

**Proposed Exemption for the Receipt of Compensation by Investment Advice
Fiduciaries
(Best Interest Contract Exemption)
1210-NEW
April 2015**

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.*

Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) authorize the Secretary of Labor and the Secretary of the Treasury to grant a conditional or unconditional exemption of any class of transactions, from all or part of the restrictions imposed by sections 406 and 407(a) of ERISA and from taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. Under section 102 of Reorganization Plan No. 4, of 1978 (Reorganization Plan No. 4), the Secretary of Labor was given the authority to grant such exemptions.

The Department is proposing this prohibited transaction class exemption (PTE) in connection with its proposed regulation under ERISA section 3(21)(A)(ii) and Code section 4975(e)(3)(B) (Proposed Regulation). The Proposed Regulation would amend the definition of a “fiduciary” under ERISA and the Code to specify when a person is a fiduciary by reason of the provision of investment advice for a fee or other compensation regarding assets of a plan or IRA. If adopted, the Proposed Regulation would replace an existing regulation dating to 1975, with the aim of more appropriately distinguishing between the sorts of advice relationships that should be treated as fiduciary in nature and those that should not.

This proposed PTE was developed to promote the provision of investment advice that is in the best interest of retail investors such as plan participants and beneficiaries, IRA owners and small plans. To facilitate continued provision of advice to such retail investors, the exemption would allow certain investment advice fiduciaries, including broker-dealers and insurance agents, to receive various forms of compensation that, in the absence of an exemption, would be prohibited under ERISA and the Code, under conditions designed to safeguard the interests of these investors. In this regard, ERISA and the Code generally prohibit fiduciaries from receiving payments from third parties and from acting on conflicts of interest, including using their authority to affect or increase their own compensation, in connection with transactions involving a plan or IRA. Certain types of fees and compensation common in the retail market, such as brokerage or insurance commissions, 12b-1 fees and revenue sharing payments, fall within these prohibitions when received by fiduciaries as a result of transactions

**Proposed Exemption for the Receipt of Compensation by Investment Advice
Fiduciaries
(Best Interest Contract Exemption)
1210-NEW
April 2015**

involving advice to the plan participants and beneficiaries, IRA owners and small plans. This PTE would allow investment advice fiduciaries to receive compensation that would otherwise be prohibited when plan participants or beneficiaries, IRAs, or certain small plans, purchase, hold or sell certain investment products provided they comply with the protective conditions of the exemption.

In order to protect the interests of plans, participants and beneficiaries, and IRA owners, the exemption would require the financial institution and the adviser to contractually acknowledge fiduciary status, commit to adhere to fundamental standards of impartial conduct, adopt policies and procedures reasonably designed to minimize harmful impact of conflicts of interest and disclose basic information on their conflicts of interest and on the cost of their advice. The adviser and financial institution must agree to meet fundamental obligations of fair dealing and fiduciary conduct – to give advice that is in the customer’s best interest; avoid misleading statements; receive no more than reasonable compensation; and comply with applicable federal and state laws governing advice. This standards-based approach aligns the adviser’s interests with those of the plan or IRA customer, while leading the adviser and financial institution the flexibility and discretion necessary to determine how best to satisfy these basic standards in light of the unique attributes of their business. Financial institutions relying on the exemption would be required to notify the Department in advance of doing so. Finally, all financial institutions making use of the exemption would have to maintain certain data, and make it available to the Department, to help evaluate the effectiveness of the exemption in safeguarding the interests of plans and IRAs.

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.

In order to receive compensation under the proposed PTE, Section II would require financial institutions and advisers to enter into a written contract with retirement investors affirmatively stating that they are fiduciaries under ERISA or the Code with respect to any recommendations to the retirement investor to purchase, sell or hold specified assets, and that the financial institution and adviser will give advice that is in the best interest of the retirement investors.

Section III(a) requires the adviser to furnish the retirement investor a disclosure prior to the execution of the purchase of the asset stating the total cost of investing in the asset. Section III(b) requires the adviser or financial institution to furnish the retirement investor with an annual statement listing all assets purchased or sold during the year, as well as the associated fees and expenses paid by the plan, participant or beneficiary account, or IRA and the compensation received directly or indirectly from any party by the financial institution and the adviser as a result of each asset sold, purchased, or held

**Proposed Exemption for the Receipt of Compensation by Investment Advice
Fiduciaries
(Best Interest Contract Exemption)
1210-NEW
April 2015**

by retirement investor. Section III(c) requires the financial institution to maintain a publicly available webpage displaying the compensation (including its source and how it varies within asset classes) that would be received by the adviser, the financial institution and any affiliate with respect to any asset that a plan, participant or beneficiary account, or IRA could purchase through the adviser.

