

## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSIONS

### A. Justification

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

The Pension Protection Act of 2006 (Pub. L. 109-280) amended the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (Code) to include a statutory exemption for providing investment advice to participants and beneficiaries in self-directed defined contribution individual account ERISA-covered plans (Plans) and beneficiaries of individual retirement accounts, individual retirement annuities, Archer MSAs, health savings accounts and Coverdell education savings accounts (collectively IRAs) described in the Code. The statutory exemption provides relief from the prohibited transaction provisions of ERISA, and the parallel provisions of the Code.

On January 21, 2009, the Department published in the *Federal Register* final rules implementing section 408(b)(14) and 408(g) of ERISA, and the parallel provisions in the Code. The final rules also included an administrative class exemption, adopted pursuant to ERISA section 408(a), granting additional prohibited transaction relief. The effective and applicability dates of the final rules, originally set for March 23, 2009, subsequently were delayed to allow the Department to solicit and review comments from interested persons on legal and policy issues raised under the final rules. Based on a consideration of the concerns raised by commenters as to whether the conditions of the class exemption would be adequate to mitigate advisers' conflicts, the Department decided to withdraw the final rule. Notice of the withdrawal of the final rule was published in the *Federal Register* on November 20, 2009 (74 FR 60156).

On March 2, 2010, the Department published in the *Federal Register* new proposed regulations that, upon adoption, implement the statutory prohibited transaction exemption under ERISA sections 408(b)(14) and 408(g), and the parallel provisions in the Code (75 FR 9360). In response to the proposal, the Department received 74 comment letters. The Department is now finalizing the rule.

The final regulations are nearly identical to the provisions of the March 2010 final rule and require the following collections of information:

#### **a. Disclosures to Plan Participants and to IRA Participants**

##### Initial Disclosures [Section 2550.408g-1(b)(7)].

In general, under section 2550.408(g)-1(b)(7), a fiduciary adviser must furnish detailed information to a Participant about an advice arrangement before initially providing investment advice. The information includes the following: the relationship between the adviser and the parties that developed the investment advice arrangement or selected the investment options

available under the Plan or IRA; to the extent such information is not otherwise provided, the past performance and historical rates of return of investments available under the Plan or IRA; all fees and other compensation the fiduciary adviser or any affiliate is to receive in connection with the provision of investment advice or in connection with the investment; the fiduciary adviser's material relationship, if any, to any investment under the arrangement; the types of services the fiduciary adviser provides in connection with the provision of investment advice; the manner in which Participant information may be used or disclosed; an acknowledgement that the fiduciary adviser is acting as a fiduciary of the Plan or IRA in connection with providing the investment advice; and notice that the recipient of the advice may separately arrange for advice from another adviser that could have no relationship to, and receive no fees in connection with, the investments. If applicable, the fiduciary adviser also furnishes in writing to the Plan fiduciary an election, as permitted under the regulation, to be treated as the sole fiduciary providing investment advice through the use of a computer model to an ERISA-covered Plan Participant.

Subsequent Disclosures (at least annual/material changes).

After the initial disclosures, 2550.408g-1(b)(7)(iv)(B) and (C) require the fiduciary adviser to provide the same initial information at least annually or upon Participant request. If there is any material change to the information, the fiduciary adviser must inform the Participant of the change. If the computer model is materially changed, the fiduciary adviser must obtain a new certification of compliance with the regulation's criteria from an eligible expert, as described below.

Section 2550.408g-1(b)(6) requires any fiduciary adviser relying on the regulation to engage, at least annually, an independent auditor to conduct an audit of the investment advice arrangement for compliance with the regulation. The fiduciary adviser must issue a written report to a fiduciary of each Plan and each IRA Participant who authorized the use of the investment advice arrangement setting forth the auditor's findings. With respect to an IRA, the fiduciary adviser may instead make the report available on its website. In addition, if the audit report finds noncompliance with respect to an IRA, the fiduciary adviser must send a copy to the U.S. Department of Labor within 30 days of receipt.

