

beneficiaries is generally not viable due to the absence of computer capability in certain industries. While the Department did not describe its methodology for incorporating electronic disclosure assumptions in detail in the interim final rule, the methodology does take a variety of factors into account, including the distribution of plan sponsors and participants across industries, data related to access to computers in different industries, survey data on the use of electronic communication methods by plan sponsors and administrators, and comments received in response to the Department's Notice of Proposed Rulemaking on Use of Electronic Communication and Recordkeeping Technologies by Employee Pension and Welfare Benefit Plans (64 FR 4506, January 28, 1999; finalized April 9, 2002, 67 FR 17264).

Specifically, in order to develop estimates of distribution expenses saved through the use of electronic communication technologies, the Department utilized a Census Bureau household survey published in 2001 on computer use⁵ and a separate 1999 Census Bureau household survey⁶ on pension and health benefit plan participation. Analysis of this information indicates that approximately 21 percent of participants have appropriate access to electronic media at their workplaces, and another 38 percent have such access at home. The pension and health coverage rates were then applied to the computer use rates industry-by-industry to account for the likelihood that computer use is greater among plan participants and especially among large plan participants, because such participants are concentrated in certain industries (e.g., the financial services industry).

The Department then looked at each disclosure required under Title I of ERISA to evaluate the extent to which plan administrators might consider electronic distribution appropriate. For purposes of the required notices of blackout periods, it was assumed that in most cases where plan administrators and participants had consistent access to computers, these notices would be distributed electronically. This is because it is believed that plan administrators will consider the information time sensitive, because electronic distribution is cost effective,

and because the investment companies that provide administrative services for many individual account plans commonly communicate with customers in an electronic format.

While the description of the use of electronic technologies in the preamble to the interim final rule may have been read to suggest that most or all blackout notices were expected to be delivered electronically, the delivery of the majority of notices is in fact still estimated to occur by first class mail. About 38 percent of such notices are expected to be delivered electronically. While the Department agrees with the commenter that many plans will derive no benefit from electronic distribution, it has carefully considered its approach to estimating distribution savings for plans situated to make use of electronic technologies, and continues to believe that the approach supports reasonable estimates.

Accordingly, it has not modified its previous assumptions concerning the likely methods of delivery for notices of blackout periods.

Burden Estimates

In order to estimate the potential costs of the notice provisions of section 101(i) of ERISA and this final rule, the Department tabulated the number of participant-directed individual account plans and the number of participants, inactive participants and beneficiaries who have not taken distributions, in those plans using the plans' Form 5500 filings for 1998, the most recent year currently available. The Department then projected these counts forward, producing estimates of 295,000 small and 45,000 large participant-directed individual account plans in 2002 (totaling 341,000). Participant counts were also projected, resulting in estimates of 7.4 million small plan participants and 40.4 large plan participants (totaling 47.8 million) in 2002 that would potentially be affected by blackout notices. A more detailed explanation of the methods and data used in these projections, as well as assumptions underlying the proportion of these plans and participants expected to be affected each year may be found in the preamble to the interim final rules.

Based on available data, the Department assumes that 25% percent of potentially affected plans will impose a blackout period in any given year. The resulting numbers of plans and participants assumed to be affected by the notice provisions annually are 85,150 and about 12 million, respectively.

The availability of a model notice as provided in paragraph (e) will lessen the time otherwise required to draft a required notice. In developing burden estimates, the Department has allowed one-half hour for drafting of the elements of the form by the plan administrator, and one hour for legal review of the drafted notice, the latter expense to be incurred as a payment of fees for outside services. This accounts for the burden of preparing the notice, which is estimated at 42,600 hours, and \$6.4 million. No additional preparation time is accounted for to draft the notice required to be provided to an issuer of employer securities under paragraph (c), because this final rule requires the content and timing of that notice to be the same as the notice prepared for the purpose of paragraph (b)(1). The burden of this notice would be driven by the number of plans rather than participants, and the notice would be required in far more limited circumstances than the notice to participants under paragraph (b)(1), as it pertains only to the issuer's securities affected by the blackout period in the plan. In addition, based on the addition of paragraph (c)(3), when the issuer designates the plan administrator as the party to receive of blackout periods involving securities of the issuer, the plan administrator is not required to provide this notice separately to itself. This modification should serve to reduce the number of these notices because the issuer and plan administrator are in some instances the same entity; however, the magnitude of the reduction cannot be estimated. Because only a small segment of participant directed individual account plans holds employer securities that would be subject to the requirements of paragraph (c), the cost of delivering such notices is estimated to be negligible.

The estimated burden for distribution of blackout notices takes several factors into account, including an assumed number of participants affected annually, the number of the notices that will be distributed electronically, and on paper, and the differential costs of electronic and paper distribution methods. The estimates of the rate of use of electronic distribution methods are consistent with those used in determining the savings associated with the Department's Final Rules Relating to Use of Electronic Communication and Recordkeeping Technologies by Employee Pension and Welfare Benefit Plans (67 FR 17264, April 9, 2002). Those participants not calculated to receive notice electronically are

⁵ "Home Computers and Internet Use in the United States: August 2000," U.S. Census Bureau Current Population Reports (September 2001).

⁶ Contingent Work Supplement to the February, 1999 Current Population Survey, U.S. Census Bureau.