If the financial institution limits the assets available for sale, Section IV requires the financial institution to furnish the retirement investor with a written description of the limitations placed on the menu. The adviser also must notify the retirement investor if it does not recommend a sufficiently broad range of assets to meet the retirement investor's needs.

Finally, before the financial institution begins engaging in transactions covered under the proposed PTE, Section V(a) would require the financial institution to provide notice to the Department of its intent seek relief under the PTE.

Section V(b) would require financial institutions to maintain investment return data in a manner accessible for examination by the Department for six (6) years. Section V(c) requires financial institutions to maintain or cause to be maintained for six years the records necessary for the Department, Internal Revenue Service, plan fiduciary, contributing employer or employee organization whose members are covered by the plan, participants and beneficiaries and IRA owners to determine whether the conditions of this exemption have been met in a manner that is accessible for audit and examination.

These information collections are intended to assist the Department's enforcement efforts and to inform plan and IRA participants' and beneficiaries' about the compensation their advisers receive based on their investment decisions to protect American workers' retirement security. Receipt of the data requested under Section V(b) will help the Department assess the effectiveness of the proposed exemption.

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

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

**Proposed Exemption for the Receipt of Compensation by Investment Advice
Fiduciaries
(Best Interest Contract Exemption)
1210-NEW
April 2015**

In addition, under 29 C.F.R. § 2520.104b-1(b) of ERISA, “where certain material, including reports, statements, and documents, is required under Part I of the Act and this part to be furnished either by direct operation of law or an individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries.” Section 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b). Section 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

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 reporting requirements of this class exemption are similar in some respects to the information required to be disclosed a variety of rules promulgated by the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA). The requirements included in this class exemption have been designed so that compliance with the SEC and FINRA requirements could be used where applicable. Therefore, the requirements of this class exemption are not duplicative.

5. *If the collection of information impacts small businesses or other small entities describe any methods used to minimize burden.*

The information collections impose the minimal burden needed to protect retirement investors’ assets from fee practices that are tainted by conflicts of interest.

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 requirements of this PTE are only mandatory if financial institutions who are fiduciaries wish to utilize the class exemption. The frequency is dependent upon the occurrence of such transactions, not on a predetermined time period. This exemption was designed to address comments by numerous groups representing the regulated community who asserted that market disruptions would occur if the Department did not provide exemptive relief allowing them to maintain their current fee practices.

7. *Explain any special circumstances that would cause an information collection to be conducted in a manner:*

**Proposed Exemption for the Receipt of Compensation by Investment Advice
Fiduciaries
(Best Interest Contract Exemption)
1210-NEW
April 2015**

- *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.*

Because this exemption is granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the exclusion from the three year guideline for record retention set forth in 5 CFR 1320.5 is applicable. Furthermore, as a result of statutory recordkeeping requirements in ERISA, the Code, and other federal laws, the respondents affected by this exemption (financial institutions that deal with employee benefit plans), for the most part, have adopted six-year recordkeeping as standard business practice in order to satisfy those separate recordkeeping requirements.

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.

**Proposed Exemption for the Receipt of Compensation by Investment Advice
Fiduciaries
(Best Interest Contract Exemption)
1210-NEW
April 2015**

In accordance with 5 CFR 1320.11, the proposed exemption provides the public with 30 days to comment on the information collection and burden estimates.

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

No payments or gifts are provided to respondents.

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

No assurance of confidentiality was provided.

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.*

There are no questions of the nature described.

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.*
- *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 estimates that the information collections in this PTE will result in approximately 1.3 million hours of burden at an equivalent cost of \$68.9 million during the first year and 620,000 hours of burden at an equivalent cost of \$21.4 million in subsequent years. A more detailed discussion of how these estimates were derived follows.

**Proposed Exemption for the Receipt of Compensation by Investment Advice
Fiduciaries
(Best Interest Contract Exemption)
1210-NEW
April 2015**

As described in more detail in question 2 above, this PTE requires respondents to produce contracts, a pre-transaction disclosure, an annual statement, a limited investment option menu disclosure, and a notice to the Department. Respondents are also required to maintain a website and maintain detailed records.

