

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSIONS

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.*

A growing number of participants and beneficiaries in ERISA-covered retirement plans are preparing for retirement by participating in plans that allow them to direct the investment of assets in their accounts. With the proliferation of these plans, participants and beneficiaries have become increasingly responsible for the adequacy of their retirement savings.

According to the Department's most recent data, there are an estimated 483,000 participant-directed individual account plans, covering an estimated 72 million participants, and holding almost \$3 trillion in assets. How well plan participants fare from the return on their retirement investments depends in part on the amount they must pay in fees and expenses.

The Department has become concerned that participants and beneficiaries may not have adequate access to or may not be considering information critical to making informed decisions about the management of their retirement accounts. Participants and beneficiaries particularly need information about the individual and comparable performance of the designated investment alternatives available to them under their employers' plans. In addition, they should have details and explanations about the fees and expenses attendant on each of their investment options. To address this issue, the Department is publishing a final regulation under ERISA section 404(a), with conforming amendments to the regulations under ERISA section 404(c)¹ that would require plan fiduciaries to disclose plan- and investment-related fee and expense information to participants and beneficiaries in all participant directed individual account plans (e.g., 401(k) plans) for plan years beginning on or after January 1, 2010.

The Department believes that the information collections contained in the rule are necessary to establish uniform, basic disclosures for participants and beneficiaries in participant-directed individual account plans without regard to whether they participate in plans that are intended to comply with ERISA section 404(c). Such information collections also are necessary to help participants and beneficiaries

¹ Under ERISA §404(c) fiduciaries of pension plans that allow participants to exercise control of their individual accounts are not responsible for losses resulting from a participant's exercise of such control. In 1992, DOL issued a regulation describing requirements that plans must meet in order for this section to apply. Among other things, this regulation details the disclosures that §404(c) plans must make to participants in order to afford them a reasonable opportunity to control their accounts. However, the fiduciary relief provided by §404(c) is elective and about 40% of participant directed plans choose not to comply with §404(c).

enrolled in all participant-directed individual account plans make informed decisions regarding the investment of assets in their retirement accounts. Therefore, the Department has included the burdens and costs associated with the information collections contained in the rule under OMB Control Number 1210-0090. This is the control number for the Department's existing regulation under ERISA Section 404(c), which would be amended by the proposal.²

The rule contains the following information collections, which are third party disclosures from plan fiduciaries to participants and beneficiaries in participant-directed individual account plans:

Plan-related Information—29 CFR 2550.404a-5(c). The rule requires three sub-categories of Plan-related information to be provided to participants and beneficiaries. The first sub-category is General Plan Information, which includes how participants may give investment instructions or exercise proxy voting or tendering rights, restrictions on transferring account assets among investment alternatives, and identification of the plan's designated investment alternatives and designated investment managers. (29 CFR 2550.404a-5(c)(1)). This information must be provided by the time a participant becomes eligible to participate in the plan, and afterwards at least annually. Material changes to this information must be disclosed at least 30 days but no more than 90 days before the effective date of the change except for unforeseen events or circumstances beyond the plan administrator's control. Plans may make these disclosures in the summary plan description (SPD).

The second sub-category of Plan-related Information is Administrative Expense Information, which refers to explanations of any fees and expenses for general plan administrative services (e.g., legal, accounting, recordkeeping) charged to individual accounts and the basis for allocating such charges among the accounts (e.g., pro-rata, per capita). (29 CFR 2550.404a-5(c)(2)). This information must be provided by the time a participant becomes eligible to participate in the plan, and afterwards at least annually. At last quarterly, plans must furnish statements of the aggregate dollar amount charged to each participant's account for these expenses during the previous quarter. Plans may make the initial and annual disclosures in the summary plan description (SPD) and the quarterly information may be included in the plan's quarterly benefit statements.

² See 29 CFR 2550.404c-1. The information collection provisions of the rule impose new hour and cost burdens on all participant directed individual account plans. However, the incremental burden placed on ERISA section 404(c) compliant plans is less than the burden imposed on non-404(c) compliant plans, because several of the rule's disclosure requirements are similar to those contained in the Department's existing 404(c) regulation at 29 CFR 2550.404c-1. For example, the Department's existing regulation requires section 404(c) compliant plans to provide general plan, information, pass-through information, and information available upon request to participants and beneficiaries. The primary sources of additional burden for 404(c) compliant plans are the requirements to disclose the actual dollar amounts of administrative and individual expenses charged to participant accounts on a quarterly basis and to provide investment-related information in a comparative format on an annual basis. In addition, the rule is more specific about the frequency and timing of the distribution of the required disclosures, which could impose additional burden on ERISA section 404(c) compliant plans.

The third sub-category of Plan-related Information is Individual Expense Information, which describes expenses assessed against accounts based on the actions taken by individual participants or beneficiaries. This would include charges for processing participant loans and qualified domestic relations orders. (29 CFR 2550.404a-5(c)(3)) Information describing these charges must be furnished before or upon a participant's eligibility and annually thereafter. Plans must provide quarterly statements identifying and showing the dollar amounts of each expense actually charged to an account. Plans may make the initial and annual disclosures in the summary plan description (SPD) and the quarterly information may be included in the plan's quarterly benefit statements.

