

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, the Secretary of Labor was given the authority to grant such exemptions.

Prohibited transaction class exemption (PTE) 86-128, which was granted on November 18, 1986, exempts from the prohibited transaction restrictions a fiduciary's use of its authority to cause a plan (including an individual retirement account) or a pooled investment fund to pay a fee to the fiduciary for effecting or executing securities transactions as agent for the plan or fund. It also permits a fiduciary to act as an agent in an agency cross transaction for both the plan and one or more other parties to the transaction, and to receive reasonable compensation for effecting or executing the agency cross transaction from one or more of the other parties to the transaction. This class exemption replaced two prior class exemptions, PTE 79-1 and PTE 84-46.

Based on an application submitted by the Securities Industry Association in 2002, the Department amended PTE 86-128 to make the exemption available to fiduciaries that are discretionary plan trustees¹, subject to certain additional conditions.

Section 406 of ERISA prohibits various transactions between a plan and certain related parties. Those parties in interest described in section 3(14) of ERISA and disqualified persons described in section 4975(e)(2) of the Code, such as plan fiduciaries, sponsoring employers, unions, service providers and affiliates, may not engage in a transaction described in section 406 of ERISA and section 4975(c) of the Code with a plan without an exemption. Specifically, these sections prohibits sales, leases, loans, or the provision of services between a party in interest and a plan; or the use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest or a disqualified person, unless

¹Prior to the 2002 amendment, PTE 86-128 was not available to any person (or any affiliate thereof) who was a discretionary trustee, plan administrator, or an employer, any of whose employees were covered by the plan.

a statutory or administrative exemption applies to the transaction. In addition, unless exempted, section 406(b) of ERISA prohibits a fiduciary's dealing with the assets of a plan in his or her own interest.

Although, section 408(b)(2) of ERISA provides a conditional statutory exemption permitting a plan to make reasonable contractual arrangements with parties in interest for the provision of services necessary for the plan's operations, the statutory exemption does not extend to an act of self-dealing described in section 406(b) of ERISA. A fiduciary performing both investment management and brokerage services for the same plan is in a position where his or her decision, as an exercise of fiduciary discretion, to engage in a portfolio trade on behalf of the plan would result in the plan's paying the fiduciary an additional fee for performance of the brokerage services. In the Department's view, such a decision involves an act of self-dealing prohibited by section 406(b) of ERISA and not exempt by section 408(b)(2) of ERISA. The Department of Labor has authority pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code to grant either individual or class exemptions. In order to grant a class exemption under ERISA section 408(a) and Code section 4975(c)(2), the Department must determine that the exemption is:

- (1) administratively feasible,
- (2) in the interests of the plan and its participants and beneficiaries, and
- (3) protective of the rights of participants and beneficiaries of such plan.

In order to ensure that the class exemption is not abused, that the rights of the participants and beneficiaries are protected, and that the exemption's conditions are being complied with, the Department often requires minimal information collections pertaining to the affected transactions, such as advance disclosures to and approval by an independent fiduciary, although such conditions are not currently applicable to transactions involving individual retirement accounts (IRAs).

Amendments Related to 2015 Conflict of Interest Rule

The Department is proposing to amend PTE 86-128 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 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 that was adopted in 1975 with one that more appropriately distinguishes between the sorts of advice relationships that should be treated as fiduciary in nature and those that should not.

The proposed amendment to PTE 86-128 would increase the safeguards of the exemption in a number of ways. The amendment would require fiduciaries relying on the exemption to adhere to certain “Impartial Conduct Standards,” including acting in the best interest of the plans and IRAs when providing advice, and would define the types of payments that are permitted under the exemption. The amendment would restrict relief under this exemption to IRA fiduciaries that have discretionary authority or control over the management of the IRA’s assets (i.e., investment managers). The amendment also would take the additional step of imposing the exemption’s conditions on those fiduciaries when they engage in transactions with IRAs.

