

(6) The number of requests for records received by the agency and the number of requests the agency processed;

(7) The median number of days taken by the agency to process different types of requests;

(8) The total amount of fees collected by the agency for processing requests;

(9) The average amount of time that the agency estimates as necessary, based

on the past experience of the agency, to comply with different types of requests;

(10) The number of full-time staff of the agency devoted to the processing of requests for records under this section; and

(11) The total amount expended by the agency for processing these requests.

(b) The FOIA Disclosure Officer shall annually, on or before February 1 of each year, prepare and submit to the

Attorney General an annual report covering each of the categories of records to be maintained in accordance with paragraph (a) of this section, for the previous fiscal year. A copy of the report will be available for public inspection and copying at the OSHRC FOIA Reading Room, and a copy will be accessible through OSHRC's Web site at <http://www.oshrc.gov>.

APPENDIX A TO PART 2201.—SCHEDULE OF FEES

Type of fee	Amount of fee
Threshold Amount (Amount below which fees will not be assessed) .....	\$10.
Search and Review Hourly Fees:	
Clerical (GS-9 and below) .....	\$23.
Professional (GS-10 through GS 14) .....	\$46.
Managerial (GS-15 and above) .....	\$76.
Duplication cost per page .....	\$0.25.
Computer printout copying fee .....	\$0.40.
Searches of computerized records .....	Actual cost to the Commission, but shall not exceed \$300 per hour, including machine time and the cost of the operator and clerical personnel.
Certification Fee .....	\$35 per authenticating affidavit or declaration. (Note: Search and review charges may be assessed in accordance with the rates listed above.)

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**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

**29 CFR Part 2520**

**RIN 1210-AB06**

**Annual Reporting and Disclosure**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Proposed rule.

**SUMMARY:** This document contains proposed amendments to Department of Labor (Department) regulations relating to annual reporting and disclosure requirements under Part 1 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA or Act). The proposed amendments contained in this document are necessary to conform the annual reporting and disclosure regulations to proposed revisions to the Form 5500 Annual Return/Report of Employee Benefit Plan forms and instructions. The proposed changes to the Form 5500 and implementing regulatory amendments are intended to facilitate the transition to an electronic filing system, separately proposed at 70 FR 51542 (August 30, 2005), reduce and streamline annual reporting burdens, especially for small businesses, and

update the annual reporting forms to reflect current issues and agency priorities. The regulatory amendments thus would, upon adoption, apply for the reporting year for which the electronic filing requirement is implemented. The proposed regulatory amendments will affect the financial and other information required to be reported and disclosed by employee benefit plans filing the Form 5500 Annual Return/Report of Employee Benefit Plan under Part 1 of Subtitle B of Title I of ERISA.

**DATES:** Written comments must be received by the Department of Labor on or before September 19, 2006.

**ADDRESSES:** Comments should be addressed to the Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attn: Form 5500 Regulation Revisions (RIN 1210-AB06). Comments also may be submitted electronically to [e-ori@dol.gov](mailto:e-ori@dol.gov) or by using the Federal eRulingmaking Portal <http://www.regulations.gov> (follow instructions for submission of comments). EBSA will make all comments available to the public on its Web site at <http://www.dol.gov/ebsa>. The comments also will be available for public inspection at the Public Disclosure Room, N-1513, EBSA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Goodman or Michael Baird, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693-8523 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Under Titles I and IV of ERISA, and the Internal Revenue Code (Code), as amended, pension and other employee benefit plans are generally required to file annual returns/reports concerning, among other things, the financial condition and operations of the plan. Filing the Form 5500 "Annual Return/Report of Employee Benefit Plan," together with any required attachments and schedules (Form 5500 Annual Return/Report) generally satisfies these annual reporting requirements. The Form 5500 Annual Return/Report is the primary source of information concerning the operation, funding, assets, and investments of pension and other employee benefit plans. In addition to being an important disclosure document for plan participants and beneficiaries, the Form 5500 Annual Return/Report is a compliance and research tool for the Department and a source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies.

## B. Discussion of the Proposed Revisions to Part 2520

### 1. Section 2520.103-1

The Department of Labor (Department) annual reporting regulations, including § 2520.103-1, are promulgated under the provisions of ERISA that authorize the creation of limited exemptions and simplified reporting and disclosure for welfare plans under ERISA section 104(a)(3), simplified annual reports under ERISA section 104(a)(2)(A) for pension plans that cover fewer than 100 participants, and alternative methods of compliance for all pension plans under ERISA section 110(a). Various changes are being proposed to the Form 5500 Annual Return/Report and its instructions in a Notice of Proposed Form Revisions published today in the **Federal Register**. To accommodate those form and instruction changes, the regulatory amendments to 29 CFR 2520.103-1 are being proposed to update the references to the annual report to reflect the new structure and components of the Form 5500 Annual Return/Report.

The following subsections outline major changes to the Form 5500. A more comprehensive discussion of the form and instructions changes is in the above-referenced Notice of Proposed Forms Revisions. Facsimiles of the proposed form revisions and proposed form instructions can be viewed on the EBSA's Web site at <http://www.dol.gov/ebsa>.<sup>1</sup> To avoid unnecessary duplication, only a general summary of the form and instruction changes is included in this notice as background for the required cost/benefit and regulatory analysis discussions. For a comprehensive discussion of form and instruction changes, see the Notice of Proposed Forms Revisions published concurrently in today's **Federal Register**.

#### (a) Short Form 5500 (Eligible Small Plan Filers)

A new two-page Form 5500 Annual Return/Report of Employee Benefit Plan—the Form 5500-SF (Short Form 5500)—is being proposed in an effort to streamline the reporting requirements for certain small pension and welfare plans (generally, plans with fewer than 100 participants) that have investment portfolios in which their assets are held by regulated financial institutions and the investments have a readily determinable fair market value as

<sup>1</sup> Paper copies of the proposed form revisions and proposed instructions may be obtained by telephoning 1-866-444-EBSA (3272) (this is a toll-free number).

described in the proposed regulation at § 2520.103-1(c)(2)(iii). A detailed description of the proposed Form 5500-SF and a facsimile of the form is in the Notice of Proposed Forms Revisions being published concurrently in today's **Federal Register**. Substantially all of the information required to be reported by employee benefit plans on the proposed Short Form 5500 currently is included in that information required to be reported as part of the Form 5500 Annual Return/Report under the simplified reporting options presently available to small plans. The proposal would not eliminate the existing simplified reporting options for small plans but, rather, would add the Short Form 5500 as another simplified reporting option for eligible small plans.

The Internal Revenue Service (IRS) has advised the Department that, although there are no mandatory electronic filing requirements for the Form 5500 under the Code or the regulations issued thereunder, to ease the burdens on plans that are not subject to Title I of ERISA but that file the Form 5500-EZ to satisfy the annual reporting and filing obligations imposed by the Code, the IRS is proposing to permit certain Form 5500-EZ filers to satisfy the requirement to file the Form 5500-EZ with the IRS by filing the proposed Short Form 5500 electronically through the EFAST processing system. Therefore, under the IRS' proposal, certain Form 5500-EZ filers will be provided both electronic and paper filing options. The electronic option will allow 5500-EZ filers to complete and electronically file with EFAST selected information on the Short Form 5500. 5500-EZ filers will also be able to choose instead to file a Form 5500-EZ on paper with the IRS.<sup>2</sup>

#### (b) Removal of Internal Revenue Service-Only Schedules From the Form 5500 Annual Return/Report

Under the proposal the Form 5500 Annual Return/Report will no longer include any of the schedules from the current Form 5500 Annual Return/Report that are required only for the IRS. This will effectuate the adoption of a wholly electronic filing requirement for the Form 5500 Annual Return/Report given the current limitations on the IRS's authority to mandate electronic filing of certain tax returns.

<sup>2</sup> Under the voluntary electronic filing option, 5500-EZ filers filing an amended return for a plan year must file the amended return electronically using the Form 5500-SF if they initially filed electronically for the plan year and must file with the IRS using the paper Form 5500-EZ if they filed for plan year with the IRS on a paper Form 5500-EZ.

Accordingly, under the proposal, the following schedules will no longer be required to be filed as part of the Form 5500 Annual Return/Report: Schedule E (ESOP Annual Information), Schedule P (Annual Return of Fiduciary of Employee Benefit Trust), and Schedule SSA (Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits). The IRS, however, has advised the Department that it intends that plan administrators, employers, and certain other entities that are subject to filing and reporting requirements under the Code will have to continue to satisfy any applicable requirements in accordance with IRS revenue procedures, regulations, publications, forms, and instructions. In that regard, the IRS has independently eliminated the Schedule P from the 2006 Form 5500 in anticipation of the transition to a wholly electronic filing environment. Further, as described elsewhere in this document, the Department is proposing to move to the Schedule R three questions on ESOP information formerly reported on the Schedule E, and the IRS has advised the Department that it does not anticipate requiring separate filings by ESOPs on the remaining questions from the Schedule E. The IRS is evaluating the information collected on Schedule SSA, and considering whether other existing information collections could be used in place of the Form 5500 Annual Return/Report.

#### (c) Schedule A (Insurance Information)

Schedule A must be attached to the Form 5500 Annual Return/Report for an ERISA-covered plan if any pension or welfare benefits under the plan are provided by, or if the plan holds any investment contracts with, an insurance company or other similar organization. Although the proposal would retain most of the Schedule A data substantially unchanged, the Department is proposing to add a line item to give administrators a specific space on the Schedule A to report the failure by an insurance carrier to provide necessary information. Certain other technical changes are being proposed to the Schedule A form and instructions to improve Schedule A as a tool for disclosure of insurance fees and commissions.

