



Employee Benefits Security Administration

Agency Information Collection Activities; Request for Public Comment

AGENCY: Employee Benefits Security Administration (EBSA), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act, provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at [reginfo.gov](http://www.reginfo.gov) (<http://www.reginfo.gov/public/do/PRAMain>).

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: James Butikofer, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N-5718, Washington, DC 20210, or ebsa.opr@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Current Actions

This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transaction exemptions described below. This action is not related to any pending

rulemakings and the Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Retirement Income Security Act Section 408(b)(2) Regulation.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0133.

Affected Public: Private sector, Business or other for profits.

Respondents: 56,891.

Responses: 1,643,991.

Estimated Total Burden Hours: 1,134,055.

Estimated Total Burden Cost (Operating and Maintenance): \$258,506.

Description:

The prohibited transaction described in section 406(a)(1)(C) of ERISA generally prohibits the furnishing of goods, services, or facilities between a plan and a party in interest to the plan. Because ERISA defines any person furnishing services to the plan as a “party in interest” to the plan, a service relationship between a plan and a service provider would constitute a prohibited transaction under section 406(a)(1)(C) in the absence of relief. Section 408(b)(2) of ERISA provides relief, however, for service contracts or arrangements if the contract or arrangement is “reasonable,” if the services are necessary for the establishment or operation of the plan, and if no more than “reasonable” compensation is paid for the services. The Department’s final rule under ERISA section 408(b)(2) (29 CFR 2550.408b-2) requires reasonable contracts or arrangements between employee pension benefit plans and certain providers of services to such plans include specified information to assist plan fiduciaries 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.

The Department also issued a class prohibited transaction exemption as part of the final rule. The class exemption grants plan fiduciaries relief from liability for a prohibited transaction resulting from the service provider's failure to comply with the regulation's disclosure requirements. The Department recognizes that a plan fiduciary may on occasion *unknowingly* enter into a contract or arrangement that does not meet the requirements of the regulation for relief under ERISA section 408(b)(2), in the reasonable belief that the service provider has divulged the requisite information. If the requirements of the rule are not satisfied, a prohibited transaction occurs for both the service provider and the plan fiduciary, but for the availability of the class exemption.

The Department has received approval from OMB for this ICR under OMB Control No. 1210-0133. The current approval is scheduled to expire on August 31, 2024.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Mental Health Parity and Addiction Equity Act of 2008 Notices.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0138.

Affected Public: Individuals or households, private sector, not-for-profit institutions, businesses or other for-profits.

Respondents: 1,323,153.

Responses: 1,323,153.

Estimated Total Burden Hours: 941,555.

Estimated Total Burden Cost (Operating and Maintenance): \$1,091,047.

Description:

The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) was enacted on October 3, 2008 as sections 511 and 512 of the Tax

Extenders and Alternative Minimum Tax Relief Act of 2008 (division C of Pub. L. 110-343). MHPAEA amends the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act (PHS Act), and the Internal Revenue Code of 1986 (the Code). In 1996, Congress enacted the Mental Health Parity Act of 1996, which required parity in aggregate lifetime and annual dollar limits for mental health (MH) benefits and medical/surgical benefits, and codified those provisions in section 712 of ERISA, section 2705 of the PHS Act, and section 9812 of the Code. The changes made by MHPAEA are codified in these same sections and include provisions to apply the mental health parity requirements to substance use disorder (SUD) benefits and impose additional requirements for financial requirements and treatment limitations for group health plans and health insurance coverage offered in connection with a group health plan. MHPAEA does not apply to small employers that have between two and 50 employees.

MHPAEA and the final regulations (29 CFR 2590.712(d)) require plan administrators to provide two disclosures regarding MH/SUD benefits -- one providing criteria for medical necessity determinations (medical necessity disclosure) and the other providing the reason for denial of claims reimbursement (claims denial disclosure).