***b. Independent Certification [Section 2550.408g-1(b)(4)(ii)]***

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

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

Consistent with the statutory exemption, the final regulation requires fiduciary advisers to maintain records with respect to the investment advice provided in reliance on the regulation necessary to determine whether the applicable requirements of the regulation have been satisfied.

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

**d. Audit Requirement [Section 2550.408g-1(b)(6)]**

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

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

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.*

Under 29 C.F.R. § 2520.104b-1(b) of ERISA, "where certain material, including reports, statements, and documents, is required under Part I of the Act and this part to be furnished either by direct operation of law or an individual request, the plan administrator shall use measures

reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries.” Section 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b).

The regulation expressly states in Section 2550.408g-1(b)(7)(iii) that the required disclosures can be provided in written or electronic form in accordance with 29 C.F.R. § 2520.104b-1(b).

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

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

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

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

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 conditions of the regulation are only mandatory if a fiduciary adviser voluntarily decides to rely on the regulation and Participants and Plan fiduciaries voluntarily elect to receive investment advice under arrangements described in the regulation. Without the disclosure and

audit requirements, Plan fiduciaries may not receive information about an investment advice arrangement needed to fulfill their fiduciary responsibilities with respect to a Plan and Participants may not have sufficient information to evaluate investment recommendations, Consequently, Participants' investments under Plans and IRAs may not be adequately protected. The Department has determined that, after a Participant has made an initial decision to participate in an investment advice arrangement, annual subsequent disclosures are the minimum protection necessary to the Participant or Plan fiduciary to re-evaluate the appropriateness of the investment advice arrangement.

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

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.*

After a material modification in certain previously disclosed information, a written response may be required within 30 or fewer days. Under the regulation, the fiduciary adviser must disclose at a time reasonably contemporaneous with a material modification to the following information: the relationship between the adviser and the parties that developed the investment advice arrangement or selected the investment options available under the Plan or IRA; if not otherwise publicly available, past performance and historical rates of return of investments available under the plan or IRA; publicly available; all fees and other compensation the fiduciary adviser or any affiliate is to receive in connection with the investment; the fiduciary adviser's material

relationship, if any, to any investment under the arrangement; and types of services the fiduciary adviser provides in connection with the investment advice. Further, if there is a material change to the computer model used to generate the investments in the initial disclosure, the fiduciary adviser must obtain a new certification before using the modified model. It is important that the information be provided and certification be obtained in a timely manner so that Participants and Plan fiduciaries can promptly monitor the investment advice arrangement in order to safeguard Plan and IRA assets.

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

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

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

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

On December 4, 2006, the Department published a Request for Information (RFI) in the *Federal Register* soliciting information to assist the Department in the development of regulations under sections 408(b)(14) and 408(g). Specifically, the Department invited interested persons to address the qualifications for the "eligible investment expert" that is required to certify that computer models used in connection with the statutory exemption meet the requirements of the statutory exemption. The Department also invited interested persons to provide information to assist the Department in developing procedures to be followed in certifying that a computer model meets the requirements of the statutory exemption. The Department also invited suggestions for a model disclosure form for purposes of the statutory exemption. In response to the RFI, the Department received 24 letters addressing a variety of issues presented by the statutory exemption. These comments were taken into account in developing the final regulation.

The Notice of Proposed Rulemaking and the Class Exemption provided the public with an opportunity to provide comment, and the Department received 43 comment letters in response.

None of the comments received; however, addressed the Department's Paperwork Reduction Act burden analysis.

On October 21, 2008, the Department held a public hearing at which interested members of the public were afforded an additional opportunity to present their views on the proposals. Eight organizations testified at the hearing.

On February 4, 2009, the Department published in the *Federal Register* (74 FR 6007) an invitation for public comment on a proposed 60-day extension of the effective dates of the final rules in order to afford the Agency the opportunity to review legal and policy issues relating to the final rules. The Department also invited public comments on the provisions of those rules and on the merits of rescinding, modifying or retaining the rules. In response to this invitation, the Department received 28 comment letters.<sup>1</sup>

On March 2, 2010, the Department published in the *Federal Register* new proposed regulations that, upon adoption, implement the statutory prohibited transaction exemption under ERISA sections 408(b)(14) and 408(g), and the parallel provisions in the Code (75 FR 9360). In response to the proposal, the Department received 74 comment letters.<sup>2</sup>

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.*

Not applicable.

