

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSIONS

A. Justification

1. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.*

Statutory Exemption

The Pension Protection Act of 2006 (Pub. L. 109-280) amended the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (Code) to include a statutory exemption for providing investment advice to participants and beneficiaries in self-directed defined contribution individual account ERISA-covered plans (Plans) and beneficiaries of individual retirement accounts, individual retirement annuities, Archer MSAs, health savings accounts and Coverdell education savings accounts (collectively IRAs) described in the Code. The statutory exemption provides relief from the prohibited transaction provisions of ERISA, and the parallel provisions of the Code. The Department has determined that a regulation providing guidance on various aspects of the statutory exemption would provide more clarity thereby encouraging the provision of investment advice under the statutory exemption.

Consistent with the statutory exemption, the Department has included specific disclosure, recordkeeping, and audit requirements as conditions of the regulation. These information collections are designed to clarify how the statutory exemption applies to investment advice arrangements involving participants or beneficiaries of Plans and IRAs (collectively, Participants). The information required would depend in part on whether the fiduciary adviser giving the advice meets the conditions of the statutory exemption by providing investment advice through use of a computer model, or by providing advice that would not result in varying compensation to the fiduciary adviser entity from investments made in accordance with the investment advice.

The proposed regulation would require the following collections of information:

a. Disclosures to Plan Participants and to IRA Participants

Initial Disclosures [Section 2550.408g-1(g)(1)].

In general, under section 2550.408(g)-1(g) of the proposal, a fiduciary adviser would be required to furnish detailed information to a Participant about an advice arrangement before initially providing investment advice. The information includes the following: the relationship between the adviser and the parties that developed the investment advice arrangement or selected the investment options available under the Plan or IRA; to the extent such information is not otherwise provided, the past performance and historical rates of return of investments available under the Plan or IRA; all fees and other compensation the fiduciary adviser or any affiliate is to

receive in connection with the provision of investment advice or in connection with the investment; the fiduciary adviser's material relationship, if any, to any investment under the arrangement; the types of services the fiduciary adviser provides in connection with the provision of investment advice; the manner in which Participant information may be used or disclosed; an acknowledgement that the fiduciary adviser is acting as a fiduciary of the Plan or IRA in connection with providing the investment advice; and notice that the recipient of the advice may separately arrange for advice from another adviser that could have no relationship to, and receive no fees in connection with, the investments. If applicable, the fiduciary adviser also furnishes in writing to the Plan fiduciary an election, as permitted under the regulation, to be treated as the sole fiduciary providing investment advice through the use of a computer model to an ERISA-covered Plan Participant.

Subsequent Disclosures (at least annual / material changes).

After the initial disclosures, section 2550.408g-1(g)(4)(ii) of the proposal would require the fiduciary adviser to provide the same initial information at least annually or upon Participant request. If there is any material change to the information, the fiduciary adviser would be required to inform the Participant of the change. If the computer model is materially changed, the fiduciary adviser must obtain a new certification of compliance with the regulation's criteria from an eligible expert, as described below.

Section 2550.408g-1(f) of the proposed regulation would require any fiduciary adviser relying on the regulation to engage, at least annually, an independent auditor to conduct an audit of the investment advice arrangement for compliance with the regulation. The fiduciary adviser would be required to issue a written report to a fiduciary of each Plan and each IRA Participant who authorized the use of the investment advice arrangement setting forth the auditor's findings. With respect to an IRA, the fiduciary adviser may instead make the report available on its website. In addition, if the audit report finds noncompliance with respect to an IRA, the fiduciary adviser must send a copy to the U.S. Department of Labor.

b. Independent Certification [Section 2550.408g-1(d)(2)]

If the fiduciary adviser provides the investment advice through the use of a computer model, then before providing the advice, the proposed regulation would require the fiduciary adviser to obtain the certification of an eligible investment expert as to the computer model's compliance with certain standards (e.g., applies generally accepted investment theories, unbiased operation, objective criteria) set forth in the regulation.

c. Recordkeeping Requirements [Section 2550.408g-1(i)]

Consistent with the statutory exemption, the proposed regulation would require fiduciary advisers to maintain records with respect to the investment advice provided in reliance on the regulation necessary to determine whether the applicable requirements of the regulation have been satisfied. In addition to records of the disclosures described above, the fiduciary adviser

would be required to maintain records necessary to determine, among other things, that an independent fiduciary has provided express authorization of the arrangement under which the investment advice is provided, that an independent expert has provided the requisite certification, that the compensation to the fiduciary adviser and its affiliates in connection with the investments is reasonable, that the terms of the purchase, sale, or holding of the investment are at least as favorable to the Plan or IRA as those in an arm's length transactions would be, and that in cases where the advice is not provided through the use of a computer model, the compensation of the fiduciary adviser is not affected by the particular investments with respect to which the investment advice is provided.

d. Audit Requirement [Section 2550.408g-1(f)(1)]

The proposed regulation would require any fiduciary adviser relying on the exemption to engage, at least annually, an independent auditor to conduct an audit of the investment advice arrangement for compliance with the conditions of the exemption. The audit report must be disclosed, and in some cases filed, as described under the answer to Question 1.a., above.

Class Exemption

The Department has the authority, pursuant to section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code), to grant an exemption from all or part of the restrictions imposed, respectively, by section 406 of ERISA and from taxes imposed by sections 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (F) of the Code.

The Pension Protection Act of 2006 (Pub. L. 109-280) amended ERISA and the Code to include a statutory exemption for providing investment advice to participants and beneficiaries in self-directed individual account ERISA-covered plans (Plans) and beneficiaries of individual retirement accounts, individual retirement plans, Archer MSAs, health savings accounts and Coverdell education savings accounts (collectively IRAs) described in the Code. The Department has determined that additional relief for investment advice is appropriate in order to increase the availability of investment advice to participants and beneficiaries in Plans and IRAs (collectively, Participants) that could provide the benefit of avoiding investment mistakes.

In order to grant a class exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department must determine that the exemption is administratively feasible, in the interest of the Plan or IRA and its Participants, and protective of the rights of the Participants. In order to protect Participants the Department has included specific policy and procedure, disclosure, record keeping, and audit requirements as conditions to the exemption. These information collections are designed to safeguard assets of Plans and IRAs with respect to which investment advice would be permitted under the exemption.

The information required under the exemption with respect to Plans and IRAs would depend in part on whether the fiduciary adviser meets the conditions of the exemption by providing investment advice after disclosing computer model generated investment recommendations, or by providing advice that does not vary personal compensation to the adviser based on investing in accordance with the advice. Alternatively, under certain circumstances, the fiduciary adviser may provide advice to an IRA Participant after disclosing a model asset class allocation.

The proposed class exemption requires the following collections of information:

a. Disclosures to Plan Participants and IRA Participants

Initial Disclosures [Section III(g)(1)].

In general, a fiduciary adviser would be required to furnish detailed information to a Participant about an advice arrangement before initially providing investment advice. The information includes the following: the relationship between the adviser and the parties that developed the investment advice arrangement or selected the investment options available under the Plan or IRA, if any; if not otherwise publicly available, past performance and historical rates of return of investments available under the Plan or IRA; all fees and other compensation the fiduciary adviser or any affiliate is to receive in connection with the investment; the fiduciary adviser's material relationship to any investment under the arrangement; types of services the fiduciary adviser provides in connection with the investment advice; the manner in which Participant information may be used or disclosed; an acknowledgement that the fiduciary adviser is acting as a fiduciary of the Plan or IRA in connection with providing the investment advice; notice that the recipient of the advice may separately arrange for advice from another adviser that could have no relationship to, and receive no fees in connection with, the investments.

Additional disclosures required before providing investment advice would depend on which alternative conditions the arrangement is designed to satisfy. If the investment advice arrangement is based on the disclosure of computer-generated investment selections, the fiduciary adviser is required to furnish such selections to the Participant. If the fiduciary adviser determines computer modeling of the number and types of investment choices available to an IRA is not possible, the fiduciary adviser may instead furnish asset class allocation models to the Participant. Alternatively, a fiduciary may satisfy the condition that would require that the compensation of the person providing advice on behalf of the fiduciary adviser may not vary based on the particular investments recommended.