Investment-related Information—29 CFR 2550.404a-5(d). The rule also requires plan administrators to disclose three sub-categories of investment-related information to participants and beneficiaries on or before their date of eligibility, which relates to the plans designated investment alternatives.³ The first sub-category of information is information required to be provided automatically. (29 CFR 2550.404a-5(d)(1)) For each designated investment alternative, the plan must disclose specified identifying information, past performance data, comparable benchmark returns, fee and expense information, and an Internet website address that is sufficiently specific to lead participants and beneficiaries to specified supplemental information for each investment alternative.

The latest information available to the plan must be furnished annually. Material changes to this information must be disclosed at least 30 days but no more than 90 days before the effective date of the change except for unforeseen events or circumstances beyond the plan administrator's control.

Investment-related information must be furnished in a chart or similar format designed to help participants compare the plan's investment alternatives across each category of information. (29 CFR 2550.404a-5(d)(2)) To facilitate compliance, the rule includes a model chart that may be used by plan fiduciaries to satisfy this requirement.

The second sub-category of investment-related Information is Post-investment Information. Following a participant's investment in an alternative, the plan administrator must provide any materials it receives regarding voting, tender or similar rights in the alternative ("pass-through materials") to the extent such rights are passed through to the participant or beneficiary. (29 CFR 2550.404a-5(d)(3))

The third sub-category of investment-related Information is information to be provided upon Request. (29 CFR 2550.404a-5(d)(4)) Participants may request the

³ The requirement to disclose the information on or before the date of plan eligibility may be satisfied by furnishing the most recent annual disclosure (and any material modifications) furnished to participants and beneficiaries.

plan to provide prospectuses, financial reports, as well as statements of valuation and a list of assets held by an investment alternative.

Amendment to Participant Fee Disclosure

The Department is proposing to amend the participant-level fee disclosure regulation to ensure that participants and beneficiaries obtain comprehensive information about TDFs that apply age or target retirement-based asset allocations, described in paragraph (e)(4)(i) of the qualified default investment alternative regulation. Specifically, to the extent the information is not already disclosed pursuant to the preceding requirements of paragraph (d)(3) of the rule, the description must satisfy three requirements. The first is an explanation of the asset allocation, how the asset allocation will change over time, and the point in time when the investment will reach its most conservative asset allocation, including a chart, table, or other graphical representation that illustrates such change in asset allocation over time and that does not obscure or impede a participant's or beneficiary's understanding of the information explained pursuant to this requirement.

The second requirement depends on whether the alternative is named, or otherwise described, with reference to a particular date (e.g., a target date). For example, many funds include a target retirement date in the name itself (e.g., a "2030 fund" or a "2040 fund"). In some cases the name of the alternative may not include a date, but a retirement or other target date may be referenced or implied in the description of the alternative's objectives or goals, or principal strategies or principal risks; this requirement applies to those alternatives as well. The notice must explain the age group for whom the investment is designed, the relevance of the date, and any assumptions about a participant's or beneficiary's contribution and withdrawal intentions on or after such date.

The third requirement is a statement that the participant or beneficiary may lose money by investing in the qualified default investment alternative, including losses near and following retirement, and that there is no guarantee that investment in the qualified default investment alternative will provide adequate retirement income.

The rule describes the timeframes and acceptable format for providing the disclosures.

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.*

The information collections under this ICR are not for the use of the Department or any other federal agency; they are mandated third-party disclosures. The

information will be used by participant and beneficiaries in ERISA-covered participant directed individual account plans to make informed decisions regarding the investment of assets held in their individual accounts. The Department will not collect the information required to be disclosed by the proposal.

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.*

The Department's separate regulation at 29 CFR 2520.104b-1(c) permits plan administrators to use electronic media to make disclosures required under Title I of ERISA, provided certain conditions are met. Plan administrators may rely on that rule to use electronic communications methods for any required disclosures, including the information collection requirements of this ICR. Moreover, in response to comments regarding the proposed regulation, the Department amended the final rule to provide a more flexible electronic disclosure standard by allowing plan administrators to satisfy the notice requirement by relying on the Department's electronic media disclosure rule or the guidance issued by the Department of the Treasury and Internal Revenue Service at 26 CFR § 1.401(a)-21 relating to the use of electronic media.

In estimating the burden of this ICR, the Department has assumed, as further described below, that 38 percent of plans will make the required information disclosures through electronic means. Where any of the requisite disclosures cannot be prepared in electronic form, they will have to be distributed as hard copies. Moreover, plan fiduciaries may have to supply paper copies of the information to participants whom they cannot reach electronically or to those who do not affirmatively consent to receiving documents electronically.

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.*

The information collections associated with the rule do not duplicate information available from any other source. In principal part, this information collection merely insures that existing relevant information is furnished appropriately to plan participants and beneficiaries. In fashioning the regulation, the Department took account of other similar federal and state requirements in order to reduce or eliminate duplication of effort.

The Department consulted with the Securities and Exchange Commission to avoid including duplicative, overlapping, or conflicting requirements in the proposal. In general, the rule follows the SEC's disclosure regime for most investments. The Department knows of no other relevant federal rules that duplicate, overlap, or conflict with the proposed regulations.