12. *Provide estimates of the hour burden of the collection of information. The statement should:*

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<sup>1</sup> These comments are available on the Department's website at: <http://www.dol.gov/ebsa/regs/cmt-investmentadvicefinalrule.html>.

<sup>2</sup> Comments can be found at: <http://www.dol.gov/ebsa/regs/cmt-1210-AB35.html>.

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

The Department has made certain specific basic assumptions in order to establish a reasonable estimate of the paperwork burden of this information collection. Most importantly, given the nature of the information collection requirements, the Department assumes a combination of personnel will perform the information collection. Using data from the Bureau of Labor Statistics, the Department assumes hourly wages rate for 2011 of approximately \$111, including both wages and benefits, for a financial manager and approximately \$27 for clerical personnel.<sup>3</sup> Legal professional time is similarly assumed to be almost \$124 per hour, and computer programming time is estimated at \$72 per hour.

The Department assumes that there are approximately 16,000 investment advisory firms (including broker-dealers) will take advantage of this statutory exemption to provide advice to both Plans and IRAs.<sup>4</sup> The number of investment advisory firms using this statutory exemptive relief is assumed to be constant over time. The Department also estimates that under the statutory exemption approximately 134,000 Plans will seek to provide advice to their Participants. These Plans represent approximately 16,616,000 Participants, of which approximately 3,532,000 will seek advice from the investment advisory firm servicing their employer sponsored retirement investment plan. IRAs can also make use of this statutory

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<sup>3</sup> The Department estimates 2009 hourly labor rates include wages, other benefits, and overhead based on data from the National Occupational Employment Survey (May 2009, Bureau of Labor Statistics) and the Employment Cost Index (October 2010, Bureau of Labor Statistics); the 2009 estimated labor rates are then inflated to 2011 labor rates. Clerical wage and benefits estimates are based on metropolitan wage rates for executive secretaries and administrative assistants. Financial manager wage and benefits estimates are based on metropolitan wage estimates for financial managers. Legal professional wage and benefits estimates are based on metropolitan wage rates for lawyers. Computer programmer wage and benefits estimates are based on metropolitan wage rates for professional computer programmers.

<sup>4</sup> Estimates based upon Hung, Angela, Noreen Clancy, Jeff Dominitz, Eric Talley, Claude Berrebi and Farrukh Suvankulov. December 2007. "Technical Report: Investor and Industry Perspectives on Investment Advisers and Broker-Dealers." RAND Corporation pre-publication. Unless otherwise noted, numbers are rounded to the nearest 1,000.



exemption, and the Department estimates that approximately 16,983,000 million IRA Participants will seek advice under this statutory exemption.<sup>5</sup>

Table 1: Number of Entities

Entities	Estimated Number
Investment advisory firms	15,552
DC Plans utilizing the statutory exemption	134,083
DC Plan Participants offered advice	16,616,009
DC Plan Participants utilizing advice	3,531,904
IRA Beneficiaries	16,982,755

**a. Disclosure Package from Investment Advisory Firms to Participants**

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

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

Under the statutory exemption, investment advisory firms are required to provide disclosures annually as well as initially. The Department assumes that investment advisory firms will distribute the same disclosures throughout the year and that they only update their disclosure

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<sup>5</sup> There are approximately 238,000 Plans currently offering advice (pre-statutory exemption advice) and after the statutory exemption is effective approximately 372,000 Plans will offer advice. The Department cannot determine which of these plans will be offering advice under pre-statutory exemption or statutory exemption conditions; thus the Department decided to apply costs to the statutory exemptions based on the incremental change in the number of Plans offering advice. This method is also applied to the number of IRA Participants receiving advice; the Department estimates that approximately 16,983,000 IRA Participants received advice under pre-statutory exemption conditions and approximately 33,966,000 will receive advice after enactment of the statutory exemption.

content for the annual disclosures. The Department further assumes that few disclosures are requested each year (one per firm on average) and most requested disclosures are distributed either electronically at a negligible cost or in person at small costs.