Subsequent Disclosures (at least annual / material changes) [Section III(g)(4)].

After the initial disclosures, the fiduciary adviser must provide the same initial information at least annually or upon Participant request. If there is any material change to the information, the fiduciary adviser must inform the Participant of the change.

A fiduciary adviser may, after disclosing computer generated investment selections to a Participant, recommend a different investment. In the case of such investments, and investments recommended after disclosure of an asset allocation model, if the investment would generate more revenue to the fiduciary adviser, or any affiliate, than other options in the same asset class, the conditions of the exemption require the fiduciary adviser to explain why the investment would be in the Participant's best interest.

The fiduciary adviser would be required to issue a written audit report (described below) to a fiduciary of each Plan and each IRA Participant who authorized the use of the investment advice arrangement setting forth the auditor's findings. With respect to an IRA, the fiduciary adviser may instead make the report available on its website. In addition, if the audit report finds noncompliance with respect to an IRA, the investment adviser must send a copy to the U.S. Department of Labor.

b. Independent Certification [Section III(e)(1)(A)]

Before providing advice through the use of a computer model, the fiduciary adviser must obtain from an eligible expert a certification as to the model's compliance with the criteria set forth in the ERISA section 408(g)(3) (e.g., applies generally accepted investment theories, unbiased operation, objective criteria), unless the computer model meets the ERISA section 408(g)(3) standards and is designed and maintained by someone independent of the fiduciary adviser. If the fiduciary adviser relies on the eligible expert certification initially and the computer model is materially changed, the fiduciary adviser would be required to obtain a new certification of compliance with the ERISA section 408(g)(3) criteria from an eligible expert.

c. Policies and Procedures [Section III(i)]

The proposed class exemption would require fiduciary advisers to adopt and follow written policies and procedures designed to assure compliance, and subject to annual audit. The audit report must be disclosed, and in some cases filed, as described above.

d. Recordkeeping Requirements [Section III(n)]

The exemption would require fiduciary advisers to maintain records with respect to the investment advice provided in reliance on the exemption necessary to determine, explain or verify compliance with the conditions of the exemption, including those records necessary to determine that the disclosures described above have been made. In this connection, the fiduciary adviser would be required to maintain records necessary to determine, among other things, that an independent fiduciary has provided express authorization of the arrangement under which the investment advice is provided, that, if applicable, an eligible investment expert has provided the requisite certification, that the compensation to the fiduciary adviser and its affiliates in connection with the investments is reasonable, that the terms of the purchase sale or holding of the investment are at least as favorable to plan or IRA as those in an arm's length transactions

would be, and in cases where the advice is not provided after disclosure of computer generated investments or an asset class allocation model, the fees or other compensation received by an employee, agent or requested representative providing investment advice on behalf of the fiduciary adviser does not vary depending on the option selected.

In addition the fiduciary adviser specifically would be required to create a record explaining why investments recommended that depart from computer generated investment selection disclosures and generate additional revenues to the fiduciary adviser (or any affiliate) are in the best interest of the Participant.

e. Audit Requirement [Section III(j)(1)]

Any fiduciary adviser relying on the exemption would also be required to engage, at least annually, an independent auditor to conduct an audit of the investment advice arrangement for compliance with the class exemption and written policies and procedures (as described below) designed to assure compliance with the exemption and the exemption's required policies and procedures. The fiduciary adviser would be required to issue a written report to each Plan fiduciary who authorized the use of the investment advice arrangement, and to IRA Participants, setting forth the auditor's findings. With respect to IRA's, the fiduciary adviser may instead make the report available on its website. Also with respect to an arrangement with an IRA, if the auditor finds noncompliance with the exemption, the fiduciary adviser must file the report with the Department of Labor.

2. *Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.*

Statutory Exemption

This is a new collection of information. The information collection requirements that are conditions of the proposed regulation include, third-party disclosures, recordkeeping, and audit requirements. With one exception, the regulation does not require any reporting or filing with the Federal government, but the designated records must be made available upon request. The exception is the requirement that the fiduciary adviser would be required under certain circumstances to forward the audit report which is also a required disclosure under the regulation to the Department. These information collections are designed to safeguard plan assets involved in transactions flowing from investment advice arrangements covered by the regulation. The information collection requirements allow beneficiaries of accounts described in section 4975(e) (1)(B) through (g) (IRAs) and plan fiduciaries and participants to assess the initial and continued appropriateness of investing assets subject to an investment advice arrangement. The information will enable the plan fiduciary to fulfill its fiduciary duties under the plan and enable

participants to protect the assets of their plan asset accounts, and enable IRA Participants to protect the assets in their accounts.

Class Exemption

This is a new collection of information. The information collection requirements that are conditions of the proposed regulation include, third-party disclosures, recordkeeping, and audit requirements. With one exception, the regulation does not require any reporting or filing with the Federal government, but the designated records must be made available upon request. The exception is the requirement that the fiduciary adviser would be required under certain circumstances to forward the audit report which is also a required disclosure under the regulation to the Department. These information collections are designed to safeguard plan assets involved in transactions flowing from investment advice arrangements covered by the regulation. The information collection requirements beneficiaries of accounts described in section 4975(e)(1)(B) through (g) (IRAs), and plan fiduciaries and participants to assess the initial and continued appropriateness of investing assets subject to an investment advice arrangement. The information will enable the plan fiduciary to fulfill its fiduciary duties under the plan and enable participants to protect the assets of their plan asset accounts, and enable IRA Participants to protect the assets in their accounts.

3. *Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration for using information technology to reduce burden.*

Statutory Exemption

Under 29 C.F.R. § 2520.104b-1(b) of ERISA, “where certain material, including reports, statements, and documents, is required under Part I of the Act and this part to be furnished either by direct operation of law or an individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries.” Section 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b).

The proposed regulation expressly states in Section 2550.408g-1(g)(3) that the required disclosures can be provided in written or electronic form in accordance with 29 C.F.R. § 2520.104b-1(b).

Class Exemption

Under 29 C.F.R. § 2520.104b-1(b) of ERISA, “where certain material, including reports, statements, and documents, is required under Part I of the Act and this part to be furnished either by direct operation of law or an individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries.” Section 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b).

Section III(g)(3) of the Class Exemption expressly states that the required disclosures can be provided in written or electronic form in accordance with 29 C.F.R. § 2520.104b-1(b) .

4. *Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.*

Statutory Exemption

The Department has attempted to avoid duplication of information collection requirements. The required disclosures are unique to the circumstances of a particular investment advice arrangement and do not replicate any other requirements imposed by state or federal regulations. Although the SEC requires somewhat similar information in Form ADV, the information required under the regulation is more specifically tailored to the investments recommended under an investment advice arrangement. Accordingly, the information is not duplicative of that required by the SEC.

Many of the records required to be kept for this regulation are most likely records the parties are already required to generate and store to satisfy other requirements of federal and state securities and accounting laws, as well in the course of following usual and customary business practices.

Class Exemption

The Department has attempted to avoid duplication of information collection requirements. The required policies, procedures and disclosures are unique to the circumstances of a particular investment advice arrangement and do not replicate any other requirements by state or federal regulations. Although the SEC requires somewhat similar information in Form ADV, the information required under the regulation is more specifically tailored to the investments recommended under an investment advice arrangement. Accordingly the information is not duplicative of that required by the SEC

Many of the records required to be kept for this regulation are most likely records the parties are already required to generate and store to satisfy other requirements of federal and state securities and accounting laws, as well as usual and customary business practices.