#### (d) Schedule B (Actuarial Information)

Schedule B is required for defined benefit pension plans subject to the minimum funding standards (see Code section 412 and Part 3 of Title I of ERISA). The Pension Benefit Guaranty Corporation (PBGC) proposes adding questions to the Schedule B designed to

obtain a “look-through” allocation of plan investments in certain pooled investment funds for certain very large defined benefit plans. Under the proposal, defined benefits plans with more than 1,000 participants would be required to breakout the percentage of total plan assets held as “stock,” “debt,” “real estate,” and “other.” The underlying investments in master trusts, common or collective trusts, pooled separate accounts, and other pooled investment vehicles, would be required to be broken out and could not be treated merely as “other,” regardless of how they are listed on Schedule H. For investments in “debt,” plans would be required to provide the “Macaulay duration” and break out the percentages held as government debt, investment-grade corporate debt, and high-yield corporate debt.

(e) Schedule C (Service Provider Information)

Schedule C must be attached to the Form 5500 Annual Return/Report filed by large plan filers to report any person who rendered services to the plan that received directly or indirectly \$5,000 or more in compensation from the plan during the plan year, and to report terminated accountants or actuaries. Consistent with recommendations of the ERISA Advisory Council Working Groups and the Government Accountability Office (GAO), EBSA has concluded that more information should be disclosed on the Form 5500 Annual Return/Report regarding plan fees and expenses. See *ERISA Advisory Council Report of the Working Group on Plan Fees and Reporting on Form 5500* (November 10, 2004) (available on the Internet at: <http://www.dol.gov/ebsa/publications>) and the Government Accountability Office (See *Private Pensions: Government Actions Could Improve the Timeliness and Content of Form 5500 Pension Information*, GAO-05-491) (available on the Internet at: <http://www.gao.gov>). EBSA's proposal would continue to limit Schedule C reporting to large plan filers and would retain the \$5,000 reporting threshold, but would revise the Schedule C and accompanying instructions to clarify the requirements regarding reporting of direct and indirect compensation (*i.e.*, money or anything else of value) received during the plan year in connection with services rendered to the plan or the person's position with the plan. Also, a new section would be added requiring that the source and nature of compensation in excess of \$1,000 received from parties other than the plan or the plan sponsor be disclosed for certain key service

providers, including, among others, investment managers, consultants, brokers, and trustees, as well as all other fiduciaries.

(f) Schedule R (Retirement Plan Information)

In light of the proposed removal of the Schedule E (ESOP Annual Information), certain questions from the Schedule E are being incorporated into the Schedule R in order to continue to collect certain information regarding ESOPs as part of the Form 5500 Annual Return/Report. In addition, multiemployer defined benefit pension plans would have to provide a list identifying each employer contributing an annual amount equal to or greater than five percent of all annual contributions to the plan (measured in dollars) and setting forth (1) the name of the contributing employer; (2) employer's employer identification number (EIN); (3) dollar amount contributed; (4) contribution rate; (5) whether the contribution base unit measure was hourly, weekly, unit of product, or other; and (6) expiration date for the collective bargaining agreement pursuant to which contributions are required to be made to the plan.

(g) Technical and Conforming Changes for Forms and Instructions

Various other technical and conforming changes are being proposed as part of the restructuring of the Form 5500 Annual Return/Report. Several of the more significant changes include: (1) Revision of the instructions for the Form 5500 Annual Return/Report and development of instructions for the Short Form 5500 to reflect the new structure of the reports and electronic filing requirements; (2) addition of questions regarding compliance with the Department's blackout notice regulation in 29 CFR 2510.101-3; (3) addition of a compliance question on whether the plan failed to pay benefits when due under the plan; (4) expansion of the use of codes to report plan feature information on pension and welfare benefit plans; (5) elimination of the optional entry of the name and the EIN of the preparer; (6) requiring administrative expenses to be reported separately from other expenses on the Schedule I; (7) addition of a question on whether any minimum funding amount reported for a pension plan will be met by the funding deadline; and (8) adoption of a standard format for use in connection with an independent qualified public accountant (IQPA) rendering an opinion on the supplemental schedule information on

Line 4a of Schedule H and I relating to delinquent participant contributions.

2. Section 2520.104-44

Section 2520.104-44 and the current Form 5500 Annual Return/Report instructions provide for limited reporting for pension plans exclusively using a tax deferred annuity arrangement under Code section 403(b)(1), custodial accounts for regulated investment company stock under Code section 403(b)(7), or a combination of both. Under the proposal, the exemption in § 2520.104-44(b)(3) would be eliminated, with the result that Code section 403(b) pension plans subject to Title I would be treated the same as any other Title I pension plan for purposes of the annual reporting requirements under Title I of ERISA. With the growth in the size and number of Code section 403(b) arrangements, and the advent of Code section 401(k) plans, the Code 403(b) arrangements have become more like Code section 401(k) plans. In this regard, the IRS has undertaken to update certain of its regulations. See 69 FR 67075, 67076 (November 16, 2004). For those section 403(b) plans that are subject to Title I of ERISA, the Department has detected violations in a high percentage of its investigations of Code section 403(b) plans. The predominant issue has been improper handling of employee contributions. The Department believes that these developments warrant amending the annual reporting requirements to put Code section 403(b) plans on par with other ERISA-covered pension plans. Small Code section 403(b) plans generally would be 100 percent invested in eligible assets for purposes of filing the proposed Short Form 5500.

3. Section 2520.104-46

In accordance with the Department's authority under section 104(a)(2)(A) and 104(a)(3) of ERISA, the Department has adopted, at 29 CFR 2520.104-41, simplified annual reporting requirements for pension and welfare benefit plans with fewer than 100 participants. In addition, the Department, at 29 CFR 2520.104-46, has prescribed for such small plans a waiver from the requirements of section 103(a)(3)(A) to engage an IQPA and to include the opinion of the accountant as part of the plan's annual report. The waiver of the IQPA requirements for pension plans was conditioned, among other requirements, on enhanced disclosure in the Summary Annual Report (SAR) provided to participants and beneficiaries. In that regard, the Department prepared a model notice

that plans could use to satisfy the enhanced SAR disclosure conditions. That model notice has been available at the EBSA's Web site at <http://www.dol.gov/ebsa>. In order to provide plan administrators with additional access to the model notice and facilitate compliance with the audit waiver and Short Form 5500 eligibility conditions, the Department is proposing to add the model notice as an appendix to § 2520.104-46.

#### 4. Section 2520.104b-10

Section 104(b)(3) of ERISA provides in part that, each year, administrators must furnish to participants and beneficiaries receiving benefits under a plan materials that fairly summarize the plan's annual report. Section 2520.104b-10 sets forth the requirements for the SAR and prescribes formats for such reports. The amendments being proposed do not include any change to the SAR requirements. However, in order to facilitate compliance with the SAR requirement for Short Form 5500 filers, the Department is updating its cross-reference guide to correspond to the line items of the SAR to the relevant line items on the Short Form 5500. The cross-reference guide, as before, would continue to be an appendix to § 2520.104b-10.

#### C. Findings on the Revised Form 5500 Annual Return/Report (including Short Form 5500) as a Limited Exemption and Alternative Method of Compliance

Section 104(a)(2)(A) of the Act authorizes the Secretary of Labor (Secretary) to prescribe by regulation simplified reporting for pension plans that cover fewer than 100 participants. Section 104(a)(3) authorizes the Secretary to exempt any welfare plan from all or part of the reporting and disclosure requirements of Title I of ERISA or to provide simplified reporting and disclosure if the Secretary finds that such requirements are inappropriate as applied to such plans. Section 110 permits the Secretary to prescribe for pension plans alternative methods of complying with any of the reporting and disclosure requirements if the Secretary finds that: (1) The use of the alternative method is consistent with the purposes of Title I of ERISA, provides adequate disclosure to plan participants and beneficiaries, and provides adequate reporting to the Secretary; (2) application of the statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) the application of the statutory reporting

and disclosure requirements would be adverse to the interests of plan participants in the aggregate.

For purposes of Title I of ERISA, the filing of a completed Form 5500 Return/Report, including the filing of the proposed Short Form 5500, in accordance with the instructions and related regulations, generally would constitute compliance with the limited exemption and alternative method of compliance in 29 CFR 2520.103-1(b). The findings required under ERISA sections 104(a)(3) and 110 relating to the use of the proposed revised Form 5500 Annual Return/Report, including the proposed Short Form 5500, as alternative methods of compliance, simplified report, and limited exemption from the reporting and disclosure requirements of part 1 of Title I of ERISA are set forth below.

In proposing revisions to the Form 5500 Annual Return/Report and the amendments in this proposed rulemaking, the Department has attempted to balance the needs of participants, beneficiaries, and of the Department to obtain information necessary to protect ERISA rights and interests with the needs of administrators to minimize costs attendant with the reporting of information to the federal government. The Department makes the following findings under sections 104(a)(3) and 110 of the Act with regard to the use of the revised Form 5500 Annual Return/Report as a simplified report, alternative method of compliance, and limited exemption pursuant to 29 CFR 2520.103-1(b).

The use of the proposed revised Form 5500 Annual Return/Report, including the proposed Short Form 5500, is consistent with the purposes of Title I of ERISA and provides adequate disclosure to participants and beneficiaries and adequate reporting to the Secretary. While the information that would be required to be reported on or in connection with the revised Form 5500 Annual Return/Report and the proposed Short Form 5500 deviates, as before, in some respects, from that delineated in section 103 of the Act, the information essential to ensuring adequate disclosure and reporting under Title I is required to be included on or as part of the Form 5500 Annual Return/Report, as proposed to be revised, and the proposed Short Form 5500.

