

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995 SUBMISSIONS

This ICR seeks to revise the Consent to Receive Employee Benefit Plan Disclosures Electronically reflecting an increase in the number of notices sent electronically due to the Department's finalized new safe harbor for the use of electronic media by administrators of retirement plans covered by ERISA. This amendment enables plan administrators to furnish documents to plan participants and beneficiaries by means of electronic delivery if they have electronic addresses and if they do not opt out of electronic delivery.

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.*

Pursuant to section 1510(a) of the Taxpayer Relief Act of 1997 (TRA '97), the Secretary of Labor and the Secretary of the Treasury were directed to issue guidance designed to interpret the notice, election, consent, disclosure, time requirements, and related recordkeeping requirements of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code, respectively, as applied to the use of new technologies by sponsors and administrators of retirement plans.

While electronic disclosure was not precluded by existing regulations, the Department of Labor (the Department) had not previously issued guidance with respect to electronic delivery of disclosure documents. On January 28, 1999, the Department published a notice of proposed rulemaking on electronic disclosure and recordkeeping issues (64 FR 4506). Where, previously, only group health plans had specifically been provided with a safe harbor for electronic disclosure, the proposal expanded the use of electronic disclosure to include all pension and welfare benefit plans covered by Title I of ERISA. In addition, the proposal added summary annual reports to the list of disclosure documents included in the safe harbor provisions.

On April 9, 2002, the Department published a notice of final rulemaking on electronic disclosure and recordkeeping issues (67 FR 17264) to establish a "safe harbor" for the use of electronic media to satisfy the general furnishing requirement. Based on public comments, the final regulation expanded the list of disclosures addressed by the safe harbor to disclosures under Title I generally. The final regulation also provided for the receipt of required disclosures at locations other than the workplace. For those participants and beneficiaries offered the opportunity and wishing to receive disclosures via electronic information systems outside the workplace, the final regulation required advance affirmative consent on the part of the recipient. This requirement is incorporated

at 29 CFR 2520.104b-1(c)(2)(ii)(A), (B), and (C). Prior to consenting, the plan administrator must provide a participant or beneficiary with a clear and conspicuous statement indicating: the types of documents to which the consent would apply; that consent may be withdrawn at any time; the procedures for withdrawing consent and updating necessary information; the right to obtain a paper copy free of charge; and any hardware and software requirements.

The final regulations under 29 CFR 2520.104b-1 and 2520.107-1 do not affect the substantive disclosure provisions of Title I and related regulations. These regulations provide guidance on the circumstances in which the substantive requirements will be deemed met when electronic technologies are used.

2019 Final E-Disclosure Rule

The Department is issuing a final rule providing a new safe harbor for plan administrators who wish to satisfy ERISA's delivery requirements for retirement plan documents by posting them on a website and notifying workers of the online availability of such documents. The preamble to the proposal included, in a separate section, a request for information (RFI) about whether, and how, any additional changes to the design, delivery, and content of ERISA disclosures could further improve their effectiveness. The final rule responds to Executive Order 13847, Strengthening Retirement Security in America, in which the Secretary of Labor is directed to explore the potential for broader use of electronic delivery as a way to improve the effectiveness of retirement documents and to reduce the costs and burdens they impose on employers and other plan fiduciaries responsible for their production and distribution.

In order to use the safe harbor, retirement plan administrators must:

- Furnish covered individuals with a notice of internet availability delivered to their electronic addresses, for example to the covered individual's email address. The notice must include, among other things, a brief description of the document being posted online, a website address where the document is posted, and instructions for requesting a free paper copy or electing paper delivery in the future. It must send each time a retirement plan disclosure is posted to the internet website. To prevent "email overload," the final rule allows a notice of internet availability to incorporate or combine other notices of internet availability in limited circumstances.
- Furnish covered individuals, free of charge, with a paper copy of a covered document, as soon as possible after receiving the covered individual's request (2520.104b-31(f)(1)).

