DOL's leadership) 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 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 (PPA). (72 FR 63731) The final rule, which was published contemporaneously with the revisions, included an amendment to DOL's final rule requiring electronic filing of the Form 5500 Annual Return/Report for reporting years beginning January 1, 2008. (72 FR 64710) Specifically, that final rule amends DOL's 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. 111-102), 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 2011-3 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

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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 2008, 2009, and 2010, PBGC submitted non-material, nonsubstantive change requests for the Form 5500 instructions for these years, which were approved by OMB. On September 17, 2010, PBGC submitted a rollover request to extend OMB approval of the ICR for three years. PBGC is amending this request to reflect the changes made by the Pension Relief Act and the IRS guidance. No changes have been made to the forms or instructions since the most recent submission was approved by OMB.

14. *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 Form 5500 return/reports are the principal source of information and data available to the Agencies concerning the operations 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.

In addition to providing the Agencies with important enforcement, research, and policy information data, 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)).

Approximately 800,000 pension and welfare benefit plans that must file the Form 5500 under Title I and IV of ERISA and the Internal Revenue Code (Code). These plans cover an estimated 150 million participants and hold an estimated \$4.3 trillion in assets. The annual report/reports are therefore important tools for protecting the benefits of American workers. (Note PBGC's portion of the information collection applies to only a small subset of the 800,000 pension and welfare plans, because, except in rare cases, PBGC's insurance program does not apply to welfare plans or defined contribution plans. PBGC estimates that there are approximately 30,300 defined benefit plans required to file pursuant to Title IV of ERISA.)

15. *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 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. For example, PBGC's share of the hour burden has been reduced from 2,373 hours when the ICR was extended in 2004 to 1,200 in the current ICR request, and its share of the cost burden has been reduced from \$1.7 million to \$1.3 million over the same timeframe.

16. *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 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.

17. *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.*

Not applicable. PBGC's portion of the information collection will not have a significant impact on a substantial number of small agencies. See also DOL's supporting statement for a description of provisions in Title I of ERISA that permit the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

18. *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.*

ERISA and the Code specifically require the filing of reports or returns by employee benefit plans on an annual basis. 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.

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

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None.

20. *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.*

PBGC published the notice required by 5 CFR 1320.8(d) soliciting comments on the information collection in the Federal Register on June 24, 2010 (75 FR 36127). The public was provided with 60 days to comment on the submission in response to the solicitation. No public comments were received.

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

No payments or gifts are provided to respondents.

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

The Form 5500 filings made under Title I of ERISA are required by law to be made available for public inspection at DOL and at the offices of the plan administrators. Accordingly, DOL and PBGC provide no assurance of confidentiality to respondents.

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23. *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.

24. *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.*
  - *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 13.*

Because the Form 5500 Series combines the information collection requests of three federal agencies (DOL, the IRS, and 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, which is conducted by DOL with input from PBGC and the IRS. This ICR requests approval of only the portion of the total paperwork burden of the Form 5500 Series that is attributed to PBGC, although it includes some information on the other portions of the total paperwork burden. PBGC has been advised by DOL and the IRS that they intend to submit separate requests for OMB review in connection with the final forms revisions. The discussion below, therefore, describes the unified methodology underlying the Agencies' estimates of the aggregate burden imposed by the proposed forms revisions as a whole, but requests approval

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only of PBGC's portion of that burden.

PBGC estimates, based on data derived from the 2007 Form 5500 filings (the most recent accurate information available), that a total of 780,000 respondents will file annual reports using the Form 5500 Annual Return/Report.<sup>1</sup> As noted above, PBGC's portion of the information collection applies only to a small subset of these 780,000 respondents, i.e., approximately 30,300 defined benefit plans required to file pursuant to Title IV of ERISA. The paperwork burden allocated to PBGC includes a portion of the general instructions, basic plan identification information, a portion of Schedule MB and Schedule SB (Actuarial Information), and a portion of Schedule R (Retirement Plan Information). PBGC's portion of the annual aggregate hour burden generated by the Form 5500 Annual Return/Report is estimated at 1,200 hours for 2010, 2011, and 2012 with the equivalent cost burden of \$1.25 million for each of these years.<sup>2</sup>

A detailed description of the basis for all the burden estimates and determinations (including those for DOL and the IRS) is included in the supporting statement submitted by DOL. The aggregate and attributed hour burdens each reflect an allocation of the overall burden between service providers hired by plans and plans that are expected to complete the return/report through use of in-house resources, rather than by purchase of services from third party service providers.

25. *Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 or 14).*

The total annual cost burden attributable to PBGC for the information collection requirements of the Form 5500 Return/Report, derived as described in the answer to item 12, above, and as shown in that answer, is estimated at \$1.25 million for 2011, 2012, and 2013.

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1 All numbers in this supporting statement are rounded to the nearest 1,000.

2 Some numbers do not sum up to the totals due to rounding. The estimate of the sponsor wage rate is based on the National Occupational Employment Survey (May 2005, Bureau of Labor Statistics) and the Employment Cost Index (Sept. 2006, Bureau of Labor Statistics) and projected to 2009.

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26. *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.*

The total annual processing cost for all Form 5500 filings during the period covered by this ICR extension request is estimated to average \$ 12.2 million (approximately \$ 12.33 million in 2011, \$11.99 million in 2012, and \$12.26 million in 2013).(including oversight), in accordance with the terms of the EFAST2 vendor contracts. Of that amount, it is estimated that the average cost to PBGC will be (\$671,000) (\$678,000 in 2011, \$660,000 in 2012, and \$675,000 in 2013).

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

PBGC is submitting paperwork numbers for approval to OMB for the three-year renewal period. PBGC's cost and burden hour estimates for this period provided in Item 13 above have not changed since the 2009 non-material, non-substantive change submission which was approved by OMB on November 6, 2009. There have been no changes to the forms and minimal changes to the instructions since that submission.

The estimated costs to the federal government provided in item 14 for this period have increased over those estimated previously. PBGC previously estimated these cost to be approximately \$400,000 annually. These estimates for 2011, 2012, and 2013 reflect the costs associated with implementing the new EFAST2 processing system.

28. *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.*

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.

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29. *If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*

OMB previously granted approval to omit the expiration date from the Form 5500. PBGC requests continued approval to omit the expiration date.

30. *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.