Section 203 of title II of division BB of the Consolidated Appropriations Act (CAA, 2021) was enacted on December 27, 2020 and amended MHPAEA, in part, by requiring group health plans and health insurance issuers offering group or individual health insurance coverage that offer both medical/surgical benefits and MH/SUD benefits and that impose NQTLs on MH/SUD benefits to perform and document their comparative analyses of the design and application of NQTLs.

The CAA, 2021 also provides that the Departments of the Treasury, Labor, and Health and Human Services (collectively, the Departments) shall request that a group health plan or issuer submit the comparative analyses for plans that involve potential violations of MHPAEA or complaints regarding noncompliance with MHPAEA that concern NQTLs, and any other

instances in which the Departments determine appropriate. The CAA, 2021 further requires the Departments, after review of the comparative analyses, to share information on findings of compliance and noncompliance with the State where the plan is located or the State where the issuer is licensed to do business.

The Department has received approval from OMB for this ICR under OMB Control No. 1210-0138. The current approval is scheduled to expire on October 31, 2024.¹

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Pension Benefit Statement.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0166.

Affected Public: Private sector, businesses or other for-profits, not-for-profit institutions.

Respondents: 721,876.

Responses: 410,933,333.

Estimated Total Burden Hours: 19,675.

Estimated Total Burden Cost (Operating and Maintenance): \$498,958,393.

Description:

Section 105(a) of the Employee Retirement Income Security Act (ERISA) requires administrators of defined contribution plans and defined benefit plans to provide periodic pension benefit statements to participants and certain beneficiaries. If a defined contribution plan permits participants and beneficiaries to direct their own investments, benefit statements must be provided at least once each quarter. If the defined contribution plan does not permit participants and beneficiaries to direct their own investments, benefit statements must be provided at least once each year. In the case of defined benefit plans, benefit statements generally must be

¹ This request for extension of the OMB approval for ICR is not related to finalizing the proposed rules published on August 3, 2023 at 88 FR 51552.

provided at least once every three years. Section 105(a)(2)(A)(i)(I) requires a benefit statement to indicate the participant's or beneficiary's "total benefits accrued."

On December 20, 2019, ERISA section 105 was amended by section 203 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act). As amended, ERISA section 105 requires, in relevant part, that "a lifetime income disclosure ... be included in only one pension benefit statement provided to participants of defined contribution plans during any one 12-month period." A lifetime income disclosure "shall set forth the lifetime income stream equivalent of the total benefits accrued with respect to the participant or beneficiary." A lifetime income stream equivalent means the amount of monthly payments the participant or beneficiary would receive if the total accrued benefits of such participant or beneficiary were used to provide a single life annuity and a qualified joint and survivor annuity.

The Department has received approval from OMB for this ICR under OMB Control No. 1210-0166. The current approval is scheduled to expire on October 31, 2024.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Retirement Income Security Act Procedure 1976-1; Advisory Opinion Procedure.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0066.

Affected Public: Private sector, Business or other for-profits, Not-for-profit institutions.

Respondents: 18.

Responses: 18.

Estimated Total Burden Hours: 182.

Estimated Total Burden Cost (Operating and Maintenance): \$477,089.

Description:

In 1976, the Department issued ERISA Procedure 76-1, the Procedure for ERISA Advisory Opinions (ERISA Procedure), in order to establish a public process for requesting

guidance from the Employee Benefits Security Administration (EBSA) on the application of ERISA to particular circumstances. The ERISA Procedure sets forth specific administrative procedures for requesting either an advisory opinion or an information letter and describes the types of questions that may be submitted.

As part of the ERISA Procedure, requesters are instructed to provide information to EBSA concerning the circumstances governing their request. Section 6 of ERISA Procedure 76-1 lists the information that must be supplied by the party requesting an advisory opinion. This information includes identifying information (name, type of plan, EIN Number, etc.), a detailed description of the act(s) or transaction(s) with respect to which an advisory opinion is being requested, a discussion of the issues presented by the act(s) or transaction(s), a statement of the party's views concerning the issues to be resolved and the legal basis for such views. The requesting party must also include copies of the relevant documents and may also request a conference with EBSA in the event that EBSA is considering issuing an adverse opinion.

