

## 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.*

The prohibited transaction described in section 406(a)(1)(C) of ERISA generally prohibits the furnishing of goods, services, or facilities between a plan and a party in interest to the plan. Because ERISA defines any person furnishing services to the plan as a “party in interest” to the plan, a service relationship between a plan and a service provider would constitute a prohibited transaction under section 406(a)(1)(C) in the absence of relief. Section 408(b)(2) of ERISA provides relief, however, for service contracts or arrangements if the contract or arrangement is “reasonable,” if the services are necessary for the establishment or operation of the plan, and if no more than “reasonable” compensation is paid for the services.

Under the interim final rule (for simplicity, the Interim Final Rule also is referred to as the Final rule herein),<sup>1</sup> for a contract or arrangement to be “reasonable,” certain service providers must disclose to a pension plan specified information, in writing, before the plan may enter into, extend, or renew the contract or arrangement

Paragraph (c)(1)(iii) provides that the final rule applies to service providers who expect to receive \$1,000 or more in compensation (direct or indirect) in connection with providing one or more of the following services to the plan pursuant to the contract or arrangement:

- services provided directly to a plan as a fiduciary under ERISA or as a registered investment adviser under the securities laws;
- services as an ERISA fiduciary to a plan asset investment vehicle in which the covered plan invests;
- certain services (accounting, auditing, actuarial, appraisal, banking, consulting, custodial, insurance, investment advisory, legal, recordkeeping, securities or other investment brokerage, third party administration, or valuation) and receive indirect compensation or fees, such as revenue sharing, for their services; or
- recordkeeping services or brokerage services to a cover plan that is a participant-directed 401(k)-type plan if one or more designated investment alternatives will be made available through a platform or similar mechanism in connection with such recordkeeping or brokerage services.<sup>2</sup>

---

<sup>1</sup> 29 CFR 2550.408b-2(c).

<sup>2</sup> The proposed rule included similar categories of service providers, but the final rule includes modifications to include service providers in the third category only if they receive indirect compensation for these services. The

A detailed description of the required disclosures is set forth in item 12, below. Covered service providers must make the disclosures, and update the information disclosed, within the specified time frames. Failure to comply with the final rule would result in a prohibited transaction both under ERISA section 406(a)(1)(C) and under section 4975(c)(1)(C) of the Internal Revenue Code.

The Department believes that the final rule will enhance plan fiduciaries' understanding of the fees received by plan service providers, directly and indirectly. Greater knowledge of such fees among sponsors and fiduciaries will in turn increase efficiency and competition in the service provider market, thereby generating benefits to plans and thus to plan participants.

The Department also is issuing as part of the final rule<sup>3</sup> a prohibited transaction class exemption. The class exemption grants plan fiduciaries relief from liability for a prohibited transaction resulting from the service provider's failure to comply with the regulation's disclosure requirements. The Department recognizes that a plan fiduciary may on occasion *unknowingly* enter into a contract or arrangement that does not meet the requirements of the regulation for relief under ERISA section 408(b)(2), in the reasonable belief that the service provider has divulged the requisite information. If the requirements of the rule are not satisfied, a prohibited transaction occurs for both the service provider and the plan fiduciary, but for the availability of the class exemption. The preamble to the final rule explains how the Department took the conditional relief available under the exemption into account in assessing the economic costs and benefits of the regulation. The Department believes that the exemption is essential to achieve the purposes underlying the regulation. The information collection activities associated with the exemption are discussed more fully in question 12, below.

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 purpose of the regulation is to help plan fiduciaries assemble sufficient information to evaluate the quality and competitiveness of their potential service

---

final rule also includes investment platform providers as a new category, because they will be required to provide the investment-related disclosures summarized below.

<sup>3</sup> The class exemption was proposed separately on the same day the Department issued the proposed rule (72 FR 70893, December 13, 2007).

providers. The information will be used by plan fiduciaries for this purpose. The Department will use the information to monitor transactions with service providers and in any enforcement proceedings.

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.*

All plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards. 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 individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries.” Additionally, section 2520.104b-1(c) delineates how disclosures under Title I of ERISA can be made through electronic media to satisfy Section 2520.104b-1(b) requirements. Finally, section 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records.