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.*

The regulation does not provide special reduced requirements for small plans or small employers, because the information collections are designed specifically to protect the rights of participants and beneficiaries covered by participant-directed individual account plans. The Department believes that the information collections contained in the rule are as important to participants and beneficiaries in small plans (or associated with small employers) as they are to participants and beneficiaries in large plans (or associated with large employers), because participants and beneficiaries in small plans need the same amount and quality of information regarding their investments and investment alternatives as participants and beneficiaries in large plans in order to make informed decisions about the management of the retirement assets in their accounts.

Small business owners who offer their employees pension plans with participant-directed individual accounts may not have the resources to analyze plan fees themselves or to hire an analyst for that purpose. However, in the likely case that small business owners use service providers for plan administration purposes, some of the costs of complying with the new requirements will be borne by the service provider who might be able to distribute them to a large number of clients. While the rule could conceivably discourage some employers from offering plans, the Department notes that the rule builds on existent disclosure requirements for section 404(c) plans.

While the Department did not adopt a delayed effective date for small plans as requested by a commenter on the proposal, it did adopt a delayed applicability date for the rule (plan years beginning on or after January 1, 2010), which should provide small and large plans with sufficient time to develop systems necessary for compliance.

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.*

If the information collections contained in the rule were not conducted, or were conducted less frequently, participants and beneficiaries in participant-directed individual account plans would be more likely to make inappropriate investment decisions that could reduce their investment returns and lead to lower retirement savings. Moreover, in the aggregate, participants and beneficiaries would spend a considerable amount of time searching for this information.

The rule would help a large number of plan participants by displaying investment-related information in a format that facilitates comparison of investment

alternatives. This simplified format will make it easier and less time consuming for participants to find and compare information they need to effectively manage their retirement accounts. The Department believes that these disclosures will benefit plan participants and beneficiaries directly by helping them to pick the lowest cost comparable investment alternatives offered under their plans. Their wiser selections will, in turn, increase their accounts' investment returns, strengthening their retirement savings. As participants and beneficiaries become savvier investors, their behavior will create more competition among the providers of the investment alternatives, which could drive down fund fees. In addition, plan fiduciaries may use the increased disclosures to scrutinize fees in order to select less expensive comparable investment alternatives under the plans. All these benefits depend on the timeliness and frequency of the information collection; the less frequent the disclosures, the less ability participants will have to determine how best to allocate their investments.

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.*

None.

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 record keeping, 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.

To facilitate the development of a proposed regulation, the Department published, on April 25, 2007, a Request for Information (RFI) in the Federal Register⁴ requesting suggestions, comments and views from interested persons on a variety of issues relating to the disclosure of plan and investment-related fee and expense and other information to participants and beneficiaries in participant-directed individual account plans.

Following its review of over 100 public comment letters in response to the RFI, the Department next published a notice of proposed rulemaking in the Federal Register on July 23, 2008.⁵ Interested persons were again invited to submit comments on the proposal, and, in response to this invitation, the Department received over 90 written comments from a variety of parties, including plan sponsors and fiduciaries, plan service providers, financial institutions, and employee benefit plan and participant industry representatives. These comments are available for review under “Public Comments” on the “Laws & Regulations” page of the Department’s Employee Benefits Security Administration Web site at <http://www.dol.gov/ebsa>.

After publishing the proposal, the Department also engaged ICF International (ICF) to conduct on its behalf a series of focus group studies concerning how participants generally make choices among their employee benefit plan’s investment alternatives, and, specifically, how participants react to the Model Comparative Chart for plan investment alternatives that was published as an Appendix to proposed section 2550.404a-5. ICF issued a report to the Department concerning the results of these focus group studies, and these results were incorporated into the section of the preamble that discusses comments on the proposed regulation and Model Comparative Chart.

In addition to requesting public comment on the proposed regulation, the Department also solicited public comments in the proposal regarding the paperwork burden of the proposal and provided the public with 60 days to comment, as required by 5 CFR 1320.8(d). No comments were received that specifically addressed the paperwork burden of the proposal.

Proposed Amendment to Participant-Level Fee Disclosure Rule

⁴ 72 FR 20457 (April 25, 2007).

⁵ 73 FR 43014 (July 23, 2008).

The Department's proposed regulation solicits public comments on the impact of the amendments to the participant-level fee disclosure rule.

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

Not applicable.

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

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.*

None.

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. Instead, this cost should be included in Item 13.*

The information collection provisions of the rule require participant-directed individual account plans to disclose “plan-related” and “investment-related” information to participants and beneficiaries on a quarterly and annual basis. The rule applies to participant-directed individual account plans that seek to rely upon the limitation on fiduciary liability provided under ERISA section 404(c) and those that do not.

In order to develop estimates of the hour and cost burdens of this rule, the Department developed, first, an estimate of the number of plans that are likely to be affected by the rule⁶ and would therefore comply with the information collection requirements. The estimates of respondents and responses on which the Department’s burden analysis is based are derived primarily from Form 5500 data for the 2007 plan year, which are the most recent reliable data available to the Department. The burden for preparation and distribution of the disclosures is treated as an hour burden. Additional cost burden derives from materials and postage. The Department assumes that 38 percent of the disclosures will be made through electronic means of communication using existing systems in accordance with the Department’s standards for electronic communication of required information under 29 CFR 2520.104b-1(c). Therefore, no cost has been attributed to the electronic distribution of information.