The Department has received approval from OMB for this ICR under OMB Control No. 1210-0066. The current approval is scheduled to expire on November 30, 2024.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Retirement Income Security Act of 1974 Technical Release 1991-1.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0084.

Affected Public: Private sector, business or other for-profits.

Respondents: 6.

Responses: 18,419.

Estimated Total Burden Hours: 623.

Estimated Total Burden Cost (Operating and Maintenance): \$839.

Description:

Section 101(e) of ERISA establishes notice requirements that must be satisfied before an employer may transfer excess assets from a defined benefit pension plan to a retiree health benefit account, as permitted under the conditions set forth in section 420 of the Internal Revenue Code of 1986, as amended (the Code).

The notice requirements of ERISA section 101(e) are two-fold. First, subsection (e)(1) requires plan administrators to provide advance written notification of such transfers to participants and beneficiaries. Second, subsection (e)(2)(A) requires employers to provide advance written notification of such transfers to the Secretaries of Labor and the Treasury, the plan administrator, and each employee organization representing participants in the plan. Both notices must be given at least 60 days before the transfer date. The two subsections prescribe the information to be included in each type of notice and further give the Secretary of Labor the authority to prescribe how notice to participants and beneficiaries must be given, and how any additional reporting requirements are deemed necessary.

On May 8, 1991, the Department published ERISA Technical Release 91-1, to provide guidance on how to satisfy the notice requirements prescribed by ERISA section 101(e). The Technical Release made two changes in the statutory requirements for the second type of notice. First, it required the notice to include a filing date and the intended asset transfer date. Second, it simplified the statutory filing requirements by providing that filing with the Department of Labor would be deemed sufficient notice to both the Department and the Department of the Treasury as required under the statute.

The Department has received approval from OMB for this ICR under OMB Control No. 1210-0084. The current approval is scheduled to expire on November 30, 2024.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Disclosures by Insurers to General Account Policyholders.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0114.

Affected Public: Private sector, business or other for-profits.

Respondents: 353.

Responses: 26,981.

Estimated Total Burden Hours: 114,670.

Estimated Total Burden Cost (Operating and Maintenance): \$10,792.

Description:

Section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104–188) (SBJPA) amended ERISA by adding section 401(c). This section requires the Department to promulgate a regulation providing guidance, applicable only to insurance policies issued on or before December 31, 1998, to or for the benefit of employee benefit plans, to clarify the extent to which assets held in an insurer’s general account under such contracts are “plan assets” within the meaning of ERISA, because the policies are not “guaranteed benefit policies” within the meaning of section 401(b) of ERISA. SBJPA further directed the Department to set standards for how insurers should manage the specified insurance policies (called Transition Policies). Pursuant to the authority and direction given under SBJPA, the Department promulgated a final rule on January 5, 2000 (65 FR 714) that is codified at 29 CFR 2550.401c–1.

Regulation section 29 CFR 2550.401(c)–1 imposes specific requirements on insurers that are parties to Transition Policies in order to ensure that the fiduciaries acting on behalf of plans have adequate information and understanding of how the Transition Policies work. This information collection requires that an insurer that issues and maintains a Transition Policy to or for the benefit of an employee benefit plan must disclose to the plan fiduciary, initially upon issuance of the policy and on an annual basis, to the extent that the policy is not a guaranteed benefit policy: (1) the methods by which income and expenses of the insurer’s general account are allocated to the policy, the actual annual return to the plan, and other pertinent information; (2) the extent to which alternative arrangements supported by the assets of the insurer’s separate accounts are available; (3) any rights under the policy to transfer funds to a separate account and

the terms governing such right; and (4) the extent to which support by assets of the insurer's separate accounts might pose differing risks to the plan.

The Department has received approval from OMB for this ICR under OMB Control No. 1210-0114. The current approval is scheduled to expire on November 30, 2024.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Registration for EFAST-2 Credentials.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0117.