- Provide covered individuals with the ability to opt out of electronic delivery and receive only paper versions of some or all covered documents (2520.104b-31(f)(2)). In the event that a plan administrator becomes aware of an invalid or inoperable electronic address, such as if an email is returned as undeliverable, the administrator must treat the covered individual as if he or she had elected to opt out of electronic delivery if the problem is not promptly cured (2520.104b-31(f)(4)). This provision is intended to ensure that covered individuals actually receive their pension documents by guarding against invalid or inoperable electronic addresses.
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 information is a third party disclosure. The consent serves to demonstrate to the plan administrator that an individual has the ability to access information in the electronic form that will be used for disclosure purposes. Such confirmation will ensure the compatibility of the hardware and software between the individual and the plan, and will also serve to demonstrate that the administrator has taken appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents results in actual receipt, as required under ERISA. Lastly, where applicable, the consent provides a means for the individual to provide the plan with the correct e-mail address to facilitate the efficiencies that may arise from the use of electronic technologies where appropriate.

2019 Final Rule

Retirement plan administrators may satisfy their obligation to furnish ERISA-required disclosures by making the information accessible online and furnishing a notice of internet availability of these disclosures to covered individuals. The notice of internet availability must be sent to the electronic address of the participant, for example to the participant's email address and include, among other things, a brief description of the document being posted online, a website address where the document is posted, and instructions for requesting a free paper copy or electing paper delivery in the future. It must be sent each time a retirement plan disclosure is posted to the internet website. To prevent "email overload," the final rule allows a notice of internet availability to incorporate or combine other notices of internet availability in limited circumstances.

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.*

Under 29 C.F.R. § 2520.104b-1(b) of ERISA, “where certain material, including reports, statements, and documents, is required under Part I of the Act and this part to be furnished either by direct operation of law or an individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries.” Section 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b). Section 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

2019 Final E-Disclosure Rule

The final rule would allow plan administrators who satisfy specified conditions to provide covered individuals with a notice that required pension disclosures will be made available on a website. Individuals who prefer to receive disclosures on paper will be able to request paper copies and to opt out of electronic delivery entirely. These changes reduce burden for pension plans by lowering the cost to deliver required notices.

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.*

Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards. ERISA establishes the manner in which disclosures made through electronic media will be deemed to satisfy the statutory disclosure requirements and the standards concerning the use of electronic media for maintenance and retention of records. There are no other rules that facilitate the use of electronic media for ERISA plans.

The framework of the final is similar to the approach the Securities and Exchange Commission takes for certain investor disclosures and also aligns with Internal Revenue Service rules about delivering retirement plan disclosures electronically.

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

A plan administrator that manages several plans is considered likely to develop a single consent that will satisfy the requirements for all plans. In addition, because a majority of small plans use a service provider for recordkeeping and disclosure purposes, it is likely that the service provider will develop a consent process for all plan clients, thereby minimizing the cost to small plans. The final rule does not require any plan or other entity to make use of electronic media for disclosure or recordkeeping; if the plan administrator chooses to provide electronic disclosures, obtaining consent is a one-time occurrence. Finally, much of the information required to be included as part of the consent process is specifically outlined in the provisions of the rule. For the foregoing reasons, the Department believes that the rule will not have a significant impact on small plans.

2019 Final E-Disclosure Rule

The final lowers costs for small businesses and small plans by reducing the costs to delivery required notices.

6. *Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*

The purpose of the consent is to ensure that participants and beneficiaries have agreed to receive disclosures about their employee benefit plan(s) by electronic means and, if the information is to be disseminated outside the workplace, that they have the necessary hardware and software for receiving the disclosures. The general purpose is to ensure that electronic dissemination is likely to result in actual receipt, as required by ERISA. Offering electronic disclosure methods, and acceptance by participants and beneficiaries, are entirely voluntary, and consent generally needs to be obtained once unless specifically enumerated changes occur subsequently.

