

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.*

The Employee Retirement Income Security Act (ERISA) requires plan fiduciaries, when selecting and monitoring service providers and plan investments, to act prudently and solely in the interest of the plan's participants and beneficiaries. Responsible plan fiduciaries also must ensure that arrangements with their service providers are "reasonable" and that only "reasonable" compensation is paid for services. Fundamental to the ability of fiduciaries to discharge these obligations is obtaining information sufficient to enable them to make informed decisions about an employee benefit plan's services, the costs of such services, and the service providers.

In February 2012, Employee Benefits Security Administration ("EBSA") issued the ERISA section 408(b)(2) final regulations, which require covered service providers ("CSPs") to ERISA-covered pension plans to provide specified information to assist responsible plan fiduciaries ("RPFs") in assessing the reasonableness of the compensation paid for services and the conflicts of interest that may affect a service provider's performance of services. In the preamble to the final rule, EBSA encouraged CSPs to provide RPFs, especially those to small- and medium-size plans, with a guide, summary, or similar tool to assist RPFs in identifying all of the disclosures required under the final rule, particularly when service arrangements and related compensation are complex and information is disclosed in multiple documents. EBSA did not adopt such a guide requirement as part of the final rule but included a sample guide as an appendix to the final rule that can be used on a voluntary basis by CSPs as a model for such a guide. In the preamble to the final rule, EBSA stated that it intends to publish a notice of proposed rulemaking in the near future under which CSPs may be required to furnish a guide or similar tool to assist RPFs' review the disclosures. EBSA recently published a notice of proposed ruling that would require CSPs to provide RPFs with a guide.

In connection with the issuance of the notice of proposed rulemaking, the Department's EBSA and the Office of Assistant Secretary for Policy/Chief Evaluation Office ("CEO") seek approval from the Office of Management and Budget (OMB) for an information collection request (ICR) titled "Evaluating the Effectiveness of the 408(b)(2) Disclosure Requirements." The ICR is designed to explore current practices and effects of EBSA's final 408(b)(2) regulation and to gather information about the need for a guide, summary, or similar tool to help RPFs navigate through and understand the disclosures.

As part of this ICR, EBSA and CEO intend to conduct eight focus group sessions with approximately 70 to 100 RPFs, primarily focusing on RPFs to small pension plans (those with less than 100 participants). Six focus groups will include RPFs from small plans, one focus group will include RPFs from plans with 100 to 999, and one focus group will include RPFs from plans with over 1,000 participants. They will be asked to provide information including

the following: (1) their role with respect to their plan; (2) the number of service providers hired by the plan; (3) whether they are aware of and understand the disclosures mandated by the 408(b)(2) final regulation; (4) their experience with receiving the disclosures; (5) whether they were able to find information regarding the services that would be provided and the costs of those services; (6) whether their review of the disclosures impacted their decision-making with regard to hiring, monitoring, or retaining service providers or changing plan investment options; (7) whether their CSPs provide a guide or similar organizational tool to help find specific information within the disclosures; and (7) whether a guide to the required disclosures would be beneficial to them, and if so, how much they would be willing to pay to receive a guide.

EBSA intends to use information collected from the focus groups to: (1) assess responsible plan fiduciaries' experience in receiving the 408(b)(2) regulation's required disclosures; (2) assess the effectiveness of these disclosures in helping plan fiduciaries make decisions; (3) determine how well plan fiduciaries understood the disclosures, especially in the small plan marketplace (100 participants or less); and (4) evaluate whether, and how, a guide, summary, or similar tool would help fiduciaries understand the disclosures. The focus group results will be used to inform and support the Department's notice of final rulemaking for the guide requirement.

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 focus groups under this research project are a new collection. The data collection efforts will include focus groups only. The information will be used for research and evaluation purposes to evaluate plan fiduciaries' experience with the requirements under the 408(b)(2) regulation. The results from these focus groups will inform policy, advance DOL's mission, and improve DOL's approach to regulation. Since this is a new collection, there has been no use of the information yet.

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 of using information technology to reduce burden.*

The information to be collected will come from focus groups. Prospective focus group participants will be contacted first by mail explaining the focus groups. They will then be contacted by telephone. Later contact with reminders of the date and time will be by phone or email.

During the focus groups evaluators will use different modes for gathering data during the focus group, such as taking notes on their laptops and/or notepads and voice recording.

