

responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$118,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: December 1, 2006.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. E6-20920 Filed 12-8-06; 8:45 am]

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### PENSION BENEFIT GUARANTY CORPORATION

RIN 1210-AB14

### Proposed Revision of Annual Information Return/Reports

**AGENCIES:** Employee Benefits Security Administration, Labor, Internal Revenue Service, Treasury, Pension Benefit Guaranty Corporation.

**ACTION:** Notice of Supplemental Proposed Forms Revisions.

**SUMMARY:** This document contains a proposal to make changes required by the Pension Protection Act of 2006 (PPA) to the Form 5500 Annual Return/Report filed for employee benefit plans under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (Code). The proposed changes supplement proposed revisions to the Form 5500 Annual Return/Report published, prior to the enactment of the PPA, by the Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation (Agencies) in the **Federal Register** on July 21, 2006, at 71 FR 41616 (July 2006 Proposal). This supplemental proposal replaces the Schedule B, "Actuarial Information," with separate actuarial schedules for single-employer plans (Schedule SB) and multiemployer plans (Schedule MB) to reflect PPA changes in funding and annual reporting requirements; adds new questions to the Schedule R, "Retirement Plan Information," to collect additional information regarding single and multiemployer defined benefit pension plans required by the PPA; and proposes having the Form 5500-SF Annual Return/Report (Short Form 5500) included in the July 2006 Proposal serve as the simplified report required by the PPA for plans with fewer than 25 participants. The revisions are being proposed for 2008 plan year filings and would affect employee pension and welfare benefit plans, plan sponsors, administrators, and service providers to plans subject to annual reporting requirements under ERISA and the Code.

**DATES:** Written comments must be received by the Department of Labor on or before January 10, 2007.

**ADDRESSES:** Commenters are encouraged to submit comments electronically to <http://www.regulations.gov> (follow instructions for submission) or [e-ORI@dol.gov](mailto:ORI@dol.gov). Comments also may be addressed to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attn: Supplemental Form 5500 Revision (RIN 1210-AB14). If comments are submitted electronically, paper submissions are not necessary.

Comments will be available to the public at <http://www.dol.gov/ebsa> and <http://www.regulations.gov>. Comments also will be available for public inspection at the Public Disclosure Room, N-1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Ann Junkins, Internal Revenue Service (IRS), (202) 283-0722, for questions relating to Schedules SB, MB, and Schedule R, as well as general questions relating to reporting under the Internal Revenue Code; Amy Viener, Pension Benefit Guaranty Corporation (PBGC), (202) 326-4080 for questions relating to Schedules SB and MB, and Michael Packard, PBGC, 202 326-4080 for questions relating to the Schedule R, as well as questions relating to the general reporting requirements under Title IV of ERISA; Elizabeth A. Goodman or Yolanda Wartenberg, Employee Benefits Security Administration (EBSA), U.S. Department of Labor, (202) 693-8523, for questions relating to the Short Form 5500-SF, as well as general reporting requirements under Title I of ERISA. The telephone numbers referenced above are not toll-free numbers.

To enable the public to better evaluate the proposed changes, the Department is making available on its Web site at <http://www.dol.gov/ebsa>, mock ups of the Schedules SB, MB and R. Copies of the mock ups may also be obtained by calling the EBSA's Public Disclosure Room at 1.866.444.EBSA (3272).

### SUPPLEMENTARY INFORMATION:

#### A. Background

Sections 101 and 104 of Title I and section 4065 of Title IV of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, sections 6058(a) and 6059(a) of the Internal Revenue Code of 1986 (Code), as amended, and the regulations issued under those sections, impose certain annual reporting and filing obligations on pension and welfare benefit plans, as

well as on certain other entities.<sup>1</sup> The Department of Labor's (Department) annual reporting regulations, including 29 CFR 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). Plan administrators, employers, and others generally satisfy these annual reporting obligations by the filing of the Form 5500 "Annual Return/Report of Employee Benefit Plan," together with any required attachments and schedules (Form 5500 Annual Return/Report), in accordance with the instructions and related regulations.

The Form 5500 Annual Return/Report is the principal source of information and data available to the Department, the IRS, and the PBGC (Agencies) concerning the operations, funding, and investments of more than 800,000 pension and welfare benefit plans. These plans cover an estimated 150 million participants and hold an estimated \$4.3 trillion in assets. Accordingly, the Form 5500 Annual Return/Report necessarily constitutes an integral part of each Agency's enforcement, research, and policy formulation programs, and is 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 Form 5500 Annual Return/Report also serves as the primary means by which plan operations can be monitored by participants and beneficiaries and by the general public.

The Pension Protection Act of 2006, Pub. L. 109-280, 120 Stat. 780 (2006) (PPA), enacted on August 17, 2006, changed certain annual reporting rules under ERISA and funding requirements under ERISA and the Code for pension plans. The PPA also required the Treasury Department/IRS and the Department to provide a simplified annual return for certain retirement plans that cover fewer than 25 participants. The Form 5500 Annual Return/Report, therefore, needs to be updated to reflect these PPA changes. The changes proposed in this document are limited to those needed to reflect the PPA annual reporting requirements and

<sup>1</sup> Other filing requirements not within the scope of this proposal may apply to certain employee benefit plans and multiple employer welfare arrangements under ERISA or to other benefit arrangements under the Code.

do not attempt to address comments received in connection with the July 2006 Proposal.<sup>2</sup> One exception, however, is the movement of proposed asset allocation questions for certain large defined benefit plans to the Schedule R in conjunction with the proposal to eliminate the existing Schedule B and create two new Schedules—the Schedule SB and the Schedule MB.

### B. Need To Expedite Adoption of Supplemental Proposed Revisions

These supplemental proposed revisions to the Form 5500 Annual Return/Report, as well as the July 2006 Proposal, are part of the Agencies' move to a fully electronic filing and processing system to replace the existing paper-based ERISA Filing Acceptance System (EFAST). As part of that initiative, the Department published a final rule in the **Federal Register** on July 21, 2006, establishing an electronic filing requirement for the Form 5500 Annual Return/Report for plan years beginning on or after January 1, 2008 (Electronic Filing Rule). 71 FR 41359. The Department also published a Request for Proposal on September 1, 2006, seeking bids to develop the new wholly electronic system, known as EFAST2, to electronically receive, process, store, publicly disclose, distribute, and archive the Form 5500 Annual Return/Report filings that will be submitted electronically starting with 2008 plan year filings. See Solicitation Number DOL069RP20266 for EFAST2 at <http://www.fedbizopps.gov> (*FedBizOpPs.gov* is the single government point-of-entry for federal government procurement opportunities over \$25,000). In order for supplemental form revisions to be incorporated into the EFAST2 procurement process in a timely fashion, the supplemental form changes need to be finalized by the February 2007 target for finalizing the July 2006 Proposal.

Furthermore, in light of the time constraints, the Agencies are publishing in this Notice charts listing the line item data elements on the new actuarial schedules (Schedule SB and Schedule MB) and the new line item data elements for the Schedule R, as well as an indication of which items on the

<sup>2</sup> The term "July 2006 Proposal" used throughout this Notice refers to two documents: The Notice of the Proposed Revision of Annual Information Return/Reports contained at 71 FR 41615 (July 21, 2006) (sometimes referred to as "July 2006 Notice"); and the proposed rule regarding Annual Reporting and Disclosure contained at 71 FR 41392 (July 21, 2006) (sometimes referred to as "July 2006 Proposed Rules"), which were necessary to conform the annual reporting and disclosure regulations to the proposed revisions.

Schedule SB and Schedule MB are the same, similar to, or different from existing Schedule B data items. To enable the public to better evaluate the proposed changes, the Department is also making available on its Web site at <http://www.dol.gov/ebsa>, mock ups of the Schedules SB, MB and R (copies of the mock ups may also be obtained by calling the EBSA's Public Disclosure Room at 1.866.444.EBSA (3272)). The Agencies believe the information being published will provide an adequate basis for public comments on the supplemental proposed form changes. The instructions for the new Schedules SB and MB and the new Schedule R questions will be subject to a later publication so that they can be developed based on guidance to be issued by the IRS or PBGC implementing the PPA requirements underlying the Form 5500 Annual Return/Report data elements. For example, guidance may explain the manner in which the employer makes elections with respect to the carryover and/or prefunding balances.