The Department is proposing a new Section I(b) of PTE 86-128 that would provide relief for the transaction currently covered in PTE 75-1, Part II(2). New Section I(b) would permit a broker-dealer fiduciary to use its authority to cause a plan (or IRA, as applicable) to purchase shares of a mutual fund from the broker-dealer fiduciary, acting as principal, where the shares were acquired solely to cover the plan’s prior order, and for the receipt of a commission by such fiduciary in connection with the transaction.² Consistent with the exemption originally provided for this transaction in PTE 75-1, Part II(2), relief is not available if such fiduciary is a principal underwriter for, or affiliated with, such investment company. The Department intends that, with respect to this new proposed transaction, the compensation to the broker-dealer will be limited to the commission (i.e., sales load) disclosed by the mutual fund, but may be paid either by the plan or the mutual fund.

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.*

Section III of the class exemption imposes the following information collection requirements on fiduciaries of employee benefit plans that effect or execute securities transactions (broker-dealers) and the independent plan fiduciary authorizing the plan to engage in the transactions with the broker-dealer (authorizing fiduciary) under the conditions contained in the exemption:

- 1) The authorizing plan fiduciary must provide the broker-dealer with an advance written authorization for the transactions;
- 2) The broker-dealer must provide the authorizing fiduciary with information necessary to determine whether an authorization should be made, including a

² Section I(b) would provide relief from the restrictions of ERISA section 406(a)(1)(A) and (D) and 406(b) and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A), (D), (E) and (F). The proposed new covered transaction, as a principal transaction, involves the purchase and sale of shares between a plan and a party in interest, and the transfer of a plan asset to a party in interest, which would violate the cited provisions of ERISA section 406(a) and Code section 4975(c)(1)(A) and (D) in the absence of an exemption.

copy of the exemption, a form for termination, a description of the broker-dealer's brokerage placement practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests;

- 3) The broker-dealer must provide the authorizing fiduciary with a termination form, at least annually, explaining that the authorization is terminable at will, without penalty to the plan, and that failure to return the form will result in continued authorization for the broker-dealer to engage in securities transactions on behalf of the plan;
- 4) The broker-dealer must provide the authorizing fiduciary with either (a) a confirmation slip for each individual securities transaction within 10 days of the transaction containing the information described in Rule 10b-10(a)(1-7) under the Securities Exchange Act of 1934, 17 CFR 240.10b-10 or (b) a quarterly report containing certain financial information including the total of all transaction-related charges incurred by the plan;
- 5) The broker-dealer must provide the authorizing fiduciary with an annual summary of the confirmation slips or quarterly reports, containing all security transaction-related charges, the brokerage placement practices (if changed), and a portfolio turnover ratio; and
- 6) A broker-dealer who is a discretionary plan trustee must provide the authorizing fiduciary with an annual report showing separately the commissions paid to affiliated brokers and non-affiliated brokers, on both a total dollar basis and a cents-per-share basis.

These requirements are designed as appropriate safeguards to ensure the protection of the plan assets involved in the transactions, which, in the absence of the class exemption, would not be permitted. These safeguards rely on the prior authorization and monitoring of the broker-fiduciary's activities by a second plan fiduciary that is independent of the first.

Without the relief provided by this class exemption, broker-fiduciaries who provide research and investment management services to accounts for which they effect transactions for the purchase and sale of securities, may be barred by ERISA from providing these combined services to employee benefit plans. Without this class exemption, these sales could not continue, causing disruption of the existing business practices of plans and the businesses that serve them.

Amendments Related to 2015 Conflict of Interest Rule

The Department is proposing to amend Section III to allow financial institutions the choice to either obtain an annual reauthorization from the authorizing fiduciary to engage in the transactions or provide the authorizing fiduciary with a termination form, at least annually, explaining that the authorization is terminable at will, without penalty to the plan, and that failure to return the form will result in continued authorization for the broker-dealer to engage in securities transactions on behalf of the plan.

The Department is proposing to amend Section VI to require 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 conditions of this exemption have been met.