The Department estimates that approximately 483,000 participant directed individual account plans⁷ covering 72,111,000 participants would be affected by the rule. Of these plans, 318,000 plans covering 58,195,000 participants and beneficiaries are reporting to comply with ERISA section 404(c), and the remaining 165,000 plans covering 13,916,000 participants and beneficiaries are not. The Department’s estimate of the number of plans is summarized in Table 1 below.

Table 1: Number of Plans and Participants

Type of Plan	Plans	Participants
404(c)	318,000	58,195,000
Non-404(c)	165,000	13,916,000
Total	483,000	72,111,000

Plan-related Information—29 CFR 2550.404a-5(c).

⁶ Affected plans are those plans that allow participant direction and have individual accounts.

⁷ All numbers stated in this document have been rounded to the nearest 1,000. Any apparent discrepancy in the calculations described here is due to this rounding.

First Year

The Department assumes that in the year of implementation, all 483,000 affected plans will conduct a legal review to verify their compliance with the rule and prepare the required disclosures. The Department estimates that the review would, on average, take one-half hour of a legal professional’s time at an (in-house) hourly rate⁸ of \$119 resulting in a total aggregate estimate of approximately 241,000 legal hours at an equivalent cost of approximately \$28,718,000. In addition, the Department estimates that each plan will spend one-half hour of clerical time at an (in-house) hourly rate of \$26 preparing the disclosures. This would result in an hour burden of about 241,000 clerical burden hours with an equivalent cost of approximately \$6,307,000. These estimates are summarized in Table 2 below.

Table 2: Plan-Related Information, General Information, New Plans, First Year

Type of Plan	Number of Affected Plans	Professional Hours	Clerical Hours	Total Professional Hours	Total Clerical Hours	Equivalent Cost- Professional	Equivalent Cost- Clerical
404c	318,000	0.5	0.5	159,000	159,000	\$15,881,000	\$4,153,000
Non-404c	165,000	0.5	0.5	82,000	82,000	\$9,367,000	\$2,153,000
Total	483,000			241,000	241,000	\$25,248,000	\$6,307,000

Plan-related information in subsequent years

Based on the 2007 Form 5500 data the Department estimates that approximately 59,000 additional participant-directed individual account plans would be required to disclose general plan information each year. The Department

⁸ The labor rate estimates used in this analysis are estimates for 2010 and are based on EBSA estimates of labor rates and include wages, other benefits, and overhead based on the National Occupational Employment Survey (May 2008, Bureau of Labor Statistics) and the Employment Cost Index June 2009, Bureau of Labor Statistics). The estimated labor rates are \$119.03 for legal professionals, \$62.81 for financial professionals, and \$26.14 for clerical professionals, and \$70.09 for IT professionals.

assumes that on average writing a new disclosure notice for these plans would require one-half hour of legal professional time and one-half hour of clerical time per plan.

This results in an hour burden of nearly 30,000 hours for legal professional work and 30,000 hours of clerical work. The hour burden has an equivalent cost of approximately \$3,534,000 for legal professional time at \$119 per hour and \$776,000 for clerical time at \$26 per hour. These estimates are summarized in Table 3 below.

Table 3: Plan-Related Information, General Information, New Plans, Subsequent Years

Type of New Plans	Number of New Plans	Professional Hours	Clerical Hours	Total Professional Hours	Total Clerical Hours	Equivalent Cost- Professional	Equivalent Cost- Clerical
404c	39,000	0.5	0.5	20,000	20,000	\$2,327,000	\$511,000
Non-404c	20,000	0.5	0.5	10,000	10,000	\$1,206,000	\$265,000
Total	59,000			30,000	30,000	\$3,534,000	\$776,000

The Department also estimates that 423,000 existing plans will require one-quarter hour of legal professional time and one-quarter hour of clerical staff time to update plan documents to take into account plan changes, such as new investment alternatives, in subsequent years. This results in an hour burden of approximately 106,000 hours for professional time and 106,000 hours for clerical time with an equivalent cost of approximately \$12,592,000 for professional time and \$2,765,000 for clerical time as summarized in Table 4.

Table 4: Plan-Related Information, General Information, Existing Plans, Subsequent Years

Existing Plans	Number of Revised Disclosures	Professional Hours	Clerical Hours	Total Professional Hours	Total Clerical Hours	Equivalent Cost- Professional	Equivalent Cost- Clerical
404c	279,000	0.25	0.25	70,000	70,000	\$8,292,000	\$1,821,000
Non-404c	144,000	0.25	0.25	36,000	36,000	\$4,300,000	\$944,000
Total	423,000			106,000	106,000	\$12,592,000	\$2,765,000

Investment-related Information—29 CFR 2550.404a-5(d).

As stated in item 1 above, the rule also requires every year three sub-categories of Investment-related information to be disclosed, which relates to the plans designated investment alternatives.