### C. Discussion of Supplemental Proposed Revisions

#### 1. Replacing Schedule B With Separate Schedules for Single-Employer Plans (Schedule SB) and Multiemployer Plans (Schedule MB)

The PPA significantly changed the funding requirements applicable to defined benefit pension plans. These changes rendered the existing Schedule B largely obsolete, especially for single-employer defined benefit pension plans. While the PPA changes for multiemployer defined benefit pension plans allowed for continued use of a reporting scheme similar to the existing Schedule B, a number of Schedule B changes were required even for multiemployer plans. The Agencies believe that the appropriate way to address the PPA changes is to eliminate the existing Schedule B and create two new Schedules—the Schedule SB, "Single-employer Defined Benefit Plan Actuarial Information," and the Schedule MB, "Multiemployer Defined Benefit Plan and Money Purchase Plan Actuarial Information."

#### a. New Schedule SB "Actuarial Information Single-Employer Defined Benefit Plans"

The proposed Schedule SB would be filed by all single-employer defined benefit plans (including multiple-employer defined benefit plans).<sup>3</sup> The

<sup>3</sup> Unlike multiemployer plans within the meaning of ERISA sections 3(37) and 4001(a)(3) to which

Schedule SB will capture identifying information about the plan and plan sponsor, the type of plan, and number of participants. It will have basic information about plan assets, number of participants, and funding target information. Like the existing Schedule B, it will have a statement by an enrolled actuary, modified to reflect that the enrolled actuary no longer will be certifying as to the reasonableness of certain actuarial assumptions, which are prescribed by statute or regulation.

The remaining data elements are to be in a similar format to the current Schedule B and consist of basic actuarial worksheets designed to allow the Agencies to evaluate the plan's compliance with the funding requirements as amended by sections 101, 102, 111, and 112 of the PPA, and to ensure that the reporting requirements under ERISA, as amended by section 503 of the PPA, are included on the schedule. The material is divided into sections consisting of "Basic Information," "Beginning of Year Carryover and Prefunding Balances," "Funding Percentages," "Contributions and Liquidity Shortfalls," "Assumptions Used to Determine Funding Target and Target Normal Cost," "Miscellaneous Items," "Reconciliation of Unpaid Minimum Required Contributions for Prior Years," and "Minimum Required Contribution for Current Year." Plans for which the effective date of the new PPA funding rules is delayed (e.g., airlines that have frozen pension plans electing the alternate funding schedule, PBGC settlement plans, certain defense contractors, certain rural electrical cooperatives, etc.) will not be required to fill out all of these sections. Instead, additional information related to the applicable funding rules for such plans will be provided as an attachment. In addition to the supplemental schedules required in the past, additional attachments may be required as a result of the PPA. For example, if a plan is in at-risk status, additional information (e.g., whether the expense load applies, a breakdown by category of the at-risk funding target without regard to the five-year phase-in) may be required.

Section 107 of the PPA amended section 103(d)(11) of ERISA to require

more than one employer is required to contribute, which must be maintained pursuant to one or more collective bargaining agreements between one or more employee organization and more than one employer, and which must satisfy other requirements prescribed in regulations issued by the Department of Labor at 29 CFR 2510.3-37. Multiple-employer plans are plans that cover the employees of two or more unrelated employers but are treated as single-employer plans for various purposes under ERISA.

disclosure of the ratio of the current value of the assets of the plan to (A) the plan's funding target (as defined in section 303(d)(1) of the PPA, in the case of a single-employer plan), or (B) the plan's current liability (as defined in section 304(c)(6)(D) of the PPA, in the case of a multiemployer plan), if that ratio is less than 70 percent. This requirement is included in Part III, Line 17, of Schedule SB.<sup>4</sup> The Agencies also concluded that, although the PPA did not amend section 103(d)(3) or section 103(d)(7), the proposal would eliminate the requirement to report "normal costs," "accrued liabilities," and "certification of the contribution necessary to reduce the accumulated funding deficiency to zero" for single-employer plans because these terms do not have continued relevance after the PPA amendments to ERISA. Instead, Schedule SB requires reporting the "funding target," "target normal cost," and the "amount of unpaid minimum required contribution," which are the post-PPA terms that most closely relate to the information required by section 103(d)(3) and 103(d)(7).

b. New Schedule MB, "Actuarial Information Multiemployer Defined Benefit Plans and Money Purchase Plans"

Because the PPA changes to the actuarial information reporting requirements were less substantial for multiemployer plans and money purchase plans, the Agencies are proposing to use the existing Schedule B as the structure for the proposed new Schedule MB, which is to be used for multiemployer defined benefit pension plans and all money purchase plans (single-employer and multiemployer). The proposed Schedule MB would use the same basic identifying information as on the existing Schedule B, although revising the check boxes for type of plans and eliminating the check box that in the past was used to indicate whether the plan had 100 or fewer participants in the prior year. The statement of the enrolled actuary would be modified to reflect that the actuarial assumptions must be individually reasonable.

Lines 1 through 3 of the existing Schedule B would remain essentially the same, except for the addition of a new element 1c(3) to report accrued liability under the unit credit cost method. To comply with section 503 of the PPA, the existing line 4 would be deleted and replaced with a new line 4 to identify information about whether

the plan is in endangered, seriously endangered, or critical status, and, if so, whether the plan is complying with the applicable requirements for its funding improvement or rehabilitation plan. The current line 5 identifying the actuarial cost method would be revised to incorporate alternative methods available only to multiemployer plans, which were previously reported under item 8b, and to reflect additional information required by section 503 of the PPA for plans using the shortfall method. Similarly, the Schedule MB would incorporate most of Schedule B current lines 6 through 9, but would eliminate information on the weighted average retirement age and annual withdrawal rates. New items would be added to Item 8 to reflect information required under section 503 of the PPA pertaining to extensions of periods to amortize bases and the use of the shortfall method. In addition, the requirement to provide a schedule of active participant data would be extended to multiemployer plans. With respect to Item 9, lines pertaining to additional interest charges due to late quarterly contributions, and any adjusted funding charges would be eliminated. Schedule MB would also revise the questions regarding the bases for which amortization periods are extended and revise the questions to conform to sections 201, 202, 211, and 212 of the PPA the questions on the reconciliation account. The Part II of the current Schedule B, which does not relate to multiemployer plans, would be deleted.

## 2. Additional Schedule R Questions for Single-employer and Multiemployer Defined Benefit Pension Plans

Section 503 of the PPA amended ERISA by adding ERISA section 103(f)(2), which requires multiemployer plans to report the amount of assets transferred in a multiemployer plan merger, information on withdrawing employers and their withdrawal liability, information on employers contributing to multiemployer plans, and information on participants for whom no employers made contributions.

The Agencies' July 2006 Proposal required plan administrators to identify major contributing employers to multiemployer defined benefit pension plans so that the PBGC could improve its ability to assess the financial condition of the plan and the financial risk posed to the plan by the financial collapse or withdrawal of one or more contributing employers. For these employers, the plan would be required to report on Schedule R: (1) Name of the

<sup>4</sup> It is also included on Part I, Line 2c, of Schedule MB.

contributing employer; (2) the employer identification number (EIN); (3) dollar amount contributed; (4) contribution rate; (5) type of base units for the contribution; and (6) expiration date for the collective bargaining agreement pursuant to which contributions are required to be made to the plan. These questions are shown here on the new Schedule R because they are now also required by section 503 of the PPA. To conform the language of the questions to that of the PPA, the question now requires identification of those employers contributing more than five percent, rather than those contributing five percent or more, as in the July 2006 proposal. In addition, the July 2006 Proposal would have added a question on the Form 5500 seeking the total number of contributing employers to multiemployer plans as well as all other types of plans, a data item now also required by section 503 of the PPA.

Several additional new questions would be added to the Schedule R to comply with section 503 of the PPA. The Schedule R, new Part V, under this proposal, would now be expanded to provide more information on multiemployer defined benefit plans. It would ask for information regarding participants for whom no employer contributions were made for the current plan year and the two preceding plan years and information regarding the number of employers withdrawing from the plan and the assessed and estimated withdrawal liability. A new Part VI would be added to Schedule R to collect funded percentage information for single-employer and multiemployer defined benefit pension plans with liabilities arising from mergers or transfers of assets during the plan year.

This proposal also moves to Part VI of Schedule R the asset allocation questions for large defined benefit plans (1000 or more participants) included on the Schedule B in the July 2006 Proposal. Under this supplemental proposal, the Schedule R would include a new section requiring such plans to report the percentage of total plan assets held as stock; debt (with break-outs for government, investment-grade, and high yield debt); real estate; and other. The plan would also be required to provide a Macaulay duration of aggregate debt investments. As part of the development of the new Schedules SB and MB, the Agencies decided to move these questions to the Schedule R from the Schedule B (where they appeared in the July 2006 Proposal) because the Agencies concluded that this essentially financial information should not be subject to the enrolled actuary certification requirement applicable to

other Schedule SB and MB information. This supplemental proposal to include these asset distribution questions for certain large defined benefit plans on the Schedule R should not be construed as a determination by the Agencies regarding public comments received in response to the July 2006 Proposal on the substance of the proposed questions themselves.