5. *If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.*

Statutory Exemption

The information collections apply only if a fiduciary adviser, and if applicable a Plan fiduciary, decides to rely on the regulation in undertaking investment advice arrangements. Because reliance on the regulation is voluntary, and because the information collections are designed specifically to protect the rights of Participants in Plans or IRAs for which such reliance is sought, the regulation does not provide special reduced requirements for small plans or small employers. The Department believes that the information collections are as important to Participants in small plans (or associated with small employers) as they are to Participants in large plans (or associated with large employers).

Class Exemption

The information collections apply only if a fiduciary adviser, and if applicable a Plan fiduciary, decides to rely on the exemption in undertaking investment advice arrangements. Because reliance on the exemption is voluntary, and because the information collections are designed specifically to protect the rights of Participants in Plans or IRAs for which such reliance is sought, the regulation does not provide special reduced requirements for small plans or small employers. The Department believes that the information collections are as important to Participants in small plans (or associated with small employers) as they are to Participants in large plans (or associated with large employers).

6. *Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*

Statutory Exemption

The conditions of the regulation are only mandatory if a fiduciary adviser voluntarily decides to rely on the regulation and Participants and Plan fiduciaries voluntarily elect to receive investment advice under arrangements described in the regulation. Without the disclosure and audit requirements, Plan fiduciaries may not receive information about an investment advice arrangement needed to fulfill their fiduciary responsibilities with respect to a Plan and Participants may not have sufficient information to evaluate investment recommendations. Consequently, Participants' investments under Plans and IRAs may not be adequately protected. The Department has determined that, after a Participant has made an initial decision to participate in an investment advice arrangement, annual subsequent disclosures are the minimum protection necessary to the Participant or Plan fiduciary to re-evaluate the appropriateness of the investment advice arrangement.

Without the recordkeeping requirements, the Department would not be able to enforce the conditions to which the investment advice arrangements described in the regulation are subject.

Class Exemption

The conditions of the regulation are only mandatory if a fiduciary adviser voluntarily decides to rely on the exemption and Participants and Plan fiduciaries voluntarily elect to receive investment advice under arrangements described in the exemption. Without the disclosure and audit requirements, Plan fiduciaries may not receive information about an investment advice arrangement needed to fulfill their fiduciary responsibilities with respect to a Plan and Participants may not have sufficient information to evaluate investment recommendations. Consequently, Participants' investments under Plans and IRAs may not be adequately protected. The Department has determined that, after a Participant has made an initial decision to participate in an investment advice arrangement, annual subsequent disclosures are the minimum protection necessary to the Participant or Plan fiduciary to re-evaluate the appropriateness of the investment advice arrangement.

Without the recordkeeping requirements, the Department would not be able to enforce the conditions to which the investment advice arrangements described in the exemption are subject.

7. *Explain any special circumstances that would cause an information collection to be conducted in a manner:*
- *requiring respondents to report information to the agency more often than quarterly;*
 - *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
 - *requiring respondents to submit more than an original and two copies of any document;*
 - *requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;*
 - *in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;*
 - *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*
 - *that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or*
 - *requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has*

instituted procedures to protect the information's confidentiality to the extent permitted by law.

Statutory Exemption

After a material modification in certain previously disclosed information, a written response may be required within 30 or fewer days. Under the proposed regulation, the fiduciary adviser would be required to disclose at a time reasonably contemporaneous with a material modification to the following information: the relationship between the adviser and the parties that developed the investment advice arrangement or selected the investment options available under the Plan or IRA; if not otherwise publicly available, past performance and historical rates of return of investments available under the plan or IRA; publicly available; all fees and other compensation the fiduciary adviser or any affiliate is to receive in connection with the investment; the fiduciary adviser's material relationship, if any, to any investment under the arrangement; and types of services the fiduciary adviser provides in connection with the investment advice. Further, if there is a material change to the computer model used to generate the investments in the initial disclosure, the fiduciary adviser would be required to obtain a new certification before using the modified model. It is important that the information be provided and certification be obtained in a timely manner so that Participants and Plan fiduciaries can promptly monitor the investment advice arrangement in order to safeguard Plan and IRA assets.

Because the regulation provides guidance on statutory provisions which themselves are subject to a record retention requirement of a period of not less than six years, ERISA section 107, the exclusion from the three year guideline for record retention set forth in 5 CFR 1320.5 is applicable.

Class Exemption

After a material modification in certain previously disclosed information, a written response may be required within 30 or fewer days. Under the proposed exemption, the fiduciary adviser would be required to disclose at a time reasonably contemporaneous with a material modification to the following information: the relationship between the adviser and the parties that developed the investment advice arrangement or selected the investment options available under the Plan or IRA; if not otherwise publicly available, past performance and historical rates of return of investments available under the plan or IRA; publicly available; all fees and other compensation the fiduciary adviser or any affiliate is to receive in connection with the investment; the fiduciary adviser's material relationship, if any, to any investment under the arrangement; and types of services the fiduciary adviser provides in connection with the investment advice. Further, if there is a material change to the computer model used to generate the investments in the initial disclosure, the fiduciary adviser would be required to obtain a new certification before using the modified model. It is important that the information be provided and certification be obtained in a timely manner so that Participants and Plan fiduciaries can promptly monitor the investment advice arrangement in order to safeguard Plan and IRA assets.

Under the proposed exemption, the fiduciary adviser would be required to disclose at a time reasonably contemporaneous with a material modification to the following information: the relationship between the adviser and the parties that developed the investment advice arrangement or selected the investment options available under the Plan or IRA; if not otherwise publicly available, past performance and historical rates of return of investments available under the plan or IRA; publicly available; all fees and other compensation the fiduciary adviser or any affiliate is to receive in connection with the investment; the fiduciary adviser's material relationship, if any, to any investment under the arrangement; and the types of services the fiduciary adviser provides in connection with the investment advice. Further, if there is a material change to the computer model used to generate the investments in the initial disclosure, the fiduciary adviser would be required to obtain a new before using the modified model. It is important that the information be provided and certification be obtained in a timely manner so that Participants and Plan fiduciaries can promptly monitor the investment advice arrangement in order to safeguard Plan and IRA assets.

Because the exemption is granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the exclusion from the three year guideline for record retention set forth in 5 CFR 1320.5 is applicable.

8. *If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.*

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

On December 4, 2006, the Department published a Request for Information (RFI) in the Federal Register soliciting information to assist the Department in the development of regulations under sections 408(b)(14) and 408(g). Specifically, the Department invited interested persons to address the qualifications for the "eligible investment expert" that is required to certify that computer models used in connection with the statutory exemption meet the requirements of the

statutory exemption. The Department also invited interested persons to provide information to assist the Department in developing procedures to be followed in certifying that a computer model meets the requirements of the statutory exemption. The Department also invited suggestions for a model disclosure form for purposes of the statutory exemption. In response to the RFI, the Department received 24 letters addressing a variety of issues presented by the statutory exemption. These comments have been taken into account in developing the proposed regulations.

The Notice of Proposed Rulemaking and the Class Exemption provide the public with an opportunity to provide comment and any comments received, as well as the Department's response to such comments, will be summarized at the final rule stage.

9. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

Statutory Exemption

Not applicable.

Class Exemption

Not applicable.

10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

Statutory Exemption

Not applicable.

Class Exemption

Not applicable.

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.*

Statutory Exemption

Not applicable.

Class Exemption

Not applicable.

12. *Provide estimates of the hour burden of the collection of information. The statement should:*
- *Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.*
 - *If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.*
 - *Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.*

The Department has made certain specific basic assumptions in order to establish a reasonable estimate of the paperwork burden of this information collection. Most importantly, given the nature of the information collection requirements, the Department assumes a combination of personnel will perform the information collection. Using data from the Bureau of Labor Statistics, the Department assumes hourly wages rate for 2008 of \$79, including both wages and benefits, for a financial manager and \$21 for clerical personnel.¹ Legal professional time is similarly assumed to be approximately \$109 per hour, and computer programming time is estimated at \$67 per hour.