Contract

The Department believes that financial institutions already maintain contracts with their clients. Therefore, the only burden associated with this requirement is legal review to adjust the existing contracts to conform to the PTE's requirements and IT staff time to adjust the IT systems to produce the new contracts. This burden is discussed in the "Legal" and "IT" sections below.

Pre-Transaction Disclosure

The Department believes that three types of burden result from this ICR: clerical staff time to produce and distribute the disclosure, IT staff time to adjust the systems to produce the disclosures, and legal staff time to create the template. The legal and IT burden is discussed in the "Legal" and "IT" sections below.

According to 2012 Form 5500 data and Internal Revenue Service Statistics of Income data, approximately 34,000 defined benefit (DB) plans with fewer than 100 participants, 117,000 defined contribution (DC) plans with fewer than 100 participants that do not allow participants to direct investments, 68 million DC plan participants, and 54.5 million individual retirement account (IRA) holders could compensate investment advisers under this PTE. Of these plans and IRAs, the Department estimates that 20 percent of DB plans, 26 percent of DC plans,¹ and 37 percent of IRAs have relationships with broker-dealers or other financial institutions that would use this PTE.² Further, only 6.16 percent of DC plan participants are offered and utilize investment advice through their plans.³ Therefore, the Department estimates that approximately 6,800 DB plans,⁴ 30,000 DC plans that do not allow participants to direct investments,⁵ 1.1 million DC plan

1 This number is calculated by adding the 14% of load mutual funds in 401(k) plans according to Figure A2 and the 12% of 12b-1 fees in >.0 to 0.25 of 401(k) Stock Mutual Fund Assets in Figure A6 both of ICI Research Perspective, Vol. 20 No.3 of July 2014.

2 Figure A15 of ICI's January 2015 Appendix: Additional Data on IRA Ownership in 2014 states that 37 percent of traditional IRAs with rollovers are held by full-service brokerages.

3 According to the Profit Sharing Council of America 108th Annual Survey, 35 percent of DC plans offer investment advice services to their participants and 17.6 percent of participants offered investment advice services utilize the option. $35\% \times 17\% = 6.16\%$

4 $34,000 \text{ DB plans} \times 20 \text{ percent} = 6,800 \text{ DB plans engaging in transactions.}$

5 $117,000 \text{ DC plans} \times 26 \text{ percent} = 30,000 \text{ DC plans engaging in transactions.}$

**Proposed Exemption for the Receipt of Compensation by Investment Advice
Fiduciaries
(Best Interest Contract Exemption)
1210-NEW
April 2015**

participants,⁶ and 20.2 million IRA holders⁷ will engage in transactions covered under this exemption.

The Department assumes that DB plans and DC plans that do not allow participants to direct investments to engage in 24 covered transactions per year. All of these pre-transaction disclosures will be produced and disseminated electronically through regular business channels at de minimis burden.

DC plan participants and IRA holders will engage in two covered transactions per year, which will result in 2.2 million DC plan participant disclosures and 40.3 million IRA holder disclosures. The Department assumes that 75 percent of these disclosures will be distributed electronically at de minimis burden. The remaining 25 percent of disclosures will be one page each with 15 percent of the paper disclosures mailed and 85 percent of the paper disclosures hand-delivered during face-to-face meetings. Each of the 10.6 million paper disclosures⁸ will require one minute of clerical time, and each of the 1.6 million mailed disclosures⁹ will require an additional one minute of clerical time.

In total, printing and mailing these paper disclosures will produce approximately 204,000 hours of clerical burden.¹⁰ At an hourly wage rate¹¹ of \$30.42,¹² this produces an equivalent cost of \$6.2 million.¹³

Annual Statement

The Department believes that three types of burden result from this ICR: clerical staff time to produce and distribute the statements, IT staff time to adjust the systems to

6 68 million DC plan participants x 26 percent x 6.16 percent = 1.1 million DC plan participants engaging in transactions.

7 54.5 million IRAs x 37 percent = 20.2 million IRAs engaging in transactions.

8 (1.1 million DC plan participants x 2 transactions/year x 25 percent paper) + (20.2 million IRA holders x 2 transactions/year x 25 percent paper) = 10.6 million paper disclosures.