2019 Final E-Disclosure Rule

The final rule removes legal obstacles to electronic disclosure allowing pension plans to provide disclosures on a website after notifying covered individuals of the availability of the disclosure and providing them with the opportunity to request paper disclosures.

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 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.*

None.

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 notice of proposed rulemaking provided the public with thirty days to comment on the information collections contained therein and was published notice on October 23, 2019 (84 FR 56894). The proposed rule contained a new safe harbor for delivering pension plan documents under ERISA electronically. The proposed safe harbor stood as an alternative to the Department's existing safe harbor for furnishing electronic

documents under ERISA. In 2002 the Department established a safe harbor for the use of electronic media to furnish disclosures (the 2002 safe harbor) that was generally limited to individuals who are “wired at work” and are required to use computers as part of their job, or who affirmatively consent to electronic delivery.

In response to the proposed regulation, the Department received 467 comment letters; 257 were unique comments and 210 were nearly identical comments from a coordinated petition. These comment letters represented the views of, among others, employees, employers, pension plan administrators, and service providers to pension benefit plans. An extensive discussion of and the Departments’ responses to those comments are contained in the preamble accompanying the final rule. The comments can be found at: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB90>.

In estimating costs associated with furnishing retirement plan documents under the 2002 safe harbor, the Department assumes that slightly more than half (56 percent) of disclosures are already delivered electronically. According to one commenter, 40 to 50 percent of participants receive disclosures electronically, likely from plans relying on the Department’s 2002 safe harbor. One service provider reported 62 percent of participants already elected for electronic delivery in 2018.¹ Another commenter reported 58 percent of defined contribution (DC) plan participants accessed plan information, including legal notices, electronically. These comments are largely consistent with the assumption that the Department relied on for information collection purposes. In the proposal, the Department solicited comments regarding the share of recipients that would elect to opt out of the new safe harbor and request to receive print disclosures by mail, and received no comment on this issue.

Paragraph (e) of the final rule requires plan administrators to ensure the existence of a website at which plan participants can access covered disclosures. In the proposed rule, the Department assumed this requirement would impose modest one-time costs. However, the Department was particularly concerned about burdening small plans and so solicited comments regarding the fraction of plans, particularly small plans, that would need to develop or modify a website. One commenter claimed that small plans have websites and not burdened by the proposed “notice and access” approach. However, another commenter suggested that small plans are less likely to have their own websites. A different commenter suggested that the burden of website requirement would vary by types of plans. The vast majority of participant-directed DC plans already have access to or actively maintain a website, while many defined benefit plans or nonparticipant-directed DC plans may not.² Another commenter made reference to a recent poll of plan

¹ *Default Electronic Delivery Works: Evidence of Improved Participant Outcomes from Electronic Delivery of Retirement Plan Documents*, Quantria Strategies, prepared for The SPARK Institute, November 2019, at 25,

<https://www.sparkinstitute.org/wp-content/uploads/2019/12/SPARK-Institute-Default-Electronic-Delivery-Works.pdf>.

² According to a commenter, this is because 29 C.F.R. § 2550.404a-5 currently requires that participant-directed individual account plans maintain a website to provide certain information to participants and beneficiaries. Defined benefit and nonparticipant-directed DC plans are not

sponsors. The poll results suggest the majority already have websites, in-house (70 percent) or via service providers (62.5 percent), and many have both.³ Although all these comments are useful to some degree, no commenter directly responded to the Department's solicitation regarding the share of plans that currently lack websites. According to one study, approximately 18 percent of profit sharing and 401(k) plans did not provide any services via internet in 2017.⁴ Based on this study, the Department estimates that approximately 25,000 plans currently do not have, directly or indirectly through a plan service provider, a website where they can post the covered documents.⁵

Although approximately 25,000 plans do not currently have a website, the Department expects the impact of paragraph (e) of the final rule to be minimal, in part, because paragraph (k) of the final rule allows plans to directly furnish covered documents by email as an attachment. Commenters recommended the direct delivery approach in paragraph (k) for a number of reasons, one being that plans may not currently have a website.⁶ The Department assumes plans that do not currently have a website for posting the covered documents will most likely email the covered documents directly. The direct delivery option will likely ease the burden on small plans, as they are less likely to have, or have access to, a website.