The amendments to Section III would be used by plan participants and plan officials to further ensure the protection of the plan assets involved in the transactions. The recordkeeping in Section VI would be used by (1) the Department, (2) the Internal Revenue Service, (3) plan participants and beneficiaries and IRA owners, (4) any employer of plan participants and beneficiaries, and (5) any employee organization any of whose members are covered by such plan to determine whether the conditions of this exemption have been met.

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). 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 under Rule 10b-10 of the Securities Exchange Act of 1934. The requirements included in this class exemption have been designed so that compliance with the Securities and Exchange Commission (SEC) requirements could be used where applicable. Therefore, the requirements of this class exemption are not duplicative.

Amendments Related to 2015 Conflict of Interest Rule

It is likely that duplication of recordkeeping requirements exist with some State and federal banking and securities laws. However, no duplicate recordkeeping is required because entities are able to satisfy the requirements of both the exemption and of the other applicable laws through one recordkeeping arrangement.

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

This exemption is needed primarily for brokers in large institutions, who would be most likely to engage in the covered transactions. Even if the broker works for a small firm, the information collection is a minimal burden needed to protect the assets of the employee benefit plan.

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 disclosure requirements of PTE 86-128 are only mandatory if a fiduciary that is a broker-dealer or who has a broker-dealer affiliate wishes to utilize the class exemption. The frequency is dependent on the occurrence of such transactions, not on a predetermined time period. This exemption was requested by in part by the Securities Industry Association on behalf of its members.

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.*

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.

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.*

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.*
- *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.*

Section III of the class exemption imposes the following information collection requirements on fiduciaries of employee benefit plans that effect or execute securities transactions (broker-dealers) and the independent plan fiduciary authorizing the plan to engage in the transactions with the broker-dealer (authorizing fiduciary) under the conditions contained in the exemption:

- 1) The authorizing plan fiduciary must provide the broker-dealer with an advance written authorization for the transactions;
- 2) The broker-dealer must provide the authorizing fiduciary with information necessary to determine whether an authorization should be made, including a copy of the exemption, a form for termination, a description of the broker-dealer's brokerage placement practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests;
- 3) The broker-dealer must provide the authorizing fiduciary with a termination form, at least annually, explaining that the authorization is terminable at will, without penalty to the plan, and that failure to return the form will result in continued authorization for the broker-dealer to engage in securities transactions on behalf of the plan;
- 4) The broker-dealer must provide the authorizing fiduciary with either (a) a confirmation slip for each individual securities transaction within 10 days of the transaction containing the information described in Rule 10b-10(a)(1-7) under the Securities Exchange Act of 1934, 17 CFR 240.10b-10 or (b) a quarterly report containing certain financial information including the total of all transaction-related charges incurred by the plan;
- 5) The broker-dealer must provide the authorizing fiduciary with an annual summary of the confirmation slips or quarterly reports, containing all security transaction-related charges, the brokerage placement practices (if changed), and a portfolio turnover ratio; and
- 6) A broker-dealer who is a discretionary plan trustee must provide the authorizing fiduciary with an annual report showing separately the commissions paid to affiliated brokers and non-affiliated brokers, on both a total dollar basis and a cents-per-share basis.

Using the 2012 Annual Return/Report of Employee Benefit Plan (Form 5500) data, it is estimated that there are approximately 677,000 ERISA covered pension plans. The Department has estimated that about 25.6% of these plans (173,000 plans) use a financial institution fiduciary that is potentially eligible to take advantage of the exemption.

The Department estimates that 2,800 financial institutions will use this exemption.³ It is further assumed that 6.5 percent⁴ of plans (11,000 plans) in a year are new plans or existing plans entering into new arrangements with covered fiduciaries in a year.

Wage rates are assumed as the following:⁵ an in-house rate of \$129.94 for legal professionals⁶ and \$30.42 for clerical staff.⁷ All dollar amounts are measured in 2015 dollars.