The Government Paperwork Elimination Act (GPEA) requires agencies to allow customers to submit information to the government electronically, when practicable. Where feasible, and subject to resource availability and resolution of legal issues, EBSA has implemented the electronic acceptance of information from customers.

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 collection (IC) for the class exemption does not require duplicative information. The Department compared two potential overlapping government requirements with the final rule: the Investment Advisers Act of 1940 and the Form 5500 annual report. Both of these requirements are substantially different from the final rule. The Investment Advisers Act guidelines for disclosure of conflicts of interest are generic in scope. The Schedule C of Form 5500 concern retrospective information provided as part of annual reporting, whereas the final rule requires the disclosure of information during the decision making process.

5. *If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-1), describe any methods used to minimize burden.*

Small plans will benefit from the increased information produced through

disclosures at least as much as large plans. Small covered service providers with relatively simple compensation arrangements can provide a relatively simple, short written disclosure. By focusing the scope of the regulation on contracts or arrangements with fiduciary service providers and service providers that received indirect compensation or provide access to plan investments, the Department believes that the final rule will avoid unnecessary burdens on small service providers that will not be subject to its written disclosure requirements.

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.*

The purpose of the regulation is to ensure that plan fiduciaries have sufficient information to evaluate the quality and competitiveness of the fees received by their potential service providers. The Department expects that this enhanced disclosure will increase efficiency and competition in the service provider market, thereby generating benefits to plans and plan participants. These benefits will not be realized if the information is not collected or is collected less frequently.

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.*

The public is provide with an opportunity to comment on the interim final rule. Comments are due within 45 days after the rule is published in the Federal Register. The Department published a notice of proposed rulemaking (NPRM) in the Federal Register (72 FR 70988) on December 13, 2007. On the same day, the Department also published a proposed class exemption from the restrictions of section 406(a)(1)(C) of ERISA in the Federal Register (72 FR 70893).In addition to requesting public comment on the proposed regulation, the NPRM solicited public comment on the paperwork burden of the proposed regulation and provided the public with 60 days for that purpose, as required by 5 CFR 1320.8(d). The Department received over 100 public comments on the proposal. No public comments were received that specifically addressed the paperwork burden analysis of the information collections.

The comments that were submitted, and which are described preamble to the final rule, contained information relevant to the costs and administrative burdens attendant to the proposals. For example, in response to comments, the Department First, unlike the proposal, the final rule does not require a formal written contract or arrangement delineating the disclosure obligations, even though the disclosures must be made in writing. The final rule focuses instead on the substance of the disclosure that must be provided. Second, the final rule treats separately pension and welfare plans. Paragraph (c)(1) of the rule provides disclosure requirements applicable to contracts or arrangements with pension plans. The Department reserves paragraph (c)(2) of the rule for future guidance on disclosure with respect to welfare plans, because the Department is persuaded, based on the public comment and hearing testimony, that there are

significant differences between service and compensation arrangements of welfare plans and those involving pension plans and that the Department should develop separate, and more specifically tailored, disclosure requirements under ERISA section 408(b)(2) for welfare benefit plans. Finally, the final rule establishes a \$1,000 threshold for service providers otherwise coming within the definition of a covered service. The Department included the \$1,000 threshold in response to commenters' request that the final rule exclude contracts or arrangements that involve de minimis amounts of compensation.

Due to the large number of public comments received, the importance of this regulatory initiative, and its potentially significant effects on the provision of services to employee benefit plans, the Department held a public hearing on March 31 and April 1, 2008, in order to further develop the public record and the Department's understanding of the issues raised in the public comments on the proposed regulation and class exemption. As a result of the public hearing, the Department received a significant number of additional comments to supplement the public record for this regulatory initiative. All of the comments received by the Department are available for review under "Public Comments" on the "Laws and Regulations" page of the Department's Employee Benefits Security Administration website at <http://www.dol.gov/ebsa>.