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

None.

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

None.

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*

subject to 29 C.F.R. § 2550.404a-5.

³ Plan Sponsor Council of America (PSCA) conducted a poll to plan sponsors in November 2019 to obtain the plan sponsors' perspectives on the proposed rule and received responses from 56 plan sponsors.

⁴ *61st Annual Survey, Reflecting 2017 Plan Experience*, Plan Sponsor Council of America, 2018. (In this survey, plan sponsors were asked to indicate if any services – enrollment, plan inquiries, contribution changes, balance inquiries, investment changes, loans, hardship distribution, retirement distributions, or no services – were provided to participants via internet. Responding to this question, about 18 percent of plan sponsors indicated they did not provide any services to participants through internet. The Department used this as a proxy for plans that do not have a website.)

⁵ According to Private Pension Plan Bulletin 2017, there were over 143,000 defined benefit plans and nonparticipant-directed defined contribution plans. Applying an assumption of 18 percent, the Department estimates approximately 25,984 (143,558 * 0.181) plans currently lack websites. This estimate may understate the total number of plans that lack websites because the PSCA study examined profit-sharing plans and 401(k) plans. As discussed, most 401(k) plans are expected to have their own websites. Therefore, the fraction of defined benefit plans and nonparticipant-directed DC plans that lack websites would be likely higher than 18 percent.

⁶ The direct delivery provision in paragraph (k) is not subject to the website standards in paragraph (e) of the safe harbor.

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.*
- *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.*

Employee benefit plan administrators will be deemed to satisfy their disclosure obligations when furnishing documents electronically only if a participant who does not have access to the employer's electronic information system in the normal course of his duties, or a beneficiary or other person entitled to documents, affirmatively consents to receive the disclosure documents. Prior to consenting, the participant or beneficiary must be provided with a clear and conspicuous statement indicating the types of documents to which the consent would apply and other information about procedures and obligations on the part of both the plan administrator and the recipient. New plans are expected to incur a one-time start-up cost with regards to the acquisition of materials used to seek and verify consent.

The Department assumes that because significant cost savings can be achieved by limiting distribution expenses, most sponsors of new plans will choose to avail themselves of the opportunity to deliver plan documents electronically, and will therefore develop a procedure for consent and document delivery. As noted above, a plan sponsor that manages several plans is considered likely to develop a single consent that will satisfy the requirements for all plans. Data from the 2017 Form 5500, the most recent year data are available, indicate that there were approximately 48,108 new plan sponsors

that year. We have taken the conservative view that each of these sponsors will seek to use the consent materials.

Although the Department believes that a number of plans will hire service providers to comply with these information collection requirements, the Department has decided, for purposes of this burden estimate, to assume that all affected plans will use their own resources to do so. The burden of preparation of the notices, therefore, is reported solely as an hour burden.⁷ Each sponsor is expected to use on average ten minutes of in-house legal professional time to develop consent materials. Thus the hour burden for the preparation of disclosure materials for this regulation is approximately 8,018 hours. The Department assumes an hourly wage rate of approximately \$138.41 for a legal professional.⁸ Thus, the equivalent cost of the development hour burden is approximately \$1,109,771.

Assuming that all of the 48,108 respondents will require fifteen minutes for photocopying and organizing the materials, 12,207 burden hours will be required for distributing the consent materials. Assuming an hourly rate of \$55.14 per hour for clerical time, the equivalent cost of the distribution hour burden is approximately \$663,169.

Overall, the total hour burden for the existing ICR is approximately 20,045 hours with an equivalent cost of approximately \$1,772,940.

