



AMERICAN BENEFITS  
COUNCIL

January 22, 2016

*Submitted via email to: OIRA\_submission@omb.eop.gov*

Office of Information and Regulatory Affairs,  
Attn: OMB Desk Officer for DOL-EBSA  
Office of Management and Budget,  
Room 10235  
725 17th Street NW  
Washington, DC 20503

**RE: Comments on Summary Annual Report, OMB Control Number 1210-0040**

Dear Sir or Madam:

The American Benefits Council is pleased to submit these comments regarding the quality, utility, and burden of the Employee Retirement Income Security Act (ERISA) Summary Annual Report (SAR), which plans governed by ERISA must furnish to participants after the filing of the plan's annual report on Form 5500. The Council believes it critical that we continually review regulations to make plan administration more effective and less costly, which will better serve Americans saving for a secure retirement.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

The Council believes the SAR is no longer useful, particularly with respect to defined contribution plans, and should be eliminated or significantly streamlined.

**The SAR does not provide useful information.** The SAR is intended to be a "summary" of the financial information in a plan's annual report. It provides generic information about any insurance contracts held under the plan, and information about the *total* assets held under the plan and that were paid out in benefits. In a defined contribution plan, where the benefits promised always equal the assets held under the

plan, the SAR does not provide *any* information that would be actionable by a participant. In a welfare plan, the SAR does not provide useful information about the actual benefits the plan provides and SARs for self-insured plans do not provide any information on the financial health of the plan or plan sponsor. Council members report that the *only thing the SAR accomplishes* is generating questions from participants about why the disclosure is being provided, what it is supposed to mean to them as participants and whether the participant needs to do anything with it.

**The SAR has been overtaken by other, more useful, notices.** Since the enactment of ERISA, other, more useful, notices have been added which remove any value the SAR ever had. For defined benefit plans, participants now receive an annual funding notice which provides information about the funded status of the plan. Congress eliminated the SAR for defined benefit plans that provide the annual funding notice. For defined contribution plans, participants now receive much more useful information in the quarterly benefit statement, which provides details on the financial information *for their account*, and the annual fee and investment notice. The quarterly benefit statement informs the participant of his or her total account balance at the beginning and ending of the quarter, the value in each investment in the account, and information about the importance of diversification. In addition, participants in participant-directed plans receive an annual fee and investment disclosure that provides additional information about the fees and performance of each investment available under the plan. The total assets, total income, and total expenses of a defined contribution plan required in the SAR generally is not helpful to a plan participant because the participant's plan benefit depends on the participant's individual account balance and not significantly on the total income or expenses of the plan. In welfare plans, new disclosures like the Summary of Benefits and Coverage (SBC) provide specific information about the plan's actual benefits. These disclosures provide personal and actionable information. The SAR does not.

In fact, the increased disclosure provided by the SAR may make it more difficult for participants to determine which disclosures they should look to for useful information about their plans and benefits. Providing additional pieces of paper like the SAR may distract participants from other disclosures like the SBC.

**The SAR requirement is not a good use of plan assets or the time and resources of the plan sponsor.** Because of the Department of Labor's current rules regarding electronic delivery (which are long overdue for an update) most plans print and mail the SAR to plan participants, beneficiaries, and retirees. Printing and mailing the SAR by U.S. First-Class Mail is a cost that is frequently borne by the plan. Given that the SAR does not provide useful information, plan assets are therefore depleted without purpose.

The requirement to prepare and furnish the SAR each year requires plan sponsor time and resources which would be better spent on preparing and distributing other

forms of disclosure that are more useful to participants, including required disclosures like summary plan descriptions and SBCs or additional explanatory documents and summaries that sponsors may prepare on a voluntary basis to assist participants in understanding their benefits.

**The Department of Labor has flexibility to eliminate or streamline the SAR.**

Section 104(b)(3) of ERISA provides that the administrator of plan (other than a plan that must provide the annual funding notice) must furnish to participants and beneficiaries the financial information described in sections 103(b)(3), (b)(4), and (d)(11) “as is necessary to fairly summarize the latest annual report.” This language gives the Department of Labor (Department) flexibility to require only the information that is actually “necessary” in light of the additional disclosures participants receive and the fact that a plan’s annual report is now posted online and fully searchable for any participant interested in reviewing it. We submit that *none* of the information currently in the SAR is necessary.

Putting aside the plan’s financial information, which is not useful to participants, the SAR does inform a participant that the annual report is available and provides a brief summary of the information in the annual report. In fact, the Department is now posting copies of annual reports on its EFAST website for easy access and review by participants.<sup>1</sup> Informing a participant that he or she can request a copy of the annual report or can access recent annual reports on the Department’s website could be done in any number of ways, including a brief annual statement on quarterly benefit statements or in the annual fee and investment disclosure. In addition, the SAR informs non-English language readers in certain plans that assistance is available to them in a common non-English language. We believe that this information can be provided as part of other required disclosures. Accordingly, we recommend the Department amend the SAR regulation to provide that the SAR obligation can be satisfied by informing a participant, at least once a year, of the participant’s right to receive a copy of the full annual report and how to obtain a copy and of the participant’s right to receive assistance in a non-English language.<sup>2</sup>

**Regardless, the Department should reevaluate the utility and economic benefit of the SAR in light of its burdens.** Because of the Paperwork Reduction Act of 1995, it is incumbent on the Department and the Office of Management and Budget to evaluate whether the SAR in its current form has *any* utility at all other than informing participants of their rights regarding the full annual report. We believe it has none. It is not “necessary for the proper functions of” the Department and has no “practical utility” for the Department, for sponsors of plans, or for participants. It is a notice whose time has come and gone.

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<sup>1</sup> While the annual report is posted on the Department’s website, there may be a delay between filing and posting. We encourage the Department to reduce this delay where possible.

<sup>2</sup> These requirements should only apply to plans that are required to provide SARs under the current regulation.

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We thank you for your consideration of the issues addressed in this letter. We look forward to discussing these issues with the Department and the Office of Management and Budget as we work together to reduce unnecessary regulatory burdens and make disclosures to participants more useful and effective. Thank you for the opportunity to provide our views and suggestions.

Sincerely,

A handwritten signature in black ink that reads "Lynn D. Dudley". The signature is written in a cursive style with a large, prominent "L" and "D".

Lynn D. Dudley  
Senior Vice President,  
Global Retirement and  
Compensation Policy