The use of Form 5500 Annual Return/Report, as revised, or the proposed Short Form 5500 will relieve plans subject to the annual reporting requirements from increased costs and unreasonable administrative burdens by providing a standardized format that

facilitates reporting, eliminates duplicative reporting requirements, and simplifies the content of the annual report in general. The Form 5500 Annual Return/Report, under the proposed revision, including the proposed Short Form, is intended to further reduce the administrative burdens and costs attributable to compliance with the annual reporting requirements.

Taking into account the above, the Department has determined that application of the statutory annual reporting and disclosure requirements without the availability of the Form 5500 Annual Return/Report, including the proposed Short Form 5500, would be adverse to the interests of participants in the aggregate. The proposed revised Form 5500 Annual Return/Report provides for the reporting and disclosure of basic financial and other plan information described in section 103 of ERISA in a uniform, efficient, and understandable manner, thereby facilitating the disclosure of such information to plan participants and beneficiaries.

Finally, the Department has determined under section 104(a)(3) of ERISA that a strict application of the statutory reporting requirements, without taking into account the proposed revisions to the Form 5500 Annual Return/Report and the proposed Short Form 5500, would be inappropriate in the context of welfare plans for the same reasons discussed above (i.e., the streamlined form reduces filing burdens without impairing enforcement, research, and policy needs, while at the same time providing adequate disclosure to participants and beneficiaries).

#### D. Regulatory Impact Analysis

##### *Executive Order 12866 Statement*

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of Executive Order 12866, the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering

with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this regulatory action will have an annual effect on the economy of more than \$100 million. Therefore, this action is "economically significant" and subject to OMB review under section 3(f)(4) of Executive Order 12866. The Department accordingly has undertaken to assess the costs and benefits of this regulatory action in satisfaction of the applicable requirements of the Executive Order.

In accordance with OMB Circular A-4 (available at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>), Table 1 below depicts an accounting statement showing the net annual cost reduction associated with the provisions of this proposed rule. The Department believes that some employee benefit plans will see a decrease in costs and others might see an increase in costs due to this proposed rule. Further information about the amount of increase and decrease in costs for particular plan types is displayed in the cost section later on in this document. On aggregate, the Department estimates a cost reduction of up to \$174 million in the first year.

TABLE 1.—ACCOUNTING STATEMENT: ESTIMATED COST REDUCTION FROM THE CURRENT REPORTING REQUIREMENTS TO THE PROPOSED 2008 REPORTING REQUIREMENTS

[In millions]

Category	Net cost reduction
Annualized Monetized Benefit ..	\$174

Need for Regulatory Action

The annual reporting regulations for which amendments are being proposed provide specific limited exceptions, for certain types of welfare benefit plans, from the statutory reporting requirements; simplified reporting and disclosure requirements for other types of small plans; and an alternative method of compliance in general for all pension plans. In providing these special rules, the Department and the other Agencies intend to reduce the overall burden of the statutory reporting

requirements without sacrificing the quality of the information collected.

As described in the preamble to the Department's proposal to require electronic filing of the Form 5500 (70 FR 51542) (E-Filing Proposal), the Department is in the process of creating a fully electronic filing system to receive the annual reports filed by employee benefit plans. In addition, as noted above, the Department has received reports from the GAO and the ERISA Advisory Council that suggest the need for some substantive changes to the annual reporting forms and the reporting regulations. The Department, in coordination with the IRS, and the PBGC (Agencies), also conducted a thorough review of the content requirements for the Form 5500. The Agencies believe the proposed regulatory and form changes, in conjunction with adoption of the electronic filing system, will substantially reduce plan administrators' reporting compliance burdens and also enhance the utility and accessibility of reported information to the government, participants and beneficiaries, and others.

The Form 5500 Annual Return/Report serves as the primary source of information concerning the operation, funding, assets, and investments of pension and other employee benefit plans. The Form 5500 Annual Return/Report is an important disclosure document for participants and beneficiaries, an enforcement and research tool for the Department, and a source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies. The Department in this proposal has attempted to balance the interests of participants, beneficiaries, and the Department in the protection of ERISA rights, as well as the public's interest in the availability of information on benefit plans, with plan administrators' and sponsors' interest in minimizing costs attendant with the reporting of information to the federal government. The Department believes that the proposed regulations' benefits justify the costs. The basis for this conclusion is explained below.

As stated in this preamble, the Department has determined that the use of the revised Form 5500 Annual Return/Report, including the proposed new Short Form 5500, would relieve plans subject to the annual reporting requirements from increased costs and administrative burdens by providing a standardized format that facilitates reporting, eliminates duplicative

reporting requirements, and simplifies the content of the annual report in general.

Moreover, the Department believes that the revisions to the Form 5500 Annual Return/Report implemented by these proposed regulations, as compared to the existing form and schedules, will both reduce the cost of reporting, on aggregate and for a large majority of affected plans, and enhance the protection of ERISA rights.

Regulatory Alternatives

Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives. The Department has concluded that, in connection with its proposal to move to a wholly electronic filing environment for employee benefit plan annual reports, form revisions and implementing regulatory changes should be made to facilitate the transition to an electronic filing system, reduce and streamline annual reporting burdens, especially for small businesses, and update the annual reporting forms to reflect current issues and agency priorities.

In developing the forms revisions and implementing regulatory changes, the Department was informed by recommendations made by GAO and the ERISA Advisory Council and conducted a thorough-going review of the current regulations and the scope of information collected, which included consideration of alternative methods of reaching its goals. The Department's consideration included, for example, different approaches to eligibility for the Short Form 5500, (see discussion in preamble to the Notice of Proposed Forms Revisions under the heading "Short Form 5500 as New Simplified Report for Certain Small Plans"), different approaches to reporting for welfare plans (see *id.* under the heading "F. Other Welfare Plan Issues"), and different approaches to improving the reporting of direct and indirect compensation paid to service providers (see *id.* under the heading "Schedule C: Compensation received by plan service providers"). Similarly, the Notice of Proposed Forms Revision discusses the assessments on how to balance the need for information to help the PBGC evaluate the financial solvency of multiemployer plans and the potential burden on administrators of multiemployer plans (see *id.* under the heading "Schedule R: Contributors to Multiemployer Pension Plans"). Inasmuch as the regulatory amendments contained in this Notice are intended to implement the forms revisions contained in the Notice of Proposed

Forms Revisions, the discussions in the Notice of Proposed Forms Revisions are directly relevant to the Department's analysis under Executive Order 12866 and should be read as part of the Department's compliance with the requirements of the Executive Order. The Department therefore incorporates those discussions by this reference.

The public is invited to comment specifically on the decision points for the several categories of proposed revisions, and on the adequacy of the models, assumptions, and data developed in order to evaluate regulatory burden. In considering these alternatives, the Department weighted the objective of reduced regulatory burden against the need for adequate reporting and disclosure to insure the protection of plan participants, quantifying impacts where possible. For example:

- *Establishment of a Short Form 5500 for certain small plans:* In considering criteria of eligibility for filing the Short Form 5500 the Department evaluated both less stringent and more stringent criteria. If, for example, the Department had relied solely on the conditions for a waiver of the audit requirements for small plans, the Department believes that as many as 95 percent of small plans (612,000 plans) would meet the Short Form 5500 requirements. Because of concern about the need to limit eligibility to small plans with easy to value investment portfolios, however, the Department added the requirements of small plans that invest in secure assets that are held or issued by regulated financial institutions and that have a fair market value that is easily determined. In so doing, the Department estimates that approximately 90 percent of small plans (571,000 plans) that formerly were able to file under the simplified requirements would qualify as eligible to file the Short Form 5500. An additional 9,000 small Code section 403(b) plans would also qualify.

- *Addition of certain asset allocation and duration information to Schedule B:* Schedule B is filed by defined benefit pension plans subject to the minimum funding standards. As noted below, this revision will increase reporting costs for affected plans. The Agencies, however, believe that these costs are justified by the need to better monitor plan funding. In developing this proposed revision, the PBGC considered the approach that could balance the need for better monitoring of plan funding and the increased burden that would be incurred to provide additional information on the breakdown of assets and duration of debt instruments held by defined benefit plans. While the

PBGC initially considered the application of the additional requirements to all large defined benefit plans (15,000 plans), it subsequently determined that additional information for the largest plans, i.e., those with more than 1,000 participants (5,000 plans), on the level and types of assets in the plan and the sensitivity of these assets to changes in market conditions would suffice for the desired improvement in the monitoring of plan funding.

#### *Benefits and Costs*

*Benefits*—These regulations and the Form 5500 Annual Return/Report and Short Form 5500 that the regulations implement will provide a standardized, streamlined alternative means of compliance with applicable statutory reporting requirements. In so doing, they will both ease plan administrators' compliance with reporting requirements and greatly enhance the utility and accessibility of information reported to the government, participants and beneficiaries, and others. In particular, the regulations and forms, together with the Department's planned program for assisting filers in the preparation and electronic submission of filings, will give plan administrators clear guidance and a supportive, routine mechanism for satisfying their reporting obligations. They also will make it possible to efficiently capture and assemble the information into an electronic data system. The data can then be processed and analyzed in the service of many beneficial activities. These include monitoring compliance with ERISA's reporting and other requirements, targeting, and carrying out prompt and effective enforcement actions; informing participants and beneficiaries of the characteristics, operations, and financial status of their benefit plans; producing statistics on the employee benefit system and monitoring trends therein and informing the public; and assembling information and conducting research that advances knowledge and fosters the formulation of sound public policies toward employee benefits. The Department believes that the benefits of the proposed regulations justify the costs.