Statutory Exemption

¹ Hourly wage estimates are based on data from the Bureau of Labor Statistics Occupational Employment Survey (May 2005) and the Bureau of Labor Statistics Employment Cost Index (Sept. 2006). Clerical wage and benefits estimates are based on metropolitan wage rates for executive secretaries and administrative assistants. Financial manager wage and benefits estimates are based on metropolitan wage estimates for financial managers. Legal professional wage and benefits estimates are based on metropolitan wage rates for lawyers. Computer programmer wage and benefits estimates are based on metropolitan wage rates for professional computer programmers.

The Department assumes that there are approximately 16,000 investment advisory firms (including broker-dealers) will take advantage of this statutory exemption to provide advice to both Plans and IRAs.² The number of investment advisory firms using this statutory exemptive relief is assumed to be constant over time. The Department also estimates that under the statutory exemption approximately 52,000 defined contribution (DC) Plans will seek to provide advice to their Participants. These Plans represent approximately 6,611,000 Participants, of which approximately 1,487,000 will seek advice from the investment advisory firm servicing their employer sponsored retirement investment plan. IRAs can also make use of this statutory exemption, and the Department estimates that approximately 8,661,000 million IRA Participants will seek advice under this statutory exemption.³

Table 1: Number of Entities for the Statutory Exemption

Statutory Exemption Entities	Estimated Number
Investment advisory firms	15,552
Plans using the statutory exemption	52,364
Plan Participants offered advice	6,610,805
Plan Participants using advice	1,487,431
IRA Participants	8,661,205

a. Statutory Exemption Disclosure Package from Investment Advisory Firms to Participants

Each investment advisory firm is required to make certain disclosures initially (in advance of giving advice), annually and upon request. As more fully discussed in the answer to Question 1.a above, the disclosure package required under the statutory exemption includes the following information regarding the investment advice arrangement: the relationship between the advisory firm and the investments recommended; if not otherwise publicly available, investment past performance; all fees and other compensation the fiduciary and its affiliates receive in connection with investments, services the fiduciary adviser provides in connection with the investment advice; acknowledgment that the adviser will act as a fiduciary; the manner in which

² Unless otherwise noted, numbers are rounded to the nearest 1,000.

³ To be conservative, the Department assumes that all 16,000 advisory firms give advice pursuant to both the statutory and class exemptions as they all will have some clients who request only level fee or computer model advice under the statutory exemption and other clients who request off-model advice under the class exemption. The Department estimates that there are approximately 209,000 Plans that are currently offering advice (pre-statutory exemption advice), that after the statutory exemption is published approximately 261,000 Plans will offer advice and that after the class exemption is published approximately 314,000 Plans will offer advice. The Department cannot determine which of these plans will be offering advice under pre-statutory exemption, statutory exemption or class exemption conditions; thus the Department decided to apply costs to the statutory and class exemptions based on the incremental change in the number of Plans offering advice. This method is also applied to the number of IRA Participants receiving advice; the Department estimates that approximately 16,813,000 IRA Participants received advice under pre-statutory exemption conditions, approximately 8,661,000 will receive advice under statutory exemption conditions and approximately 8,491,000 will receive advice under class exemption conditions. The Department welcomes comments on this assumption.

the advisee's information may be used or disclosed; and a notice of opportunity to engage in non conflicted advice arrangements. The Department assumes that investment advisory firms will compile all of these notices into a single four page disclosure package for each Participant given advice.

The Department assumes that investment advisory firms will distribute this disclosure package only to Participants who seek advice under this statutory exemption. The Department further assumes that the initial disclosure package will be disbursed at the time the Participant initiates contact with the firm. The Department acknowledges that investment advisory firms might for other reasons decide to make disclosures to all of the Participants of any particular Plan; the Department assumes that investment advisory firms will only do so if disbursement through electronic means is available, thus there is no distribution costs associated with this type of mass market disclosure.

Under the statutory exemption investment advisory firms are required to provide disclosures annually as well as initially. The Department assumes that investment advisory firms will distribute the same disclosures throughout the year and that they only update their disclosure content for the annual disclosures. The Department further assumes that few disclosures are requested each year (one per firm on average) and most requested disclosures are distributed either electronically at a negligible cost or in person at small costs.

First Year Preparation of Statutory Exemption Disclosure Package

Some of the information required to be in the disclosure package will be the same for all Participants offered advice; in particular the notice of the role of the person with a material affiliation or material contractual relationship in developing the investment advice arrangement, the manner in which the Participant's information will be used or disclosed, the types of services provided by fiduciary adviser in connection with the provision of investment advice, the acknowledgement that the fiduciary adviser is acting as a fiduciary of the plan or IRA, and that the Participant can arrange for investment advice by an adviser that does not (1) receive fees in connection with the investment or (2) have a material affiliation with the investment. The Department assumes that these notices will be drafted by legal professionals within the investment advisory firm and estimates that the notices require six hours for each of almost 16,000 investment advice firm to prepare thus generating an hour burden of approximately 93,000 hours for an associated equivalent cost of approximately \$10,215,000.

Other information required to be in the disclosure package is dependent upon the investment options that the investment advisor recommends to the Participant, therefore the preparation of these disclosures will depend upon the individual Plan or IRA investment options. For the Plans, the investment advisory firm will generate the same notices for all of the Participants who seek advice through their Plan. Again, the Department assumes that these notices will be drafted by legal professionals within the investment advisory firm and estimates that they will require two and one half hours for each of about 52,000 Plans using the statutory exemption to prepare, thus

generating an hour burden of approximately 131,000 hours for an equivalent cost of about \$14,331,000.

The Department assumes that the investment advisory firm will create a computer program to generate the specific disclosure package for IRA Participants and to only include information on the investments that the advisor is recommending. The Department further assumes that all investment advisory firms use outsourced computer programming resources to generate this program; however, the computer model generation also requires an in-house legal professional to work with the out-sourced computer programmer to determine the parameters of the computer program. This in-house legal professional is expected to need approximately 100 hours for each of almost 16,000 investment advisory firms to generate the parameters of the computer program. Thus the associated in-house hour burden for the preparation of disclosures to IRA Participants is approximately 1,555,000 hours for an equivalent cost of about \$170,247,000.

Overall, the statutory exemption's disclosure preparation requires an hour burden of approximately 1,779,000 with an equivalent cost of approximately \$194,792,000.

Table 2: Statutory Exemption First Year Disclosure Package Preparation Hour Burden Estimates

Entity	Number	Hours per Entity	Hour Burden	Hourly Rate	Equivalent Cost
Advice Firms	15,552	6	93,312	\$109.47	\$10,214,799
Plans	52,364	2.5	130,911	\$109.47	\$14,330,737
IRA (Advice Firms)	15,552	100	1,555,200	\$109.47	\$170,246,656
TOTAL			1,779,423		\$194,792,192

Subsequent Years Preparation of Statutory Exemption Disclosure Package

For the annual updating of disclosures the Department assumes that the preparation time needed for updating the notices that are (a) the same for all Participants will be about three hours for each of almost 16,000 investment advisory firms, (b) the same for all Plan Participants will average one hour and a half for each of over 52,000 Plans, and (c) individualized for IRAs will average 50 hours for each of almost 16,000 investment advisory firms. Thus the annual hour burden is approximately 903,000 with an equivalent cost of approximately \$98,829,000.