### 3. Simplified Annual Reporting for Plans With Fewer Than 25 Participants

Section 1103(b) of the PPA requires the Secretary of the Treasury/IRS and the Secretary of Labor to provide for the filing of a simplified annual return for any retirement plan which covers fewer than 25 participants on the first day of the plan year and which (1) meets the minimum coverage requirements of section 410(b) of the Code without being combined with any other plan of the business that covers the employees of the business; (2) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control; and (3) does not cover a business that uses the services of leased employees (within the meaning of section 414(n) of the Code). The PPA provision does not include specific requirements as to the form or content of the simplified filing.

As noted above, the July 2006 Proposal included, among other changes: (1) The establishment of a Form 5500-SF Annual Return/Report (Short Form or Short Form 5500) as a new simplified report for certain small plans. The Short Form is a new two-page form for small plans (generally, plans with fewer than 100 participants) with secure and easy to value investment portfolios. As set forth in greater detail in the July 2006 Proposal, a plan would be eligible to file the Short Form if the plan: (1) Covers fewer than 100 participants or would be eligible to file as a small plan under the 80 to 120 rule in 29 CFR 2520.103-1(d); (2) is eligible for the small plan audit waiver under 29 CFR 2520.104-46 (but not by virtue of enhanced bonding); (3) holds no employer securities; and (4) has 100% of its assets in investments that have a readily ascertainable fair market value. Because the Agencies believe that all multiemployer plans should be required to answer newly proposed questions on the Form 5500 Annual Return/Report and the Schedule R regarding contributing employers, as proposed, multiemployer plans were not to be eligible to file the Short Form. Most Short Form filers would not be required to file any schedules, although defined benefit pension plans would

continue to be required to file Schedule SB, where applicable. Those small plans not eligible to use the Short Form could still avail themselves of the current simplified reporting alternatives for small pension plans.

The Agencies believe that the requirement in the PPA to provide "simplified" reporting for plans with fewer than 25 participants is satisfied by the simplified reporting scheme in the July 2006 Proposal. The Agencies believe that the Short Form 5500, as proposed, was targeted to provide a simplified report for plans with fewer than 25 employees because we estimate that approximately 75% of all plans eligible to file the Short Form cover fewer than 25 participants. The Agencies propose to continue to prohibit plans that invest in employer securities or other hard to value assets and multiemployer plans from being eligible to use the Short Form 5500. The Agencies believe this conclusion is consistent with the PPA's emphasis on increasing transparency, accurate measurement of assets, greater participant control over the disposition of employer securities in defined contribution plans, and expanding the annual reporting requirements for multiemployer plans. As under the July 2006 Proposal, small plans not eligible to use the Short Form 5500 still would be able to avail themselves of the other simplified reporting options available to small plans under the Form 5500 Annual Return/Report and its schedules.<sup>5</sup>

<sup>5</sup> The PPA provision requiring a simplified report for plans that cover fewer than 25 participants only applies to plans that meet the minimum coverage requirements of Code section 410(b) without being combined with any other plan that covers business' employees; does not cover a business that is a member of an affiliates service group, a controlled group of corporations, or a group of businesses under common control; and does not cover a business that uses leased employees (within the meaning of section 414(n) of such Code). Since these PPA conditions focus on tax qualification rules under the Code, and because the PPA did not prohibit the Department of providing those plans with a simplified report pursuant to its general authority under ERISA section 104(a)(2)(A) to establish simplified reports for pension plans that cover fewer than 100 participants, the Department concluded that it did not need to restrict the simplified report being proposed under Title I of ERISA with those conditions. The Department also notes the elimination of IRS-only schedules from the Form 5500 and from the Short Form 5500 as a part of the Department's adoption of a wholly electronic filing requirement under Title I of ERISA diminishes the relevance of the above PPA conditions to Form 5500 filings under EFAS. However, as explained in the Department's Electronic Filing Final Rule, 71 FR 41359 (July 21, 2006), the IRS intends to permit plans that cover only sole proprietors or partners (and their spouses) that are not subject to Title I of ERISA but file the Form 5500-EZ to satisfy the annual reporting and

A list of the proposed data elements for the Short Form 5500 and a mock-up of the Short Form and the instructions were published in the **Federal Register** as part of the July 2006 Proposal. The July 2006 Proposal can be viewed on the Department's Web site at <http://www.dol.gov/ebsa>.

Section 1103(b) of the PPA requires a simplified report to be available for 2007 plan year filings, i.e., filings for plan years beginning after December 31, 2006. This proposal addresses the simplified report requirement for 2008 plan years, i.e., those beginning after December 31, 2007. For the 2007 plan year, the Agencies will allow plans covering fewer than 25 participants that would meet the conditions for being eligible to file the Short Form 5500 if those conditions applied to 2007 filings to file an abbreviated version of the current Form 5500 Annual Return/Report available for "small plan" filers. Specifically, the Department anticipates that the simplified report will to a large extent replicate within the context of the existing Form 5500 Annual Return/Report structure the information that would be required to be reported on the proposed Short Form 5500 (Form 5500-SF), possibly by allowing certain schedules to be excluded from the filing or requiring only certain line items to be completed on required schedules. The Department understands that some eligible small plan filers may want to wait until the 2008 plan year to file the Short Form in order to avoid having to implement changes to their annual reporting systems and procedures for their 2007 plan year filings and then adjust them again in 2008 to file the Short Form, and, accordingly, the Department intends that these plans will have the option of continuing to file in accordance with the normal rules for the 2007 plan year. Specific guidance regarding this simplified reporting option will be included in the instructions to the 2007 Form 5500. The Agencies currently anticipate posting information copies of the 2007 forms and instructions in July 2007.

#### *4. Electronic Filing and Web Site Display of Form 5500 Information*

Section 504 of the PPA requires that, for defined benefit pension plans, the basic plan identifying information and actuarial information included in the annual report must be filed with the Department in an electronic format that accommodates display on the Internet.

filing obligations imposed by the Code, to satisfy the requirement to file the Form 5500-EZ with the IRS or by filing the Form 5500-SF electronically with the EFAST system.

As noted above, the Department has an ongoing initiative to move to a wholly electronic filing and processing system for all Form 5500 reports filed with the Department starting with reporting years beginning on or after January 1, 2008. The Department's Request for Proposal on the EFAST2 system published on September 1st already calls for the system to be capable of electronic public disclosure of all Form 5500 filings. The Department intends that the new EFAST2 system and the Electronic Filing Rule will satisfy section 504 of the PPA's requirement regarding electronic filing with and display of information by the Department.

#### **D. 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 ERISA 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 Department finds under sections 104(a)(3) and 110 of ERISA that the use of the proposed Short Form 5500, the Schedule SB and MB to replace the Schedule B, and the revised Schedule R,

along with the previously proposed revised Form 5500 Annual Return/Report, 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 ERISA, 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 the 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 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 that the use of the Short Form 5500 is a simplified means of reporting for purposes of the requirements of section 1103 of the PPA that takes into account the appropriate balance of reducing filing burdens for plans with fewer than 25 participants without impairing enforcement, research, and policy needs, and providing adequate disclosure to participants and beneficiaries, which balance is required by section 104(a) of ERISA.

## E. Regulatory Impact Analysis

### Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a 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). Section 3(f) of Executive Order 12866 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 raises novel legal or policy issues arising out of legal mandates and the President’s priorities. Therefore, this action is a “significant regulatory action” 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 cost associated with the provisions of this proposal. The Department believes that some employee benefit plans will see a decrease in costs (e.g., Short Form eligible plans and single-employer defined benefit pension plans) and others might see an increase in costs due to this proposal (e.g., multiemployer defined benefit pension plans).<sup>6</sup> Further information about the

amount of increase and decrease in costs for particular plan types is displayed in the cost section, below. On aggregate, the Department estimates a cost reduction of up to \$77 million in the first year.

Unless stated otherwise, this analysis describes the increases and decreases in benefits, costs, and burdens that this proposal alone would cause as compared to the costs, benefits, and burdens created by current law. Where this proposal modifies a forms revision included in the July 2006 Proposal, we attempt to explain the nature of the modification, but we have not attempted to quantify any differences in the respective economic analyses.

