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DEPARTMENT OF LABOR

Proposed Information Collection Request Submitted for Public Comment; Evaluating the Effectiveness of the 408(b)(2) Disclosure Requirements

AGENCY: Employee Benefits Security Administration (EBSA) and the Office of the Assistant Secretary for Policy/Chief Evaluation Office

ACTION: Proposed collection; notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department's Employee Benefits Security Administration (EBSA) and the Office of the Assistant Secretary for Policy/Chief Evaluation Office (CEO) are soliciting comments on the proposed information collection request (ICR) described below. A copy of the ICR may be obtained by contacting the office listed in the ADDRESSEE section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before **[INSERT DATE THAT IS 60 DAYS FOLLOWING THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSEE: Copies of the proposed collection of information can be obtained and comments may be forwarded by either one of the following methods: E-mail: richie.celeste.j@dol.gov; Mail or Courier: Office of the Assistant Secretary for Policy / Chief Evaluation Office, U.S. Department of Labor, Room S-2312, 200 Constitution Avenue, NW., Washington, DC 20210. Instructions: Please submit one copy of your comments by only one method. All submissions received should reference the agency name and title of the proposed information collection. Commenters are strongly encouraged to transmit their comments electronically via e-mail or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION: Contact Celeste Richie by telephone at 202-693-5076 (this is not a toll-free number) or by email at richie.celeste.j@dol.gov.

I. SUPPLEMENTARY INFORMATION

This notice requests public comment on the Department's proposed collection of information titled "Evaluating the Effectiveness of the 408(b)(2) Disclosure Requirements." As further described below, the collection of information is designed to

explore current practices and effects of EBSA's rule that was issued in February 2012, known as the "408(b)(2) regulation," which requires covered service providers ("CSPs") to pension plans to provide specific disclosures to responsible plan fiduciaries ("RPFs") regarding the CSP's compensation for the services. In addition, EBSA intends to gather information about the utility of a guide, summary, or similar tool to help plan fiduciaries identify and understand the disclosures. A summary of the ICR and current burden estimates follows:

Agency: Employee Benefits Security Administration (EBSA) and the Office of the Assistant Secretary for Policy/Chief Evaluation Office (OASP/CEO), Department of Labor.

Title: "Evaluating the Effectiveness of the 408(b)(2) Disclosure Requirements"

Type of Review: New collection of information.

OMB Number: 1210-NEW

Respondents: 70 to 100 Plan Sponsors and other Fiduciaries

Total Burden Hours: Approximately 70 to 200 hours over one year.

Total Annual Other Burden Cost: \$0

Description: The Employee Retirement Income Security Act of 1974, as amended (ERISA) requires plan fiduciaries, when selecting and monitoring service providers and plan investments, to act prudently and solely in the interest of the plan's participants and beneficiaries. Responsible plan fiduciaries also must ensure that arrangements with their service providers are "reasonable" and that only "reasonable" compensation is paid for services. Fundamental to the ability of fiduciaries to discharge

these obligations is obtaining information sufficient to enable them to make informed decisions about an employee benefit plan's services, the costs of such services, and the service providers.

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

In connection with the issuance of the notice of proposed rulemaking, EBSA and the CEO intend to request approval from the Office of Management and Budget (OMB) for

the collection of data for the project titled "Evaluating the Effectiveness of the 408(b)(2) Disclosure Requirements." The project is designed to explore current practices and effects of EBSA's final regulation and to gather information about the need for a guide, summary, or similar tool to help RPFs navigate and understand the disclosures.

EBSA and CEO intend to conduct approximately eight to ten focus group sessions with approximately 70 to 100 RPFs to small pension plans (those with less than 100 participants). They will be asked to provide information including the following: (1) their role with respect to their plan; (2) the number of service providers hired by the plan; (3) whether they are aware of and understand the disclosures mandated by the 408(b)(2) final regulation; (4) their experience with receiving the disclosures; (5) whether they were able to find information regarding the services that would be provided and the costs of those services; (6) whether their review of the disclosures impacted their decision-making with regard to hiring, monitoring, or retaining service providers or changing plan investment options; (7) whether their CSPs provide a guide or similar organizational tool to help find specific information within the disclosures; and (8) whether a guide to the required disclosures would be beneficial to them, and if so, how much they would be willing to pay to receive a guide.

EBSA intends to use information collected from the focus groups to: (1) assess responsible plan fiduciaries' experience in receiving the 408(b)(2) regulation's required disclosures; (2) assess the effectiveness of these disclosures in helping plan fiduciaries make decisions; (3) determine how well plan fiduciaries understood the disclosures, especially in the small plan marketplace (less than 100 participants); and (4) evaluate

whether, and how, a guide, summary, or similar tool would help fiduciaries understand the disclosures.

II. FOCUS OF COMMENTS

The Department is particularly interested in comments that: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., by permitting electronic submissions of responses).

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

James H. Moore, Jr.,

Deputy Assistant Secretary for Policy

U.S. Department of Labor

Billing Code: 4510-23

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