In developing the revised paperwork burden analysis discussed in Items 12 and 13, below, the Department took into account public comments that were considered in connection with making changes to the proposal,

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.*

In order to estimate the potential hour burden of the disclosure provisions of the final rule, the Department estimated the number of service providers, plans, and arrangements covered by the rule. Based on information for the 2006 Form 5500, the Department estimates that approximately 49,000 defined benefit pension plans (“DB plans”) covering more than 42 million participants and approximately 646,000 defined contribution plans (“DC plans”) covering nearly 80 million participants are covered by the rule.<sup>4</sup>

The Department also estimates that based on data for the 2006 Form 5500 and its Schedule C, that there are approximately 10,000 covered service providers. The 2006 Schedule C data also was used to count the number of covered plan-service provider arrangements. On average, defined benefit plans employ more covered service providers per plan than defined contribution plans, and large plans use more covered service providers per plan than small plans. The Department estimates that defined benefit plans have 119,000 arrangements with covered service providers, while defined contribution plans have 780,000 arrangements. For purposes of this analysis, the Department assumes that about 50 percent of disclosures between service providers and plan fiduciaries are made only electronically.

For purposes of determining the equivalent cost of the hour burden, the Department estimates the hourly labor cost to be about \$119.03 for a legal professional, \$62.81 for a financial professional, and \$26.14 for clerical staff in 2010 dollars.<sup>5</sup>

---

<sup>4</sup> Out of these pension plans, about 38,000 are small DB plans and 588,000 small DC plans. Small plans generally are those with less than 100 participants.

<sup>5</sup> EBSA estimates of labor rates include wages, other benefits, and overhead based on the National Occupational

*Compliance Review and Implementation:* Most of the hour burden under the final rule will be imposed on service providers. Covered service providers will need to review the rule, evaluate whether their current disclosure practices comply with its requirements, and, if not, determine how their disclosure practices must be changed to be compliant. The Department projected this as an hour burden incurred in 2011, the year in which the rule will apply to contracts or arrangements with covered service providers.

Although all covered service providers are assumed to incur these hours, it is likely that service providers with complex fee arrangements will require more time to comply. The Department assumes that the number of service providers with more complex arrangements can be approximated by the number of unique service providers who are reported on the Schedule C as having received \$1 million or more in compensation (approximately 1,000 service providers).

The Department assumes that covered service providers with complex arrangements will require 24 hours of legal professional time and 80 hours of financial professional time. The non-complex service providers (approximately 9,000 service providers based on the quantitative analysis above) would require only three hours of legal professional time and 13 hours of financial professional time. Based on the foregoing, the Department estimates that in the first year service providers will incur an hour burden of 241,000 hours with an equivalent cost of approximately \$17.9 million.

The Department also has estimated the hour burden for initial compliance review and implementation of service providers newly entering the market (“new service providers”) to provide service to plans (either for the first time or by re-entry) beginning in 2012 and each year thereafter. Based on data from the 2005 and 2006 Form 5500, the Department assumes that about eight percent of all service providers (80 complex and 740 non-complex) will be new in each year subsequent to 2011 and that these service providers will incur the same compliance review and implementation costs as existing service providers. Based on the foregoing, the Department estimates that new service providers will incur an hour burden of 20,000 hours with an equivalent cost of approximately \$1.5 million.

In summary, the Department estimates that the burden hours associated with compliance review and implementation will be 241,000 hours with an equivalent cost of \$17.9 million in 2011 and 20,000 hours with an equivalent cost of \$1.5 million in 2012 and subsequent years. The average annual hour burden over the next three years associated with compliance review and implementation is estimated to be 94,000 hours

---

Employment Survey (May 2008, Bureau of Labor Statistics) and the Employment Cost Index June 2009, Bureau of Labor Statistics).



with an equivalent cost of \$7.0 million.