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

Category	Net cost reduction
Annualized Monetized Benefit.	\$77 million. <sup>7</sup>

### Need for Regulatory Action

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. To address changes required by the PPA, the Department has attempted in this supplemental proposal to balance the interests of participants, beneficiaries, the public, and the Department in the protection of ERISA rights and 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 supplemental forms revisions’ benefits justify the costs. The

out the amount of savings attributed to plans with fewer than 25 participants from the total savings.

<sup>7</sup> The \$77 million figure reflects the cost reduction that would occur if this proposal alone were implemented. The \$174 million cost reduction figure from the July 2006 Proposal represents the cost reduction that would occur if the July 2006 Proposal alone were implemented. See July 2006 Proposed Rule, 71 FR at 41396.

basis for this conclusion is explained below.

### Regulatory Alternatives

Executive Order 12866 directs federal agencies promulgating rules to evaluate regulatory alternatives. The Department has concluded that its proposal to substitute separate actuarial schedules for single-employer plans and multiemployer plans for the existing Schedule B and to add new questions to the Schedule R is appropriate as a means to collect additional information as required by the PPA. Further, the Department has concluded that the July 2006 Proposal to make available the Short Form 5500 for plans with fewer than 100 participants would be an appropriate way to simplify reporting and reduce filer burden for plans with fewer than 25 participants, as required in section 1103 of the PPA, while still meeting the needs of participants, beneficiaries, the public, and the Department in full and adequate disclosure.

In developing form revisions and implementing regulatory changes, as required by the PPA, the Department considered several alternatives. The Department’s consideration included, for example, different approaches to the Schedule B, R, and H changes as well as the eligibility criteria for the Short Form 5500.

The public is invited to comment specifically on the decision points for the proposed revisions and on the adequacy of the models, assumptions, and data developed to evaluate regulatory burden. In considering these alternatives, the Department weighed the objective of reduced regulatory burden against the need for adequate reporting and disclosure, quantifying impacts where possible.<sup>8</sup> For example:

- *Change and add new plan funding information on Actuarial Information Schedule (Currently Schedule B):* Schedule B is filed currently by defined benefit pension plans subject to the minimum funding schedules. In developing this proposed supplemental revision, the Department considered how to balance the need for information to help participants, beneficiaries, and the PBGC evaluate the financial solvency of both single and multiemployer defined benefit plans with the potential burden on administrators of those plans of providing the additional information (see discussion in preamble to the July

<sup>6</sup> The reduction in costs shown in Table 1 for plans with fewer than 25 participants represents a portion of the savings attributed to the Short Form 5500 for plans with fewer than 100 participants in the July 2006 Proposal and supporting documents. This analysis uses the same methodology as used in the July 2006 Proposal to calculate the savings, although this analysis refines the result by breaking

<sup>8</sup> The Department will take into account all comments received in response to both this proposal and the July 2006 Proposal in connection with finalizing the forms revisions.

2006 Notice). The Department believes that a cost-effective way to gather the information required by the PPA is to replace the existing Schedule B with separate forms specifically tailored for single-employer and multiemployer plans, Schedules SB and MB respectively. Providing each type of plan with its own actuarial schedule will generate cost savings and efficiencies. The Department

entertained the alternative of simply adding the additional questions required by the PPA for both types of plans to the existing Schedule B instead of separating the Schedule B into the Schedules SB and MB. However, differences in the statutory requirements for single-employer and multiemployer plans would cause some questions to have been filled out only by single-employer plans and others only by

multiemployer plans. Plan administrators would have had to spend additional time and effort to distinguish questions relevant for their plans. As can be seen in Table 2 below, collecting the information on a single Schedule B would result in a smaller reduction of burden than adopting the proposed separate Schedules SB and MB.

TABLE 2.—CHANGE IN BURDEN BETWEEN SEPARATE ACTUARIAL INFORMATION SCHEDULES AS PROPOSED IN THE SUPPLEMENTAL PROPOSED FORMS REVISIONS AND ONE EXPANDED SCHEDULE B

	Change in burden if separate Schedule Bs are established (as proposed)	Change in burden if changes are made to single Schedule B (alternative)
Total Change in Hours .....	– 17,000	– 10,000
Total Change in Costs (in Millions) .....	– \$1.48	– \$0.84

- *Establishment of a Short Form 5500 for certain plans with fewer than 25 participants:* As discussed in more detail in the preamble of the July 2006 Notice (under the heading “A. Short Form 5500 as New Simplified Report for Certain Small Plans,” 71 FR at 41618), the Department determined that most small plans, by virtue of their assets being held by regulated financial institutions and having a readily determinable fair market value, present reduced risks for their participants and beneficiaries and should be allowed a simplified annual report filing (*i.e.*, the Short Form 5500). The Department estimates that 95% of non-403(b) plans would qualify to file the Short Form 5500, 75% of which are plans with fewer than 25 participants.<sup>9</sup> In considering how to provide the simplified filing required by the PPA, the Department considered allowing all plans with fewer than 25 participants, regardless of their investments, to file the Short Form 5500. The Department

estimates that this would affect about 29,000 plans.

However, the Department continues to believe, as noted in the July 2006 Proposal, that prohibiting use of the Short Form 5500 by plans with employer securities or other assets that are difficult to value is consistent with important policy objectives. The importance of those policies is underscored by the PPA’s emphasis on increasing plan transparency, accurate measurement of assets, greater participant control over the disposition of employer securities in defined contribution plans, and expanding the annual reporting requirements for multiemployer plans. All plans with fewer than 25 participants will be able to file a simplified annual return. In most cases that simplified return will be the Short Form 5500, but as under the July 2006 Proposal, small plans not eligible to use the Short Form 5500 still will be able to avail themselves of the other simplified reporting options available to small plans under the Form 5500 Annual Return/Report and its schedules.

**Benefits and Costs**

Benefits—The use of the Short Form 5500 for eligible plans to satisfy the simplified reporting requirement in the PPA and of the Form 5500, Schedules SB and MB, and Annual Return/Report and Schedule R, as modified, to obtain the additional annual reporting required by the PPA, will provide a standardized, streamlined alternative means of compliance with applicable statutory reporting requirements, as well as providing appropriate simplified annual reports and exemptions under section 104(a)(2) and (3) of ERISA. In so doing, they will both ease plan administrators’ burden of compliance with reporting requirements and 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 the new reporting obligations. They also will make it possible to efficiently capture and assemble the information into an electronic data system, as also required by the PPA. The data will 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, monitoring

- *Additional data elements reported on Schedule R:* Moving the asset distribution questions to Part VI of Schedule R presents an alternative to the treatment of these items in the July 2006 Proposal, which placed them on Schedule B (now Schedules SB and MB). As noted earlier in the preamble, this proposal’s placement of these items on the Schedule R should not be construed as a determination by the Agencies regarding public comments on the substance of the questions received in response to the July 2006 Proposal.

<sup>9</sup>Previously, in the July 2006 Proposed Rules, the Department estimated that 90% of non-403(b) plans would be eligible for filing the Short Form 5500. 71 FR at 41397. The Department has revised this estimate to conclude that an estimate of 95% eligibility is a more accurate estimate. These numbers do not include any estimate regarding 403(b) plans because this RIA, which is limited only to the changes required by the PPA, is based on current law. Using proposed forms revisions, 403(b) plans are treated as having only limited reporting requirements of current law, but this supplemental notice should not be construed as a substantive determination in response to the comments received on the July 2006 Proposal. As noted before, the Department anticipates combining all changes to the 2008 Form 5500 proposed in the July 2006 Proposal and this supplement and addressing the comments on both comprehensively into a final notice.

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 supplemental revisions justify the costs as further detailed below.

*Separate actuarial schedules for single-employer plans and multiemployer plans to reflect PPA changes in funding and annual reporting requirements:* As noted below, this revision is expected to decrease reporting costs for single-employer plans and increase reporting costs for multiemployer plans. The Agencies believe, however, that the cost increases for multiemployer plans are justified by the need to better monitor plan funding. This information is needed by participants, beneficiaries, and the PBGC to improve their ability to assess the financial condition of the plan.

*Additional data elements reported on Schedule R:* As noted below, this revision will increase reporting costs for affected plans. The PPA requires Multiemployer defined benefit plans to report additional information that is needed by participants, beneficiaries, and the PBGC to assess the financial risk posed to the plan by a financial collapse or withdrawal of one or more contributing employers. Some of the additional data elements are already included in the July 2006 Proposal and, as further described in the July 2006 Proposed Rule (see discussion in preamble to the July 2006 Proposed Rule under the heading "Adding

Multiemployer Plan Contributing Employer Information," 71 FR at 41398), where it was stated that the PBGC believes that it is prudent to begin monitoring companies that are major contributors to multiemployer plans, especially because the financial conditions of many multiemployer plans have been deteriorating. Similarly, multiemployer plan mergers, information on withdrawing employers and their withdrawal liability, and information on participants for whom no employer makes contributions are important. Identification of companies and plans affected by such changes and gathering additional information on their impact is essential to making accurate assessments of the potential risks to which these plans are exposed.