9 10.6 million disclosures x 15 percent mailed = 1.6 mailed disclosures.

10 (10.6 million paper disclosures x 1 minute) + (1.6 million mailed disclosures x 1 minute) = 204,000 hours.

11 The Department's estimated 2015 hourly labor rates include wages, other benefits, and overhead are calculated as follows: mean wage from the 2013 National Occupational Employment Survey (April 2014, Bureau of Labor Statistics <http://www.bls.gov/news.release/pdf/ocwage.pdf>); wages as a percent of total compensation from the Employer Cost for Employee Compensation (June 2014, Bureau of Labor Statistics <http://www.bls.gov/news.release/ecec.t02.htm>); overhead as a multiple of compensation is assumed to be 25 percent of total compensation for paraprofessionals, 20 percent of compensation for clerical, and 35 percent of compensation for professional; annual inflation assumed to be 2.3 percent annual growth of total labor cost since 2013 (Employment Costs Index data for private industry, September 2014 <http://www.bls.gov/news.release/eci.nr0.htm>).

12 Secretaries, Except Legal, Medical, and Executive (43-6014): \$16.35(2013 BLS Wage rate)/0.675(ECEC ratio) *1.2(Overhead Load Factor) *1.023(Inflation rate) ^2(Inflated 2 years from base year) = \$30.42

13 204,000 hours x \$30.42 per hour = \$6.2 million.

**Proposed Exemption for the Receipt of Compensation by Investment Advice
Fiduciaries
(Best Interest Contract Exemption)
1210-NEW
April 2015**

produce the statements, and legal staff time to create the statement template. The legal and IT burden is discussed in the “Legal” and “IT” sections below.

As discussed previously, the Department estimates that approximately 6,800 DB plans,¹⁴ 30,000 DC plans that do not allow participants to direct investments,¹⁵ 1.1 million DC plan participants,¹⁶ and 20.2 million IRA holders¹⁷ will engage in transactions covered under this exemption and require annual statements.

The Department assumes that annual statements for DB plans and DC plans that do not allow participants to direct investments will be produced and disseminated all electronically at de minimis burden.

The Department estimates that 38 percent of the 1.5 million DC plan participant annual statements will be distributed electronically at de minimis burden and the remaining 62 percent (676,000) will be mailed, requiring two minutes of clerical time per disclosure. For the 20.2 million IRA annual statements, the Department estimates that 50 percent will be distributed electronically at de minimis burden and the remaining 50 percent (10.1 million) will be mailed, requiring two minutes of clerical time per disclosure.

In total, printing and mailing these paper disclosures will produce approximately 359,000 hours of clerical burden.¹⁸ At an hourly wage rate of \$30.42, this produces an equivalent cost of \$10.9 million.¹⁹

Limited Investment Option Disclosure

The Department believes that three types of burden result from this ICR: clerical staff time to produce and distribute the disclosures, IT staff time to adjust the systems to produce the disclosures, and legal staff time to create the disclosure template. The legal and IT burden is discussed in the “Legal” and “IT” sections below.

As discussed previously, the Department estimates that approximately 6,800 DB plans,²⁰ 30,000 DC plans that do not allow participants to direct investments,²¹ 1.1 million DC

14 34,000 DB plans x 20 percent = 6,800 DB plans engaging in transactions.

15 117,000 DC plans x 26 percent = 30,000 DC plans engaging in transactions.

16 68 million DC plan participants x 26 percent x 6.16 percent = 1.1 million DC plan participants engaging in transactions.

17 54.5 million IRAs x 37 percent = 20.2 million IRAs engaging in transactions.

18 (676,000 DC paper statements + 10.1 million IRA paper statements) x 2 minutes = 359,000 hours.

19 359,000 hours x \$30.42 per hour = \$10.9 million.

20 34,000 DB plans x 20 percent = 6,800 DB plans engaging in transactions.

21 117,000 DC plans x 26 percent = 30,000 DC plans engaging in transactions.

**Proposed Exemption for the Receipt of Compensation by Investment Advice
Fiduciaries
(Best Interest Contract Exemption)
1210-NEW
April 2015**

plan participants,²² and 20.2 million IRA holders²³ will engage in transactions covered under this exemption. During the first year, the Department assumes that all of these investors will require the limited investment option disclosure. In subsequent years, investors starting relationships with the eight percent of financial institutions that are new will require the limited investment option disclosure (a total of 1.7 million investors).²⁴

The Department assumes that limited investment option disclosures for DB plans and DC plans that do not allow participants to direct investments will be produced and disseminated all electronically at de minimis burden.