### *First Year Preparation of Disclosure Package*

Some of the information required to be in the disclosure package will be the same for all Participants offered advice; in particular the notice of the role of the person with a material affiliation or material contractual relationship in developing the investment advice arrangement, the manner in which the Participant's information will be used or disclosed, the types of services provided by fiduciary adviser in connection with the provision of investment advice, the acknowledgement that the fiduciary adviser is acting as a fiduciary of the plan or IRA, and that the Participant can arrange for investment advice by an adviser that does not (1) receive fees in connection with the investment or (2) have a material affiliation with the investment. The Department assumes that these notices will be drafted by legal professionals within the investment advisory firm and estimates that the notices require six hours for each of almost 16,000 investment advice firm to prepare thus generating an hour burden of approximately 93,000 hours for an associated equivalent cost of approximately \$11,531,000.

Other information required to be in the disclosure package is dependent upon the investment options that the investment advisor recommends to the Participant, therefore the preparation of these disclosures will depend upon the individual Plan or IRA investment options. For the Plans, the investment advisory firm will generate the same notices for all of the Participants who seek advice through their Plan. Again, the Department assumes that these notices will be drafted by legal professionals within the investment advisory firm and estimates that they will require two and one half hours for each of over 134,000 Plans using the statutory exemption to prepare, thus generating an hour burden of approximately 225,000 hours for an equivalent cost of about \$41,425,000.

The Department assumes that the investment advisory firm will create a computer program to generate the specific disclosure package for IRA Participants and to only include information on the investments that the advisor recommends. The Department further assumes that all investment advisory firms use outsourced computer programming resources to generate this program; however, the computer model generation also requires an in-house legal professional to work with the out-sourced computer programmer to determine the parameters of the computer program. This in-house legal professional is expected to need approximately 100 hours for each of almost 16,000 investment advisory firms to generate the parameters of the computer program. Thus the associated in-house hour burden for the preparation of disclosures to IRA Participants is approximately 1,555,000 hours for an equivalent cost of about \$192,191,000.

Overall, the statutory exemption's disclosure preparation requires an hour burden of approximately 1,984,000 with an equivalent cost of approximately \$245,147,000.

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**Table 2: First Year Disclosure Package Preparation Hour Burden Estimates**

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Entity	Number	Hours per Entity	Hour Burden	Hourly Rate	Equivalent Cost
Advice Firms	15,552	6	93,312	\$123.58	\$11,531,459
Plans	134,083	2.5	335,208	\$123.58	\$41,424,872
IRA (Advice Firms)	15,552	100	1,555,200	\$123.58	\$192,190,990
<b>TOTAL</b>			<b>1,983,720</b>		<b>\$245,147,321</b>

Numbers may not add to totals due to rounding.

### *Subsequent Years Preparation of Disclosure Package*

For the annual updating of disclosures the Department assumes that the preparation time needed for updating the notices that are (a) the same for all Participants will be about three hours for each of almost 16,000 investment advisory firms, (b) the same for all Plan Participants will average one hour and a half for each of over 134,000 Plans, and (c) individualized for IRAs will average 50 hours for each of almost 16,000 investment advisory firms. Thus the annual hour burden is approximately 1,025,000 with an equivalent cost of approximately \$126,716,000.

Table 3: Subsequent Years Disclosure Package Preparation Hour Burden Estimates

Entity	Number of Entities	Hours per Entity	Hour Burden	Hourly Rate	Equivalent Cost
Advice Firm	15,552	3	46,656	\$123.58	\$5,765,730
Plan	134,083	1.5	201,125	\$123.58	\$24,854,923
IRA (Advice Firms)	15,552	50	777,600	\$123.58	\$96,095,495
<b>TOTAL</b>			<b>1,025,381</b>		<b>\$126,716,148</b>

Numbers may not add to totals due to rounding.