*Establishment of a Short Form 5500 for certain small plans:* The Agencies estimate that this change will result in a reduced burden on the affected small plans. As noted in the July 2006 Proposal and as further described in the July 2006 Proposed Rule (see discussion in the preamble to the July 2006 Proposed Rule under the heading "Establishment of a Short Form 5500 for certain small plans," 71 FR at 41397), the Short Form 5500 was being developed with the specific intent of reducing reporting costs while still collecting sufficient information to preserve ERISA protections and satisfying the enforcement, research, and regulatory needs of the 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 issued by regulated financial institutions and having 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. 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.

*Electronic Filing and Web site Display of Form 5500 Information:* This will give participants and beneficiaries an additional option on how to monitor the financial status of their pension plans. They will be able to access important information instantaneously and without any additional costs involved, as plans must be capable of electronic public disclosure beginning with the 2008 reporting years.

*Costs—*The Supplemental Proposed Forms Revisions will reduce the burden for small plans eligible to file the Short Form 5500, but increase the burden for plans that must report additional information on Schedules SB or MB, R and H. As shown in Table 3, the aggregate cost of reporting under the existing rules is estimated to be \$775 million annually,<sup>10</sup> shared across the 780,000 filers subject to the filing requirement. The Department estimates that the supplemental proposed forms revisions, however, reduce the annual cost burden by \$77 million.<sup>11</sup>

TABLE 3.—SUMMARY OF COSTS: CURRENT REQUIREMENTS VS. REQUIREMENTS UNDER THE SUPPLEMENTAL PROPOSED REVISION

	Total costs (in millions)	Total burden hours (in millions)
Current Reporting Requirements .....	\$774.8	9.42
Change due to the Supplemental Proposed Revision .....	- 77	- 0.94
Requirements under the Supplemental Proposed Revision .....	698	8.48

Note: Number of affected plans: 445,000.  
The Requirements under the Supplemental Proposed Revision do not include the reporting requirements that are included in the July 2006 Proposal but not in the Supplemental Proposed Revisions.

Similar to the July 2006 Proposal, the Department assumes that substantial revisions to the existing reporting requirements will entail some one-time transition costs, but 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 transaction costs.

In addition to estimating the total impact of the proposed revisions on aggregate costs, the Department has broken down the change in costs by individual revisions in the following way:

<sup>10</sup> For reasons explained in footnote 20 and in the technical appendix, the cost of current reporting requirements contained in this proposal is different from the cost calculated for the July 2006 Proposal.

<sup>11</sup> These cost estimates take only the PPA changes into account. They take the changes included in the July 2006 Proposal into account only to the extent that the PPA also requires them. As noted before,

the Department intends to consolidate all changes into the final revisions expected to be published in 2007.



1. Separate actuarial schedules for single-employer plans and multiemployer plans to reflect PPA changes in funding and annual reporting requirements. Under the Supplemental Proposed Forms Revisions the Schedule B will be separated into a Schedule SB for single-employer and multiple-employer defined benefit plans and a Schedule MB for multiemployer defined benefit and money purchase plans. Relative to the current filing requirement, the establishment of Schedule SB will reduce the total annual burden for 43,000 affected filers by a little more than 18,000 hours. Applying an hourly labor rate of \$88 for service providers and \$61 for plan sponsors, the Department estimates that this will lower the annual reporting cost by an estimated \$1.59 million.<sup>12</sup> On the other

hand, the establishment of Schedule MB will increase the total annual burden for 1,500 affected filers by 1,200 hours. Applying an hourly labor rate of \$88 for service providers and \$61 for plan sponsors, the Department estimates that this will increase the annual reporting cost by an estimated \$105,000. On aggregate, the separation of the Schedule B will decrease the aggregate total annual burden by 17,000 hours, or by an estimated \$1.48 million.

2. Additional Data Elements on Schedule R. The provision of this information is anticipated to add an estimated additional annual cost of \$1.07 million (13,000 hours) for 20,000 affected filers when applying an hourly rate of \$88 for service providers and \$61 for plan sponsors.<sup>13</sup>

3. Establishment of a Short Form 5500 for certain small plans. A large majority

of small plans, or 425,000 of the 629,000 total small plan filers, are estimated to be eligible to use the Short Form 5500, thereby saving an estimated \$77 million (942,000 hours) annually. Again, the Department is applying an hourly rate of \$88 for service providers and \$61 for plan sponsors.<sup>14</sup>

4. Electronic Filing and Web site Display of Form 5500 Information. This requirement is not anticipated to add any additional costs, as plans must be capable of electronic public disclosure beginning with the 2008 reporting year due to the Electronic Filing Rule.

A summary of the changes in costs and burden hours that were allocated to the groups of proposed supplemental changes as outlined above, as well as the number of affected employee benefit plans, can be found in Table 4 below.

TABLE 4.—SUMMARY OF SUPPLEMENTAL PROPOSED CHANGES TO THE REPORTING REQUIREMENTS: COSTS, BURDEN, AND AFFECTED PLANS

Supplemental proposed revisions for 2008	Change in costs (in millions) <sup>1</sup>	Change in burden hours <sup>1</sup>	Number of affected plans <sup>1 2</sup>
Separate Schedule Bs .....	− \$1.48	− 17,000	44,500
Short Form 5500 .....	− 76.75	− 942,000	425,000
Schedule R .....	+1.07	+13,000	20,000
Total .....	− 77.17	− 944,000	445,000

<sup>1</sup> Note: The displayed numbers might not sum up to the totals due to rounding.

<sup>2</sup> Some plans are affected by more than one individual revision. Consequently, the total number of affected plans is lower than the summation of the number of plans affected by the three individual revisions.

**Assumptions, Methodology, and Uncertainty**

The cost and burden associated with the annual 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 plan that merges with another multiemployer plan and invests in employer securities or other hard to value assets. Therefore, as in the July 2006 Proposal, 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 the methodology designed and peer reviewed for the July 2006 Proposal and repeated below.

Assumptions Underlying This Analysis—The Department’s analysis of the costs and benefits of these supplemental proposed revisions 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 this

proposal and absent the July 2006 Proposal will resemble the present.<sup>15</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 the U.S. Dept. of Labor May 25, 1999.<sup>16</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

<sup>12</sup> For purpose of the burden analysis, the Department assumes that 4% to 8% of the burden hours of Schedule B are incurred by the plan sponsors and 92% to 96% by service providers. The displayed numbers in the text might not multiply to the totals due to rounding. The labor rates were updated from the rates used in the July 2006 Proposed Notice. See 71 FR at 41399. Please see the Technical Appendix for details.

<sup>13</sup> For purpose of the burden analysis, the Department assumes that 29% to 32% of the burden hours of Schedule R are incurred by the plan sponsors and 68% to 71% by service providers. The displayed numbers in the text might not multiply to the totals due to rounding.

<sup>14</sup> For purpose of the burden analysis, the Department assumes that 19% to 24% of the burden hours of the Short Form 5500 are incurred by the

plan sponsors and 76% to 81% by service providers. The displayed numbers in the text might not multiply to the totals due to rounding.

<sup>15</sup> Further detail can be found in the Technical Appendix.

<sup>16</sup> The Mathematica report can be accessed at the Department’s Web site at <http://www.dol.gov/ebssa>. Further detail can be found in the Technical Appendix.

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) for the July 2006 Proposal and subsequent burden estimates. 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 supplemental revisions to the reporting requirements. Table 5 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 supplemental proposed requirements. As can be seen from the Total line in Table 5, aggregate cost under current and proposed regulations add up to \$775 million and \$698 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). Small plans were divided into very small (less than 25 participants) and small (at least 25 participants, but less than 100 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 5.—NUMBER OF AFFECTED FILERS AND COST UNDER CURRENT VS. SUPPLEMENTAL PROPOSED REQUIREMENTS

Type of plan	Number affected	Aggregate cost under current requirements (in millions)	Aggregate cost under supplemental proposed requirements (in millions)
5500 Large Plans (> = 100 participants) .....	151,800		
DB, ME, 100–1,000 participants .....	600	\$4.67	\$4.78
DB, ME, > 1,000 participants .....	900	6.53	6.84
DB, SE, 100–1,000 participants .....	7,000	51.91	51.54
DB, SE, > 1,000 participants .....	3,400	25.00	25.49
DC, ME, non-403(b) .....	1,700	8.15	8.15
DC, ME, 403(b) .....	100	0.0035	0.0035
DC, SE, non-403(b) .....	57,400	261.97	261.96
DC, SE, 403(b) .....	7,200	0.31	0.31
Welfare, ME .....	4,100	7.78	7.78
Welfare, SE .....	69,200	92.60	92.60
5500 Very Small Short Form Eligible (< 25 participants) .....	428,700		
DB .....	28,600	33.40	17.84
DC, non-403(b) .....	396,200	145.18	83.28
5500 Small Short Form Ineligible .....	200,000		
DB .....	7,700	9.91	9.80
DC, non-403(b) .....	180,500	123.68	123.68
DC, 403(b) .....	8,900	0.39	0.39
Welfare .....	6,800	3.30	3.30
Total .....	780,450	774.8	697.74

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

DB—defined benefit plans.