Affected Public: Private sector, not-for-profit institutions, businesses or other for-profits.

Respondents: 248,985.

Responses: 248,985.

Estimated Total Burden Hours: 82,995.

Estimated Total Burden Cost (Operating and Maintenance): \$0.

Description:

The Employee Retirement Income Security Act of 1974 (ERISA) section 104 requires administrators of employee benefits plans (pension and welfare plans) and employers sponsoring certain fringe benefit plans and other plans of deferred compensation to file returns/reports annually with the Secretary of Labor concerning the financial condition and operation of plans. Reporting requirements are satisfied by filing the Form 5500 in accordance with its instructions and the related regulations. Form 5500 filings are processed under the ERISA Filing Acceptance System 2 (EFAST-2), which is designed to simplify and expedite the receipt and processing of the Form 5500 by relying on Internet-based forms and electronic filing technologies.

In order to file electronically, employee benefit plan Filing authors, Schedule authors, Filing signers, Form 5500 transmitters, and entities developing software to complete and/or transmit the Form 5500 are required to register for EFAST-2 credentials through the EFAST2 website. The information requested for registration includes: Applicant type (Filing Author,

Filing Signer, Schedule Author, Transmitter, or software developer); mailing address; fax number (optional); email address; company name, contact person; and daytime telephone number. Registrants must also provide an answer to a challenge question (“What is your date of birth?” or “Where is your place of birth?”), which enables users to retrieve forgotten credentials. In addition, registrants must accept a Privacy Agreement; PIN Agreement; and, under penalty of perjury, a Signature Agreement.

The Department has received approval from OMB for this ICR under OMB Control No. 1210-0117. The current approval is scheduled to expire on November 30, 2024.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Retirement Income Security Act Blackout Period Notice.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0122.

Affected Public: Private sector, businesses or other for-profits, not-for-profit institutions.

Respondents: 47,250.

Responses: 7,409,220.

Estimated Total Burden Hours: 88,905.

Estimated Total Burden Cost (Operating and Maintenance): \$324,524.

Description:

The Sarbanes-Oxley Act (SOA), enacted on July 30, 2002, amended ERISA to include a blackout period disclosure requirement in subsection 101(i). This information collection requires administrators of individual account pension plans (e.g., a profit sharing plan, 401(k) type plan or money purchase pension plan) to provide at least 30 days advance written notice to the affected participants and beneficiaries in advance of any “blackout period” during which their existing rights to direct or diversify their investments under the plan, or obtain a loan or distribution from the plan will be temporarily suspended. The term “blackout period” is generally defined as any period of more than three consecutive business days during which time the ability of plan

participants and beneficiaries to direct or diversify investments or to obtain loans or distributions is suspended, limited or restricted.

The Department has received approval from OMB for this ICR under OMB Control No. 1210-0122. The current approval is scheduled to expire on November 30, 2024.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Coverage of Certain Preventive Services under the Affordable Care Act—Private Sector.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0150.

Affected Public: Individuals or households, private sector, businesses or other for-profits, not-for-profit institutions.

Respondents: 114.

Responses: 777,363.

Estimated Total Burden Hours: 181.

Estimated Total Burden Cost (Operating and Maintenance): \$194,963.

Description:

The Patient Protection and Affordable Care Act, Public Law 111–148, (the Affordable Care Act) was enacted on March 23, 2010 and amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 on March 30, 2010. The Affordable Care Act added section 2713 to the Public Health Service (PHS) Act and incorporated this provision into ERISA and the Code. The Departments of Health and Human Services, Labor, and Treasury first published interim final rules on July 19, 2010, which implements the requirements of PHS Act section 2713, including the requirement that non-grandfathered group health insurance coverage to provide benefits for certain preventive services without cost sharing, including benefits for certain women’s preventive health services as provided for in comprehensive guidelines supported by the Health Resources and Services Administration. The Departments subsequently

published regulations establishing an exemption for certain religious objectors with respect to the requirement to cover contraception pursuant to comprehensive guidelines supported by HRSA.