The Department further believes that the revisions to the existing reporting requirements contained in the proposed regulations will both reduce aggregate reporting costs and enhance protection of ERISA rights. The former anticipated effect is quantified in the discussion of costs below. With respect to the latter, the Department developed each of the revisions contained in the proposed regulations either to enhance

protections, or to reduce costs in ways that do not compromise protections. The revisions are considered separately below.

*Removal of the IRS-only schedules:* As explained in the Notice of Proposed Forms Revisions published simultaneously with these proposed regulations, this change is intended partly to facilitate a change to mandatory electronic filing—a change which is expected to yield substantial benefits. As also explained therein, to the extent that some Title I information may have been collected in these schedules, these proposed regulations provide for the ongoing collection of that information in other parts of the Annual Return/Report. In addition, it is the Department's understanding that some of the IRS-only information that will no longer be collected as part of the annual return/report may be collected in the future via other Treasury or IRS vehicles. The Department expects this revision to preserve protections of ERISA rights, while reducing Form 5500 Return/Report filing reporting costs as estimated below. From a broader societal perspective, the reduction in reporting costs may be less than what has been assumed here if IRS elects to collect some of this information through other channels.

*Establishment of a Short Form 5500 for certain small plans:* The Short Form 5500 is being developed with the specific intent of reducing reporting costs (as estimated below) while continuing to collect sufficient information to preserve ERISA protections, satisfying the enforcement, research, and regulatory needs of the Department and the other Agencies, and the disclosure needs of participants and beneficiaries. The Agencies determined that less information is needed in the case of small plans that invest in secure assets that are held or issued by regulated financial institutions and that have a fair market value that is easily determined. The Agencies believe that the eligibility conditions for Short Form 5500 filers, including the requirements relating to security and valuation of the plan's investments, ensure that the Short Form 5500 will provide adequate disclosure to the participants and beneficiaries in the plan and adequate annual reporting to the Agencies. The Notice of Proposed Forms Revisions published simultaneously with these proposed regulations details the content of the Short Form 5500 and elaborates on its adequacy for its intended purpose. Small plans that are not eligible to file the Short Form 5500 would continue to be able to file

simplified reports as under the current system.

*Elimination of the special reporting rules for Code section 403(b) plans:* As noted below, this revision is expected to increase reporting costs for affected plans. However, the Department believes these added costs are justified by the need to enhance ERISA protections in connection with these plans the Department believes that developments with respect to Code section 403(b) plans, described above in connection with the proposed amendment to 2520.104-44, warrant amending the annual reporting requirements to put Code section 403(b) plans on par with other ERISA-covered pension plans. Small Code section 403(b) plans generally would be 100 percent invested in eligible assets for purposes of filing the proposed Short Form 5500. This would result in only a modest increase in the annual reporting burden on small Code section 403(b) plan filers.

*Addition of certain asset allocation and duration information to Schedule B:* As noted below, this revision will increase reporting costs for affected plans. The Agencies, however, believe that these costs are justified by the need to better monitor plan funding. The PBGC has found that it needs more information on the breakdown of assets and duration of debt instruments held by defined benefit plans. A plan's funded status is highly dependent on the level and types of assets in the plan and the sensitivity of these assets to changes in market conditions. Thus, the additional information required by this revision will improve the PBGC's ability to estimate the impact of economic changes on the financial status of the plans it insures, and by extension, on the future financial status of the PBGC. Much of the information newly required by this revision is typically in the immediate possession of the committee or authority that oversees the

investments of plans sponsored by privately held companies, and generally is already required to be provided to the United States Securities and Exchange Commission by public company sponsors of defined benefit plans.

*Adding Multiemployer Plan Contributing Employer Information:* The Form 5500 Annual Return/Report currently does not require plans to state the number or identities of employers participating in a multiemployer plan. Multiemployer plans are, however, currently required to keep a list of participating employers on file and to make such information available to participants on request. Accordingly, requiring multiemployer plans to provide the number of participating employers will not create any new recordkeeping requirements. This information will be useful to various governmental and private firms that use the Form 5500 Annual Return/Report data for policy and research purposes. The Form 5500 Annual Return/Report also currently lacks information that shows a multiemployer plan's basis for employer contributions. This information is particularly important with respect to multiemployer defined benefit pension plans, as this information is needed by the PBGC in order for it to assess the financial risk posed to the plan by the financial collapse or withdrawal of one or more contributing employers. Over the past several years, the financial condition of many multiemployer plans has been deteriorating. The PBGC believes it is prudent to begin monitoring those companies that are major contributors to the multiemployer plans. To do so, the PBGC must be able to identify these companies. Because multiemployer plans are most at risk when a major contributing sponsor encounters financial difficulties, this proposed revision would require identification only of major contributors.

*Other Improvements and Clarifications of Existing Form 5500 Reporting Requirements:* Some of the revisions that come under this heading are technical clarifications or conforming changes to more substantive proposed revisions. These entail no material benefits or costs. Other revisions make small adjustments to the instructions or reporting requirements to reflect changing market or compliance trends. Some of these entail small increases in reporting costs that are justified by the need to stay current. These include, for example, the addition of feature codes to identify plans with certain default features, compliance questions directed at the provision of blackout notices, and fuller instruction on the reporting of certain indirect plan expenses. Others, such as the elimination of the requirement for self-insured health benefit plans to separately report certain payments to individual health care providers, may reduce reporting costs without compromising protections. These revisions and their respective intents are detailed in the Notice of Proposed Forms Revisions published simultaneously with these proposed regulations.

*Costs*

Although the costs to plans of satisfying their annual reporting obligations will be lower under these proposed regulations than they would be under existing regulations, they will still be substantial.<sup>3</sup> As shown in Table 2 below, the aggregate cost of such reporting under the existing regulations is estimated to be \$1,062 million annually, shared across the 833,000 filers subject to the filing requirement. The Department estimates that the proposed regulations, however, impose an annual cost burden on the 833,000 filers of only \$888 million.<sup>4</sup>

TABLE 2.—SUMMARY OF COSTS: CURRENT REQUIREMENTS VS. PROPOSED REQUIREMENTS

	Total costs (in millions)	Total burden hours (in millions)
Current Reporting Requirements .....	\$1,062	13.51
Change due to Revisions for 2008 .....	174	2.26
Proposed Reporting Requirement, 2008 .....	888	11.25

**Note:** Number of affected plans: 833,000.

<sup>3</sup> The Department believes, however, that the annual cost burden on filers would be higher still in the absence of the existing regulations, because the filers would then be required to comply with

the statutory filing requirements without the benefit of any regulatory exceptions, simplified reporting, or alternative methods of compliance.

<sup>4</sup> More detail about the cost estimates can be found in the section "Assumptions, Methodology, and Uncertainty".

Because these proposed regulations make substantial revisions to the existing reporting requirements, they will entail some one-time transition costs. The Department examined such transition costs in connection with the last major revision to the Form 5500 Annual Return/Report, which revised the Annual Return/Report for plan years beginning in 1999. See 65 FR 5026 (Feb. 2, 2000). Based on information provided by plan service providers and Form 5500 Annual Return/Report software developers at that time, the Department concluded that such costs are generally loaded into the prices paid by plans for affected services and products, spread both across plans and across the expected life of the service and product changes. The Department's estimates provided here are therefore intended to reflect such spreading and loading of these transition costs. That is, the gradual defrayal of the transition costs is included in the annual cost estimates here.

In addition to estimating the total impact of the proposed revisions on aggregate costs, the Department has broken down the change in cost by individual revisions. This apportioning of costs to individual revisions could be potentially done in several ways, as some types of plans are affected by more than one revision and therefore sequencing of the changes becomes important for the calculations. For example, large and small Code section 403(b) plans are affected by the elimination of the special reporting rules, but small Code section 403(b) plans are affected also by the introduction of the Short Form 5500. For the purpose of quantifying the impact of the individual law changes,

the Department carried out the calculations in the following way:

1. Removal of the IRS-only schedules: Under the proposed regulations some of the information formerly collected in these schedules will be collected by the Department elsewhere in the Form 5500 Annual Return/Report filing. On net, however, this revision will substantially reduce the amount of information collected. Relative to the current filing requirement, this revision will reduce the total annual burden hours for 740,000 affected filers by 1.2 million hours. Applying an hourly labor rate of \$84 for service providers and \$59 for plan sponsors, the Department estimates that this will lower the aggregate annual reporting cost by an estimated \$90 million.<sup>5</sup>

2. Establishment of a Short Form 5500 for certain small plans: A large majority of small plans, or 580,000 of the 640,000 total small plan filers, are estimated to be eligible to use the Short Form 5500, thereby saving an estimated \$154 million (1.9 million hours) annually. This estimate includes about 9,000 small Code section 403(b) plans that under the proposed rule would be subjected to increased filing requirements.

3. Addition of certain asset allocation and duration information to Schedule B: The provision of this information, and its certification by an actuary, will entail estimated additional annual costs of \$1.5 million (19,000 hours) for 5,000 affected defined benefit pension plans with more than 1,000 participants.

4. Revision of Schedule C (Service Provider Information): This revision intends to clarify the reporting requirements and improve the information plan officials receive regarding amounts being received by plan service providers. This is

anticipated to add an estimated \$3 million (41,000 hours) for 79,000 affected plans to annual reporting costs.

5. Addition of requirements for certain multi-employer plans to report certain information about contributing employers: This is anticipated to add an estimated \$300,000 (3,500 hours) to annual reporting costs for 10,000 multiemployer plans.

6. Adoption of various technical revisions and other miscellaneous revisions to the Form 5500 Annual Return/Report to improve and clarify existing reporting requirements: Together these are estimated to add an estimated \$12 million (154,000 hours) to annual reporting costs and affect approximately 250,000 plans.