*Initial Disclosure**Disclosure:* As discussed above, covered service providers must develop or update their current disclosure materials to comply with the regulatory requirements. Paragraph (c)(1)(iv) of the rule require service providers to disclose general information to a responsible plan fiduciary when a contract is entered into, renewed, or extended. The Department assumes that service providers will create a general disclosure that can be used for all plans and customize this document by adding individualized information for each plan. This activity includes developing formulae and algorithms to present or estimate direct and indirect compensation that will be applied in a pro forma projection for each plan with which the provider will contract. The Department assumes that the majority of this cost would be incurred by service providers in 2011 and that one hour of a legal professional's time and 45 minutes of a financial professional's time will be required to prepare the general disclosure for each arrangement 900,000). In addition two minutes of clerical staff time per mailed disclosure (450,000) will be required to distribute the disclosures. Based on the foregoing, the Department estimates that the hour burden to prepare these disclosures in year 2011 will be 1.6 million hours and the equivalent cost of these hours will be \$149.8 million.

Covered service providers also will have to meet the requirements of the rule for new contracts and arrangements entered into in 2012 and subsequent years. The Department does not have information on the number of new arrangements in a year; therefore, the Department used the percentage of plans that are new plans, about 14 percent, as a proxy for the percentage of new arrangements in a year. This results in 122,000 new arrangements every year. The Department estimates that preparing the disclosures for new arrangements will require one hour of a legal professional's time with, 45 minutes of a financial profession's time, and two minutes of clerical staff time per mailed disclosure (61,000) will be required to distribute the disclosures. Based on the foregoing, the hour burden to prepare these disclosures in year 2012 and thereafter will be 215,000 hours and the equivalent cost of these hours will be \$20.3 million. The resulting average annual hour burden over the next three years is 673,000 hours with an equivalent cost of \$63.5 million.

Paragraph (c)(1)(vi) requires service providers to provide any other information relating to compensation or fees received in connection with the contract or arrangement that is required for the covered plan to comply with the reporting and disclosure requirements of Title I of ERISA and the regulations, forms, and schedules issued thereunder upon the request of responsible plans fiduciaries or plan administrators of covered plans. The Department is not aware of a basis for determining the number of requests that responsible plan fiduciaries or plan administrators will make; therefore, it

assumes that approximately ten percent (90,000) of responsible plan fiduciaries will request additional information annually. The Department further assumes that service providers already will have this information available, because it is required to comply with other legal requirements. Therefore, the Department estimates that it will take clerical staff two minutes per request (90,000 requests) to prepare the information and an additional two minutes per mailed request (45,000 requests) to distribute the requested materials at an hourly labor cost of \$26. Based on the foregoing, the Department estimates that the yearly and average annual hour burden over the next three years to disclose information upon request will be 4,500 hours at an equivalent cost of \$118,000.

Paragraph (c)(1)(v)(B) generally requires service providers to disclose any changes to the general information as soon as reasonably practicable, but no later than 60 days from the date the covered service provider knows of such change. The Department assumes that changes in plan disclosures will occur at least once every three years, because plans normally conduct requests for proposal (RFPs) from service providers at least once every three to five years. If it is assumed that an equal number of plans conduct an RFP in any given year, then approximately 35 percent of arrangements will require an updated disclosure every year, for a total of 315,000 updates to the general information. The Department assumes that one-half hour of legal professional time and one-third hour of a financial professional time will be required to update the disclosures. In addition two minutes of clerical staff time per mailed disclosure (157,500 disclosures) will be required to distribute the disclosures. Based on the foregoing, the Department estimates that the annual hour burden to update the disclosure of general information will be 268,000 hours with an equivalent cost of \$25.5 million.

In summary, the Department estimates that the hour burden to disclose the required general information in 2011 will be 1.6 million hours with an equivalent cost of approximately \$150 million. The hour burden in subsequent years will be 483,000 hours with an equivalent cost of \$45.8 million. The average annual hour burden to disclose general information over the three year period 2011-2013 will be 852,000 hours, and the equivalent cost of these hours will be \$80.5 million.