DC—defined contribution plans.

SE—single-employer plans.

ME—multi employer plans.

Large plans—100 participants or more.

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 would consist of only a few questions on the Form 5500, Schedule A, and Schedules C and G, where applicable. 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 SB or MB (Actuarial Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), Schedule G where applicable, 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, 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 2003 (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.<sup>17</sup> In

summary, the model estimates that due to \$77 million in cost reductions the proposed revisions would lead to aggregate costs of \$698 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 5 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 supplemental proposed revisions. Some of the revisions just move items from the current Schedule B to the single-employer or multiemployer schedule. The impact of these changes can be estimated more accurately than the impact of the revisions that require the reporting of new items. 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, 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 the Department in Regulatory Impact Analyses. The Department determined that the data and methods employed in the regulatory analysis of the July 2006 Proposal constituted "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. The

Form 5500 data has become recently available and is used for making burden estimates for the Supplemental Proposed Revisions.

current proposal uses the same methodology and, accordingly, the Department is relying on the Peer Review Report prepared in connection with the July 2006 Proposal for its proposed use of the Short Form 5500 to satisfy the simplified reporting requirement and additional reporting requirements for defined benefit pension plans contained in the PPA.<sup>18</sup> 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,

<sup>18</sup> The current analysis uses the same methodology as was used in the July 2006 Proposal, except that the Department slightly updated some components. Information about the updates was included in the material given to the peer reviewer. The Department also used a newer data set (2003 Form 5500 data, rather than 2002 data) to estimate the burden. Further information about these updates can be found in the section "Costs" above.

<sup>17</sup> While the July 2006 Proposal used burden estimates drawing from 2002 Form 5500 data, 2003

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 this proposal 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 this proposal 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 revise the forms relating to the annual reporting and disclosure requirements of section 103 of ERISA to satisfy requirements of the PPA.

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 of those changes, 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 forms revisions to readjust its reporting requirements to take into account the PPA as well as certain recent changes in markets, the law, and technology, many of which are referenced above in this preamble.

(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 supplemental forms revisions are to implement applicable provisions of the PPA, as well as 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.

(3) These supplemental proposed forms revisions 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 forms revisions. Approximately 629,000 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 supplemental forms revisions. Of these, under the supplemental forms revisions an estimated 425,000 small pension plans 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.

(4) The proposed reporting requirements applicable to small plans are detailed above. For a large majority of the 629,000 small plans subject to annual reporting requirements, or an estimated 396,000 pension 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 29,000 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 SB. The remaining 204,000 small plans will not be eligible to use the Short Form 5500 under the PPA and will continue to be required to file the Form 5500 Annual Return/Report. Of these, 8,000 are defined benefit plans that must use an actuary and file Schedule SB or MB. All will require a mix of clerical and professional

administrative skills to satisfy their reporting requirements.

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

The Table 6 below compares the Department's estimates of small plans' reporting costs under the current requirements with those under the supplemental proposed requirements for various classes of affected plans. As shown, costs under the supplemental

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 6.—SMALL PLAN REPORTING COSTS UNDER CURRENT VS. SUPPLEMENTAL PROPOSED REQUIREMENTS

Class of plan	Number affected	Aggregate cost under current requirements (in millions)	Aggregate cost under supplemental proposed requirements (in millions)
Defined Benefit Pension, Short Form eligible .....	29,000	\$33.40	\$17.84
Defined Benefit Pension, Short Form ineligible .....	8,000	9.91	9.80
Code Section 403(b), Short Form ineligible .....	9,000	0.39	0.39
Other Defined Contribution, Short Form eligible .....	393,000	145.18	83.28
Other Defined Contribution Pension, Short Form ineligible .....	180,000	123.68	123.68
Funded Welfare .....	7,000	3.30	3.30
<b>Total for all affected small plans .....</b>	<b>629,000</b>	<b>315.85</b>	<b>238.28</b>

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

The Department notes that the estimated reporting costs amount to less than \$400 on average for each of the 629,000 small plans subject to annual reporting requirements. This compares with roughly \$3,000 on average for each of the 152,000 affected large filers.

(5) Except for the July 2006 Proposal, the Department is unaware of any relevant federal rules for small plans that duplicate, overlap, or conflict with these proposed forms revisions. The July 2006 Proposal includes provisions that overlap and duplicate with some of the form changes proposed in this notice of supplemental proposed forms revisions. For example, the July 2006 Proposal proposes the Short Form 5500 not only for certain small pension plans with less than 25 participants, but also for certain small pension and welfare plans with less than 100 participants. As noted above, the Department anticipates combining the forms revisions under the July 2006 Proposal and the supplemental proposed forms revisions when it finalizes the forms revisions.

(6) In developing the forms revisions, the Department considered a number of alternative provisions directed at small plans. For example, as discussed in the July 2006 Proposal, the Department 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 Supplemental Proposed 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.

#### Paperwork Reduction Act Statement

As part of continuing efforts to reduce paperwork and respondent burden, the general public and Federal agencies are generally invited to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data will be provided in the desired format, reporting burden (time and financial resources) will be minimized, collection instruments will be clearly understood, and the impact of collection requirements on respondents can be properly assessed. Concurrent with publication of the July 2006 Proposal, the Department submitted an

information collection request (ICR) to OMB, in accordance with 44 U.S.C. 3507(d), for its review of the Department's proposed revisions to the information collections previously approved by OMB under OMB Control No. 1210-0110.

On August 29, 2006, OMB issued a notice indicating that it would continue its approval of the information collections under Control No. 1210-0110 as currently in effect, but would not approve the Department's request for approval of the proposed revisions until after the Department considers public comment and promulgates a final rule describing and explaining any changes. The IRS and the PBGC indicated, in the July 2006 Proposal, that they intend to submit separate requests for OMB review and approval based upon the final forms revisions, and the Department now indicates its intention to do so as well. The Department solicits comments on any information collection burdens described in this Notice of Supplemental Proposed Forms Revisions.

#### Congressional Review Act

The notice of proposed forms revisions 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 proposal does 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. This proposal does 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 this proposal does 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.

**Appendix A**

**DATA ITEMS FOR 2008 (AND LATER) SCHEDULE SB (SINGLE-EMPLOYER DEFINED BENEFIT PLAN ACTUARIAL INFORMATION)**

Item	Comparison with 2006 Schedule B
<b>Identifying Information</b>	
Plan year	
A. Name of plan .....	Same.
B. Plan number .....	Same.
C. Plan sponsor's name .....	Same.
D. EIN .....	Same.
E. Type of plan (Single-Employer, Multiple-Employer) .....	Similar.
F. Prior year plan size (100 or fewer, 101-500, More than 500) .....	Similar.
<b>Part I—Basic Information</b>	
1. Valuation date .....	Same.
2. Assets	
a. Market value .....	Same.
b. Actuarial value .....	Similar.
3. Funding target and participant count breakdown (separate participant count and funding target figures for: retired participants and beneficiaries receiving payment; terminated vested participants; active participants by nonvested benefits, vested benefits, and total active; and totals.	
a. Number of participants column .....	Same.
b. Funding target column .....	Similar.
4. Additional information for plans that are at-risk	
a. Funding target disregarding prescribed at-risk assumptions .....	New.
b. Funding target reflecting at-risk assumptions, but disregarding transition rule for plans that have been at risk for fewer than five consecutive years.	New.
5. Effective interest rate .....	New.
6. Target normal cost .....	Similar.
Statement by Enrolled Actuary—To the best of my knowledge, the information supplied in this schedule and accompanying schedules, statements and attachments, if any, is complete and accurate. Each prescribed assumption was applied in accordance with applicable law and regulations. In my opinion, each other assumption is reasonable (taking into account the experience of the plan and reasonable expectations) and such other assumptions, in combination, offer my best estimate of anticipated experience under the plan.	Similar.
Signature, Name, Date, Most recent enrolled actuary number, Firm name, Telephone number, Address of firm, and check box to indicate if actuary has not fully reflected any regulation or ruling promulgated under the statute in completing the schedule.	Similar.
<b>Part II—Beginning of Year Carryover/Prefunding Balance Reconciliation</b>	
7. Balance at beginning of prior plan year after applicable adjustments (carryover balance and prefunding balance) .....	Similar.
8. Portion used to satisfy prior year's funding requirement (carryover balance and prefunding balance) .....	New.
9. Remaining amount (carryover balance and prefunding balance) .....	New.
10. Interest earned during prior year (carryover balance and prefunding balance) .....	New.
11. Prior year's excess contributions to be added to prefunding balance (carryover balance and prefunding balance) .....	New.
a. Excess contributions .....	New.
b. Interest on (a) using prior year's effective rate .....	New.
c. Total available at beginning of current plan year to add to prefunding balance .....	New.
d. Portion of (c) to be added to prefunding balance .....	New.
12. Voluntary reduction (carryover balance and prefunding balance) .....	New.
13. Balance at beginning of current year = Item 9 + item 10 + item 11 - item 12 (carryover balance and prefunding balance) .....	New.