1) Written authorization from the authorizing plan fiduciary to the broker-dealer

Authorizing fiduciaries of new plans entering into a relationship with a broker-dealer are required to provide the broker-dealer with an advance written authorization to perform transactions for the plan. The Department estimates that there are approximately 11,000 new plans or plans entering new arrangements each year. Therefore, the Department estimates that approximately 11,000 authorizing fiduciaries are expected to send an advance written authorization. It is assumed that a legal professional will spend one hour per plan reviewing the disclosures and preparing an authorization form. This results in an hour burden of 11,000 hours⁸ with an equivalent cost of \$1.5 million.⁹

To produce and distribute the authorization, the Department assumes that 38 percent will be distributed electronically through traditional electronic methods at no additional

³ 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 that could use the PTE in small numbers.

⁴ This estimate is from the 2012 Form 5500 data set.

⁵ 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>).

⁶ Legal Professional (23-1011): $\$63.46(2013 \text{ BLS Wage rate}) / 0.69(\text{Ecec ratio}) * 1.35(\text{Overhead Load Factor})$

$* 1.023(\text{Inflation rate}) ^2(\text{Inflated 2 years from base year}) = \129.94

⁷ Secretaries, Except Legal, Medical, and Executive (43-6014): $\$16.35(2013 \text{ BLS Wage rate}) / 0.675(\text{Ecec ratio})$

$* 1.2(\text{Overhead Load Factor}) * 1.023(\text{Inflation rate}) ^2(\text{Inflated 2 years from base year}) = \30.42

⁸ 11,000 plans x 1 hour per plan = 11,000 hours

⁹ 11,000 hours x \$129.94 per hour = \$1.5 million

burden, and the remaining 62 percent will be mailed. For paper authorizations, the Department assumes that clerical staff will spend two minutes preparing and sending the authorization resulting in an hour burden of approximately 200 hours¹⁰ with an equivalent cost of \$7,000.¹¹

In total, as seen in the table below, the written authorization requirement is expected to result in a total hour burden of 11,000 hours with an equivalent cost of \$1.5 million.

Activity	Burden Hours	Equivalent Burden Cost
Legal	11,000	\$1.5 million
Clerical	200	\$7,000
Total	11,000	\$1.5 million

2) Provision of materials for evaluation of authorization of transaction

Prior to a written authorization being made, the authorizing fiduciary must be provided by the financial institution with a copy of the exemption, a form for termination of authorization, a description of broker’s placement practices, and any other reasonably available information. This information is assumed to be readily available.¹² To produce and distribute the materials, the Department assumes that 38 percent will be distributed electronically through traditional electronic methods at no additional burden, and the remaining 62 percent will be mailed. For paper copies, a clerical staff member is assumed to require two minutes to prepare and mail the required information to the plan fiduciary. This information will be sent to the 11,000 plans entering into an agreement with a financial institution, and based on the above, the Department estimates that this requirement results in an hour burden of 200 hours¹³ with an equivalent cost of \$7,000.¹⁴

3) Provision of a termination form

Each of the 173,000 plans’ authorizing fiduciaries must be supplied annually with a form expressly providing an election to terminate the written authorization. It is assumed that legal professionals with each financial institution will spend 1 hour preparing the

¹⁰ 11,000 plans x 62 percent paper x 2 minutes per plan = 200 hours

¹¹ 200 hours x \$30.42 per hour = \$7,000

¹² The cost of preparing the termination form is accounted for under requirement three.

¹³ 11,000 plans x 62 percent paper x 2 minutes per plan = 200 hours

¹⁴ 200 hours x \$30.42 = \$7,000

termination forms, which results in an hour burden of 2,800 hours¹⁵ with an equivalent cost of \$364,000.¹⁶

To produce and distribute the termination form, the Department assumes that 38 percent will be distributed electronically through traditional electronic methods at no additional burden, and the remaining 62 percent will be mailed. The Department estimates that clerical staff will spend two minutes per plan preparing and distributing the paper termination forms resulting in an hour burden of 3,600 hours¹⁷ with an equivalent cost of \$109,000.¹⁸

In total, as seen in the table below, providing the annual termination form is expected to impose an hour burden of 6,000 hours with an equivalent cost of \$473,000.