2019 Electronic Disclosure Final Regulation

While the Department expects the final rule to reduce costs associated with distributing covered disclosures by eliminating material, printing, and mailing costs, these cost reductions are partly offset by costs incurred by administrators to meet the new safe harbor's requirements to: (1) furnish a notice of internet availability to covered individuals ((paragraph (d) of the final); (2) ensure the existence of a website at which a covered individual is able to access, free of charge, one or more covered documents (paragraph (e) of the final); and (3) furnish an initial notification of default electronic delivery and right to opt out in paper to each person, before he or she becomes a covered individual (paragraph (g) of the proposal).

⁷ This method has been chosen for several reasons. First, the Department does not presently have a reliable source of information for an estimate of how many plans may hire service providers for this purpose. Second, the Department does not have adequate information on which to base an estimate of the cost to plans of purchasing these services, particularly since the Department has reason to believe that the pricing of such services will be based on competitive factors and bundling with other related services. Finally, the Department believes that this method will provide a more accurate estimate of the paperwork burden by relying solely on the Department's estimate of the time necessary to create and distribute the disclosures and eliminating the artificial and arbitrary distinction between tasks performed by the respondents and tasks performed by a service provider. Translation of the total hour burden into dollars, with appropriate allocation between professional and clerical time, provides a reliable cost comparison.

⁸ For more information regarding how the Department estimates labor costs, see <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebbsa-opr-ria-and-pra-burden-calculations-june-2019.pdf>

The Department assumes that plans will incur one-time start-up costs to develop systems and notices required by the rule, which would include time for the plan's (or the plan service provider's) legal counsel to prepare and review the notices to ensure compliance with the final regulatory requirements. While the Department also assumes that the cost incurred by plans to distribute notices of internet availability would be negligible because they could be distributed electronically, the initial notification of default electronic delivery and right to opt out would impose material, printing, and postage costs on administrators, because they would be required to be furnished to covered individuals in a non-electronic format.

Initial Notice

The initial notification and right to opt out is a one-time transitional notice that informs covered individuals who are existing employees of changes in default delivery system to e-delivery.⁹ Administrators are required to furnish this notice in paper form to each person, prior to such person becoming a covered individual, informing them that some or all covered documents will be furnished electronically, that they have the right to request paper copies of some or all of the covered documents or to opt out of electronic delivery altogether, and of the procedures for exercising such rights. For transition purposes, the final rule would require an administrator using the safe harbor to send this notification to all existing employees before any or all of them can become a "covered individual." Thereafter, an administrator must send this notification to all new employees and beneficiaries receiving benefits. To minimize any unnecessary confusion and ensure smooth transitions from covered individuals' perspectives, the rule requires this notification to be sent to employees who have affirmatively consented to receiving electronic disclosures under the existing safe harbor if an administrator wishes to transition to providing electronic disclosures to such participants under the finalized safe harbor.

Retirement plans will incur one-time costs to develop and design an initial notice. The final rule clearly describes the specific information required to be included in this notice; therefore, the Department expects the costs to develop and design the notice would be modest, approximately 295,636 hours with an equivalent cost of \$40,920,275 on aggregate assuming all retirement plans decide to rely on this final rule.¹⁰ The burden to prepare the notices for distribution is 11,825 hours with an equivalent cost of \$758,148.¹¹

The Department estimates that approximately 60 million covered individuals in retirement plans received covered disclosures by mail in 2017; and therefore, could

⁹ For newly hired employees, it is assumed that they will receive the Initial Notice and Right to Opt-out in their new employee packets, as it will be incorporated into a part of new employee intake process, thus employers incur only negligible costs in subsequent years.

¹⁰ The Department estimates there were over 709,527 retirement plans in 2017. The Department estimates that attorneys will take approximately 296,000 hours to develop and review the Initial Notice. Assuming the hourly rate for in-house attorneys was \$138.41 in 2017, the costs of developing the Initial Notice are estimated approximately \$41 million (295,636 hours * \$138.41).