During the first year 1.1 million DC plan participants and 20.2 million IRA holders will receive limited investment option disclosures. In subsequent years, 87,000 DC plan participants and 1.6 million IRA holders will receive limited investment option disclosures from new financial institutions. The Department assumes that 75 percent of these disclosures will be distributed electronically at de minimis burden. The remaining 25 percent of disclosures will be one page each with 15 percent of the paper disclosures mailed and 85 percent of the paper disclosures hand-delivered during face-to-face meetings. Each of the 5.3 million paper disclosures in the first year and each of the 425,000 paper disclosures in subsequent years²⁵ will require one minute of clerical time. Each of the 797,000 mailed disclosures in the first year and each of the 64,000 mailed disclosures in subsequent years²⁶ will require an additional one minute of clerical time.

In total, printing and mailing these paper disclosures will produce approximately 244,000 hours of clerical burden during the first year²⁷ and approximately 20,000 hours of clerical burden during subsequent years.²⁸ At an hourly wage rate of \$30.42, this produces an equivalent cost of \$7.4 million in the first year²⁹ and \$595,000 in subsequent years.³⁰

22 68 million DC plan participants x 26 percent x 6.16 percent = 1.1 million DC plan participants engaging in transactions.

23 54.5 million IRAs x 37 percent = 20.2 million IRAs engaging in transactions.

24 The Department estimates that eight percent of financial institutions are new each year and assumes that investors are distributed equally across new and existing financial institutions. Therefore, investors working with new financial institutions represent eight percent of all investors.

25 (1.1 million DC plan participants x 25 percent paper) + (20.2 million IRA holders x 25 percent paper) = 5.3 million paper disclosures in the first year. 5.3 million paper disclosures x 8 percent = 425,000 paper disclosures in subsequent years.

26 5.3 million disclosures x 15 percent mailed = 797,000 mailed disclosures in the first year; 425,000 disclosures x 15 percent mailed = 64,000 mailed disclosures in subsequent years.

27 (5.3 million paper disclosures x 1 minute) + (797,000 mailed disclosures x 1 minute) = 244,000 hours.

28 (425,000 paper disclosures x 1 minute) + (64,000 mailed disclosures x 1 minute) = 20,000 hours.

29 244,000 hours x \$30.42 per hour = \$7.4 million.

30 20,000 hours x \$30.42 per hour = \$595,000.

**Proposed Exemption for the Receipt of Compensation by Investment Advice
Fiduciaries
(Best Interest Contract Exemption)
1210-NEW
April 2015**

Notice to EBSA

The Department believes that two types of burden result from this ICR: clerical staff time to print and mail the notice and legal staff time to draft the notice. The legal burden is discussed in the “Legal” section below.

The Department estimates that 2,800 financial institutions will use this exemption and submit the required notice to the Department during the first year.³¹ In subsequent years, the Department estimates that eight percent of financial institutions will be new, and will submit the required notice. All 2,800 notices during the first year and all 224 notices in subsequent years will be mailed to the Department, which will require two minutes of clerical time per disclosure.

In total, printing and mailing these paper disclosures will produce approximately 93 hours of clerical burden during the first year³² and 7 hours of clerical burden in subsequent years.³³ At an hourly wage rate of \$30.42, this produces an equivalent cost of approximately \$2,800 during the first year³⁴ and approximately \$200 in subsequent years.³⁵

Recordkeeping

Financial institutions are required to maintain a variety of records to demonstrate compliance with the exemption and to assist the Department’s future research and enforcement efforts. The Department assumes that maintaining records is a regular and customary business practice and that the data retention requirements are consistent with data retention already mandated by the SEC and FINRA. Where data retention requirements are lengthier than those required by the SEC and FINRA, the Department believes the burden associated with the extended holding period is de minimis. Therefore, the Department has estimated that the additional time needed to maintain records consistent with the exemption will only require about one-half hour, on average, annually for a financial manager to organize and collate the documents, and an additional 15 minutes of clerical time to make the documents available for inspection during normal business hours.