### *Annual Distribution of Disclosure Package*

All of these disclosures (initial, annual and upon request) can be distributed either electronically or in paper. The Department estimates that those disclosures distributed upon request will be distributed mostly through electronic means, and, thus, will have a negligible cost to advice firms. Based on data from the Current Population Survey,<sup>6</sup> the Department estimates that 80 percent of workers with any employer sponsored benefit plan have access to the Internet either at home or at work. Using this percentage, the Department estimates that approximately 80 percent of the initial and annual disclosures will be electronically distributed with 20 percent distributed on paper. The Department further assumes that of the 20 percent of disclosures printed, 50 percent will be handed out in person and 50 percent will be mailed to the Participant; thus, ten percent of Participants will receive disclosures through the mail (with associated costs burdens for photocopying and mailing discussed in response 13.a. below). The Department estimates that

<sup>6</sup> This estimate is derived from CPS October 2003 School Supplement probit equations applied to February 2005 Contingent Worker Supplement. These equations show that approximately 81 percent of workers aged 19 to 65 had internet access either at home or at work in 2005. The Department further assumes that one percent of these participants will elect to receive paper documents instead of electronic, thus 20 percent of participants receive disclosures through paper media.

an in-house clerical professional will require approximately four minutes per disclosure package (one minute per page) to make photocopies and about one minute to prepare each disclosure package for mailing. Assuming approximately 3,532,000 Plan Participants and approximately 16,983,000 IRA Participants seek advice, the regulation’s annual hour burden hours associated with photocopying and mailing will be approximately 308,000 hours with an equivalent cost of approximately \$8,373,000.

Table 4: Annual Disclosure Package Distribution Hour Burden Estimates

	Participants	Hours Required	Hour Burden	Hourly Rate	Equivalent Cost
<b>Total Photocopying</b>	<b>4,102,932</b>	<b>(1*4)/60</b>	<b>273,529</b>	<b>\$27.21</b>	<b>\$7,443,100</b>
Plans	706,381	(1*4)/60	47,092	27.21	\$1,281,440
IRAs	3,396,551	(1*4)/60	226,437	27.21	\$6,161,660
<b>Total Mailing</b>	<b>2,051,466</b>	<b>0.0167</b>	<b>34,191</b>	<b>\$27.21</b>	<b>\$930,387</b>
Plans	353,190	0.0167	5,887	27.21	\$160,180
IRAs	1,698,275	0.0167	28,305	27.21	\$770,207
<b>TOTAL</b>			<b>307,720</b>		<b>\$8,373,487</b>

Numbers may not add to totals due to rounding.

Thus the hour burden under the statutory exemption for the preparation and distribution of the disclosure package to Participants in the first year is approximately 2,291,000 hours with an equivalent cost burden of \$253,521,000. The annual hour burden hours under the statutory exemption for the preparation and distribution of the disclosure package to Participants in the subsequent years are approximately 1,333,000 hours with an equivalent cost burden of \$135,090,000.

Table 5: Disclosure Package Hour Burden Estimates

	First Year Hour Burden	First Year Equivalent Cost	Subsequent Years Hour Burden	Subsequent Years Equivalent Cost
Preparation	1,983,720	\$245,147,321	1,025,381	\$126,716,148
Distribution	307,720	\$8,373,487	307,720	\$8,373,487
<b>TOTAL</b>	<b>2,291,440</b>	<b>\$253,520,809</b>	<b>1,333,101</b>	<b>\$135,089,635</b>

Numbers may not add to totals due to rounding.

**b. Disclosure Package from Investment Advisory Firms to Authorizing Fiduciary**

Under new paragraph (b)(8) of the final rule, a fiduciary adviser must provide written notification to authorizing fiduciaries stating that it: (i) intends to comply with the conditions of the statutory exemption under ERISA sections 408(b)(14) and 408(g) and these final regulations; (ii) will be audited annually by an independent auditor for compliance with the conditions of the exemption and regulations; and, (iii) that the auditor will furnish the authorizing fiduciary with a copy of the auditor’s findings within 60 days of completion of the audit. The Department

estimates that no additional hour or cost burden will be associated with this disclosure, because it will be provided in the normal course of engaging in an eligible investment advice engagement.