Sub-Category 1: Information to be Provided Automatically

Preparation: The Department assumes that the preparation of the comparative chart containing specified identifying information, past performance data, comparable benchmark returns, fee and expense information, and an Internet website address that is sufficiently specific to lead participants and beneficiaries to certain specified information will require in the year of implementation five hours of accountant or financial professional time at an hourly rate of \$63, which would result in an hour burden of approximately 2,413,000 hours at an equivalent cost of about \$151,542,000. These estimates are summarized in Table 5 below. The hours required to accomplish the tasks would then fall to four hours in subsequent years resulting in an hour burden of 1,930,000 with an equivalent cost of \$121,234,000.

Table 5: Investment-Related Information, Information Provided Automatically, Preparation

Type of Plan	Number of Plans	Professional Hours	Total Professional Hours	Equivalent Cost-Professional
404c	318,000	5	1589,000	\$99,795,000
Non-404c	165,000	5	824,000	\$51,747,000
Total	483,000		2,413,000	\$151,542,000

Distribution: The comparative chart and its accompanying information need to be sent to all participants (72.1 million). Given that 38 percent (27.4 million) of all disclosures are made electronically, only 62 percent will be sent by mail (44.7 million). The Department assumes that clerical staff could spend, on average, two minutes per disclosure to copy and mail this information. This burden is shown in Table 6.

Table 6: Investment-Related Information, Information Provided Automatically, Distribution

Type of Plan	Total Number of Participants	Disclosures by Mail	Number of Disclosures	Clerical Hours Per Disclosure	Total Clerical Hours	Equivalent Cost- Clerical
404c	58,195,000	62%	36,081,000	0.033	1,203,000	\$31,438,000
Non-404c	13,915,000	62%	8,628,000	0.033	288,000	\$7,518,000
Total	65,269,000		44,709,000		1,490,000	\$38,956,000

Plans also are required to provide a link to a website containing the required information. The Department estimated this cost using as an upper bound the cost for a plan to create and maintain a website. The estimated burden includes 1.4 million burden hours (\$101.5 million in equivalent costs) in the first year, see table 7, and 1.1 million burden hours (\$75.6 million equivalent costs) in subsequent years , see table 8, for plans to engage an information technology professional to comply with the rule’s requirement for plans to provide a website to disclose supplemental information to participants and beneficiaries.

Table 7: Burden to Create and Maintain a Website, First Year

Type of Plan	Number of Websites	Total IT Professional Hours	Equivalent Cost
404c	318,000	953,000	\$66,817,000
Non-404c	165,000	494,000	\$34,647,000
Total	483,000	1,448,000	\$101,464,000

Table 8: Burden to Create and Maintain a Website, Subsequent Year

Type of Plan	Number of Websites	Total IT Professional Hours	Equivalent Cost
404c	318,000	710,000	\$49,790,000
Non-404c	165,000	368,000	\$25,818,000
Total	483,000	1,079,000	\$75,607,000

Sub-Category 2: Post-Investment Information

Distribution: The Department assumes that clerical staff will prepare and send the required materials. It may take the clerical staff on average one and one-half minutes to prepare and mail the post-investment materials. It is further assumed that this disclosure

will be sent to 16,617,000 plan participants. The Department also assumes that this information will be sent annually resulting in 16,617,000 disclosures. The Department expects 38 percent of the disclosures will be sent electronically resulting in no burden. This results in an hour burden of approximately 258,000 hours of clerical staff time, with an equivalent cost of \$6,733,000. Table 9 reports the estimates of the burden.

This number is less than the total number of plan participants, because the Department has assumed that only plan participants with employer securities will receive this information. In a change from the proposal, the burden for plan participants in non-404(c) plans is included here, because the Department’s Qualified Default Investment Alternative regulation (QDIA) was amended to cross-reference 2550.404a-5(d)(3), which applies to 404(c) and non-404(c) plans. The burden previously was attributed to the QDIA regulation (OMB Control Number 1210-0132), because before the amendment, the QDIA regulation cross-referenced a section of the Department’s ERISA section 404(c) regulation that only applied to section 404(c) compliant plans, which has been removed by this rule.

Table 9: Investment-Related Information, Post Investment Information, Distribution

Type of Plan	Number of Disclosures	Clerical Hours	Total Clerical Hours	Equivalent Cost-Clerical
404c	13,729,000	0.025	213,000	\$5,563,000
Non-404c	2,887,000	0.025	45,000	\$1,170,000
Total	16,617,000		258,000	\$6,733,000

Sub-Category 3: Information to be Provided Upon Request

Preparation: Plans must be prepared to provide the required information on request and must therefore maintain such information in updated form to comply with the regulation. The Department estimates that plans will need to devote, on average, one clerical staff hour to update the information and maintain the records necessary to comply with this requirement.

The Department expects plans to receive on average one request per year for the information. In a change from the proposal, the burden for non-404(c) plans also is accounted for here, because of the conforming amendment to the QDIA regulation, which is discussed under the heading *Sub-Category 2: Post-Investment Information*, above. Under the proposal, the burden was only counted for 404(c) plans. As shown on Table 10, this results in a total hour burden of 483,000 hours and an equivalent cost of \$12,614,000.