31 The Department assumes that broker-dealers will be the primary users of the PTE. Internal estimates suggest that of the 4,410 broker-dealers registered with the SEC, 2,619 service ERISA plans or IRAs. The Department rounded up to 2,800 to reflect other possible types of financial institutions (such as insurance companies and banks) that could use the PTE in small numbers.

32 2,800 paper disclosures x 2 minutes = 93 hours.

33 224 paper disclosures x 2 minutes = 7 hours.

34 93 hours x \$30.42 per hour = \$2,800.

35 7 hours x \$30.42 per hour = \$200.

**Proposed Exemption for the Receipt of Compensation by Investment Advice
Fiduciaries
(Best Interest Contract Exemption)
1210-NEW
April 2015**

As described previously, the Department estimates that approximately 2,800 financial institutions will utilize the exemption and be required to maintain records. Thus, the Department estimates that a total of approximately 700 hours of clerical time³⁶ and 1,400 hours of financial manager time³⁷ result from this requirement. At an hourly wage rate of \$30.42 for clerical staff and \$125.95 for a financial manager,³⁸ this results in an equivalent cost of \$198,000.³⁹

Legal Burden

As described previously, the Department estimates that approximately 2,800 financial institutions will use the exemption and 224 new financial institutions will begin using the exemption in future years. Each of these financial institutions will require in-house attorneys to expend 60 hours of time drafting and reviewing the required disclosures and notice, as well as revising the existing contracts. This will result in 168,000 hours of legal burden⁴⁰ during the first year and 13,000 hours of legal burden⁴¹ during subsequent years. At an hourly wage rate of \$129.94,⁴² this results in an equivalent cost of \$21.8 million during the first year⁴³ and \$1.7 million in subsequent years.⁴⁴

IT Burden

As described previously, the Department estimates that approximately 2,800 financial institutions will use the exemption and 224 new financial institutions will begin using the exemption in future years. Each of these financial institutions will require in-house IT staff to expend 100 hours updating computer systems and updating the website to produce the required disclosures and contracts. This will result in 280,000 hours of IT burden⁴⁵ during the first year and 22,000 hours of IT burden⁴⁶ during subsequent years.

36 15 minutes x 2,800 financial institutions = 700 hours.

37 30 minutes x 2,800 financial institutions = 1,400 hours.

38 Financial Managers (11-3031): \$60.89(2013 BLS Wage rate) /0.683(ECEC ratio) *1.35(Overhead Load Factor) *1.023(Inflation rate) ^2(Inflated 2 years from base year) = \$125.95

39 (700 hours x \$30.42 per hour) + (1,400 hours x \$125.95 per hour) = \$198,000.

40 60 hours x 2,800 financial institutions = 168,000 hours.

41 60 hours x 224 financial institutions = 13,000 hours.

42 Legal Professional (23-1011): \$63.46(2013 BLS Wage rate) /0.69(ECEC ratio) *1.35(Overhead Load Factor) *1.023(Inflation rate) ^2(Inflated 2 years from base year) = \$129.94

43 168,000 hours x \$129.94 per hour = \$21.8 million.

44 13,000 hours x \$129.94 per hour = \$1.7 million.

45 100 hours x 2,800 financial institutions = 280,000 hours.

46 100 hours x 224 financial institutions = 22,000 hours.

**Proposed Exemption for the Receipt of Compensation by Investment Advice
Fiduciaries
(Best Interest Contract Exemption)
1210-NEW
April 2015**

At an hourly wage rate of \$79.67,⁴⁷ this results in an equivalent cost of \$22.3 million during the first year⁴⁸ and \$1.8 million in subsequent years.⁴⁹

Summary

As seen in the tables below, the overall burden associated with this PTE totals 1.3 million hours during the first year and 620,000 hours in subsequent years. The equivalent costs are \$68.9 million during the first year and \$21.4 million in subsequent years.