*Investment Disclosure:* Paragraphs (c)(1)(iv)(F) and (G) require fiduciaries to investment vehicles holding plan assets (described in paragraph (c)(1)(iii)(A)(2)) and providers of recordkeeping and brokerage services to a participant-directed individual account plan if they provide access to one or more designated investment alternatives for the covered plan (described in paragraph (c)(1)(iii)(B) (“platform providers”) to disclose investment-related compensation and fee information. This information generally must be disclosed to the responsible plan fiduciary reasonably in advance of the date the contract or arrangement is entered into, extended or renewed, and as soon as practicable, but no later than 60 days after the covered service provider is informed that the

information has changed.<sup>6</sup> Paragraph (c)(1)(iv)(G)(2) allows covered platform providers to satisfy this disclosure requirement by passing through to the responsible plan fiduciary copies of any state or federally regulated disclosure materials (e.g., prospectuses) provided by the issuer of the designated investment alternative, so long as such issuer is not affiliated with the platform provider, and the platform provider does not know that any of the information contained in such materials is incomplete or inaccurate.

The hour burden associated with disclosing investment-related compensation and fee information will be attributable primarily to the time spent gathering the required information. However, much of this cost will be reduced, because, as discussed above, the rule allows platform providers to satisfy this requirement by passing-through information to the responsible plan fiduciary. Based on the foregoing, the Department assumes that preparation of investment-related compensation and fee information will require one-half hour of financial professional time for each of the individual account plans. There will be 462,000 plans fiduciaries receiving this information in 2011. In addition thirty-four minutes of clerical staff time per mailed disclosure (231,000 disclosures) will be required to distribute the disclosures. Further, it is assumed that 14 percent of arrangements (63,000) will be new in each subsequent year and require the initial investment disclosure. The Department estimates that the hour burden to disclose the required investment information will be 362,000 hours with an equivalent cost of \$17.9 million in 2011. In the subsequent years the hour burden will be 249,000 hours with an equivalent cost of \$2.4 million. The average annual hour burden for the next three years associated with disclosing investment related information is 286,000 hours with an equivalent cost of \$7.6 million.

In addition, service providers must disclose changes to investment information. The Department assumes that service providers will have to disclose changes to investment information to each responsible plan fiduciary at least once per year due to the regulation, resulting in 399,000 disclosures.<sup>7</sup> This notification is expected to require one-half hour of financial professional time to prepare and thirty-four minutes of clerical staff time per mailed disclosure (199,500) to distribute the disclosures. Based on the foregoing, the cost to update investment information in subsequent years is estimated to be 206,000 hours with an equivalent cost of \$12.7 million. The Department estimates that the average annual hour burden over the next three years associated with reporting changes to the required investment related information will be 138,000 hours with an

---

<sup>6</sup> Generally, the rule requires service providers to disclose any change to investment information as soon as practicable, but not later than 60 days from the date on which the covered service provider is informed of such change.

<sup>7</sup> The Department assumes that in a given year only the plans existing in prior years will receive updated investment information.

equivalent cost of \$8.5 million.

In summary, the Department estimates that the hour burden to disclose all investment information in 2011 will be 362,000 hours with an equivalent cost of \$17.9 million. The burden to disclose the required investment information in subsequent years is 455,000 hours with an equivalent cost of \$15.1 million. The average annual hour burden for the next three years for service providers to disclose the required investment information is estimated to be 424,000 hours with an equivalent cost of \$16.1 million.

*Hour Burden Imposed on Plans:* The main hour burden of the regulation that is imposed on plans (695,000) is additional time spent reviewing the regulation and ensuring that the plan has received all of the required disclosures. The Department estimates the responsible plan fiduciaries will need one hour of a legal professional's time to review and evaluate the new written disclosures. The hour burden is estimated to be 695,000 with an equivalent cost of \$43.6 million in 2011.

Responsible plan fiduciaries of new plans established or maintained in 2012 and subsequent years will have to review the written disclosures and evaluate whether service providers are compliant. Based on data from the 2005 and 2006 Form 5500, the Department estimates that 14 percent of plans will be new each year (94,000). The Department assumes that responsible plan fiduciaries of new plans will have the same costs as fiduciaries of existing plans. Therefore, the hour burden associated with the review for fiduciaries of new plans is estimated to be 94,000 hours at an equivalent cost of \$5.9 million for years 2012 and thereafter.