In 2013, the Department issued final rules, which clarified the definition of religious employer for purposes of the religious employer exemption and also provided accommodations for health coverage established or maintained or arranged by certain nonprofit religious organizations with religious objections to contraceptive services (eligible organizations). The 2018 final rules expanded the exemption to include additional entities (any kind of employer) and persons that object based on religious beliefs or moral convictions objecting to contraceptive or sterilization coverage, and by making the accommodation compliance process optional for eligible organizations instead of mandatory. The regulations contain the following collections of information. First, each organization seeking to be treated as an eligible organization for the optional accommodation process offered under the regulation must either notify an issuer or third-party administrator using the EBSA Form 700 method of self-certification or provide notice to HHS of its religious or moral objection to coverage of all or a subset of contraceptive services. Second, a health insurance issuer or third-party administrator providing or arranging separate payments for contraceptive services for participants and beneficiaries in insured plans (or student enrollees and covered dependents in student health insurance coverage) of eligible organizations is required to provide a written notice to plan participants and beneficiaries (or student enrollees and covered dependents) informing them of the availability of such payments. The notice must be separate from but, contemporaneous with (to the extent possible) any application materials distributed in connection with enrollment (or re-enrollment) in group or student coverage of the eligible organization in any plan year to which the accommodation is to apply and will be provided annually. To satisfy the notice requirement, issuers may, but are not required to, use the model language set forth in the 2018 final rules or substantially similar language. Third, an eligible organization may also revoke its use of the accommodation process and must provide participants and beneficiaries written notice of such revocation as soon as possible.

The Department has received approval from OMB for this ICR under OMB Control No. 1210-0150. The current approval is scheduled to expire on November 30, 2024.²

Agency: Employee Benefits Security Administration, Department of Labor.

Title: EBSA Participant Assistance Program Customer Survey.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0161.

Affected Public: Individuals or households.

Respondents: 11,200.

Responses: 11,200.

Estimated Total Burden Hours: 1,867.

Estimated Total Burden Cost (Operating and Maintenance): \$0.

Description:

EBSA conducts the surveys to evaluate the Participant Assistance Program (PAP) provided by the benefits advisor staff nationwide to understand how well the Agency is meeting service delivery goals by; (1) assessing EBSA's customers' perception of the services provided by the EBSA benefit advisors, and (2) determining what actions the performance data indicate could enable each regional office to provide the best possible participant assistance service; and (3) establishing a current baseline for EBSA's (Government Performance and Accountability Act GPRA) measurement. EBSA will use the data from the survey to track the agency's progress on accomplishing its GPRA measurement goal.

The PAP Customer Survey collects customer satisfaction data for a sample of private citizens who call into the participant assistance program to ask about their private sector employer provided benefits such as pensions, retirement savings, and health benefits. Three types of callers are queried: (1) those who need benefit claim assistance, (2) those who have a

² This request for extension of the OMB approval for ICR is not related to finalizing the proposed rules published on February 2, 2023 at 88 FR 7236.

valid benefit claim, and (3) those who have an invalid benefit claim will be queried. The results of the survey will be analyzed to provide actionable data that could be used to improve program performance. The study includes data from the EBSA regional offices in Atlanta, Boston, Chicago, Cincinnati, Dallas, Kansas City, Los Angeles, New York, Philadelphia, and San Francisco, as well as the District offices in Miami, Seattle, and Washington.

The Department has received approval from OMB for this ICR under OMB Control No. 1210-0161. The current approval is scheduled to expire on November 30, 2024.

II. Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the information collection; they will also become a matter of public record.

Signed at Washington, DC, this 29th day of January 2024.

Lisa M. Gomez,

Assistant Secretary,

Employee Benefits Security Administration,

U.S. Department of Labor.

[FR Doc. 2024-02176 Filed: 2/2/2024 8:45 am; Publication Date: 2/5/2024]