First Year Activity	Burden Hours	Equivalent Burden Cost
1. Pre-Transaction Disclosure Clerical	204,000	\$6.2 million
2. Annual Statement Clerical	359,000	\$10.9 million
3. Limited Investment Option Disclosure Clerical	244,000	\$7.4 million
4. Notice to EBSA Clerical	93	\$2,800
5. Recordkeeping Clerical and Financial Manager	2,100	\$198,000
6. Legal Review	168,000	\$21.8 million
7. IT Updates	280,000	\$22.3 million
Total (First Year)	1.3 million	\$68.9 million

Subsequent Year Activity	Burden Hours	Equivalent Burden Cost
1. Pre-Transaction Disclosure Clerical	204,000	\$6.2 million
2. Annual Statement Clerical	359,000	\$10.9 million
3. Limited Investment Option Disclosure Clerical	20,000	595,000
4. Notice to EBSA Clerical	7	200
5. Recordkeeping Clerical and Financial Manager	2,100	\$198,000
6. Legal Review	13,000	\$1.7 million
7. IT Updates	22,000	\$1.8 million
Total (Subsequent Years)	620,000	\$21.4 million

For purposes of reginfo.gov database entry purposes, burden hours have been annualized over the three-year approval period.

47 Computer Programmer (15-1131): \$38.91(2013 BLS Wage rate) /0.69(ECEC ratio) *1.35(Overhead Load Factor) *1.023(Inflation rate) ^2(Inflated 2 years from base year) = \$79.67

48 280,000 hours x \$79.67 per hour = \$22.3 million.

49 22,000 hours x \$79.67 per hour = \$1.8 million.

**Proposed Exemption for the Receipt of Compensation by Investment Advice
Fiduciaries
(Best Interest Contract Exemption)
1210-NEW
April 2015**

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 Department estimates that the information collections in this PTE will result in approximately \$8.6 million of burden during the first year and \$7.7 million of burden in subsequent years. All of the burden is materials and postage costs associated with printing and mailing paper copies of disclosures. Electronic distribution and hand delivery are both assumed to result in a de minimis cost. All other burden associated with these information collections is reflected in question 12 as hour burden. A more detailed discussion of how the cost estimates were derived follows.

As discussed in question 12, the Department estimates that respondents will produce 10.6 million one-page paper pre-transaction disclosures annually, of which 1.6 million will be mailed. Respondents will also produce 10.8 million two-page paper annual statements each year, all of which will be mailed. Additionally, respondents will produce 5.3 million two-page limited investment option disclosures during the first year and 425,000 two-page limited investment option disclosures during subsequent years. Respondents will mail 797,000 limited investment option disclosures during the first year and 64,000 limited investment option disclosures in subsequent years. Finally, respondents will print and mail 2,800 one-page notices to the Department during the first year and 224 one-page notices to the Department in subsequent years.

The Department estimates that respondents will incur a \$0.05 materials cost per page and a \$0.49 postage cost per mailed disclosure. Therefore, respondents will incur a materials and postage cost of \$1.3 million for pre-transaction disclosures annually.⁵⁰ For annual statements, respondents will incur an annual materials and postage cost of \$6.3 million.⁵¹ For limited investment option disclosures, respondents will incur a materials and postage cost of \$922,000 during the first year and \$74,000 in subsequent years.⁵² Finally, respondents will incur a materials and cost burden of \$1,500 during the first year and \$100 in subsequent years to provide the notice to the Department.⁵³

50 (10.6 million paper disclosures x 1 page x \$0.05 per page) + (1.6 million mailed disclosures x \$0.49 postage) = \$1.3 million.

51 (10.8 million paper statements x 2 pages x \$0.05 per page) + (10.8 million mailed statements x \$0.49 postage) = \$6.3 million.

52 (5.3 million paper disclosures x 2 pages x \$0.05 per page) + (797,000 mailed disclosures x \$0.49 postage) = \$922,000; (425,000 paper disclosures x 2 pages x \$0.05 per page) + (64,000 mailed disclosures x \$0.49 postage) = \$74,000.

53 (2,800 paper notices x 1 page x \$0.05 per page) + (2,800 mailed notices x \$0.49 postage) = \$1,500; (224 paper notices x 1 page x \$0.05 per page) + (224 mailed notices x \$0.49 postage) = \$100.

**Proposed Exemption for the Receipt of Compensation by Investment Advice
Fiduciaries
(Best Interest Contract Exemption)
1210-NEW
April 2015**

In total, the cost burden associated with printing and distributing paper disclosures and notices is \$8.6 million during the first year and \$7.7 million in subsequent years.

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.*

The agency associates no Federal cost with this information collection.

15. *Explain the reasons for any program changes or adjustments reported in Items 13 or 14.*

This is a new information collection.

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 results of this information collection.

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 collection of information will display a currently valid OMB control number.

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

None.

B. Statistical Methods

This information collection does not employ statistical methods.