¹¹ 709,527 plans * 1 minutes per plan= 11,825 hours. 11,825 hours * \$64.11 for a mailing clerk= \$758,148.

potentially receive the initial notice from their plan administrators. Assuming a one-page notice is mailed to these 60 million covered individuals, the Department estimates the hour burden to print the initial notice will be approximately 998,440 hours with an equivalent cost of \$64,011,534.¹²

Therefore, the Department estimates that retirement plans would incur a total burden for this requirement of approximately 1,305,902 hours with an equivalent cost of \$105,689,957 one-time costs to develop and prepare the initial notice. These are one-time transitional costs that would not be incurred in subsequent years.¹³

Notice of Internet Availability

Plan Administrators are generally required to send a notice of internet availability each time a retirement plan disclosure is posted to the internet website. To prevent “email overload,” paragraph (k) of the proposal allows a notice of internet availability to incorporate or combine other notices of internet availability in limited circumstances. A notice of internet availability must include, among other things, a brief description of the document being posted online, a website address where the document is posted, and instructions for requesting a free paper copy or electing paper delivery in the future. Plans will require a one-time burden in the first year 177,382 hours with an equivalent costs of \$24,552,165 to develop the notice.¹⁴ Plan administrators will also incur in every year the burden of preparing the notice of 259,747 hours with an equivalent cost of \$14,323,054.¹⁵

Plan administrators also would incur costs to remedy failed delivery of internet availability notices. The Department assumes that before mailing out covered documents to the recipients of an undelivered notice of internet availability, plan administrators would choose the option of resolving issues that are relatively easier to fix such as attempting to redeliver bounced emails or reaching out to covered employees to obtain updated electronic addresses. However, it may be difficult for plan administrators to remedy failed delivery for certain covered individuals, such as those who have separated from service. Plan administrators consequently are likely to treat at least some such covered individuals as opting out of electronic delivery. Although the Department acknowledges that plan administrators would spend time attempting to correct failed delivery as provided in paragraph (f)(4) of the proposal, it does not have sufficient data to quantify associated costs. The Department, however, assumes that plan administrators

12 This estimate is based on \$14 million preparation costs incorporating an in-house clerk’s time to prepare for mailing (approximately 330 hours * \$64.11 hourly rate of mailing clerk).

13 For newly hired employees, the Department assumes that they will receive the Initial Notice in their new employee packets, as it will be incorporated into a part of new employee intake process, thus employers incur only negligible costs in subsequent years.

14 709,527 plans * 15 minutes per plan= 177,382 hours. 177,382 hours * \$138.41 for a legal professional = \$24,552,165.

15 (Plans without a website—on average email twice a year: 25,984 plans * 10 minutes per plan * \$55.14 for a clerical worker= \$238,803) + (Plans already have a website- on average post twice a year: 117,574 plans * 10 minutes per plan * \$55.14 for a clerical worker= \$1,080,552) + (Plans already have a website- on average post five times a year: 595,969 hours * 25 minutes * 55.14 for a clerical worker = \$13,003,699) = \$14,323,054

always would select the least costly and most efficient option. Therefore, if locating covered individuals and obtaining updated electronic addresses were too burdensome, the Department assumes that the plans would furnish covered documents identified in the undelivered notice of internet availability to those covered individuals by mail. The annual burden to prepare a list of bounced emails and include them in database for mailing would be 389,620 hours with an equivalent cost of \$21,484,581.¹⁶ Actual costs for delivery are included in the ICRs for the respective notices.

Therefore, the Department estimates that retirement plans would incur a total burden for this requirement of approximately 826,749 hours with an equivalent cost of \$60,359,851 in the first year and approximately 649,367 hours with an equivalent cost of \$35,807,636 in the subsequent years.

