

## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSIONS

### Part 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 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.

The Department is issuing a final rule concerning the disclosures that must be furnished to plan fiduciaries in order for a contract or arrangement for plan services to be “reasonable,” as required by ERISA section 408(b)(2). A proposed rule was published December 13, 2007 (72 FR 70988). Following review of public comments on the proposal and testimony presented at the Department’s 2008 public hearing, the Department published an interim final rule in the Federal Register on July 16, 2010 (75 FR 41600). Both the proposal and the interim final rule required that reasonable contracts or arrangements between employee pension benefit plans and certain providers of services to such plans include specified information to assist plan fiduciaries in assessing the reasonableness of the compensation paid for services and the conflicts of interest that may affect a service provider’s performance of services. The Department believes that plan fiduciaries need this information, when selecting and monitoring service providers, to satisfy their fiduciary obligations under ERISA section 404(a)(1) to act prudently and solely in the interest of the plan’s participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the plan.

The Department’s final regulation retains the basic structure of the proposal and interim final rule by requiring covered service providers to satisfy certain disclosure requirements in order to qualify for the statutory exemption for services under ERISA section 408(b)(2). The final rule reflects modifications to the interim final rule. The most significant modifications, each discussed in detail below, conform the investment-related disclosure requirements to the Department’s participant-level disclosure regulation at 29 CFR § 2550.404a-5 (75 FR 64910, Oct. 20, 2010) (the “participant-level

disclosure regulation. These provisions are reflected in the hour and cost burden estimates contained in Items 12 and 13 of this supporting statement.

Under the final rule,<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 services ) 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>

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.

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

The Department also is issuing as part of the final rule 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 information collection is to help plan fiduciaries assemble sufficient information to evaluate the quality and competitiveness of their potential service 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.*

Consistent with the views expressed in the 2007 proposed rule, the final regulation does not limit the ability of covered service providers to furnish information required by the regulation to responsible plan fiduciaries via electronic media. However, unless the covered service provider's disclosure information on a website is readily accessible to responsible plan fiduciaries, and fiduciaries have clear notification on how to gain such access, the information on the website may not be regarded as furnished within the meaning of the regulation.

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 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.

The information collection for the class exemption does not require duplicative information.

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.*

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;*

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- *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 Department published an interim final rule in and class prohibited transaction exemption in the Federal Register (75 FR 41600) on July 16, 2010. 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 December 13, 2007 (72 FR 70893). In addition to requesting public comment on the interim final regulation, the Department solicited public comment on the paperwork burden imposed by the regulation and provided the public with a 60-day comment period as required by 5 CFR 1320.8(d). The Department received over 45 public comments on the interim final. No public comments were received that specifically addressed the paperwork burden analysis of the information collections. 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>.

The comments that were submitted, and which are described in the preamble to the final rule, contained information relevant to the costs and administrative burdens attendant to the interim final rule. The most significant modification to the interim final rule conforms the investment-related disclosure requirements to the Department's recently finalized participant-level disclosure regulation, at 29 CFR § 2550.404a-5 (75 FR 64910, Oct. 20, 2010).

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 interim final regulation.

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

Not applicable. No payments or gifts will be provided to respondents.

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

Not applicable to this collection that offers no such assurances.

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 2008 Form 5500, the Department estimates that approximately 49,000 defined benefit pension plans (“DB plans”) covering more than 42 million participants and approximately 669,000 defined contribution plans (“DC plans”) covering nearly 83 million participants are covered by the rule.<sup>3</sup>

The Department also estimates that based on data for the 2008 Form 5500 and its Schedule C, that there are approximately 9,500 covered service providers. The 2008 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 836,000 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 \$123.58 for a legal professional, \$64.59 for a financial professional, and \$27.21 for clerical staff in 2011 dollars.<sup>4</sup>

*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

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<sup>3</sup> Out of these pension plans, about 38,000 are small DB plans and 597,000 small DC plans. Small plans generally are those with less than 100 participants.

<sup>4</sup> EBSA estimates of labor rates include wages, other benefits, and overhead based on the National Occupational Employment Survey (May 2009, Bureau of Labor Statistics) and the Employment Cost Index October 2010, Bureau of Labor Statistics).

compliant. The Department projected this as an hour burden incurred in 2012, 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 900 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 8,600 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 231,000 hours with an equivalent cost of approximately \$17.7 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 2013 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 (75 complex and 719 non-complex) will be new in each year subsequent to 2012 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 19,000 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 231,000 hours with an equivalent cost of \$17.7 million in 2012 and 19,000 hours with an equivalent cost of \$1.5 million in 2013 and subsequent years. The average annual hour burden over the next three years associated with compliance review and implementation is estimated to be 90,000 hours with an equivalent cost of \$6.9 million.