**c. Computer Model Certification**

Under the statutory exemption, a fiduciary adviser that chooses to rely on the conditions of the exemption that require computer model generated investment selections must obtain the certification of an eligible investment expert as to the computer model’s compliance with the criteria set forth in the regulation. The Department assumes that there are six companies that will provide the investment advice computer model<sup>7</sup> and that legal professionals working at these six companies supply in-house support by providing documentation and other information to the eligible investment expert who certifies the company’s investment advice computer model. These legal professionals spend about 40 hours per investment advice computer model provider and on average 40 hours for each of the almost 16,000 investment advisory firms to whom the computer model providers supply their models. Thus the investment advice computer model providers have an hour burden of approximately 622,000 hours for an equivalent cost of about \$76,906,000. See Table 6 for detailed analysis.

The Department also assumes that the investment advisory firm will need in-house legal professionals to provide documentation and other information to the eligible investment expert who certifies the investment advisory firm’s investment advice computer model. These legal professionals will spend on average ten hours for each of over 134,000 Plans and on average 50 hours for each of the almost 16,000 investment advisory firms. Thus the investment advisory firm’s hour burden in the first year for the certification of the investment advice computer model is approximately 2,118,000 hours with an equivalent cost of about \$261,795,000.

The total hour burden attributable to the certification of the investment computer model is approximately 2,741,000 hours with an equivalent cost of almost \$338,701,000.

Table 6: First Year Computer Model Certification Hour Burden Estimates

	Estimated Number	Hours Required	Hour Burden	Hourly Rate	Equivalent Cost
<b>Model provider</b>			<b>622,320</b>	<b>\$123.58</b>	<b>\$76,906,055</b>

<sup>7</sup> Based on limited information with respect to the investment computer model industry, the Department estimates that there are six companies that produce investment advice computer models.

Models	6	40	240	\$123.58	\$29,659
IRA (advice firms)	15,552	40	622,080	\$123.58	\$76,876,396
<b>Advice Firm</b>			<b>2,118,432</b>	<b>\$123.58</b>	<b>\$261,794,983</b>
DC Plan	134,083	10	1,340,832	\$123.58	\$165,699,488
IRA (advice firms)	15,552	50	777,600	\$123.58	\$96,095,495
<b>TOTAL</b>			<b>2,740,752</b>		<b>\$338,701,038</b>

Numbers may not add to totals due to rounding.

The Department assumes that in subsequent years the hours required for any investment advice computer model recertification will be approximately half of the first certification and that investment advisory firms will have their investment advice computer model recertified on average once a year. Thus in the subsequent years the hour burden is approximately 1,370,000 hours with an equivalent cost of approximately \$169,351,000.

Table 7: Subsequent Years Computer Model Certification Hour Burden Estimates

	Estimated Number	Hours Required	Hour Burden	Hourly Rate	Equivalent Cost
<b>Model provider</b>			<b>311,160</b>	<b>\$123.58</b>	<b>\$38,453,028</b>
Models	6	20	120	\$123.58	\$14,830
IRA (advice firms)	15,552	20	311,040	\$123.58	\$38,438,198
<b>Advice Firm</b>			<b>1,059,216</b>	<b>\$123.58</b>	<b>\$130,897,492</b>
DC Plan	134,083	5	670,416	\$123.58	\$82,849,744
IRA (advice firms)	15,552	25	388,800	\$123.58	\$48,047,747
<b>TOTAL</b>			<b>1,370,376</b>		<b>\$169,350,519</b>

Numbers may not add to totals due to rounding.

#### **d. Recordkeeping Requirements**

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

#### **e. Audit Requirements**

An annual audit performed by an independent auditor is required under the statutory exemption, and all firms are assumed to outsource this service but use some internal clerical and legal professional time to assist the auditor.<sup>8</sup> The clerical staff is expected to spend about three hours

<sup>8</sup> Audit firms are expected to transmit the final audit report to the advisory firm through electronic means at no additional costs. The advisory firms must either furnish a copy of the audit report to IRA Participants or make the audit report available on their website and inform IRA Participants of the purpose of the report and how and where to locate the report applicable to their account with the other disclosures discussed above. The Department assumes that all advisory firms will make the audit report available on their website and add a few sentences to the single

per advisory firm and on average ten minutes per Participant to gather documentation and other information. The in-house legal professional is expected to need approximately four hours to assist the auditor with the statutory exemption audit. The Department estimates that about one percent of Participants will be audited per year, resulting in approximately 205,000 audits of 20,515,000 total Participants. As each Participant receives advice on average four times per year, there are approximately 821,000 Participant transactions audited under the statutory exemption each year. Overall, the annual in-house hour burden for the annual audit requirement is estimated at 143,000 hours, with equivalent costs of approximately \$9,888,000.