Website

Paragraph (e) of the final rule would require administrators to ensure the existence of a website at which plan covered individuals can access covered disclosures free of charge. Based on these comments and study, the Department estimates that approximately 26,000 plans currently do not have, directly or indirectly through a plan service provider, a website where they can post the covered documents.¹⁷

Although approximately 26,000 plans do not currently have a website, the Department expects the impact of paragraph (e) of the final rule to be minimal, in part, because paragraph (k) of the final rule allows plans to furnish covered documents by email. The direct delivery option will likely ease the burden on small plans, as they are less likely to have, or have access to, a website. The Department estimates that about 25,984 plans do not have websites and will incur a burden of 0 hours with an equivalent cost of \$0 in the first year to develop a website. All plans will incur a burden to post disclosures on the website. This annual burden is 255,416 hours with an equivalent cost of \$28,182,611.¹⁸

This requirement results in an hour burden of 255,416 hours with an equivalent cost of \$28,182,611 in the first year and 255,416 hours in subsequent years with an equivalent cost of \$28,182,611.

16 (Plans without a website—on average email twice a year: 25,984 plans * 15 minutes per plan * \$55.14 for a clerical worker= \$358,205) + (Plans already have a website- on average post twice a year: 117,574 plans * 15 minutes per plan * \$55.14 for a clerical worker = \$1,620,828) + (Plans already have a website- on average post five times a year: 595,969 hours * 37.5 minutes * 55.14 for a clerical worker = \$19,505,549) = \$21,484,581

17 According to Private Pension Plan Bulletin 2017, there were over 143,000 defined benefit plans and nonparticipant-directed defined contribution plans. Applying an assumption of 18 percent, the Department estimates approximately 25,984 (143,558 * 0.181) plans currently lack websites. This estimate may understate the total number of plans that lack websites because the PSCA study examined profit-sharing plans and 401(k) plans. As discussed, most 401(k) plans are expected to have their own websites. Therefore, the fraction of defined benefit plans and nonparticipant-directed DC plans that lack websites would be likely higher than 18 percent.

18 (Plans already have a website- on average post twice a year: 117,574 plans * 10 minutes per plan * \$110.34 for a computer programmer = \$2,162,186) + (Plans already have a website- on average post five times a year: 565,969 hours * 25 minutes * 110.34 for a computer programmer = \$26,020,425) = \$28,182,425

In total the final rule is expected to increase the burden 2,388,066 hours with an equivalent cost of \$194,232,368 in the first year, and 1,127,210 hours with an equivalent cost of \$76,255,409 in subsequent years.¹⁹

Total Cost of Existing and Final Rule.

In total, the ICR is estimated to have a burden of 2,408,111 hours with an equivalent cost of \$196,005,309 in the first year, and 1,147,255 hours with an equivalent cost of \$78,028,350 in subsequent years. The three-year average burden is 1,567,541 hours with an equivalent cost of \$117,354,003.

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 Department assumes that all of the participants and beneficiaries will receive paper consent materials either on their job site or as an insertion into other material received through the mail, thus there are no mailing costs associated with delivery of the opt-out notifications. The per page photocopy costs are assumed to be five cents. Form 5500 data from 2014 indicate that there are 4,454,703 participants in new plans, who will receive paper opt-out notifications. The associated cost burden for generating paper copies of the opt-out notification to participants under the regulation is estimated to be approximately \$222,735 in the first year.

2019 Electronic Disclosure Final Regulation

Initial Notice

The Department estimates that approximately 60 million covered individuals received covered disclosures by mail in 2016; and therefore, could potentially receive the initial notice from their plan administrators. Assuming a one-page notice is mailed to these 60 million participants, the Department estimates the costs of mailing the initial notice will be approximately \$36 million.²⁰ The Department assumes that these are one-time transitional costs that would not be incurred in subsequent years.²¹

Notice of Internet Availability

¹⁹ The three-year average hour burden was calculated in the following manner: $(\$196,005,309 + \$78,028,350 + \$72,028,350) / 3 = \$117,354,003$. The three-year average for the equivalent cost of the hour burden was calculated in the following manner: $(2,408,111 + 1,147,255 + 1,147,255) / 3 = 1,567,541$ hours.