Based on the foregoing, the hour burden imposed on plans to review the regulation is estimated to be 695,000 hours in 2011 with an equivalent cost of \$43.6 million and 94,000 hours in 2012 and subsequent years with an equivalent cost of \$5.9 million. The average annual hour burden over the next three years on plans to review the regulation is estimated to be 294,000 hours with an equivalent cost of \$18.5 million.

*Exemption for Responsible Plan Fiduciary:* The class exemption contained in paragraph (c)(1)(ix) of the final rule provides relief from ERISA's prohibited transaction rules for plan fiduciaries that enter into a contract or arrangement with service providers upon a mistaken belief that they have received all of the disclosures required by the final rule. Upon discovering that a covered service provider failed to disclose all of the required information, the responsible plan fiduciary must take reasonable steps to obtain such information, including requesting in writing that the covered service provider furnish the information in order to rely on the exemption and notify the Department if the service provider fails to comply with the written request within 90 days.

While the Department has no basis for estimating the percentage of arrangements where a responsible plan fiduciary will not receive all of the required disclosures from a covered service provider, the Department assumes that 10 percent of arrangements (69,000) may experience a failure that will require the responsible plan fiduciary to send a notice to the service provider in 2011. In 2012 and thereafter, the number of requests for missing information is expected to decrease to 5 percent of arrangements (35,000). The Department estimates that one-half hour of a financial professional's time will be required to prepare the request for the undisclosed information, and one minute of clerical staff time per mailed request (35,000 in 2011 and 17,000 in subsequent years) will be required to send the request.

The Department estimates that the burden for plans to send notice to service providers of missing information will be 35,000 hours with an equivalent cost of \$2.2 million in 2011. The hour burden for subsequent years is estimated to be over 18,000 hours with an equivalent cost of \$1.1 million. The average annual hour burden over the next three years for requesting missing information is estimated to be 23,500 hours with an equivalent cost of \$1.5 million.

The Department further assumes that service providers may not respond to 10 percent of the requests for undisclosed information within 90 days, which will result in the responsible plan fiduciary preparing and sending a notice to the Department (6,900 in 2011 and 3,500 in subsequent years). The Department estimates that one-half hour of a financial professional's time will be required to prepare the notice, and one minute of clerical staff time per mailed notice (3,500 in 2011 and 1,800 in subsequent years) will be required to distribute the notice. The Department estimates that the burden for plans to send notice to the Department of Labor will be 3,500 hours with an equivalent cost of \$219,600 in 2011. The hour burden for subsequent years is estimated to be 1,800 hours with an equivalent cost of \$109,800. The average annual hour burden over the next three years to prepare the notice to be sent to DOL is estimated to be 2,400 hours with an equivalent cost of \$146,000.

#### *Summary of the Hour Burden*

Table 1 reports the number of respondents and responses of the regulation. In the first year there will be 79,000 respondents (approximately 10,000 service providers and 69,000 plans) and more than 1.5 million responses (approximately 1,452,000 from service providers and 76,000 from plans). The annual average totals approximately 56,000 respondents, and 1.2 million responses.

TABLE 1 .—Number of Respondents and Responses

**408(b)(2) Service Provider Disclosure Requirements**  
**OMB Control Number 1210-0133**  
**February 2010**

	Year 1	Year 2	Year 3	Annual Average
Respondents	79,000	45,000	45,000	56,000
Responses	1,528,000	1,027,000	1,027,000	1,194,000

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

Table 2 shows the total hour burden of the information collection and Table 3 shows the total equivalent cost. The first year hour burden for service providers is 2,197,000 hours with an equivalent cost of approximately \$185.8 million. The annual average hour burden for the first three years for service providers is estimated to be 1.2 million hours with an equivalent cost of \$103.6 million. The first year hour burden for plans is estimated to be 733,000 hours with an equivalent cost of approximately \$46.0 million. The average annual hour burden over the first three years for plans is estimated to be 320,000 hours with an equivalent cost of \$20.1 million. The total average annual hour burden over the first three years of the information collection is estimated to be 1.6 million hours with an equivalent cost of \$123.7 million.