Table 3: Statutory Exemption Subsequent Years Disclosure Package Preparation Hour Burden Estimates

Entity	Number of Entities	Hours per entity	Hour Burden	Hourly Rate	Equivalent Cost
Advice Firm	15,552	3	46,656	\$109.47	\$5,107,400
Plan	52,364	1.5	78,547	\$109.47	\$8,598,442
IRA (Advice Firms)	15,552	50	777,600	\$109.47	\$85,123,328
TOTAL			902,803		\$98,829,170

Annual Distribution of Statutory Exemption Disclosure Package

All of these disclosures (initial, annual and upon request) can be distributed either electronically or in paper. The Department estimates that those disclosures distributed upon request will be distributed mostly through electronic means, and, thus, will have a negligible cost to advice firms. Based on data from the Current Population Survey,⁴ the Department estimates that 80 percent of workers with any employer sponsored benefit plan have access to the internet either at home or at work. Using this percentage, the Department estimates that approximately 80 percent of the initial and annual disclosures will be electronically distributed with 20 percent distributed on paper. The Department further assumes that of the 20 percent of disclosures printed 50 percent will be handed out in person and 50 percent will be mailed to the Participant; thus ten percent of Participants receive disclosures through the mail (with associated costs burdens for photocopying and mailing discussed in response 13.a. below). The Department estimates that an in-house clerical professional will require approximately four minutes per disclosure package (one minute per page) to make photocopies and about one minute to prepare each disclosure package for mailing. Assuming approximately 1,487,000 Plan Participants and approximately 8,661,000 IRA Participants seek advice, the regulation’s annual hour burden hours associated with photocopying and mailing will be approximately 152,000 hours with an equivalent cost of approximately \$3,225,000.

Table 4: Statutory Exemption Annual Disclosure Package Distribution Hour Burden Estimates

	Participants	Hours required	Hour burden	Hourly Rate	Equivalent Cost
Total Photocopying	2,029,727	(1*4)/60	135,315	\$21.19	\$2,866,944
Plans	297,486	0.067	19,832		\$420,193
IRAs	1,732,241	0.067	115,483		\$2,446,751
Total Mailing	1,014,864	0.0167	16,914	\$21.19	\$358,368
Plans	148,743		2,479		\$52,524
IRAs	866,120		14,435		\$305,844

⁴ This estimate is derived from CPS October 2003 School Supplement probit equations applied to February 2005 Contingent Worker Supplement. These equations show that approximately 81 percent of workers aged 19 to 65 had internet access either at home or at work in 2005. The Department further assumes that one percent of these participants will elect to receive paper documents instead of electronic, thus 20 percent of participants receive disclosures through paper media.

TOTAL		152,230	\$3,225,312
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Thus the hour burden under the statutory exemption for the preparation and distribution of the disclosure package to Participants in the first year is approximately 1,932,000 hours with an equivalent cost burden of \$198,018,000. The annual hour burden hours under the statutory exemption for the preparation and distribution of the disclosure package to Participants in the subsequent years are approximately 1,055,000 hours with an equivalent cost burden of \$102,054,000.

Table 5: Statutory Exemption Disclosure Package Hour Burden Estimates

	First Year Hour burden	First Year Equivalent Cost	Subsequent Years Hour burden	Subsequent Years Equivalent Cost
Preparation	1,779,423	\$194,792,192	902,803	\$98,829,170
Distribution	152,230	\$3,225,312	152,230	\$3,225,312
TOTAL	1,931,653	\$198,017,504	1,055,033	\$102,054,482

b. Statutory Exemption Computer Model Certification

Under the statutory exemption, a fiduciary adviser that chooses to rely on the conditions of the exemption that require computer model generated investment selections must obtain the certification of an eligible investment expert as to the computer model’s compliance with the criteria set forth in the regulation. The Department assumes that there are six companies that will provide the investment advice computer model⁵ and that legal professionals working at these six companies supply in-house support by providing documentation and other information to the eligible investment expert who certifies the company’s investment advice computer model. These legal professionals spend about 40 hours per six investment advice computer model providers and on average 40 hours for each of the almost 16,000 investment advisory firms to whom the computer model providers supply their models. Thus the investment advice computer model providers have an hour burden of approximately 622,000 hours for an equivalent cost of about \$68,125,000.

The Department also assumes that the investment advisory firm will need in-house legal professionals to provide documentation and other information to the eligible investment expert who certifies the investment advisory firm’s investment advice computer model. These legal professionals will spend on average ten hours for each of over 52,000 Plans and on average 50 hours for each of the almost 16,000 investment advisory firms. Thus the hour burden in the first year for the certification of the investment advice computer model is approximately 1,301,000 hours with an equivalent cost of about \$142,446,000.

⁵ Based on limited information with respect to the investment computer model industry, the Department estimates that there are six companies that produce investment advice computer models.

Table 6: Statutory Exemption First Year Computer Model Certification Hour Burden Estimates

	Estimated Number	Hours Required	Hour Burden	Hourly Rate	Equivalent Cost
Model provider			622,320	\$109.47	\$68,124,935
Models	6	40	240		\$26,273
IRAs (advice firm)	15,552	40	622,080		\$68,098,662
Advice Firm			1,301,244	\$109.47	\$142,446,276
Plan	52,364	10	523,644		\$57,322,948
IRA (Advice Firms)	15,552	50	777,600		\$85,123,328
TOTAL			1,923,564		\$210,571,211

The Department assumes that in subsequent years the hours required for any investment advice computer model recertification will be approximately half of the first certification and that investment advisory firms will have their investment advice computer model recertified on average once a year. Thus in the subsequent years the hour burden is approximately 962,000 hours with an equivalent cost of approximately \$105,286,000.

Table 7: Statutory Exemption Subsequent Years Computer Model Certification Hour Burden Estimates

	Estimated Number	Hours Required	Hour Burden	Hourly Rate	Equivalent Cost
Model provider			311,160	\$109.47	\$34,062,467
Models	6	20	120		\$13,136
IRAs (advice firm)	15,552	20	311,040		\$34,049,331
Advice Firm			650,622	\$109.47	\$71,223,138
Plan	52,364	5	261,822		\$28,661,474
IRA (Advice Firms)	15,552	25	388,800		\$42,561,664
TOTAL			961,782		\$105,285,606

c. Statutory Exemption Investment Advisory Firm Written Policies and Procedures

There are no requirements for written policies and procedures under the statutory exemption.

d. Statutory Exemption Recordkeeping Requirements

The Department also assumes that all investment advisory firms need to maintain recordkeeping systems. The Department assumes that all records that are required to be maintained will be kept electronically under normal business practices; therefore no printing and negligible holding costs are anticipated to be associated with records maintenance.

e. Statutory Exemption Audit Requirements

An annual audit performed by an independent auditor is required under the statutory exemption, and all firms are assumed to outsource this service but use some internal clerical and legal professional time to assist the auditor.⁶ The clerical staff is expected to spend about three hours per advisory firm and on average ten minutes per Participant to gather documentation and other information. The in-house legal professional is expected to need approximately four hours to assist the auditor with the statutory exemption audit. The Department estimates that about one percent of Participants will be audited per year, resulting in approximately 101,000 audits of 10,149,000 total Participants. As each Participant receives advice on average four times per year, there are approximately 406,000 Participant transactions audited under the statutory exemption each year. Overall, the annual in-house hour burden for the annual audit requirement is estimated at 126,000 hours, with equivalent costs of approximately \$8,157,000.

Table 8: Statutory Exemption First Year Audit Hour Burden Estimates

	Entity	Hours per	Hour Burden	Hourly Rate	Equivalent Cost
Clerical, per firm	15,552	3	46,656	\$21.19	\$988,508
Clerical, per Participant	101,486	0.167	16,914	\$21.19	\$358,368
Legal, per firm	15,552	4	62,208	\$109.47	\$6,809,866
TOTAL			125,778		\$8,156,742

Class Exemption

The Department assumes that all of the 16,000 investment advisory firms that take advantage of the statutory exemption will also provide advice that relies on the class exemption. As

⁶ Audit firms are expected to transmit the final audit report to the advisory firm through electronic means at no additional costs. The advisory firms must either furnish a copy of the audit report to IRA Participants or make the audit report available on their website and inform IRA Participants of the purpose of the report and how and where to locate the report applicable to their account with the other disclosures discussed above. The Department assumes that all advisory firms will make the audit report available on their website and add a few sentences to the single disclosure package at negligible costs. Any advisory firm whose audit report identifies noncompliance with the requirements of the statutory or class exemption must send a copy of the report to the Department within 30 days following receipt of the report. The Department assumes that the majority of advisory firms will comply with the exemption; therefore, the costs associated with sending the audit reports to the Department are expected to be negligible. The Department welcomes comments on this assumption.

mentioned above, all investment advisory firms provide advice to both Plans and IRAs and the number of investment advisory firms using this class exemptive relief is assumed to be constant over time. The Department also estimates that under the class exemption approximately 52,000 Plans will seek to provide advice to their Participants. These plans represent approximately 6,611,000 Participants, of which approximately 2,016,000 will seek advice from the investment advisory firm employed on behalf of their employer sponsored retirement investment plan. IRAs can also make use of this class exemption, and the Department estimates that approximately 8,491,000 IRA Participants will seek advice under this class exemption.