7. Elimination of the special reporting rules for Code section 403(b) plans: Approximately eighteen thousand Code section 403(b) plans are subject to the annual reporting requirements. It is anticipated that all 9,000 small Code section 403(b) plans will be eligible to use the new Short Form and will be eligible for waiver of the audit requirement. The impact of the proposed changes on the small Code section 403(b) plans is quantified above. Nine thousand large Code section 403(b) plans will be newly subject to the audit requirement and required to file a Form 5500 Annual Return/Report similar to those filed by similar Code section 401(k) plans. This revision will increase annual reporting costs for large Code section 403(b) plans by an estimated \$54 million (or 690,000 hours).

A summary of the changes in costs and burden hours that were allocated to the groups of proposed changes as outlined above, as well as the number of affected employee benefit plans, can be found in Table 3 below.

TABLE 3.—SUMMARY OF PROPOSED CHANGES TO THE REPORTING REQUIREMENTS: COST, BURDEN, AND AFFECTED PLANS

Revisions for 2008	Change in costs (in millions)	Change in burden hours	Number of affected plans
IRS-only Schedules, Short Form and small Code Section 403(b) plans .....	–\$90.1	– 1,226,000	739,000
Schedule B .....	– 154.3	– 1,938,000	580,000
Schedule C .....	1.5	19,000	5,000
Multi-employer plans .....	3.2	41,000	79,000
Technical and Miscellaneous Revisions .....	0.3	3,500	10,000
Large Code Section 403(b) plans .....	11.9	154,000	253,000
	53.9	689,000	9,000
<b>Total .....</b>	<b>– 173.6</b>	<b>(2,258.30)</b>	<b>833,000</b>

**Note:** The displayed numbers might not sum up to the totals due to rounding.

<sup>5</sup> A discussion on the appropriateness of the labor rates used in the calculations as well as on other

assumptions can be found in the Technical Appendix.

The proposed regulation otherwise generally does not alter reporting costs. Plans currently exempt from annual reporting requirements (such as certain small unfunded or fully insured welfare plans and certain Simplified Employer Pensions) will remain exempt. Also, except for Code section 403(b) plans, plans eligible for limited reporting options (such as certain IRA-based pension plans) will continue to be eligible for that annual reporting relief. The revisions continue the Form 5500 Annual Return/Report structure that is familiar to individual and corporate taxpayers—a simple two-page main form with basic information necessary to identify the plan for which the report is filed, along with a checklist of the schedules being filed that are applicable to the filer’s plan type. The structure is designed to aid filers by allowing them to assemble and file a return customized to their plan.

*Assumptions, Methodology, and Uncertainty*

The cost and burden associated with the annual reporting requirement for any given plan will vary according to a variety of factors, including the plan’s characteristics, practices, and operations, which in turn determine what information must be provided. A small, single-employer defined contribution pension plan filing a new Short Form 5500 generally will incur far lower costs than a large, multiemployer defined benefit pension plan that holds multiple insurance contracts, engages in numerous reportable transactions, and pays large fees to a number of service providers. Therefore, in arriving at its aggregate cost estimates, the Department separately considered the cost to different types of plans of providing different types of information. The basis for the Department’s estimates is elaborated below.

*Assumptions Underlying this Analysis*—The Department’s analysis of the costs and benefits of these proposed amendments assumes that all benefits and costs will be realized in the first year of the reporting cycle to which the amendments apply and within each year thereafter. This assumption is based on the nature of the statutory reporting provisions, which require that each plan complete a filing within a yearly period. The Department has used a “status quo” baseline for this analysis, assuming that the world absent the regulations will resemble the present.<sup>6</sup>

*Methodology*—The underlying cost data was developed by Mathematica Policy Research, Inc. (MPR), and has been used by the Agencies in various burden estimates related to the Form 5500 Annual Return/Report during recent years. See, 65 FR 21068, 21077–78 (April 19, 2000); Borden, William S., “Estimates of the Burden for Filing Form 5500: The Change in Burden from the 1997 to the 1999 Forms,” Mathematica Policy Research, submitted to U.S. Dept. of Labor May 25, 1999.<sup>7</sup> It is grounded in surveys of filers and their service providers, which measured the unit cost burden of providing various types of information. Aggregate estimates were produced by interacting these unit cost measures with historical counts of Form 5500 Annual Return/Report filers.

A new burden estimating model, based on the Form 5500 Burden Model that MPR most recently used for estimating burdens in October 2004, was assembled by Actuarial Research Corporation (ARC). ARC assembled a simplified model, drawing on implied burdens associated with subsets of filer groups represented in the MPR model. The model used the level of detail consistent with reflecting burden differences associated with the various

proposed forms revisions. In the following, the ARC model is described in broad terms. Further details about the model are explained in the Technical Appendix that can be accessed at the Department’s Web site at <http://www.dol.gov/ebsa>.

To estimate aggregate burdens, the types of plans that have similar reporting requirements were grouped together. Thus, calculations were prepared for different subsets of types of plans as appropriate based on the specifics of the revisions to the reporting requirements. Table 4 below shows the particular types of plans considered, the number of plans affected by the proposed revisions, as well as the aggregate costs under current and proposed requirements. As can be seen from the Total line in Table 4, aggregate cost under current and proposed regulations add up to \$1,062 million and \$888 million, respectively. The universe of filers was divided into three basic plan types: Defined benefit pension plans, defined contribution pension plans, and welfare plans, and each of these major plan types was further subdivided into multiemployer and single-employer plans. Defined contribution Code section 403(b) plans were treated separately from other defined contribution plans. Since the filing requirements differ substantially for small and large plans, the plan types were also divided by plan size. For large plans (100 or more participants), the defined benefit plans were further divided between very large (1000 or more participants) and other large plans (at least 100 participants, but less than 1000 participants). For each of these sets of respondents, burden hours per respondent were estimated for the Form 5500 Annual Return/Report itself and for up to eight schedules.

TABLE 4.—NUMBER OF AFFECTED FILERS AND COST UNDER CURRENT VS. PROPOSED REQUIREMENTS

Type of plan	Number affected	Aggregate cost under current requirements (in millions)	Aggregate cost under proposed requirements (in millions)
5500 Large Plans (> = 100 participants)—189,000:			
DB, ME, 100–1,000 participants .....	800	7.6	7.2
DB, ME, > 1,000 participants .....	1,100	13.3	13.2
DB, SE, 100–1,000 participants .....	8,900	80.2	74.2
DB, SE, > 1,000 participants .....	4,200	38.8	39.2
DC, ME, non-403(b) .....	2,300	14.4	13.7
DC, ME, 403(b) .....	400	0.016	2.4
DC, SE, non-403(b) .....	70,000	437.1	401.3
DC, SE, 403(b) .....	8,600	0.350	51.9
Welfare, ME .....	5,700	14.3	14.8
Welfare, SE .....	86,600	124.3	127.9

<sup>6</sup> Further detail can be found in the Technical Appendix.

<sup>7</sup> The Mathematica report can be accessed at the Department’s Web site at <http://www.dol.gov/ebsa>.

TABLE 4.—NUMBER OF AFFECTED FILERS AND COST UNDER CURRENT VS. PROPOSED REQUIREMENTS—Continued

Type of plan	Number affected	Aggregate cost under current requirements (in millions)	Aggregate cost under proposed requirements (in millions)
5500 Small Short Form Eligible—580,000:			
DB .....	30,800	30.3	21.2
DC, non-403(b) .....	533,000	263.9	87.8
DC, 403(b) .....	8,800	0.36	1.4
Welfare .....	7,000	3.4	1.2
5500 Small Short Form Ineligible—64,000:			
DB .....	4,000	3.8	3.7
DC, non-403(b) .....	60,200	29.3	26.9
DC, 403(b) .....	.....	.....	.....
Welfare .....	100	0.079	0.080
Total .....	832,500	1,061.5	888.08

**Note:** The displayed numbers might not sum up to the totals due to rounding.

DB—defined benefit plans.

SE—single-employer plans.

Large plans—100 participants or more.

DC—defined contribution plans

ME—multi employer plans.

Small plans—less than 100 participants.

In addition to separating plans by type and size, costs were estimated separately for the form and for each schedule. When items on a Form 5500 Annual Return/Report schedule are required by more than one Agency, the estimated burden associated with that schedule is allocated among the Agencies. This allocation is based on whether only a single item on a schedule is required by more than one agency or whether several or all of the items are required by more than one agency. Filers must read not only the instructions for particular items but also instructions pertaining to the general filing requirements, and the burden associated with reading the instructions is tallied and allocated accordingly.

A plan's reporting burden is estimated in light of the specific items and schedules it must complete as well as its size, funding method, and investment structures. For example, the annual report for a large fully insured welfare plan generally would consist of only a few questions on the Form 5500 and the Schedule A (Insurance Information). The requirement that this plan provide very limited information on the Form 5500 Annual Return/Report is reflected in the estimates of reporting burden time. By contrast, a large defined benefit pension plan that is intended to be tax-qualified and that uses a trust fund and invests in insurance contracts would be required to submit an annual report completing almost all the line items of the Form 5500, plus Schedule A (Insurance Information), Schedule B (Actuarial Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan

Information), Schedule H (Financial Information), and Schedule R (Retirement Plan Information), and would be required to submit an IQPA's report and opinion. The Agencies' methodology attempts to capture, through its categorization, these different reporting burdens, thereby providing meaningful estimates of significant differences in the burdens placed on different categories of filers.

Burden estimates for each schedule were adjusted for the proposed revisions, reflecting the numbers of items added or deleted in each schedule or moved from one schedule to another, and the average burden currently attributable to items on each of the corresponding current schedules. The burden for the proposed Short Form 5500 was built from the estimated current burden associated with the various line items included in it.