²⁰ This estimate is based on \$36 million mailing costs (approximately 60 million notices * \$0.60)

²¹ For newly hired employees, the Department assumes that they will receive the Initial Notice in their new employee packets, as it will be incorporated into a part of new employee intake process, thus employers incur only negligible costs in subsequent years.

Paragraph (f)(4) of the proposal requires plan administrators to take certain actions if they are alerted that a covered individual's electronic address has become invalid or inoperable, such as if a notice of internet availability sent to that address is returned as undeliverable. In such circumstances, the administrator must (1) promptly take reasonable steps to cure the problem (for example, by furnishing a notice of internet availability to the covered individual's secondary electronic address that is valid and operable, if available, or obtaining a new valid and operable electronic address for the covered individual), or (2) treat the covered individual as if he or she made an election to opt out of electronic disclosure under paragraph (f)(2) of the proposal.

To satisfy this requirement, plan administrators would incur costs associated with monitoring for invalid or inoperable electronic addresses. The Department believes, however, that most plan administrators already have such features built into their electronic delivery systems. The Department assumes that approximately 26,000 plans currently do not have such features built in to their systems, and thus, would incur costs to purchased software to allow them to monitor whether electronic notices are delivered, bounced back, opened, and clicked through.²² The Department estimates these plan administrators would incur approximately \$8.8 million in aggregate annual costs to purchase such software.²³

Website

Although the Department estimates that about 26,000 plans do not have websites, the Department expects the impact of paragraph (e) of the final rule to be minimal, in part, because paragraph (k) of the final rule allows plans to furnish covered documents by email.

The total cost burden for the final rule in the first year would be \$44,736,825 and in the subsequent years the costs would be \$9,460,266 a year.

Total Cost of Existing and Final Rules.

The total cost burden for the ICR in the first year would be \$44,959,560 and \$9,683,001 in subsequent years with a 3-year average of \$21,441,854.²⁴

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*

²² The Department understands that software is commercially available to monitor emails to produce a list of email addresses that have bounced back with the owners' name, export the list into different formats, and, in certain circumstances, remove invalid email addresses from the list. Such software also generates and reports relevant statistics such as bounce rate, open rate and click-through rate. Some software has the capability to automatically re-attempt delivery depending on the reasons of failed delivery.

²³ The Department gathered pricing information for five commercial software packages that ranged from \$10 per month to \$320 per month, depending on the volume and sophistication of features available. Taking the average of basic level price of these five products, the Department assumes that it would cost \$28.20 per month (\$338.40 per year) to subscribe. Assuming 25,984 plans would purchase this type of product, the Department estimates that the aggregate costs will total \$8.8 million (25,984 plans * \$338.40).

²⁴ The three-year average cost burden was calculated in the following manner: (\$44,959,560 + 9,683,001 + 9,683,001) / 3 = \$21,441,854.

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.

There is no cost to the Federal government associated with this information collection.

15. *Explain the reasons for any program changes or adjustments reporting in Items 13 or 14*

In accordance with Executive Order 13847, the Department finalized a new safe harbor for the use of electronic media by administrators of retirement plans covered by ERISA. This amendment enables plan administrators to furnish covered documents to covered individuals by means of electronic delivery if they have electronic addresses and if they do not opt out of electronic delivery. Cost increases reflect the creation a website by some plans and the creation and distribution of notices to notify participants of the changes. This rule creates cost savings by increasing the number of electronically delivered documents, thereby reducing printing, mailing, and postage costs. This cost savings is reflected in the lower estimated costs for materials and postage reflected in Item 13 of documents covered under the related ICRs.

The requirement for retirement plan administrators to furnish to participants and beneficiaries with a notice of internet availability of these disclosures increases the costs of this ICR.

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 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 Submission."*

Not applicable.

B. Collections of Information Employing Statistical Methods

Not applicable.