Table 8: Annual Audit Hour Burden Estimates

	Entity	Hours Required	Hour Burden	Hourly Rate	Equivalent Cost
Clerical, per firm	15,552	3	46,656	\$27.21	\$1,269,575
Clerical, per Participant	205,147	0.17	34,191	\$27.21	\$930,387
Legal, per firm	15,552	4	62,208	\$123.58	\$7,687,640
<b>TOTAL</b>			<b>143,055</b>		<b>\$9,887,602</b>

Numbers may not add to totals due to rounding.

*Summary of Hour Burden Estimates*

The Department estimates that the statutory exemption hour burden is approximately 5,200,000 hours in the first year for an equivalent cost of approximately \$602,109,000 and in each subsequent year the statutory exemption will have an hour burden of almost 2,800,000 with an equivalent cost of approximately \$314,328,000.

Table 9: Total Hour Burden Estimates

	First Year Hour Burden	First Year Equivalent Cost	Subsequent Years Hour Burden	Subsequent Years Equivalent Cost
<b>Total</b>	<b>5,175,247</b>	<b>\$602,109,449</b>	<b>2,846,532</b>	<b>\$314,327,757</b>

disclosure package at negligible costs. Any advisory firm whose audit report identifies noncompliance with the requirements of this rule must send a copy of the report to the Department within 30 days following receipt of the report. The Department assumes that the majority of advisory firms will comply with the exemption; therefore, the costs associated with sending the audit reports to the Department are expected to be negligible. The Department welcomes comments on this assumption.

Disclosures	2,291,440	\$253,520,809	1,333,101	\$135,089,635
Audit	143,055	\$9,887,602	143,055	\$9,887,602
Model Certification	2,740,752	\$338,701,038	1,370,376	\$169,350,519

Numbers may not add to totals due to rounding.

The three-year average hour burden reported in ROCIS is estimated to be approximately 3,626,000 hours with an equivalent cost of approximately \$410,332,000.

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

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

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

As discussed in response 12.a. above, the Department assumes that all firms will outsource the creation of a computer program to enable them to prepare disclosures for IRA Participants. The Department estimates that the computer programmer will charge on average \$1,200 per firm in the first year and \$600 each subsequent year;<sup>9</sup> thus the cost burden, given there are almost 16,000 investment advisory firms, will be approximately \$18,662,000 in the first year and approximately \$9,331,000 in all subsequent years.

Table 10: Disclosures Generation Computer Program Cost Estimates

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

Numbers may not add to totals due to rounding.

*Annual Distribution of Disclosure Package*

As stated in the response to Question 12.a above, the Department estimates that 20 percent of the disclosures to Participants will be delivered through paper, with 50 percent of these delivered in person and 50 percent mailed to the Participants, thus ten percent of Participants receive their disclosure package through the mail. The per page photocopy costs are assumed to be five cents

<sup>9</sup> The Department has based this cost estimate on limited industry data.



and the mailing costs are assumed to be \$0.44 per disclosure package for regular First Class mail. Given that there will be approximately 20,515,000 Participants (3,532,000 Plan Participants and 16,983,000 IRA Participants), the associated cost burden for generating paper copies of the disclosures to Participants under the statutory exemption is estimated to be \$821,000 annually. Under the basic USPS postage at a cost of \$0.44 per disclosure package for ten percent of Participants, the postage cost burden of the statutory exemption will be approximately \$903,000 annually. Thus, the overall cost burden associated with distributing disclosures to Participants is estimated to be approximately \$1,723,000 per year.