The Department has not attributed a recordkeeping burden to the Form 5500 Annual Return/Report either here or in its Paperwork Reduction Act analysis because it believes that plan administrators' practice of keeping financial records necessary to complete the Form 5500 Annual Return/Report arises from usual and customary management practices that would be used by any financial entity, and does not result from ERISA or Code annual reporting and filing requirements.

The aggregate baseline burden is the sum of the burden per form and schedule filed multiplied by the estimated aggregate number of forms and schedules. The simplified model draws on Form 5500 Annual Return/Report data representing each plan's

filing for plan year 2002 (the most recent year for which complete data is available), both for estimating the impact of changes in the numbers of filings associated with the introduction of the Short Form 5500 for most small filers as well as for estimating the impact of changes in filing obligations associated with other schedules. In summary, the model estimates that due to \$174 million in cost reductions the proposed revisions would lead to aggregate costs of \$888 million. While there is a net reduction in costs, the Department estimates that some large plans might experience cost increases, while small plans will experience cost reductions. The total burden estimates, as well as the burden broken out by type of plan can be found in Table 4 above.

*Uncertainty within Estimates*—The Department acknowledges that there are several areas of uncertainty that might affect the estimates, in particular the unit cost estimates. While the Department has a good sense for the filing universe and for the number of filers that file the different schedules of the Form 5500, the unit costs under the current requirements as well as the way they would change due to the proposed revisions are more uncertain. The Department has no direct measure for the unit costs, but rather uses a proxy adapted from the existing MPR model, which was developed in the late 1990s. Additional uncertainty is added due to the proposed revisions. Some of the revisions delete items or move them from certain schedules to others. The impact of these changes can be estimated more accurately than the impact of the revisions that require the

reporting of new items like fees. Consequently, the unit cost estimates would benefit from updated information and the Department welcomes comments that would provide information on this matter.

#### Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review, 70 FR 2664 (January 14, 2005) (Peer Review Bulletin), establishing that important scientific information shall be peer reviewed before it is disseminated by the Federal government. The Peer Review Bulletin applies to original data and formal analytic models used by agencies in Regulatory Impact Analyses. The Department determined that the data and methods employed in its regulatory analysis of this proposal constitutes "influential scientific information" as defined in the Peer Review Bulletin. Accordingly, a peer review was conducted under Section II of the Bulletin. The peer review report concluded that the methodology and data generally were sound and produced plausible estimates, which supports the Department's conclusion that the proposed form changes should reduce the aggregate burden relative to the previous forms. The Peer Review Report can be accessed at the Department's Web site at <http://www.dol.gov/ebsa>.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of analysis under the RFA, EBSA proposes to continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2)

of ERISA, which permits the Secretary to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under ERISA section 104(a)(3), the Secretary may also provide for exemptions or for simplified reporting and disclosure for welfare benefit plans. Pursuant to the authority of ERISA section 104(a)(3), the Department has previously issued at 29 CFR 2520.104-20, 2520.104-21, 2520.104-41, 2520.104-46, and 2520.104b-10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans, that cover fewer than 100 participants and satisfy certain other requirements.

Further, while some large employers may have small plans, in general small employers maintain most small plans. Thus, EBSA believes that assessing the impact of these proposed rules on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). EBSA therefore requests comments on the appropriateness of the size standard used in evaluating the impact of these proposed rules on small entities. EBSA has consulted with the SBA Office of Advocacy concerning use of this participant count standard for RFA purposes. See 13 CFR 121.902(b)(4). The following seven subsections address specific requirements of the RFA.

(1) The Department is proposing to amend the regulations relating to the annual reporting and disclosure requirements of section 103 of ERISA to conform existing regulations to proposed revisions to the Form 5500 Annual Return/Report forms that are included in the Notice of Proposed Forms Revisions published simultaneously with these regulations.

The Department continually strives to tailor reporting requirements to minimize reporting costs while ensuring that the information necessary to secure ERISA rights is adequately available. The optimal design for reporting requirements to satisfy these objectives changes over time. Benefit plan designs and practices evolve over time in response to market trends, including trends in labor markets, financial markets, health care and insurance markets, and markets for various services used by plans. Partly as a

result, the nature and mix of compliance issues and risks to ERISA rights change over time. Frequent amendments to ERISA, the Code, and to associated regulations also change the parameters of ERISA rights and the methods needed to protect those rights. In addition, the technologies available to manage and transmit information continually advance. It is incumbent on the Department to revise its reporting requirements from time to time to keep pace with such changes. The Department is proposing these regulations and associated forms revisions to readjust its reporting requirements to take into account certain recent changes in markets, the law, and technology, many of which are referenced above in this preamble and/or in the Notice of Proposed Forms Revision published simultaneously with these regulations.

(2) Section 103 of ERISA requires every employee benefit plan covered under part 1 of Subtitle B of Title I of ERISA to publish and file an annual report concerning, among other things, the financial conditions and operations of the plan. Section 109 of ERISA authorizes the Secretary to prescribe forms for the reporting of information that is required to be included in the annual report. Section 104(a)(2)(A) of ERISA authorizes the Secretary to prescribe by regulation simplified annual reporting for pension plans that cover fewer than 100 participants. Section 104(a)(3) of ERISA authorizes the Secretary to exempt any welfare plan from all or part of the reporting and disclosure requirements of Title I of ERISA or to provide simplified reporting and disclosure if the Secretary finds that such requirements are inappropriate as applied to such plans. Section 110 of ERISA permits the Secretary to prescribe for pension plans alternative methods of complying with any of the reporting and disclosure requirements if the Secretary finds that: (1) The use of the alternative method is consistent with the purposes of Title I of ERISA, and it provides adequate disclosure to plan participants and beneficiaries and adequate reporting to the Secretary; (2) application of the statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate.

The Department proposes to find that use of the Form 5500 Annual Return/Report, as revised, along with the

proposed Short Form 5500, constitutes an alternative method of compliance, an exemption, and/or a simplified report, as applicable, consistent with these conditions. Generally, the Department believes that use of the revised Form 5500 Annual Return/Report and the proposed Short Form 5500 would relieve plans of all sizes of increased costs and burdens by providing a standard format that facilitates reporting required by the statute, eliminating duplicative reporting requirements, and streamlining the content of the annual return/report.

The objectives of these proposed, amended regulations and the associated proposed forms revisions are to streamline reporting and reduce aggregate reporting costs, particularly for small plans, while preserving and enhancing protection of ERISA rights. These purposes are detailed above in this preamble and in the Notice of Proposed Forms Revisions published simultaneously with these regulations.

(3) These proposed regulatory amendments do not alter the number of small plans required to comply with the annual reporting requirements, but do implement a new Short Form 5500, which is designed specifically to further streamline the limited reporting requirements presently applicable to small plans. The Department estimates that more than six million small, private-sector employee pension and welfare benefit plans are covered under Title I of ERISA. However, a large majority of these are fully insured or unfunded welfare benefit plans, which currently are exempt from annual reporting requirements and will continue to be exempt under these proposed regulations and the associated forms revisions. Approximately 644,000

small plans, including small pension plans and small funded welfare plans, currently are required to file annual reports and will continue to be so required under these proposed regulations and the associated forms revisions. Of these, an estimated 580,000 will be eligible to use the proposed new Short Form 5500. Use of the Short Form 5500 is expected to reduce these plans' reporting costs while preserving or enhancing the protection of their participants' ERISA rights.

Among small plans, perhaps the most acutely affected will be the approximately 9,000 small Code section 403(b) plans. As explained above, such plans are currently subject only to limited annual reporting requirements. These proposed regulations and associated forms revisions, which will subject these plans to the same requirements as other covered small plans, will increase these plans' reporting costs. As discussed above, the Department believes these added costs are justified by the need to strengthen protections for affected participants' ERISA rights. The numbers and types of small plans affected by these proposed regulations and the magnitude and nature of the proposed regulations' effects are further elaborated below.

(4) The proposed regulations' reporting requirements applicable to small plans are detailed above and in the associated Notice of Proposed Forms Revisions. For a large majority of the 644,000 small plans subject to annual reporting requirements, or an estimated 549,000 plans, submission of the Short Form 5500 alone will fully satisfy their annual reporting requirements. All of these plans are eligible for the waiver of audit requirements, and none are

defined benefit pension plans. Therefore, for such plans satisfaction of their applicable annual reporting requirements is not expected to require the services of an IQPA or auditor, but will require the use of a mix of clerical and professional administrative skills. For an additional 31,000 small defined benefit pension plans that would be eligible to use the streamlined Short Form 5500, satisfaction of the reporting requirements also will require services of an actuary and submission of Schedule B. The remaining 64,000 small plans will not be eligible to use the Short Form 5500 and will continue to be required to file the Form 5500 Annual Return/Report. Of these, 4,000 are defined benefit plans that must use an actuary and file Schedule B, and 32,000 are ineligible for waiver of the audit requirement and are required to employ an IQPA and submit an IQPA's report. All will require a mix of clerical and professional administrative skills to satisfy their reporting requirements.

Satisfaction of annual reporting requirements under these proposed regulations is not expected to require any additional recordkeeping that would not otherwise be part of normal business practices.

Table 5 below compares the Department's estimates of small plans' reporting costs under the current requirements with those under the proposed requirements for various classes of affected plans. As shown, costs under the proposed requirements will be lower on aggregate and for most classes of plans. These estimates take account of the quantity and mix of clerical and professional skills required to satisfy the reporting requirements for various classes of plans.