TABLE 2.--Hour Burden

	Year 1	Year 2	Year 3	Average
Service Providers	2,197,000	963,000	963,000	1,374,000
Plans	733,000	114,000	114,000	320,000
Total	2,930,000	1,076,000	1,076,000	1,694,000

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

Table 3.--Equivalent Cost

	Year 1	Year 2	Year 3	Average
Service Providers	\$185,811,000	\$62,529,000	\$62,529,000	\$103,623,000
Plans	\$46,041,000	\$7,119,000	\$7,119,000	\$20,093,000
Total	\$231,852,000	\$69,648,577	\$69,648,577	\$123,716,000

Note: The displayed numbers are rounded to the nearest thousand 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.)*

Table 4 reports the number of disclosures that are required to be sent for each type of required disclosure and the estimated number of pages per disclosure. Table 5 reports the estimated printing and postage costs associated with each required notice and disclosure.<sup>8</sup> The Department assumes that 50 percent of the disclosures will be sent electronically at no cost, and that the cost of printing and paper for the remaining 50% of documents will be 5 cents per page. Based on the foregoing, the Department estimates that the total cost burden of the rule in 2011 will be \$8,830,000 (approximately \$8,810,000 for service providers and \$21,000 for plans) and \$1,435,000 (approximately \$1,424,000 for service providers and \$10,000 for plans) in subsequent years. The average annual cost burden over the next three years is estimated to be almost \$3.9 million.

TABLE 4.—*Number of Disclosures*

	Number of Disclosures (A)	Percent not Sent Electronicall y (B)	Pages Per Disclosure (C)	Number of Disclosures Sent by Mail A*B
Disclose General Information: 2011	900,000	50%	8	450,000
Disclose General Information: 2012	122,000	50%	8	61,000
Information Upon Request	90,000	50%	10	45,000
Disclosure of Changes to General Information	315,000	50%	4	157,000
Disclose Investment Information: 2011	462,000	50%	510	231,000
Disclose Investment Information: 2012	62,000	50%	510	31,000
Disclosure of Changes to Investment Information	399,000	50%	2	200,000
Request for Additional Information for Exemption: 2011	69,000	50%	2	35,000
Request for Additional Information for Exemption: 2012	35,000	50%	2	17,000
Notice to DOL: 2011	6,900	50%	2	3,500
Notice to DOL: 2012	3,500	50%	2	1,700

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

<sup>8</sup> Postage costs are estimated to be 44 cents per mailed disclosure, except for investment information disclosures, whose postage costs are assumed to be \$10.35 per mailed disclosure.

**408(b)(2) Service Provider Disclosure Requirements**  
**OMB Control Number 1210-0133**  
**February 2010**

TABLE 5.--Cost Burden

	2011	2012	2013	Average
Disclose General Information	\$378,000	\$51,000	\$51,000	\$160,000
Update General Information	\$0	\$101,000	\$101,000	\$67,000
Information Upon Request	\$42,000	\$42,000	\$42,000	\$42,000
<b>General Information Total</b>	<b>\$420,000</b>	<b>\$194,000</b>	<b>\$194,000</b>	<b>\$270,000</b>
Disclose Investment Information	\$8,282,000	\$1,122,000	\$1,122,000	\$3,509,000
Update Investment Information	\$108,000	\$108,000	\$108,000	\$108,000
<b>Disclose Investment Information Total</b>	<b>\$8,390,000</b>	<b>\$1,230,000</b>	<b>\$1,230,000</b>	<b>\$3,617,000</b>
Request for Additional Information for Exemption	\$19,000	\$9,000	\$9,000	\$13,000
Notice to DOL	\$2,000	\$900	\$900	\$1,000
<b>Total</b>	<b>\$8,830,000</b>	<b>\$1,435,000</b>	<b>\$1,435,000</b>	<b>\$3,900,000</b>

Note: The displayed numbers are rounded to the nearest thousand 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.*

Except for minimal costs for storage of the notices to the Department, 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.*

New information collection requirements.

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.



**408(b)(2) Service Provider Disclosure Requirements**  
**OMB Control Number 1210-0133**  
**February 2010**

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.*

The OMB expiration date will be published in the Federal Register following OMB approval.

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.