Table 11: Annual Distribution Cost Burden Estimates

	Participants	Cost per Participant	Cost Burden
<b>Total Photocopying</b>	<b>4,102,932</b>	<b>\$0.20</b>	<b>\$820,586</b>
Plans	706,381	\$0.20	\$141,276
IRAs	3,396,551	\$0.20	\$679,310
<b>Total Mailing</b>	<b>2,051,466</b>	<b>\$0.44</b>	<b>\$902,645</b>
Plans	353,190	\$0.44	\$155,404
IRAs	1,698,275	\$0.44	\$747,241
<b>TOTAL</b>			<b>\$1,723,231</b>

Numbers may not add to totals due to rounding.

When the costs of the IRA computer disclosure program generation and distribution of disclosure packages are added together, the statutory exemption has an estimated cost burden of \$20,386,000 in the first year and \$11,054,000 in every subsequent year.

Table 12: Summary of Disclosures Cost Burden

	First Year Cost Burden	Subsequent Years Cost Burden
IRA Computer Program	\$18,662,400	\$9,331,200
Distribution	\$1,723,231	\$1,723,231
<b>TOTAL</b>	<b>\$20,385,631</b>	<b>\$11,054,431</b>

Numbers may not add to totals due to rounding.

**b. Computer Model Certification**

As discussed in the response to Question 12.d., above, the Department assumes that all firms will outsource the certification of the financial investment advice computer model to an independent expert. The Department estimates that the independent expert will charge on average \$18,000 per financial investment advice firm in the first year and \$9,000 per financial investment advice firm each subsequent year;<sup>10</sup> thus the cost burden, given there are almost 16,000 investment advisory firms, will be approximately \$279,936,000 in the first year and approximately \$139,968,000 in all subsequent years.

<sup>10</sup> The Department has based this cost estimate on limited industry data.

Table 13: Investment Advice Computer Model Certification Cost Estimates

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

Numbers may not add to totals due to rounding.

**c. Investment Advisory Firm Written Policies and Procedures**

There is no additional cost burden for these requirements.

**d. Recordkeeping Requirements**

There is no additional cost burden for these requirements.

**e. Audit Requirements**

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

Table 14: Initial and Annual Audit Cost Burden Estimates

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

Numbers may not add to totals due to rounding.

*Summary of Statutory Exemption Cost Burden Estimates*

The Department estimates that the statutory exemption has a cost burden of approximately \$580,258,000 in the first year and in each subsequent year the statutory exemption has a cost burden of approximately \$430,958,000.

Table 15: Total Cost Burden

	First Year Cost Burden	Second Year Cost Burden
<b>TOTAL</b>	<b>\$580,257,631</b>	<b>\$430,958,431</b>
Disclosures	\$20,385,631	\$11,054,431
Audit	\$289,823,602	\$279,936,000

<sup>11</sup> The Department has based this cost estimate on limited industry data.

Model Certification	\$279,936,000	\$139,968,000
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Numbers may not add to totals due to rounding.

The three-year average total cost burden reported in ROCIS is approximately \$480,739,000.

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

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

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

The Department calculated the estimated hour and cost burden of the ICRs under the final rule using the same methodology that was used in making such estimate in the March 2010 proposal. The Department has made a minor increase to the estimated number of DC plan sponsors offering advice, the number of DC plan participants utilizing advice, and the labor hour rates used to estimate the hour burden based on more current data. The Department also has taken into account a new requirement in paragraph (b)(8) of the final rule, which requires fiduciary advisers to provide written notification to authorizing fiduciaries stating that it: (i) intends to comply with the conditions of the statutory exemption under ERISA sections 408(b)(14) and 408(g) and these final regulations; (ii) will be audited annually by an independent auditor for compliance with the conditions of the exemption and regulations; and, (iii) that the auditor will furnish the authorizing fiduciary with a copy of the auditor's findings within 60 days of completion of the audit. All other calculations remain the same as in the March 2010 proposed 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.*

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

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

The DOL associates no forms on which to display the OMB expiration date; however, the agency communicate the date to the public via the *Federal Register*.

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

There are no exceptions to the certification statement.

**B: Statistical Methods**

Not applicable. The use of statistical methods is not relevant to this collection of information.