Table 9: Class Exemption Number of Entities

Class Exemption Entities	Estimated Number
Investment advisory firms	15,552
Plans utilizing class exemption	52,364
Plan Participants offered advice	6,610,805
Plan Participants utilizing advice	2,016,295
IRA Participants	8,491,377

a. Class Exemption Disclosure Package from Investment Advisory Firms to Participants

Each investment advisory firm is required to make certain disclosures initially (in advance of giving advice), annually and upon request. As more fully discussed in the answer to Question 1.a., the disclosure package required under the class exemption includes the following information regarding the investment advice arrangement: the relationship between the advisory firm and the investments recommended; if not otherwise publicly available investment past performance; all fees and other compensation the fiduciary and its affiliates receive in connection with investments, services the fiduciary adviser provides in connection with the investment advice; acknowledgment that the adviser will act as a fiduciary; the manner in which the advisee’s information may used or disclosed; and a notice of opportunity to engage in non conflicted advice programs. The Department assumes that investment advisory firms will compile these notices into a single five page disclosure package for each Participant given advice.

The Department assumes that investment advisory firms will distribute this disclosure package only to Participants who seek advice under this class exemption. The Department further assumes that the initial disclosure package will be disbursed at the time the Participant initiates contact with the firm. The Department acknowledges that investment advisory firms might for other reasons decide to make disclosures to all of the Participants of any particular Plan; the Department assumes that the investment advisory firm will only do so if disbursement through electronic means is available, thus there is no distribution costs associated with this type of mass market disclosure.

Under the class exemption investment advisory firms are required to provide disclosures annually as well as initially. The Department assumes that investment advisory firms distribute the same disclosures throughout the year and that they only update their disclosure content for the annual disclosures. The Department further assumes that few disclosures will be requested each year (one per firm on average) and most requested disclosures will be distributed either electronically at a negligible cost or in person at small costs.

First Year Preparation of Class Exemption Disclosure Package

Some of the information required to be in the disclosure package will be the same for all Participants offered advice; in particular the notice of the role of the person with a material affiliation or material contractual relationship in developing the investment advice arrangement, the manner in which the Participant's information will be used or disclosed, the types of services provided by the fiduciary adviser in connection with the provision of investment advice, the acknowledgement that the fiduciary adviser is acting as a fiduciary of the plan or IRA, and that the Participant can arrange for investment advice by an adviser that does not (1) receive fees in connection with the investment or (2) have a material affiliation with the investment. The Department assumes that these notices will be drafted for the statutory exemption, and, thus, have no costs under the class exemption.

However, other information required to be in the disclosure package is dependent upon the investment options that the investment advisor recommends to the Participant; therefore, the preparation of these disclosures will depend upon the individual Plan or IRA investment options. For the Plans, the investment advisory firm will generate the same notices for all of the Participants who seek advice through their Plan. Again, the Department assumes that these notices will be drafted by legal professionals within the investment advisory firm and estimates that they will require two hours for each of 52,000 Plans using the class exemption to prepare thus generating an hour burden of approximately 105,000 hours for an equivalent cost of about \$11,465,000

The Department assumes that the investment advisory firm will create a computer program to generate the specific disclosure package for IRA Participants and will include only information on the investments that the advisor is recommending. The Department further assumes that all investment advisory firms will use outsourced computer programming resources to generate this program; however, the computer model generation also will require an in-house legal professional to work with the out-sourced computer programmer to determine the parameters of the computer program. This in-house legal professional is expected to need on average 80 hours for each of almost 16,000 investment advisory firms to generate the parameters of the computer program for a burden hour of approximately 1,244,000 hours at an equivalent cost of approximately \$136,197,000. Thus, the associated hour burden for the first year of the class exemption is estimated to be approximately 1,349,000 hours for an equivalent cost of about \$147,662,000.

Table 10: Class Exemption Disclosure Package First Year Preparation Hour Burden Estimates

Entity	Number	Hours per Entity	Hour Burden	Hourly Rate	Equivalent Cost
Plans	52,364	2	104,729	\$109.47	\$11,464,590
IRA (Advice Firms)	15,552	80	1,244,160	\$109.47	\$136,197,325
TOTAL			1,348,889		\$147,661,914

Subsequent Years Preparation of Class Exemption Disclosure Package

For the annual updating of disclosures the Department assumes that the preparation time needed for updating the notices that are (a) the same for all Plan Participants will take on average one hour for each of over 52,000 Plans and (b) individualized for IRA Participants will average 40 hours for each of almost 16,000 investment advisory firms. Thus the annual hour burden is approximately 674,000 with an equivalent cost of approximately \$73,831,000.

Table 11: Class Exemption Disclosure Package Subsequent Years Preparation Hour Burden Estimates

Entity	Number of Entities	Hours per entity	Hour Burden	Hourly Rate	Equivalent Cost
Plan	52,364	1	52,364	\$109.47	\$5,732,295
IRA (Advice Firms)	15,552	40	622,080	\$109.47	\$68,098,662
TOTAL			674,444		\$73,830,957

Annual Distribution of Class Exemption Disclosure Package

All of these disclosures (initial, annual and upon request) can be distributed either electronically or in paper. The Department estimates that those disclosures distributed upon request will be distributed mostly through electronic means, and, thus, will have a negligible cost to the firms. Based on data from the Current Population Survey, the Department estimates that 80 percent of workers with any employer sponsored benefit plan have access to the internet either at home or at work. Using this percentage, the Department estimates that approximately 80 percent of the initial and annual disclosures will be electronically distributed with 20 percent distributed on paper. The Department further assumes that of the 20 percent of disclosures printed 50% are handed out in person and 50 percent are mailed to the Participant; thus ten percent of Participants receive disclosures through the mail (with associated cost burdens for photocopying and mailing discussed in the response to Question 13.b. below).

The Department estimates the most of the investment advisory firms that take advantage of the class exemption will determine that computer modeling of the number and types of investment choices available to an IRA is not possible, and will instead furnish asset class allocation models to the Participant. As such, the disclosure package for participants who receive advice pursuant

to the class exemption will be five pages in length, instead of four. An in-house clerical profession requires on average five minutes (one minute per page) per disclosure package to photocopy and one minute per disclosure package to prepare each disclosure package for mailing. Given that approximately 2,016,000 Plan Participants and approximately 8,491,000 IRA Participants are expected to receive advice under the class exemption, the regulation's yearly hour burden hours associated with photocopying and mailing will be approximately 193,000 hours with an equivalent cost of approximately \$4,082,000.

Table 12: Class Exemption Disclosure Package Annual Distribution Hour Burden Estimates

	Participants	Hours Required	Hour Burden	Hourly Rate	Equivalent Cost
Total Photocopying	2,101,535	0.083	175,128	\$21.19	\$3,710,462
Plans	403,259		33,605		\$711,993
IRAs	1,698,275		141,523		\$2,998,469
Total Mailing	1,050,767	0.0167	17,513	\$21.19	\$371,046
Plans	201,630		3,360		\$71,199
IRAs	849,138		14,152		\$299,847
TOTAL			192,641		\$4,081,509

Thus, the hour burden under the class exemption for the preparation and distribution of the disclosure package to Participants in the first year is approximately 1,542,000 hours with an equivalent cost burden of approximately \$151,743,000. The hour burden for the preparation and distribution of the disclosure package to Participants in the subsequent years under the class exemption is approximately 867,000 hours with an equivalent cost of \$77,912,000.