TABLE 5.—SMALL PLAN REPORTING COSTS UNDER CURRENT VS. PROPOSED REQUIREMENTS

Class of plan	Number affected	Aggregate cost under current requirements (In millions)	Aggregate cost under proposed requirements (In millions)
Defined Benefit Pension, Short Form eligible .....	31,000 .....	\$30.34	\$21.24
Defined Benefit Pension, Short Form ineligible .....	4,000 .....	3.77	3.67
Code Section 403(b) .....	All of 9,000 .....	0.36	1.45
Other Defined Contribution, Short Form eligible .....	533,000 .....	263.94	87.84
Other Defined Contribution Pension, Short Form ineligible.	60,000 .....	29.32	26.92
Funded Welfare .....	All of 7,000 .....	3.52	1.24
Other Welfare .....	None of approximately 6 million .....	.....	.....
Total for All Affected Small Plans .....	644,000 .....	331.26	142.35

The Department notes that the estimated reporting costs amount to \$221 on average for each of the 644,000 small plans subject to annual reporting

requirements, or just \$22 if averaged across all of the approximately 6.6 million small plans covered by Title I of ERISA. This compares with roughly

\$4,000 on average for each of the 189,000 affected large filers.

(5) The Department is unaware of any relevant federal rules for small plans

that duplicate, overlap, or conflict with these proposed regulations.

(6) In developing these proposed regulations and the associated forms revisions, the Department considered a number of alternative provisions directed at small plans. For example, as discussed in the Notice of Proposed Forms Revisions published simultaneously with these regulations, the ERISA Advisory Council suggested that the Department consider exempting welfare plans from reporting requirements, or, alternatively, subjecting all welfare plans to new, separately designed reporting requirements. The Department opted instead to retain both the requirement that small funded welfare plans submit annual reports and the exception from annual reporting requirements for other small welfare plans. Annual reporting by the relatively small number of small funded welfare plans is necessary, in the Department's view, to protect ERISA rights in connection with the assets that they hold. A requirement that the remaining approximately six million small welfare plans report annually is not justified insofar as these plans have no assets to protect and insofar as the vast majority of these plans are fully insured and therefore separately protected by State oversight of the insurance contracts they hold and the insurers that issue them. The Department also considered both narrower and broader eligibility criteria for use of the Short Form 5500, settling on criteria that limit eligibility to plans holding relatively safe and protected assets, which nonetheless includes a large majority of small plans. The Department also considered the inclusion of more or fewer of the items of information formerly collected from small plans in the Form 5500 Annual Return/Report, retaining only those items it believes to be necessary and adequate to the protection of small plan participants' ERISA rights.

(7) The Department invites interested persons to submit comments regarding the impact on small plans of these proposed regulations and the associated forms revisions, and on the Department's assessment thereof. The Department also requests comments on the alternatives it considered and its conclusions regarding those alternatives; on any additional alternatives it should have considered; on what, if any, special problems small plans might encounter if the proposal were to be adopted; and what changes, if any, could be made to minimize those problems. To avoid duplication of comments, comments submitted in response to the Notice of Proposed Form

Revisions published simultaneously with these proposed regulations will be treated as comments on this proposed rulemaking.

#### **Paperwork Reduction Act Statement**

The Department, as part of its continuing efforts to reduce paperwork and respondent burden, invites the general public and Federal agencies to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data are provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents is properly assessed. The Department solicits comments on the information collection request (ICR) included in this proposed regulatory action, as well as the Notice of Proposed Forms Revisions published simultaneously with this Notice. In order to avoid unnecessary duplication of public comments, the PRA information published in the associated Notice of Proposed Forms Revisions is incorporated herein by this reference in its entirety, and comments submitted in response to these **Federal Register** publications will be treated as comments on these proposed rules. A copy of the ICR may be obtained by contacting the office listed under the heading "PRA Addressee."

The Department has submitted a copy of the proposed information collection to OMB, in accordance with 44 U.S.C. 3507(d), for its review of the information collection. The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility;
- Evaluate the accuracy of the Agencies' estimate of the burden of the proposed collection 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., permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration, Department of Labor. Although comments may be submitted through September 19, 2006, OMB requests that comments be received within 30 days of publication of these proposed regulations to ensure their consideration.

PRA Addressee: Written comments regarding only PRA and the ICR should be sent to Gerald B. Lindrew, U.S. Department of Labor, EBSA/OPR, Room N-5718, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 693-8410; Fax: (202) 219-4745. These are not toll-free numbers. Written comments must be submitted on or before September 19, 2006 to be assured of consideration.

#### **Congressional Review Act**

The notice of proposed rulemaking being issued here is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to the Congress and the Comptroller General for review.

#### **Unfunded Mandates Reform Act**

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as well as Executive Order 12875, the proposed rules do not include any Federal mandate that may result in expenditures by state, local, or tribal governments in the aggregate of more than \$100 million, or increased expenditures by the private sector of more than \$100 million.

#### **Federalism Statement**

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. These proposed rules do not have federalism implications because they would have no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions

specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in these proposed rules do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

#### List of Subjects in 29 CFR Part 2520

Accountants, Disclosure requirements, Employee benefit plans, Employee Retirement Income Security Act, Pension plans, Pension and welfare plans, Reporting and recordkeeping requirements, and Welfare benefit plans.

In view of the foregoing, the Department of Labor proposes to amend 29 CFR part 2520 as set forth below:

#### PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for part 2520 continues to read as follows:

**Authority:** 29 U.S.C. 1021–1025, 1027, 1029–31, 1059, 1134, and 1135; Secretary of Labor's Order 1–2003, 68 FR 5374 (February 3, 2003). Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c.

Secs. 2520.102–3, 2520.104b–1, and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788.

2. In § 2520.103–1, revise paragraphs (a)(2) and (c) to read as follows:

#### § 2520.103–1 Contents of the annual report.

(a) \* \* \*

(2) Under the authority of subsections 104(a)(2), 104(a)(3) and 110 of the Act, a simplified report, limited exemption or alternative method of compliance is prescribed for employee welfare and pension benefit plans, as applicable. A plan filing a simplified report or electing the limited exemption or alternative method of compliance shall file an annual report containing the information prescribed in paragraph (b) or paragraph (c) of this section, as applicable, and shall furnish a summary annual report as prescribed in § 2520.104b–10.

\* \* \* \* \*

(c) *Contents of the annual report for plans with fewer than 100 participants.*

(1) Except as provided in paragraph (c)(2) of this section and in paragraph (d) of this section, and in §§ 2520.104–

43 and 2520.104a–6, the annual report of an employee benefit plan that covers fewer than 100 participants at the beginning of the plan year shall include a Form 5500 “Annual Return/Report of Employee Benefit Plan” and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule B (Actuarial Information), Schedule D (DFE/Participating Plan Information), Schedule I (Financial Information—Small Plan), and Schedule R (Retirement Plan Information). See the instructions for this form.

(2)(i) The annual report of an employee benefit plan that covers fewer than 100 participants at the beginning of the plan year and that meets the conditions in paragraph (c)(2)(ii) of this section with respect to a plan year may, as an alternative to the requirements of paragraph (c)(1) of this section, meet its annual reporting requirements by filing the Form 5500–SF “Short Form 5500 Annual Return/Report of Employee Benefit Plan” and any statements or schedules required to be attached to the form, including Schedule B (Actuarial Information), completed in accordance with the instructions for the form. See the instructions for this form.

(ii) A plan meets the conditions in this paragraph (c)(2)(ii) with respect to the year if the plan:

(A) Does not hold any employer securities at any time during the year;

(B) Satisfies the audit waiver conditions in §§ 2520.104–46(b)(1)(i)(A)(1) and 2520.104–46(b)(1)(i)(B) and (b)(1)(i)(C); and

(iii) Had at all times during the plan year 100 percent of the plan's assets held for investment purposes invested in assets that have a readily ascertainable fair market value. For purposes of this section, the following shall be treated as assets that have a readily ascertainable fair market value: Shares issued by an investment company registered under the Investment Company Act of 1940; investment and annuity contracts issued by any insurance company, qualified to do business under the laws of a State, that provides valuation information at least annually to the plan administrator; bank investment contracts issued by a bank or similar financial institution, as defined in § 2550.408b–4(c) of this chapter, that provides valuation information at least annually to the plan administrator; securities (except employer securities) traded on a public exchange; government securities issued by the United States or by a State; cash or cash equivalents held by a bank or

similar financial institution, as defined in § 2550.408b–4(c) of this chapter; by an insurance company, qualified to do business under the law of a State; by an organization registered as a broker-dealer under the Securities Exchange Act of 1934; or by any other organization authorized to act as a trustee for individual retirement accounts under section 408 of the Internal Revenue Code; and any loan meeting the requirements of section 408(b)(1) of the Act and the regulations issued thereunder.

\* \* \* \* \*

3. In § 2520.104–44, remove paragraph (b)(3).

4. In § 2520.104–46, add a new paragraph (e) and a new appendix to the section to read as follows:

#### § 2520.104–46 Waiver of examination and report of an independent qualified public accountant for employee benefits plans with fewer than 100 participants.

\* \* \* \* \*

(e) *Model notice.* The appendix to this section contains model language for inclusion in the summary annual report to assist plan administrators in complying with the requirements of paragraph (b)(1)(i)(B) of this section to avail themselves of the waiver of examination and report of the independent qualified public accountant for employee benefit plans with fewer than 100 participants. Use of the model language is not mandatory. In order to use the model language in the plan's summary annual report, administrators must, in addition to any other information required to be in the summary annual report, select among alternative language and add relevant information where appropriate in the model language. Items of information that are not applicable to a particular plan may be deleted. Use of the model language, appropriately modified and supplemented, will be deemed to satisfy the notice content requirements of paragraph (b)(1)(i)(B) of this section.