Table 10: Investment-Related Information, Information on Request, Preparation

Type of Plan	Number of Disclosures	Clerical Hours	Total Clerical Hours	Equivalent Cost-Clerical
404c	318,000	1	318,000	\$8,306,000
Non-404c	165,000	1	165,000	\$4,307,000
Total	483,000		483,000	\$12,614,000

Distribution: The Department estimates that in total plans will respond to approximately 483,000 requests for information annually. The regulation permits plans flexibility in deciding how to make the required disclosures, which may be delivered by mail, by hand, or electronically. Again, the Department has assumed that 38 percent of these disclosures will be provided through electronic means in accordance with the Department’s standards for electronic communication of required information under 29 CFR 2520.104b-1(c) or the guidance issued by the Department of the Treasury and Internal Revenue Service at 26 CFR § 1.401(a)-21 relating to the use of electronic media.

For the remaining 62 percent of disclosures (299,000 requests annually), the Department has assumed that these disclosures will be sent by mail and estimates that reproduction and distribution of these notices will take 2 minutes of clerical time per

request. Plans will therefore have an additional annual hour burden of 10,000 hours (299,000 requests notices x 0.033 hours). The equivalent cost of these hours is \$261,000. The costs for printing and postage of notices are covered under Item 13. Table 11 contains the estimates of the burden.

Table 11: Investment-Related Information, Information on Request, Distribution

Type of Plan	Number of Disclosures by Mail	Clerical Hours	Total Clerical Hours	Equivalent Cost-Clerical
404c	197,000	0.033	6,600	\$172,000
Non-404c	102,000	0.033	3,400	\$89,000
Total	299,000		10,000	\$261,000

Summary

Based on the above analysis, the Department estimates that the 483,000 affected plans will send in total approximately 161,321,000 annual disclosures and 576,886,000 quarterly disclosures (a total of 738,207,000 disclosures) each year. Table 12 below shows the number of responses by type of required disclosure.

TABLE12.--Recipients and Disclosures

	Number of Recipients	Number of Disclosures	Number of Responses
General Plan Information	72,111,000	1	72,111,000
Individual and Administrative Expenses	72,111,000	4	288,443,000
Comparative Chart	72,111,000	1	72,111,000
Pass -Through Information	16,617,000	1	16,617,000
Information Upon Request	483,000	1	483,000
Website	72,111,000	4	288,443,000
		Total	738,207,000

Note: The displayed numbers are rounded and therefore may not add up to the totals.

The total hour burden of the proposed regulation will be 6,583,000 hours with an equivalent cost of \$346,595,000 in the first year. In subsequent years the total burden hours it estimated to be 5,520,000 hours with an equivalent cost of \$275,072,000 and is shown in Tables 13 and 14.

TABLE 13 --Hour Burden

	Year 1	Year 2	Year 3	Average
General Plan Information	483,000	271,000	271,000	341,000
Individual and Administrative Expenses				
Comparative Chart	3,903,000	3,420,000	3,420,000	3,581,000
Pass -Through Information	258,000	258,000	258,000	258,000
Information Upon Request	493,000	493,000	493,000	493,000
Website	1,448,000	1,079,000	1,079,000	1,202,000
Total	6,583,000	5,520,000	5,520,000	5,875,000

Note: The displayed numbers are rounded and therefore may not add up to the totals.

TABLE 14.--Equivalent Cost Burden

	Year 1	Year 2	Year 3	Average
General Plan Information	\$35,025,000	\$19,668,000	\$19,668,000	\$24,787,000
Individual and Administrative Expenses				
Comparative Chart	\$190,498,000	\$160,190,000	\$160,190,000	\$170,293,000
Pass -Through Information	\$6,733,000	\$6,733,000	\$6,733,000	\$6,733,000
Information Upon Request	\$12,874,000	\$12,874,000	\$12,874,000	\$12,874,000
Website	\$101,464,000	\$75,607,000	\$75,607,000	\$84,226,000
Total	\$346,595,000	\$275,072,000	\$275,072,000	\$298,913,000

Note: The displayed numbers are rounded and therefore may not add up to the totals.

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

As explained in question 12 above, the rule requires plan-related and investment-related information to be disclosed to participants and beneficiaries covered by participant directed individual account plans. The Department

developed estimates for the universe of plans, participants and beneficiaries affected by these information collections. Additional costs in this Question 13 relate solely to the additional costs that arise from determining administrative and individual fees charge against participants’ accounts, printing and distributing the required disclosures, and establishing and maintaining the plan’s website. The annual cost burden is calculated as follows:

Plan-related Information—29 CFR 2550.404a-5(c).

For purposes of this analysis, the Department assumes that plan-related information will be disclosed to participants and beneficiaries in a mailing containing the required plan information⁹ or in quarterly benefit statements that are distributed to participants and beneficiaries¹⁰.

The Department assumes that plans will send 72,111,000 copies of the required plan information to plan participants and beneficiaries, which will contain an average of 10 pages. Paper and printing costs are expected to be 5 cents per page and mailing costs are expected to be 78 cents per mailed disclosure. It is assumed that 38 percent of the required plan information will be delivered electronically. This results in a cost burden of \$57,227,000, as shown in Table 1.