Table 13: Class Exemption Disclosure Package Hour Burden Estimates

	First Year Hour Burden	First Year Equivalent Cost	Subsequent Years Hour Burden	Subsequent Years Equivalent Cost
Preparation	1,348,889	\$147,661,914	674,444	\$73,830,957
Distribution	192,641	\$4,081,509	192,641	\$4,081,509
TOTAL	1,541,530	\$151,743,423	867,085	\$77,912,466

b. Class Exemption Computer Model Certification Requirements

The computer model is developed and certified for the statutory exemption, thus, the hour burden and cost burden are applied to the statutory exemption only.

c. Class Exemption Investment Advisory Firm Written Policies and Procedures

Financial investment advisory firms that wish to provide investment advice pursuant to the class exemption need to develop written policies and procedures that insure the firm follows all of the class exemption requirements. The Department assumes that all investment advisory firms will use existing in-house resources to prepare the written policies and procedures. The Department estimates that each investment advisory firm will prepare their written policies and procedures in the first year they provide advice pursuant to the class exemption and that updating the written policies and procedures will generally require no additional costs. It is assumed that drafting these policies and procedures will on average require seven hours of legal professional time for each of the almost 16,000 investment advisory firms to prepare the firm’s written policies and procedures at the legal professional labor hour rate of \$109. This leads to an hour burden for the preparation of written policies and procedures in the first year of about 109,000 hours with an equivalent cost of approximately \$11,917,000.

Table 14: Class Exemption Written Policies and Procedures First Year Hour Burden Estimates

Firms	Hours per Firm	Hour Burden	Hourly Rate	Equivalent Cost
15,552	7 hours	108,864	\$109.47	\$11,917,266

d. Class Exemption Recordkeeping Requirements

The Department also assumes that all investment advisory firms maintain recordkeeping systems to satisfy these information collections requirements. The Department assumes that all records that are required to be maintained will be kept electronically under normal business practices, so the Department anticipates that there will be no printing and negligible holding costs associated with maintenance of the records. One of the requirements of the class exemption discussed in response 1.d. is that any fiduciary adviser who recommends a particular investment that departs from a previously disclosed computer model generated specific investment recommendations, or that comes after a general asset allocation model disclosure, and that may provide greater revenue to the adviser and any affiliate than an investment in the same asset class set forth in the disclosure (“Off-Model Advice”), is required to draft a written report (explaining why the particular investment is in the best interests of the Plan Participant or IRA owner). The Department assumes that such Off -Model Advice will be provided in ten percent of the possible plan cases, and 30 percent of the possible IRA Participant cases; thus of the approximately 2,016,000 Participants and approximately 8,491,000 IRA Participants receiving advice under the class exemption, almost 202,000 Plan Participants and 2,547,000 IRA Participants will receive such Off-Model Advice.⁷ The Department further assumes that each Participant or beneficiary receiving advice will receive this advice an average of four times per year (once a quarter), resulting in almost 10,996,000 reports. The Department assumes that each investment advisor who provides Off-Model advice will need approximately 15 minutes to write this report. Generating these reports is estimated to result in approximately 2,749,000 burden hours for the investment manager with an associated equivalent cost of \$217,125,000.

⁷ Based on limited information on the type of advice given to Participants, the Department estimates that ten percent of Plan Participants and 30 percent of IRA Participants will receive Post-Model Advice.

Table 15: Class Exemption Recordkeeping First Year Hour Burden Estimates

Entity	Participants Receiving Post -Model Advice	Post-Model Reports Generated	Hours per Participant Transaction	Hour Burden	Hourly Rate	Cost Equivalent
Plan	201,630	806,518	0.25	201,630	\$78.98	\$15,925,134
IRA	2,547,413	10,189,653	0.25	2,547,413	\$78.98	\$201,200,172
Total	2,749,043	10,996,171		2,749,043		\$217,125,307

e. Class Exemption Audit Requirements

An annual audit performed by an independent expert is required under the class exemption. All firms are assumed to outsource this service, but some are expected to use internal clerical and legal professional time to assist the auditor. As an audit is also required under the statutory exemption, the fixed in-house hours are attributed to the statutory exemption and only the variable clerical hours are divided between the statutory and class exemption. Under the class exemption, clerical staff is expected to spend on average ten minutes to pull each audited participant’s files or to provide other documentation or information. The Department estimates that about one percent of participants will be audited per year, thus approximately 105,000 Participants will be audited. Overall, the annual in-house hour burden for the annual audit requirement is estimated at 18,000 hours, with equivalent costs of approximately \$371,000.

Table 16: Class Exemption Annual Audit Hour Burden Estimates

	Participants	Hours per Participant	Hour Burden	Hourly Rate	Equivalent Cost
Total: Clerical	105,077	0.167	17,513	\$21.19	\$371,046

Summary of Class and Statutory Exemption Hour Burden Estimates

The Department estimates that the statutory exemption hour burden is approximately 3,981,000 hours in the first year for an equivalent cost of approximately \$416,745,000 and in each subsequent year the statutory exemption will have an hour burden of almost 2,143,000 with an equivalent cost of approximately \$215,497,000. In addition, the Department estimates that the class exemption will have an hour burden of approximately 4,417,000 hours in the first year for an equivalent cost of approximately \$381,157,000 and in each subsequent year the class exemption will have an hour burden of almost 3,634,000 with an equivalent cost of approximately \$295,409,000.

Table 17: Total Hour Burden Estimates

	First Year Hour Burden	First Year Equivalent Cost	Subsequent Years Hour Burden	Subsequent Years Equivalent Cost
Statutory Exemption	3,980,995	\$416,745,457	2,142,593	\$215,496,829
Disclosures	1,931,653	\$198,017,504	1,055,033	\$102,054,482
Audit	125,778	\$8,156,742	125,778	\$8,156,742
Model Certification	1,923,564	\$210,571,211	961,782	\$105,285,606
Class Exemption	4,416,949	\$381,157,042	3,633,641	\$295,408,819
Policies and Procedures	108,864	\$11,917,266	NA	NA
Recordkeeping	2,749,043	\$217,125,307	2,749,043	\$217,125,307
Disclosures	1,541,529	\$151,743,423	867,085	\$77,912,466
Audit	17,513	\$371,046	17,513	\$371,046

13. *Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 or 14).*

Statutory Exemption

The costs arising from the information collection requirements of the statutory exemption derive from the outsourcing of the legal counsel review of disclosure notifications, the direct costs of distribution of disclosures, the costs of having an outside independent expert audit the transactions that use the statutory exemption and the costs of having an outside independent expert certify the firm's investment advice computer model.

a. Statutory Exemption Disclosure Package to Participants (corresponding to the disclosures discussed in the response to Question 12. Section a. under Statutory Exemption above)

As discussed in response 12.a. above, the Department assumes that all firms will outsource the creation of a computer program to enable them to prepare disclosures for IRA Participants. This computer model will be used for advice given pursuant to both the statutory exemption and the class exemption, but there will only be one computer program generated, and, thus, the costs are all applied to the statutory exemption. The Department estimates that computer programmer will charge on average \$1,200 per firm in the first year and \$600 each subsequent year,⁸ thus, the cost burden, given there are almost 16,000 investment advisory firms, will be approximately \$18,662,000 in the first year and approximately \$9,331,000 in all subsequent years.

⁸ The Department has based this cost estimate on limited industry data.