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.*

Focus groups will provide distinctive information about experience of plan fiduciaries in receiving the 408(b)(2) regulation's required disclosures. Information collected from these data collection methods is not otherwise available from Departmental or from public sources. These data will, as a result, enable DOL to gain a deeper insight into the experience of plan fiduciaries under this regulation and assist in determining whether a summary or guide is necessary to help plan sponsors understand the disclosures. There are no other sources of information that could be used in place of the information collected by the focus groups.

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

The Department has developed an efficient focus group protocol designed to minimize the burden on all businesses, including small businesses and other small entities.

6. *Describe the consequences 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 in reducing burden.*

Focus groups are important opportunities for DOL to learn about the impact of a regulation and the experiences of the entities affected by disclosures under this regulation. If the information collection requested by this package is not conducted, policymakers, program administrators, and service providers may lack high-quality information on the regulation of and the experiences of plan fiduciaries with the disclosures under the 408(b)(2) regulation. Without these data collection efforts, DOL will not benefit from the specific, experience-based input that the focus groups would provide as to the efficacy of the regulation. This input would help DOL determine plan fiduciaries' needs for additional guidance or for further development of the final 408(b)(2) regulation.

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;*
- *requiring the use of 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 secrets, 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 that would cause this information collection to be conducted in any manner listed above.

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 notice soliciting public comment and providing 60 days for that purpose as required by 5 CFR 1320.8 (d) was published in the Federal Register on March 12, 2014 (79 FR 14085). The Department received seven comments in response to the publication of the 60-day notice. The comments were focused on six areas: 1) concern with overall timing of the focus groups relative to the publication of the NPRM; 2) whether fiduciaries of large plans should be included in the focus groups; 3) whether service providers should be included in focus groups; 4) whether a survey should be used instead of, or in conjunction with, the focus groups; 5) participant recall of disclosures received in the past; and 6) comments on specific questions of the script. The comments are summarized below.

Timing of the Focus Groups Relative to the Publication of the NPRM

Commenters raised concerns about the timing of conducting the focus groups relative to the publication of the NPRM. They assert that EBSA should have completed the focus group testing before issuing the NPRM, because the focus groups would have provided EBSA with information to determine whether the proposed guide requirement is necessary and whether its benefits justify its costs. The Department, with OMB approval, already has published the NPRM. However, the Department will consider the results of the focus group testing in determining whether, and what, final guidance will be issued in response to the NPRM. The view of these commenters is that they ought to have an opportunity to review and comment on the results of the focus groups. In the preamble to the NPRM, the Department has already said it may reopen the comment period on the NPRM once the focus group report is made public to allow interested parties to comment on the focus group results. The Department will revisit the

issue of whether to reopen the comment period on NRPM when we have the results of the focus group in hand.

Include Fiduciaries of Large Plans in the Focus Groups

Commenters suggested that large plan fiduciaries should be included in the focus groups, given that most plan participants are in large plans and that the NRPM would apply to such plans. In response, the Department is adding two separate focus groups for large plan fiduciaries and retaining six focus groups for small plan fiduciaries. There are more focus groups for small plan fiduciaries than for large plan fiduciaries because the Department understands that small plan fiduciaries are most likely to be having problems with the 408(b)(2) disclosures. Moreover, although most participants are in large plans, most plans are small. Therefore, the Department continues to include more focus groups for small plan fiduciaries.

Including Service Providers in Focus Groups

Commenters suggested either that plan fiduciaries be asked or permitted to bring their service providers with them to the focus groups, or that the Department conduct separate focus groups for service providers. They asserted that often it is an adviser or other service provider that actually reviews the disclosures and assists the small employer in selecting other plan services and service providers. These commenters question whether the Department will learn much from these small employers without the assistance of these advisers. The Department did not accommodate this suggestion. Fiduciaries are the target audience of the regulation's requirements and are ultimately responsible for the selecting and monitoring of plan service providers. The focus groups are being conducted to evaluate the effectiveness of the 408(b)(2) regulations in helping fiduciaries to find and understand the information they need to make decisions. Therefore, the Department has decided that the focus groups will continue to include only plan fiduciaries. Service providers may still submit their comments through the public comment process for the NRPM.

Conduct a Survey

Commenters suggested that the Department conduct a survey in place of, or in addition to, a focus group. The Department understands that a survey could provide statistical validity depending on how it is constructed and carried out, whereas a focus group would not. The Department has decided not to pursue a survey at this time, because a focus group allows more in-depth study of the topic, including responses to other focus group participants' ideas and comments. The development and clearance of a survey would also delay obtaining information, including another ICR. Coupled, these two items suggest a survey might have limited practical utility for the Department. A survey is also not within the scope of the Department's current contract (and funding). Moreover, the "recall" issue discussed below is of even greater concern with a survey, because respondents would not be prompted by a moderator to refresh their recollection about the disclosures they received, as they would in a focus group setting.