Table 1: Plan Related Information, Cost Burden

Type of Plan	Number of Disclosures	Percent Sent by Mail	Number of Pages	Paper and Printing Cost per Page	Mailing Cost	Cost Burden
404c	58,195,000	62%	10	\$0.05	\$078	\$46,184,000
Non-404c	13,916,000	62%	10	\$0.05	\$0.78	\$11,044,000
Total	72,111,000					\$57,227,000

⁹ While plans are allowed to provide the disclosure in the SPD, the Department assumed that plans would provide the required disclosures in a separate mailing to reduce costs as they otherwise are not required to send the SPD every year.

¹⁰ The Department invites comments on this assumption.

Plans will also have to determine the administrative and individual fees that will be charged directly against participants' accounts,¹¹ which will be included in the plans' quarterly benefit statements. The Department estimates a cost burden of approximately \$30,486,000 in the first year and \$10,670,000 in subsequent years to establish new information systems or accounting practices that will collect, track and report the actual dollar amounts charged to the individual accounts. This cost is shown in tables 2 and 3, below.¹²

Table 2: Plan-Related Information, Cost Burden, First Year

Type of Plan	Number of Disclosures	Per Participant Cost from GAO Report	Fraction of Cost for Calculating Administrative Fees	Cost Burden
404(c)	58,195,000	\$1.27	1/3	\$24,603,000
Non-404(c)	13,916,000	\$1.27	1/3	\$5,883,000
Total	72,111,000			\$30,486,000

Table 3: Plan-Related Information, Cost Burden, Subsequent Years

Type of Plan	Number of Disclosures	Per Participant Cost from GAO Report	Fraction of Cost for Calculating Administrative Fees	Cost Burden
404(c)	58,195,000	\$0.44	1/3	\$8,611,000
Non-404(c)	13,916,000	\$0.44	1/3	\$2,059,000
Total	65,269,000			\$10,670,000

Investment-related Information—29 CFR 2550.404a-5(d).

Disclosing investment related information leads to material costs, if the materials are given out by hand or mailed. As with the disclosure of the required plan information it is assumed that 38 percent of the disclosures will be sent

¹¹ It is assumed that the inclusion of the actual dollar disclosure will add a minimal burden that has not been quantified.

¹² The increase in administrative costs resulting from disclosing actual dollar fee and expense disclosure is derived from a GAO report (GAO-03-551T, "Mutual Funds: Information on Trends in Fees and Their Related Disclosure," March 12, 2003, p.14), which measures the cost of the disclosures of the actual dollar amount of mutual fund investment expenses on a participant level. The GAO report estimates the initial cost to generate these disclosures in 2001 at \$1 per account, and the annual cost of continued compliance at \$0.35 per account. The cost to plans to calculate administrative fees for purposes of the rule is expected to be less, because most of the expense information to be disclosed under the regulation is already tracked. The Department assumes it may cost plans one-third of the costs of disclosure of investment costs by mutual funds to disclose actual dollars charged, leading to cost estimates of about 42 cents per plan participant in the first year and 15 cents thereafter.

electronically with no associated cost burden. Paper and printing costs are assumed to be 5 cents per page.

Sub-Category 1: Information to be Provided Automatically

The first sub-category of investment related information is the information that is required to be sent automatically, is primarily information included in the comparative chart. It is assumed this disclosure will be three pages consisting of two pages for the chart plus one page of additional information. Disclosures will be sent to all 72,111,000 covered plan participants. As this information is required to be sent on an annual basis the Department assumes it will be sent with the required plan information. Mailing costs are already accounted for in the calculation of the cost burden for plan information. The resulting annual cost burden, shown in Table 4, is \$6,706,000.

Table 4: Investment-Related Information, Information Provided Automatically, Cost Burden

Type of Plan	Number of Disclosures	Percent Sent by Mail	Number of Pages	Paper and Printing Cost per Page	Cost Burden
404c	58,195,000	62%	3	\$0.05	\$5,412,000
Non-404c	13,916,000	62%	3	\$0.05	\$1,294,000
Total	72,111,000				\$6,706,000

Plans also are required to create and maintain a website. One way for plans to comply would be to create a plan website. Having a plan website might require plans to rent server space at an estimated cost of \$240 annually. The estimated annual cost of renting the server space is approximately \$115.8 million (483,000 plans * \$240). This cost burden associated with providing a plan website was not estimated at the proposed rule stage.

Sub-Category 2: Post-Investment Information

The second sub-category of investment related information is post investment information that must be passed-through to participants. It was assumed that this information would primarily be sent to those participants holding company securities. The cost burden for all participants in 404(c) compliant plans will be counted, In a change from the proposal, the burden for plan participants in non-404(c) plans is included here, because the Department’s Qualified Default Investment Alternative regulation (QDIA) was amended to cross-reference 2550.404a-5(d)(3), which applies to non-404(c) plans. The burden previously was attributed to the QDIA regulation (OMB Control Number 1210-0132), because before the amendment, the QDIA regulation cross-referenced a section of the Department’s ERISA section 404(c) regulation that only applied to section 404(c) compliant plans, which has been removed by this rule.