*Initial 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 2012 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 (956,000). In addition two minutes of clerical staff time per mailed disclosure (478,000) will be required to distribute the disclosures. Based on the foregoing, the Department estimates that the hour burden to prepare these disclosures in year 2012 will be 1.7 million hours and the equivalent cost of these hours will be \$164.5 million.

Covered service providers also will have to meet the requirements of the rule for new contracts and arrangements entered into in 2013 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 130,000 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 (65,000) will be required to distribute the disclosures. Based on the foregoing, the hour burden to prepare these disclosures in year 2013 and thereafter will be 227,000 hours and the equivalent cost of these hours will be \$22.3 million. The resulting average annual hour burden over the first three years is 709,000 hours with an equivalent cost of \$69.7 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 (96,000) 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 (96,000 requests) to prepare the information and an additional two minutes per mailed request (48,000 requests) to distribute the requested materials at an hourly labor cost of \$27.21. 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 5,000 hours at an equivalent cost of \$130,000.

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 335,000 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 (167,300 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 284,000 hours with an equivalent cost of \$28.0 million.

In summary, the Department estimates that the hour burden to disclose the required general information in 2012 will be 1.7 million hours with an equivalent cost of approximately \$164.5 million. The hour burden in subsequent years will be 518,000 hours with an equivalent cost of \$50.5 million. The average annual hour burden to disclose general information over the three year period 2012-2014 will be 910,000 hours, and the equivalent cost of these hours will be \$88.7 million.

*Investment Disclosure:* Paragraphs (c)(1)(iv)(F) 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>5</sup> Paragraph (c)(1)(iv)(F)(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

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<sup>5</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.

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 498,000 plans fiduciaries receiving this information in 2012. In addition thirty-four minutes of clerical staff time per mailed disclosure (249,000 disclosures) will be required to distribute the disclosures. Further, it is assumed that 14 percent of arrangements (67,000) 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 390,000 hours with an equivalent cost of \$20.0 million in 2012. In the subsequent years the hour burden will be 53,000 hours with an equivalent cost of \$2.7 million. The average annual hour burden for the next three years associated with disclosing investment related information is 165,000 hours with an equivalent cost of \$8.4 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 431,000 disclosures.<sup>6</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 (215,300) to distribute the disclosures. Based on the foregoing, the cost to update investment information in subsequent years is estimated to be 222,000 hours with an equivalent cost of \$14.1 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 74,000 hours with an equivalent cost of \$4.7 million.

In summary, the Department estimates that the hour burden to disclose all investment information in 2012 will be 390,000 hours with an equivalent cost of \$19.9 million. The burden to disclose the required investment information in subsequent years is 275,000 hours with an equivalent cost of \$16.8 million. The average annual hour burden for the next three years for service providers to disclose the required investment information is estimated to be 314,000 hours with an equivalent cost of \$17.8 million.

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<sup>6</sup> The Department assumes that in a given year only the plans existing in prior years will receive updated investment information.

*Hour Burden Imposed on Plans:* The main hour burden of the regulation that is imposed on plans (718,000) 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 to review and evaluate the new written disclosures. The hour burden is estimated to be 718,000 with an equivalent cost of \$46.3million in 2012.

Responsible plan fiduciaries of new plans established or maintained in 2013 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 (approximately 97,000). 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 97,000 hours at an equivalent cost of \$6.3 million for years 2012 and thereafter.

Based on the foregoing, the hour burden imposed on plans to review the regulation is estimated to be 718,000 hours in 2012 with an equivalent cost of \$46.3 million and 97,000 hours in 2013 and subsequent years with an equivalent cost of \$6.3 million. The average annual hour burden over the next three years on plans to review the regulation is estimated to be 304,000 hours with an equivalent cost of \$19.6 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 (72,000) may experience a failure that will require the responsible plan fiduciary to send a notice to the service provider in 2012. In 2013 and thereafter, the number of requests for missing information is expected to decrease to 5 percent of arrangements (36,000). 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 (36,000 in 2012 and 18,000 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 39,000 hours with an equivalent cost of \$2.3 million in 2012. The hour burden for subsequent years is estimated to be over 18,000 hours with an equivalent cost of \$1.2 million. The average annual hour burden over the next three years for requesting missing information is estimated to be 24,000 hours with an equivalent cost of \$1.6 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 (7,200 in 2012 and 3,600 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 (3,600 in 2012 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 3,600 hours with an equivalent cost of \$233,000 in 2012. The hour burden for subsequent years is estimated to be 1,800 hours with an equivalent cost of \$117,000. 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 \$156,000.

*Summary of the Hour Burden*

Table 1 reports the number of respondents and responses of the regulation. In the first year there will be 81,000 respondents (approximately 9,500 service providers and 72,000 plans) and more than 1.6 million responses (approximately 1,549,000 from service providers and 79,000 from plans). The annual average totals approximately 57,000 respondents, and 1.3 million responses.