Participant Recall

Commenters expressed concern and skepticism that focus group participants would be able meaningfully to recall details about disclosures received, in some cases, two years in the past. The Department appreciates this concern and has taken steps to address this concern. For

instance, prospective focus group participants will be contacted prior to the focus group and will be encouraged to review their disclosures before attending the focus groups, or even bring them to the focus groups. The Department also notes that at least some participating fiduciaries will have reviewed their disclosures recently as part of their periodic review of their plans' service providers, or if they are contemplating changing a service provider. In addition, some plan fiduciaries may have recently received updated disclosures from their service providers.

In addition to the principal issues mentioned above, the Department, at the specific request of commenters, made approximately 15 changes to specific questions on the focus group script. Some of these changes were editorial and others were to reduce or eliminate potential answer bias.

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

No payments or gifts will be provided to respondents.

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

The Department of Labor will be blind to the focus group process. The focus groups will be conducted by a contractor and the raw data obtained in the focus groups will not be shared with the Department. The Department will thus not be able to determine the identity of any of the focus group participants. The focus group participants will be assured that any information the contractor shares with the Department will not include participants' or their employers' names.

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 these 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.*

None.

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.*

Table 1, below, provides the estimate of the respondent hour burden for participating in the focus groups conducted by the evaluators. The hour burden estimate for data collection through focus groups over one year ranges from 70 to 200 hours. The actual number will vary based on the complexity and duration of each focus group. The lower range assumes a smaller number of participants (a total of 70 respondents in the year) and a smaller time burden (60 minutes) for each focus group. The upper range assumes a larger number of participants (a total of 100 respondents in the year) and a larger time burden (120 minutes) for each focus group.

Total Hour Burden Estimates for One Year:

- Lower range totals: focus groups = **70 total hours**
- Higher range totals: focus groups = **200 total hours**

TABLE 1: ESTIMATED RESPONSE BURDEN IN HOURS OF DATA COLLECTION OVER 1 YEARS

Data Collection Activity	Number of Respondents Over 1 Year	Frequency of Collection per Respondent	Time Per Respondent	Total Burden Hours Over 1 Year
Focus Groups Lower range # of studies (estimated at 70 respondents total for 8 focus groups)	70	1	60 minutes	70 hours
Upper range # of studies (estimated at 100 respondents total for 8 focus groups)	100	1	120 minutes	200 hours
Midpoint	85 respondents	1	90 minutes	128 hours

The figures in Table 1 are based on the following assumptions about the number of focus groups and the number of participants in each focus group:

- **Focus groups:**
 - **Lower Range.** The lower range was calculated by estimating 8 focus groups over the one-year clearance timeframe with 70 respondents over the one-year clearance timeframe. Assuming that each respondent will be asked to participate in a focus group once, with each focus group at approximately 60 minutes, the total estimated burden hours is calculated at 70 hours per year.
 - **Higher Range.** The higher range was calculated by estimating 8 focus groups over the one-year clearance timeframe with 100 respondents over the one-year clearance timeframe. Assuming that each respondent will be asked to participate

in a focus group once, with each focus group at approximately 120 minutes, the total estimated burden hours is calculated at 200 hours per year.

Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage and 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.

A range of total annualized costs to respondents associated with site visit interview and focus groups is presented in Table 2. The hourly wage in that table is the average hourly wage, including benefits and overhead, of \$117.88.¹ This estimate represents an upper bound of the hourly cost that could be incurred for this collection. The \$117.88 hourly rate assumes that fiduciary agents will be participating in the focus groups.