Table 18: Statutory Exemption Disclosures Generation Computer Program Cost Estimates

	Advice Firms	Cost per Advice Firm	Cost Burden
First Year	15,552	\$1,200	\$18,662,400
Subsequent Years	15,552	\$600	\$9,331,200

Annual Distribution of Statutory Exemption Disclosure Package

As stated in the response to Question 12.a above, the Department estimates that 20 percent of the disclosures to Participants will be delivered through paper, with 50 percent of these delivered in person and 50 percent mailed to the Participants, thus ten percent of Participants receive their disclosure package through the mail. The per page photocopy costs are assumed to be five cents and the mailing costs are assumed to be \$0.42⁹ per disclosure package for regular First Class mail. Given that there will be approximately 10,149,000 Participants (1,487,000 Plan Participants and 8,661,000 IRA Participants), the associated cost burden for generating paper copies of the disclosures to Participants under the statutory exemption is estimated to be \$406,000 annually. Under the basic USPS postage at a cost of \$0.42 per disclosure package for ten percent of Participants, the postage cost burden of the statutory exemption will be approximately \$426,000 annually. Thus, the overall cost burden associated with distributing disclosures to Participants is estimated to be approximately \$832,000 per year.

Table 19: Statutory Exemption Annual Distribution Cost Burden Estimates

	Participants	Cost per Participant	Cost Burden
Total Photocopying	2,029,727	\$0.20	\$405,945
Plans	297,486		\$59,497
IRAs	1,732,241		\$346,448
Total Mailing	1,014,864	\$0.42	\$426,243
Plans	148,743		\$62,472
IRAs	866,120		\$363,771
TOTAL			\$832,188

When the costs of the IRA computer disclosure program generation and distribution of disclosure packages are added together, the statutory exemption has an estimated cost burden of \$19,495,000 in the first year and \$10,163,000 in every subsequent year.

Table 20: Summary of Disclosures Cost Burden for Statutory Exemption

	First Year Cost Burden	Subsequent Years Cost Burden
IRA Computer Program	\$18,662,400	\$9,331,200
Distribution	\$832,188	\$832,188

⁹ The USPS is increasing the cost of First Class Postage to \$0.42 as of May 2008

TOTAL	\$19,494,588	\$10,163,388
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b. Statutory Exemption Computer Model Certification

As discussed in the response to Question 12.d above, the Department assumes that all firms will outsource the certification of the financial investment advice computer model to an independent expert. This computer model certification will be used for advice given pursuant to both the statutory exemption and the class exemption but there will only be one computer model certified and thus the costs are all applied to the statutory exemption. The Department estimates that the independent expert will charge on average \$18,000 per financial investment advice firm in the first year and \$9,000 per financial investment advice firm each subsequent year,¹⁰ thus the cost burden, given there are almost 16,000 investment advisory firms, will be approximately \$279,936,000 in the first year and approximately \$139,968,000 in all subsequent years.

Table 21: Statutory Exemption Investment Advice Computer Model Certification Cost Estimates

	Advice Firms	Cost per Advice Firm	Cost Burden
First Year	15,552	\$18,000	\$279,936,000
Subsequent Years	15,552	\$9,000	\$139,968,000

c. Statutory Exemption Investment Advisory Firm Written Policies and Procedures

There is no additional cost burden for these requirements.

d. Recordkeeping Requirements

There is no additional cost burden for these requirements.

e. Statutory Exemption Audit Requirements

As discussed in the response to Question 12.e. above, under both the statutory exemption and the class exemption all investment advisory firms are required have an independent audit every year. The Department assumes that the statutory exemption audits will be performed by a legal professional for each of the almost 16,000 investment advisory firms and will cost on average \$18,000 for each investment advisory firm.¹¹ Thus, the annual cost burden will be approximately \$279,936,000.

Table 22: Initial and Annual Class Exemption Audit Cost Burden Estimates

¹⁰ The Department has based this cost estimate on limited industry data.

¹¹ The Department has based this cost estimate on limited industry data.

Number of Advice Firms	Cost per Advice Firm	Annual Cost Burden
15,552	\$18,000	\$279,936,000

Class Exemption

The costs arising from the information collection requirements of the class exemption derive from the outsourcing of the legal counsel review of disclosure notifications, the direct costs of distribution of disclosures and the costs of an annual independent audit.

a. Class Exemption Disclosure Package to Participants

Distribution of Class Exemption Disclosures Packages

As stated in the response to Question 12.b above, the Department estimates that 20 percent of the disclosures to Participants will be delivered through paper, with 50 percent of these delivered in person and 50 percent mailed to the Participants, thus ten percent of Participants receive their disclosure package through the mail. The per page paper and photocopy costs are assumed to be five cents and the mailing costs are assumed to be \$0.42 per disclosure package for regular First Class mail. Given that there are approximately 10,508,000 Participants (2,016,295 Plan Participants and 8,491,000 IRA Participants), the associated cost burden for generating paper copies of the disclosures to Participants under the class exemption is estimated to be approximately \$525,000 annually. Under the basic USPS postage at a cost of \$0.42 per disclosure package for ten percent of Participants the cost burden of mailing disclosures under the statutory exemption will be approximately \$441,000 annually. Thus the cost burden from distribution of disclosures to Participants under the statutory exemption is approximate \$967,000.

Table 23: Class Exemption Annual Distribution Cost Burden Estimates

	Participants	Cost per Participant	Cost Burden
Total Photocopying	2,101,535	\$0.25	\$525,384
Plans	403,259		\$100,815
IRAs	1,698,275		\$424,569
Total Mailing	1,050,767	\$0.42	\$441,322
Plans	201,630		\$84,684
IRAs	849,138		\$356,638
TOTAL			\$966,706

b. Class Exemption Investment Advice Computer Model Certification Requirements

There is no additional cost burden for these requirements as they are all applied to the statutory exemption.

c. Class Exemption Investment Advisory Firm Written Policies and Procedures

There is no additional cost burden for these requirements as they are all applied to the statutory exemption.

d. Class Exemption Recordkeeping Requirements

There is no additional cost burden for these requirements.

e. Class Exemption Audit Requirements

As discussed in the response to Question 12.e. under Statutory Exemption above, under both the statutory exemption and the class exemption all investment advisory firms are required have an independent audit every year. The Department assumes that the class exemption audits will be performed by a legal professional for each of the almost 16,000 investment advisory firms and will cost on average \$4,000 for each investment advisory firm. Thus, the annual cost burden will be approximately \$62,208,000.

Table 24: Annual Class Exemption Audit Cost Burden Estimates

Number of Advice Firms	Cost per Advice Firm	Annual Cost Burden
15,552	\$4,000	\$62,208,000

Summary of Class and Statutory Exemption Cost Burden Estimates

The Department estimates that the statutory exemption has a cost burden of approximately \$583,257,000 in the first year and in each subsequent year the statutory exemption has a cost burden of approximately \$433,957,000. In addition, the Department estimates that the class exemption has a cost burden of approximately \$67,453,000 in the first year and in each subsequent year the class exemption has a cost burden of almost \$67,453,000.

Table 25: Total Cost Burden

	First Year Cost Burden	Subsequent Years Cost Burden
Statutory Exemption	\$579,366,588	\$430,067,388
Disclosures	\$19,494,588	\$10,163,388
Audit	\$279,936,000	\$279,936,000

Model Certification	\$279,936,000	\$139,968,000
Class Exemption	\$63,174,706	\$63,174,706
Disclosures	\$966,706	\$966,706
Audit	\$62,208,000	\$62,208,000

14. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.*

Statutory Exemption

There are no annualized costs to the Federal government for this information collection because it does not require any reporting or filing with the Federal government.

Class Exemption

There are no annualized costs to the Federal government for this information collection because it does not require any reporting or filing with the Federal government.

15. *Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.*

Statutory Exemption

Not applicable. This is a new collection of information.

Class Exemption

Not applicable. This is a new collection of information.

16. *For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.*

Statutory Exemption

There are no plans to publish the results of this collection of information.

Class Exemption

There are no plans to publish the results of this collection of information.

17. *If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*

Statutory Exemption

There are no exceptions to the certification statement.

Class Exemption

There are no exceptions to the certification statement.

18. *Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.*

Statutory Exemption

No applicable. The use of statistical methods is not relevant to this collection of information.

Class Exemption

No applicable. The use of statistical methods is not relevant to this collection of information.