This results in approximately 16,617,000 participants receiving quarterly disclosures each year, resulting in a total of approximately 16,617,000 disclosures each year. One disclosure is assumed to be, on average, ten pages long, with mailing costs of \$0.61 per disclosure. As Table 5 shows, this results in an annual cost burden of \$11,436,000.

Table 5: Investment-Related Information, Post-Investment Information, Cost Burden

Type of Plan	Number of Disclosures	Percent Sent by Mail	Number of Pages	Paper and Printing Cost per Page	Mailing Cost	Cost Burden
404c	13,729,000	62%	10	\$0.05	\$0.61	\$9,449,000
Non-404c	2,887,000	62%	10	\$0.05	\$0.61	\$1,987,000
Total	16,617,000					\$11,436,000

Sub-Category 3: Information to be Provided Upon Request

The third sub-category of investment related information is information available upon request. It is assumed that on average plans will receive one request per year. In a change from the proposal, the burden for non-404(c) plans also is accounted for here,

because of the conforming amendment to the QDIA regulation, which is discussed under the heading *Sub-Category 2: Post-Investment Information*, above. Under the proposal, the burden was only accounted for 404(c) plans. As shown in Table 6 below, this results in a cost burden of \$482,000, which based on an average page length of 20 pages and mailing costs of \$0.61.

Table 6: Investment Related Information, Information on Request, Cost Burden

Type of Plan	Number of Disclosures	Percent Sent by Mail	Number of Pages	Paper and Printing Cost per Page	Mailing Cost	Cost Burden
404c	318,000	62%	20	\$0.05	\$0.61	\$317,000
Non-404c	165,000	62%	20	\$0.05	\$0.61	\$164,000
Total	483,000					\$482,000

Proposed Amendment to Participant-Level Fee Disclosure Regulation

The proposed amendment to the Department’s participant-level disclosure regulation would require participant-directed individual account plans that offer TDFs as a designated investment alternative to include the TDF disclosures as an appendix to the participant-level disclosures required by 29 CFR 2550.404a-5 (d)(1) and (d)(2).

The Department assumes that plans would incur a de minimis cost to prepare the appendix, because, as stated above, investment issuers and service providers already have the TDF information readily available to provide to plans. No additional mailing costs are expected, because the TDF disclosures would be attached as an appendix to, and distributed with, the participant-level disclosure. Thus, the only anticipated additional costs would pertain to the additional paper costs associated with including the additional TDF appendix with the participant-level disclosure.

The TDF appendix is expected, on average, to add two pages to the participant-level disclosure. The Department estimates that 43.6 million participants are covered by participant-directed individual account plans that offer TDFs as an investment alternative.¹³ The Department estimates that 6.8 percent of participants are new to a plan in a given year; therefore, 2.96 million additional disclosures would be required¹⁴ resulting in a total of 46.5 million TDF fund appendices being distributed annually. The Department estimates that 38 percent of the disclosures would be distributed electronically at a de minimis cost, leaving 28.8 million paper disclosures to be distributed via mail. Assuming paper costs of \$0.10 per participant (\$.05 per page), the proposed amendment to the Participant-Level Fee Disclosure Regulation would impose an additional cost of approximately \$2.9 million to the participant-level disclosure.

¹³ The Department’s estimate is based on the Profit Sharing/401k Council of America, 52nd Annual Survey of Profit Sharing and 401(k) plans, for plan year 2008.

¹⁴ 43.6 million*.068=2.96 million.

Summary

It is estimated that the total cost burden of the proposed regulation in the first year will be approximately \$222,147,000 and in subsequent years about \$202,331,000, see Table 7 below. The proposed amendment will add about \$2.9 million each year.

TABLE 7.--Cost Burden

	Year 1	Year 2	Year 3	Average
General Plan Information	\$57,227,000	\$57,227,000	\$57,227,000	\$57,227,000
Individual and Administrative Expenses	\$30,486,000	\$10,670,000	\$10,670,000	\$17,275,000
Comparative Chart	\$6,706,000	\$6,706,000	\$6,706,000	\$6,706,000
Pass -Through Information	\$11,436,000	\$11,436,000	\$11,436,000	\$11,436,000
Information Upon Request	\$482,000	\$482,000	\$482,000	\$482,000
Website	\$115,810,000	\$115,810,000	\$115,810,000	\$115,810,000
Total	\$222,147,000	\$202,331,000	\$202,331,000	\$208,936,000

Note: The displayed numbers are rounded and therefore may not add up to the totals.

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.*

There is no cost to the Federal Government associated with this information collection.

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

As stated above, the rule provides new regulations under ERISA section 404(a)(5) and make conforming amendments to existing regulations under ERISA section 404(c) that would require plan fiduciaries to disclose plan- and investment-related fee and expense information to participants and beneficiaries in all participant-directed individual account plans for plan years beginning on or after January 1, 2011. Therefore, the program change reported in Item 13 above represents the incremental hour and cost burdens imposed on all participant-directed individual account plans by the information collection provisions in the rule.

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.*

Not applicable.

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.*

Not applicable.

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

Not applicable; no exceptions to the certification statement.