TABLE 2: ESTIMATED RESPONSE BURDEN IN HOURS OF DATA COLLECTION

Data Collection Activity	Total Burden Hours Over 1 Years	Annualized Number of Burden Hours	Average Hourly Wage	Total Annualized Equivalent Cost
Site Visit Focus Groups				
Lower range # of focus group participants (estimated at 70 focus group participants for the year)	70	70	\$102.41	\$7,169
Upper range # of focus group participants (estimated at 100 focus group participants for the year)	200	200	\$102.41	\$20,482
Midpoint	128 hours	128 hours	\$102.41	\$13,108

13. *Provide an estimate for 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 and 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, maintenance, and

¹ The Department's estimated 2015 hourly labor rates include wages, other benefits, and overhead are calculated as follows: mean wage from the 2013 National Occupational Employment Survey (April 2014, Bureau of Labor Statistics <http://www.bls.gov/news.release/pdf/ocwage.pdf>); wages as a percent of total compensation from the Employment Cost Index (June 2014, Bureau of Labor Statistics <http://www.bls.gov/news.release/ecec.t02.htm>); overhead as a multiple of compensation is assumed to be 25 percent of total compensation for paraprofessionals, 20 percent of compensation for clerical, and 35 percent of compensation for professional; annual inflation assumed to be 2.3 percent annual growth of total labor cost since 2013 (Employment Costs Index data for private industry, September 2014 <http://www.bls.gov/news.release/eci.nr0.htm>). Compensation and Benefits Manager (11-3041): \$50.92(2013 BLS Wage rate) /0.697(ECEC ratio) *1.35(Overhead Load Factor) *1.023 (Inflation rate) ^2(Inflated 2 years from base year) = \$102.41(2015 hourly labor rate).

purchase of services 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 collections 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.

There will be no start-up or ongoing financial costs incurred by respondents that result from the data collection efforts submitted under this clearance for focus groups. The proposed information collection will not require respondents to purchase equipment or services or to establish new data retrieval mechanisms.

14. *Provide estimates of annualized costs 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 may also aggregate cost estimates from Items 12, 13, and 14 in a single table.*

The cost to the government to oversee the contractor and review documents is estimated at the labor rate of a government worker with a GS14-4 level (\$56.01) spending 40 hours with a cost of \$2,240.

The government contractor cost for this information collection is \$119,611 (\$110,477 labor, \$7,569 travel, and \$1,565 other direct costs).

TABLE.--Contract Costs

	T1. Initial Project Meeting	T2. Project Work Plan	T3. Focus Groups	T4. Monthly Reports/ad hoc Briefings	Total
Labor					

Evaluating the Effectiveness of the 408(b)(2) Disclosure Requirements Focus Group
OMB Control Number 1210-New
December 2014

Labor Category	Rate	Hours	Dollars	Hours	Dollars	Hours	Dollars	Hours	Dollars	Hours	Dollars
Project Director	\$288.07	4	\$1,152	8	\$2,305	8	\$2,305	6	\$1,728	26	\$7,490
Project Director	\$288.07					11	\$3,169			11	\$3,169
Task Leader	\$198.68					11	\$2,185		\$0	11	\$2,185
Senior Analyst	\$146.84					26	\$3,818			26	\$3,818
Task Leader	\$198.68					13	\$2,583			13	\$2,583
Task Leader	\$198.68					24	\$4,768			24	\$4,768
Task Leader	\$198.68	7	\$1,391	9	\$1,788	39	\$7,749	12	\$2,384	67	\$13,312
Task Leader	\$198.68					103	\$20,464			103	\$20,464
Senior Analyst	\$146.84					16	\$2,349			16	\$2,349
Project Director	\$288.07	4	\$1,152	19	\$5,473	34	\$9,794			57	\$16,420
Task Leader	\$198.68					17	\$3,378			17	\$3,378
Analyst	\$108.34					84	\$9,101			84	\$9,101
Research/Admin	\$76.17			2	\$152	84	\$6,398			86	\$6,551
Clerical/Admin	\$89.66					34	\$3,048			34	\$3,048
Analyst	\$108.34					109	\$11,843			109	\$11,843
Total - Labor		15	\$3,695	38	\$9,718	613	\$92,952	18	\$4,113	684	\$110,478
Other Direct Cost (ODC's)											
Total - ODCs			\$13		\$86		\$1,412		\$53		\$1,564
Travel Cost											
Total - Travel Cost			\$135				\$7,434				\$7,569
Total Proposed Price		15	\$3,843	38	\$9,804	613	\$101,798	18	\$4,166	684	\$119,611

15. Explain the reasons for any program changes or adjustments.

None.

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 end dates of the collection of information, completion of report, publication dates, and other actions.*

The contract covers the time period 6/24/2013 to 6/23/2015. The contractor will provide DOL with a final report of the Focus Group findings at the end of the period of performance.

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

The collection of information will display a currently valid OMB control number.

18. *Explain each exception to the certification statement identified in Item 19, Certification for Paperwork Reduction Act Submissions.*

Not applicable; no exceptions to the certification statement.