DATA ITEMS FOR 2008 (AND LATER) SCHEDULE SB (SINGLE-EMPLOYER DEFINED BENEFIT PLAN ACTUARIAL INFORMATION)—Continued

Item	Comparison with 2006 Schedule B
<b>Part III—Funding Percentages</b>	
14. Funding Target Attainment Percentage .....	New.
15. Adjusted Funding Target Attainment Percentage .....	New.
16. Prior year's funding percentage for purposes of determining whether carryover/prefunding balance may be used to reduce current year's funding requirement.	New.
17. If the current value of the assets of the plan is less than 70 percent of the funding target, enter such percentage. ....	Similar.
<b>Part IV—Contributions and Liquidity Shortfalls</b>	
18. Contributions made to the plan for the plan year by employer(s) and employees by (a) date, (b) amount paid by employer, and (c) amount paid by employees.	Same.
19. Discounted plan contributions .....	New.
a. Contributions allocated toward unpaid minimum required contribution from prior years .....	New.
b. Contributions made to avoid restrictions adjusted to valuation date .....	New.
c. Contributions allocated toward minimum required contribution for current year adjusted to valuation date .....	New.
20. Quarterly contributions and liquidity information	
a. Did the plan have a "funding shortfall" for the prior year? .....	New.
b. If 20a is yes, were required quarterly installments for the current year made in timely manner .....	New.
c. If 20a is yes, complete table showing liquidity shortfall as of the end of each quarter of the plan year .....	Same.
<b>Part V—Assumptions</b>	
21. Discount rate	
a. Segment rate(s) for 1st, 2nd and 3rd segments or indicate that full yield curve is used .....	New.
b. Applicable month .....	New.
22. Weighted average retirement age .....	Same.
23. Mortality table—indicate whether prescribed table(s) or substitute table used .....	New.
<b>Part VI—Miscellaneous items</b>	
24. Has a change been made in the non-prescribed actuarial assumptions for the current plan year? If yes, see instructions for required attachment.	Same.
25. Has a method change been made for the current plan year? If yes, see instructions for required attachment .....	Same.
26. Is the plan required to provide a Schedule of Active Participants? If yes, see instructions for required attachment .....	Same.
27. If the plan is eligible for (and is using) alternative funding rules, enter applicable code. If yes, see instructions for required attachment.	New.
<b>Part VII—Reconciliation of Unpaid Minimum Required Contributions for Prior Years</b>	
28. Unpaid minimum required contribution for all prior years .....	New.
29. Discounted employer contributions allocated toward unpaid minimum required contribution from prior years (Item 19a) .....	New.
30. Remaining amount of unpaid minimum required contributions (item 28 minus item 29) .....	New.
<b>Part VII—Minimum Required Contribution for Current Year</b>	
31. Target normal cost (item 6) .....	Similar.
32. Amortization charges	
a. Net Shortfall amortization charges (and outstanding balance) .....	Similar.
b. Waiver amortization charges (and outstanding balance) .....	Similar.
33. If a waiver has been approved for this plan year, enter the date of the ruling letter granting the approval and the waived amount.	Similar.
34. Total funding requirement before reflecting carryover and prefunding balances (Item 31 + item 32a + item 32b – item 33) .....	New.
35. Enter Carryover and prefunding balance used to offset funding requirement .....	New.
36. Additional cash requirement after reflecting carryover and prefunding balances (item 34 minus item 35) .....	New.
37. Contributions allocated toward minimum required contribution for current year adjusted to valuation date (item 19c) .....	New.
38. Excess contributions for current year (excess, if any, of item 37 over item 36) .....	New.
39. Unpaid minimum required contribution for current year (excess, if any, of item 36 over item 37) .....	New.
40. Unpaid minimum required contribution for all years .....	New.

Appendix B

**DATA ITEMS FOR 2008 (AND LATER) SCHEDULE MB (MULTIEMPLOYER DEFINED BENEFIT PLAN AND MONEY PURCHASE PLAN ACTUARIAL INFORMATION)**

Item	Comparison with 2006 Schedule B
Plan year .....	Same.
A. Plan name .....	Same as item A.
B. Plan number .....	Same as item B.
C. Plan sponsor's name .....	Same as item C.
D. Employer identification number .....	Same as item D.
E. Type of plan (multiemployer DB plan, money purchase plan) .....	Similar to item E (item F deleted).
1a Valuation date .....	Same as line 1a.
1b Assets:	
(1) Current value of assets .....	Same as line 1b(1).
(2) Actuarial value of assets .....	Same as line 1b(2).
1c Accrued liability information:	
(1) Accrued liability for plans using immediate gain methods .....	Same as line 1c(1).
(2) Information for plans using spread gain methods .....	Same as line 1c(2).
(3) Accrued liability under unit credit method .....	New.
1d Information on current liabilities:	
(1) Amount excluded attributable to pre-participation service .....	Same as line 1d(1).
(2) "RPA '94" information	
(a) Current liability .....	Same as line 1d(2)(a).
(b) Expected increase in current liability due to benefits accruing during the plan year .....	Same as line 1d(2)(b).
(c) Expected release from "RPA '94" current liability for the plan year .....	Same as line 1d(2)(d) (line 1d(2)(c) deleted).
(3) Expected release from "RPA '94" current liability for the plan year .....	Same as line 1d(3).
Statement by Enrolled Actuary—To the best of my knowledge, the information supplied in this schedule and accompanying schedules, statements and attachments, if any, is complete and accurate. Each prescribed assumption was applied in accordance with applicable law and regulations. In my opinion, each other assumption is reasonable (taking into account the experience of the plan and reasonable expectations) and such other assumptions in combination, offer my best estimate of anticipated experience under the plan.	Similar.
2 Operational information as of beginning of the plan year	
2a Current value of assets .....	Same as line 2a.
2b (column 1). Participant count breakdown by category (terminated vested, retired, active).	Same information as line 2b, column 1 except for amended format.
2b (column 2). "RPA '94" current liability .....	Amended to incorporate information from line 2b, columns 2 and 3 (column 3 deleted).
2c Current liability funded percentage .....	Same as line 2c.
3 Contributions (employer(s) and employees) .....	Same as item 3.
4 Plan status—Code to indicate plan's status in accordance with instructions for attachment of supporting evidence of plan's status. For certain codes, the rest of line 4 is skipped. Funded percentage for monitoring plan's status. Whether the plan is making the schedule progress with any applicable funding improvement or rehabilitation plan. If the plan is in critical status, whether any adjustable benefits were reduced, and if so, the reduction in liability resulting from the reduction in adjustable benefits, measured as of the valuation date.	New (replaces existing item 4).
5 Information on actuarial cost method	
5a–g Actuarial cost method used—Check boxes to identify the actuarial cost method(s) used as the basis for this plan year's funding standard account computations: Attained age normal, entry age normal, accrued benefit (unit credit), aggregate, frozen initial liability, individual level premium, individual aggregate, shortfall, reorganization, other (specify).	Similar to lines 5a–g. Note that multiple boxes may be checked.
5h Shortfall method .....	New—previously addressed in line 8b and attachments for multiemployer plans.
5i Reorganization .....	New—previously addressed in line 8b and attachments for multiemployer plans.
5j Other (specify) .....	Same as line 5h.
5k Period of use, shortfall method .....	New, required under ERISA section 103(f)(2)(F).
5l–n Change in funding method—Must state if there was a change in funding method for the plan year, and if so, whether it was made pursuant to Revenue Procedure 2000–40. If there was a change in funding method, but it was not made pursuant to Revenue Procedure 2000–40, then the date of the ruling letter (individual or class) approving the change in funding method must be entered.	Same as lines 5i–k except for updated line references.
6 Actuarial assumptions	
6a Interest rate for current liability .....	Same as line 6a (line 6b deleted).
6b Rates specified in insurance or annuity contracts .....	Same as line 6c.
6c Mortality table (males, females) .....	Same as line 6d.
6d Valuation liability interest rate .....	Same as line 6e.
6e Expense loading .....	Same as line 6f (line 6g deleted).
6f Salary scale .....	Same as line 6h.
6g–h Estimated investment return on assets .....	Same as lines 6i–j.
7 Information on new amortization bases—(1) type of base (2) initial balance (3) amortization charge/credit.	Same as item 7.