#### Appendix to § 2520.104–46—Model Summary Annual Report Notice (Plan Administrators Will Need To Modify the Model To Omit Information That Is Not Applicable to the Plan)

The U.S. Department of Labor's regulations require that an independent qualified public accountant audit the plan's financial statements unless certain conditions are met for the audit requirement to be waived. This plan met the audit waiver conditions for the plan year beginning (insert year) and therefore has not had an audit performed. Instead, the following information is provided to assist you in verifying that the assets reported on the (Form 5500 or Form

5500-SF—select as applicable) were actually held by the plan.

At the end of the (insert year) plan year, the plan had (include separate entries for each regulated financial institution holding or issuing qualifying plan assets):

[Set forth amounts and names of institutions as applicable where indicated]

[(insert \$ amount) in assets held by (insert name of bank)],

[(insert \$ amount) in securities held by (insert name of registered broker-dealer)],

[(insert \$ amount) in shares issued by (insert name of registered investment company)],

[(insert \$ amount) in investment or annuity contract issued by (insert name of insurance company)].

The plan receives year-end statements from these regulated financial institutions that confirm the above information. [Insert as applicable—The remainder of the plan’s

assets were (1) qualifying employer securities, (2) loans to participants, (3) held in individual participant accounts with investments directed by participants and beneficiaries and with account statements from regulated financial institutions furnished to the participant or beneficiary at least annually, or (4) other assets covered by a fidelity bond at least equal to the value of the assets and issued by an approved surety company.]

Plan participants and beneficiaries have a right, on request and free of charge, to get copies of the financial institution year-end statements and evidence of the fidelity bond. If you want to examine or get copies of the financial institution year-end statements or evidence of the fidelity bond, please contact [insert mailing address and any other available way to request copies such as e-mail and phone number].

If you are unable to obtain or examine copies of the regulated financial institution statements or evidence of the fidelity bond, you may contact the regional office of the U.S. Department of Labor’s Employee Benefits Security Administration (EBSA) for assistance by calling toll-free 1.866.444.EBSA (3272). A listing of EBSA regional offices can be found at <http://www.dol.gov/ebsa>. General information regarding the audit waiver conditions applicable to the plan can be found on the U.S. Department of Labor Web site at <http://www.dol.gov/ebsa> under the heading “Frequently Asked Questions.”

5. Revise the Appendix to § 2520.104b–10 to read as follows:

**§ 2520.104b–10 Summary Annual Report.**  
\* \* \* \* \*

APPENDIX TO § 2520.104b–10.—THE SUMMARY ANNUAL REPORT (SAR) UNDER ERISA: A CROSS-REFERENCE TO THE ANNUAL REPORT

SAR item	Form 5500—large plan filer line items	Form 5500—small plan filer line items	Form 5500-SF—filer line items
<b>A. Pension Plan:</b>			
1. Funding arrangement .....	Form 5500–9a .....	Same .....	Not applicable.
2. Total plan expenses .....	Sch. H–2j .....	Sch. I–2j .....	Line 8h.
3. Administrative expenses .....	Sch. H–2i(5) .....	Sch. I–2h .....	Line 8f.
4. Benefits paid .....	Sch. H–2e(4) .....	Sch. I–2e .....	Line 8d.
5. Other expenses .....	Sch. H—Subtract the sum of 2e(4) & 2i(5) from 2j.	Sch. I–2i .....	Line 8g.
6. Total participants .....	Form 5500–6f	Same .....	Line 5b.
7. Value of plan assets (net):			
a. End of plan year .....	Sch. H–1l [Col. (b)] .....	Sch. I–1c [Col. (b)] .....	Line 7a [Col. (b)].
b. Beginning of plan year .....	Sch. H–1l [Col. (a)] .....	Sch. I–1c [Col. (a)] .....	Line 7a [Col. (a)].
8. Change in net assets .....	Sch. H—Subtract 1l [Col. (a)] from 1l [Col. (b)].	Sch. I—Subtract 1c [Col. (a)] from 1c [Col. (b)].	Line 7c—Subtract Col. (a) from Col. (b).
9. Total income .....	Sch. H–2d .....	Sch. I–2d .....	Line 8c.
a. Employer contributions	Sch. H–2a(1)(A) & 2a(2)—if applicable.	Sch. I–2a(1) & 2b if applicable ...	Line 8a(1) if applicable.
b. Employee contributions	Sch. H–2a(1)(B) & 2a(2) if applicable.	Sch. I–2a(2) & 2b if applicable ...	Line 8a(2) if applicable.
c. Gains (losses) from sale of assets.	Sch. H–2b(4)(C) .....	Not applicable .....	Not applicable.
d. Earnings from investments.	Sch. H—Subtract the sum of 2a(3), 2b(4)(C) and 2c from 2d.	Sch. I–2c .....	Line 8b.
10. Total insurance premiums	Total of all Schs.A–5b .....	Total of all Schs.A–5b .....	Not applicable.
11. Funding deficiency:			
a. Defined benefit plans ..	Sch. B–10 .....	Same .....	Same.
b. Defined contribution plans.	Sch. R–6c, if more than zero .....	Same .....	Line 12c.
<b>B. Welfare Plan:</b>			
1. Name of insurance carrier ..	All Schs. A–1(a) .....	Same .....	Not applicable.
2. Total (experience rated and non-experienced rated) insurance premiums.	All Schs. A—Sum of 8a(4) and 9(a).	Same .....	Not applicable.
3. Experience rated premiums	All Schs. A–8a(4) .....	Same .....	Not applicable.
4. Experience rated claims .....	All Schs. A–8b(4) .....	Same .....	Not applicable.
5. Value of plan assets (net):			
a. End of plan year .....	Sch. H–1l [Col. (b)] .....	Sch. I–1c [Col. (b)] .....	Line 7c—[Col. (b)].
b. Beginning of plan year	Sch. H–1l [Col. (a)] .....	Sch. I–1c [Col. (a)] .....	Line 7c—[Col. (a)].
6. Change in net assets .....	Sch. H—Subtract 1l [Col. (a)] from 1l [Col. (b)].	Sch. I—Subtract 1c [Col. (a)] from 1c [Col. (b)].	Line 7c—Subtract [Col. (a)] from [Col. (b)].
7. Total income .....	Sch. H–2d .....	Sch. I–2d .....	Line 8c.
a. Employer contributions	Sch. H–2a(1)(A) & 2a(2) if applicable.	Sch. I–2a(1) & 2b if applicable ...	Line 8a(1) if applicable.
b. Employee contributions	Sch. H–2a(1)(B) & 2a(2) if applicable.	Sch. I–2a(2) & 2b if applicable ...	Line 8a(2) if applicable.
c. Gains (losses) from sale of assets.	Sch. H–2b(4)(C) .....	Not applicable .....	Not applicable.
d. Earnings from investments.	Sch. H—Subtract the sum of 2a(3), 2b(4)(C) and 2c from 2d.	Sch. I–2c .....	Line 8b.

## APPENDIX TO § 2520.104b-10.—THE SUMMARY ANNUAL REPORT (SAR) UNDER ERISA: A CROSS-REFERENCE TO THE ANNUAL REPORT—Continued

SAR item	Form 5500—large plan filer line items	Form 5500—small plan filer line items	Form 5500—SF—filer line items
8. Total plan expenses .....	Sch. H—2j .....	Sch. I—2j .....	Line 8h.
9. Administrative expenses .....	Sch. H—2i(5) .....	Sch. I, line 2h .....	Line 8f.
10. Benefits paid .....	Sch. H—2e(4) .....	Sch. I—2e .....	Line 8d.
11. Other expenses .....	Sch. H—Subtract the sum of 2e(4) & 2i(5) from 2j.	Sch. I—2i .....	Line 8g.

Signed at Washington, DC, this 13th day of July 2006.

**Ann C. Combs,**

*Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 06-6330 Filed 7-20-06; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[CGD05-06-068]

RIN 1625-AA08

#### Special Local Regulations for Marine Events; John H. Kerr Reservoir, Clarksville, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish temporary special local regulations for the “Clarksville Hydroplane Challenge”, a power boat race to be held on the waters of the John H. Kerr Reservoir adjacent to Clarksville, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the John H. Kerr Reservoir adjacent to Clarksville, Virginia during the power boat race.

**DATES:** Comments and related material must reach the Coast Guard on or before August 21, 2006.

**ADDRESSES:** You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, hand-deliver them to Room 415 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, fax them to (757) 391-8149, or e-mail them to [Dennis.M.Sens@uscg.mil](mailto:Dennis.M.Sens@uscg.mil). The Inspections and Investigations Branch, Fifth Coast Guard District, maintains the

public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dennis Sens, Project Manager, Inspections and Investigations Branch, at (757) 398-6204.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05-06-068), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

##### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### Background and Purpose

On October 7 and 8, 2006, the Virginia Boat Racing Association will sponsor the “Clarksville Hydroplane Challenge”, on the waters of the John H. Kerr Reservoir. The event will consist of approximately 70 inboard hydroplanes racing in heats counter-clockwise

around an oval racecourse. A fleet of spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

##### Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the John H. Kerr Reservoir adjacent to Occoneechee State Park, Clarksville, Virginia and State Route 15 Highway Bridge. The regulated area includes a section of the John H. Kerr Reservoir approximately one half mile long, and bounded in width by each shoreline. This rule will be enforced from 7:30 a.m. to 6:30 p.m. on October 7 and 8, 2006, and will restrict general navigation in the regulated area during the power boat race. The Coast Guard, at its discretion, when practical will allow the passage of vessels when races are not taking place. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area during the enforcement period. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

##### Regulatory Evaluation

This proposed rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.