TABLE 1 .—Number of Respondents and Responses

	Year 1	Year 2	Year 3	Annual Average
Respondents	81,000	45,000	45,000	57,000
Responses	1,628,000	1,097,000	1,097,000	1,274,000

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 2,315,000 hours with an equivalent cost of approximately \$202.6 million. The annual

average hour burden for the first three years for service providers is estimated to be 1.3 million hours with an equivalent cost of \$113.4 million. The first year hour burden for plans is estimated to be 758,000 hours with an equivalent cost of approximately \$48.9 million. The average annual hour burden over the first three years for plans is estimated to be 331,000 hours with an equivalent cost of \$21.3 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 \$134.7 million.

TABLE 2.--Hour Burden

	Year 1	Year 2	Year 3	Average
Service Providers	2,315,000	813,000	813,000	1,313,000
Plans	758,000	117,000	117,000	331,000
<b>Total</b>	<b>3,072,000</b>	<b>930,000</b>	<b>930,000</b>	<b>1,644,000</b>

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	\$202,623,000	\$68,769,000	\$68,769,000	\$113,387,000
Plans	\$48,912,000	\$7,563,000	\$7,563,000	\$21,346,000
<b>Total</b>	<b>\$251,535,000</b>	<b>\$76,332,000</b>	<b>\$76,332,000</b>	<b>\$134,733,000</b>

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>7</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 percent of documents will be 5 cents per page. Based on the foregoing, the Department estimates that the total cost burden of the rule in 2012 will be \$9,560,000 (approximately \$9,539,000 for service providers and \$21,000 for plans) and \$1,591,000 (approximately \$1,580,000 for service providers and \$11,000 for plans) in subsequent years. The average three-year annual cost burden approximately \$4.2 million.

<sup>7</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.

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TABLE 4.—*Number of Disclosures*

	Number of Disclosures (A)	Percent not Sent Electronically (B)	Pages Per Disclosure (C)	Number of Disclosures Sent by Mail A*B
Disclose General Information: 2012	956,000	50%	8	478,000
Disclose General Information: 2013	130,000	50%	8	65,000
Information Upon Request	96,000	50%	10	48,000
Disclosure of Changes to General Information	335,000	50%	4	167,000
Disclose Investment Information: 2012	498,000	50%	510	249,000
Disclose Investment Information: 2013	67,000	50%	510	34,000
Disclosure of Changes to Investment Information	431,000	50%	2	215,000
Request for Additional Information for Exemption: 2012	72,000	50%	2	36,000
Request for Additional Information for Exemption: 2013	36,000	50%	2	18,000
Notice to DOL: 2012	7,200	50%	2	3,600
Notice to DOL: 2013	3,600	50%	2	1,800

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

TABLE 5.—*Cost Burden*

	2012	2013	2014	Average
Disclose General Information	\$401,000	\$54,000	\$54,000	\$170,000
Update General Information	\$0	\$107,000	\$107,000	\$71,000
Information Upon Request	\$45,000	\$45,000	\$45,000	\$45,000
<b>General Information Total</b>	<b>\$446,000</b>	<b>\$206,000</b>	<b>\$206,000</b>	<b>\$286,000</b>

**408(b)(2) Service Provider Disclosure Requirements**  
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Disclose Investment Information	\$8,928,000	\$1,210,000	\$1,210,000	\$3,783,000
Update Investment Information	\$116,000	\$116,000	\$116,000	\$116,000
<b>Disclose Investment Information Total</b>	<b>\$9,045,000</b>	<b>\$1,326,000</b>	<b>\$1,326,000</b>	<b>\$3,899,000</b>
Request for Additional Information for Exemption	\$19,000	\$9,000	\$9,000	\$13,000
Notice to DOL	\$2,000	\$1,000	\$1,000	\$1,000
<b>Total</b>	<b>\$9,513,000</b>	<b>\$1,543,000</b>	<b>\$1,543,000</b>	<b>\$4,200,000</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.*

As stated in Item 1 above, the Department’s final regulation retains the basic structure of the proposal and interim final rule by requiring that covered service providers satisfy certain disclosure requirements in order to qualify for the statutory exemption for services under ERISA section 408(b)(2). The final rule reflects modifications to the interim final rule. The most significant modifications conform the investment-related disclosure requirements to the Department’s final participant-level disclosure regulation, at 29 CFR § 2550.404a-5 (75 FR 64910, Oct. 20, 2010) (the “participant-level disclosure regulation. These provisions are reflected in the hour and cost burden estimates contained in Items 12 and 13 of this supporting statement. The wage rates used as a basis for Department’s estimates in Items 12 and 13 also were adjusted.

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, this information collection would not result in the publication of any results.



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.

**Part B—Statistical Methods.**

This information collection does not employ statistical methods.