DATA ITEMS FOR 2008 (AND LATER) SCHEDULE MB (MULTIEMPLOYER DEFINED BENEFIT PLAN AND MONEY PURCHASE PLAN ACTUARIAL INFORMATION)—Continued

Item	Comparison with 2006 Schedule B
8 Miscellaneous information	
8a Funding waiver—If a waiver of a funding deficiency has been approved for this plan year, enter the date of the ruling letter granting the approval..	Similar to line 8a, amended to apply only to funding waivers (line 8b deleted; information reflected in lines 5h–i).
8b Schedule of Active Participant Data .....	New for multiemployer plans, same as line 8c for single-employer plans.
8c Amortization extension under 304(d)—Are any of the plan’s amortization bases operating under an extension of time under section 412(e) (as in effect prior to 2008) or section 431(d)(1) of the Code?	New.
8d(1)–(2) Automatically-approved extensions—If yes, was an extension granted automatic approval under section 431(d)(1) of the Code? If yes, enter the number of years by which the amortization period was extended.	New.
8d(3)–(5) IRS-approved extensions—Was an extension approved by the Internal Revenue Service under section 412(e) (as in effect prior to 2008) or 431(d) of the Code? If yes, enter the number of years by which the amortization period was extended (not including the number of years granted automatic approval under section 431(d)(1) of the Code), the date of the ruling letter approving the extension.	New.
8d(6) Pre-PPA extensions—the amortization base eligible for amortization using interest rates applicable under section 6621(b) of the Code for years beginning after 2007.	New.
8e Effect of shortfall method or amortization extension—If the shortfall method is used as the basis for this year’s funding standard account computations or any of the plan’s amortization bases are operating under an extension of time under section 412(e) (as in effect prior to 2008) or section 431(d)(1) of the Code, enter the difference between the minimum required contribution for the year and the minimum that would have been required without using the shortfall method or extending the amortization base(s).	New—required under 103(f)(2) (E) and (F).
9 Funding standard account	
9a Prior year funding deficiency .....	Same as line 9a.
9b Normal cost .....	Same as line 9b.
9c Amortization charges .....	Similar to line 9c, but amended to distinguish between funding waivers and extended bases using the valuation interest rate versus the rate under section 6621(b) of the Code.
9d Interest .....	Same (lines 9e–f deleted).
9e–n Funding standard account items .....	Same as lines 9g–p except for updated line references.
9o Accumulated reconciliation account	
9o(1) Due to waived funding deficiencies and extended amortization bases, accumulated prior to the 2008 plan year.	Based on line 9o(3), but amended to distinguish between funding waivers (pre-PPA) and extended amortization bases (lines 9o(1) and (2) deleted).
9o(2) Adjustments for extended amortization bases .....	Similar to line 9o(3), but amended to apply to extended amortization bases only.
9o(3) Total accumulated reconciliation account .....	Similar to line 9o(4).
10 Contribution necessary to avoid an accumulated funding deficiency .....	Similar to line 10.
11 Change in assumptions check box .....	Same as line 11.
Part II—Additional information for plans other than multiemployer plans .....	Deleted in its entirety.

Appendix C

ADDITIONAL INFORMATION FOR 2008 (AND LATER) SCHEDULE R (RETIREMENT PLAN INFORMATION)

[Parts I–IV remain as proposed on July 21, 2006. Part V expanded and Part VI added]

Part V—Additional Information for Multiemployer Defined Benefit Pension Plans

13. Enter the following information for each employer who contributed more than 5% of total contributions to the plan during the plan year (measured in dollars). See instructions: Name of contributing employer, EIN, date collective bargaining agreement expires, dollar amount contributed, contribution rate, contribution base unit measure as hourly, weekly, unit of product or other (specify). Complete as many entries as needed to report all applicable employers.
14. Enter the number of participants on whose behalf no contributions were made by an employer for: 14a current year, 14b the plan year immediately preceding the current plan year, and 14c the second preceding plan year.
15. Provide the ratio of (a) item 14a to item 14b and (b) item 14a to item 14c.
16. Information with respect to any employers who withdrew from the plan during the preceding plan year:
  - a. Enter the number of employers who withdrew during the preceding plan year.
  - b. If item 16a is greater than 0, enter the aggregate amount of withdrawal liability assessed or estimated to be assessed against such withdrawn employers.

## ADDITIONAL INFORMATION FOR 2008 (AND LATER) SCHEDULE R (RETIREMENT PLAN INFORMATION)—Continued

[Parts I–IV remain as proposed on July 21, 2006. Part V expanded and Part VI added]

17. If assets and liabilities from another plan have been transferred to or merged with this plan during the plan year, check box and see instructions regarding supplemental information to be included as an attachment.

**Part VI—Additional Information for Single-Employer and Multiemployer Defined Benefit Pension Plans**

18. If any liabilities to participants or their beneficiaries under the plan as of the end of the plan year consist (in whole or in part) of liabilities to such participants and beneficiaries under two or more pension plans as of immediately before such plan year, check box and see instructions regarding supplemental information to be included as an attachment.
19. If the total number of participants is 1,000 or more, complete items (a) through (c).
- Enter the percentage of plan assets held as Stock, Debt, Real Estate, Other.
  - Provide the percentage held of each type of debt security: Government debt, Investment Grade Corporate Debt, and High-Yield Corporate Debt.
  - Provide the Macaulay Duration for the total portfolio.

**Statutory Authority**

Accordingly, pursuant to the authority in sections 101, 103, 104, 109, 110 and 4065 of ERISA and section 6058 of the Code, the Form 5500 Annual Return/Report and the instructions thereto are proposed to be amended as set forth herein, including the addition of the proposed Short Form 5500.

Signed at Washington, DC, this 6th day of December 2006.

**Bradford P. Campbell,**

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

**Joseph H. Grant,**

*Director, Employee Plans, Tax Exempt and Government Entities Division, Internal Revenue Service.*

**Vincent K. Snowbarger,**

*Interim Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 06–9633 Filed 12–8–06; 8:45 am]

**BILLING CODE 4510–29–P**

**MILLENNIUM CHALLENGE CORPORATION**

[MCC FR 06–22]

**Notice of Quarterly Report (July 1, 2006–September 30, 2006)**

**AGENCY:** Millennium Challenge Corporation.

**SUMMARY:** The Millennium Challenge Corporation (MCC) is reporting for the quarter July 1, 2006 through September 30, 2006 with respect to both assistance provided under Section 605 of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D (the Act)), and transfers of funds to other federal agencies pursuant to Section 619 of that Act. The following report shall be made available to the public by means of publication in the **Federal Register** and on the Internet Web site of the MCC (<http://www.mcc.gov>) in accordance with Section 612 (b) of the Act.

**ASSISTANCE PROVIDED UNDER SECTION 605**

Projects	Obligated	Objectives	Quarterly disbursements	Measures
Country: Madagascar Year: 2006 Quarter 4 Total Obligation: \$109,773,000 Entity to which the assistance is provided: MCA Madagascar Total Quarterly Disbursement: \$0				
Land Tenure Project .....	\$37,803,000	Increase Land Titling and Security.	\$0	Legislative proposal (“loin de cadrage”) reflecting the PNF submitted to Parliament and passed. Percentage of land documents inventoried, restored, and/or digitized. Average time and cost required to carry out property-related transactions at the local and/or national land services offices. Time/cost to respond to information request, issue titles and to modify titles after the first land right. Number of land disputes reported and resolved in the target zones and sites of implementation. Percentage of land in the zones that is demarcated and ready for titling. Promote knowledge and awareness of land tenure reforms among inhabitants in the zones (surveys).