Activity	Burden Hours	Equivalent Burden Cost
Legal	2,800	\$364,000
Clerical	3,600	\$109,000
Total	6,000	\$473,000

4) Transaction Reporting

The broker-dealer engaging in a covered transaction must furnish the authorizing fiduciary with either a conformation slip for each securities transaction or a quarterly report containing specified information. As discussed above, the provision of the confirmation already is required under SEC regulations. Therefore, if the transaction reporting requirement is satisfied by sending conformation slips, no additional hour burden will occur.

It is estimated that 60 percent of plans receive quarterly reports. The collecting and generation of the information for the quarterly report is reported as a cost burden. To produce and distribute the quarterly report, the Department assumes that 38 percent will be distributed electronically through traditional electronic methods at no additional burden, and the remaining 62 percent will be mailed. Clerical staff may be required to prepare and distribute the reports. It is assumed that clerical staff will spend one minute per plan for preparing and mailing each of the quarterly reports to the 104,000 plans that

¹⁵ 2,800 financial institutions x 1 hour per financial institution = 2,800 hours

¹⁶ 2,800 hours x \$129.94 per hour = \$364,000

¹⁷ 173,000 plans x 62 percent paper x 2 minutes per plan = 3,600 hours

¹⁸ 3,600 hours x \$30.42 per hour = \$109,000

receive quarterly reports.¹⁹ This results in an hour burden of 9,000 hours²⁰ and equivalent cost of \$261,000.²¹

5) Annual Statement

In addition to the transaction reporting requirement, broker-dealers are required to send an annual report to each authorizing plan fiduciary containing the same information as the quarterly report and also containing all security transaction-related charges, the brokerage placement practices, and a portfolio turnover ratio. Collecting and generating the information required for the annual report is reported as a cost burden. In addition, it is assumed that the information that must be sent annually could be sent together; therefore, the clerical staff hours required to prepare and distribute the report has been included with the provision of annual termination form requirement. Therefore, no additional hour burden has been reported.

6) Report of Commissions Paid

A discretionary trustee must provide an authorizing fiduciary with an annual report showing separately the commissions paid to affiliated brokers and non-affiliated brokers, on both a total dollar basis and a cents-per-share basis. The collecting and generation of the information for the quarterly report is reported as a cost burden. The clerical hour burden to prepare and distribute the report is included with the provision of annual termination form requirement, because both items are required to be sent annually.

Summary

In total, the conditions of this exemption will result in the production of 958,000 disclosures. Electronic methods will be used to distribute 38 percent of disclosures, at de minimis burden, while 594,000 disclosures will be on paper. Production and distribution of paper disclosures will result in an overall burden of 27,000 hours with an equivalent cost of \$2.8 million.

Activity	Burden Hours	Equivalent Burden
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¹⁹ 173,000 plans x 60 percent receiving quarterly reports = 104,000 plans receiving quarterly reports

²⁰ 104,000 plans receiving quarterly reports x 62 percent paper x 2 minutes per plan x 4 reports per year = 9,000 hours

²¹ 9,000 hours x \$30.42 per hour = \$261,000

		Cost
1. Written authorization from the authorizing plan fiduciary to the broker-dealer	11,000	\$1.5 million
2. Provision of materials for evaluation of authorization of transaction	200	\$7,000
3. Provision of an annual termination form	6,000	\$473,000
4. Transaction Reporting	9,000	\$261,000
5. Annual Statement	0	\$0
6. Report of Commissions Paid	0	\$0
Total	27,000	\$2.2 million

Amendments Related to 2015 Conflict of Interest Rule

The amended PTE 86-128 would restrict relief under this exemption to IRA fiduciaries that have discretionary authority or control over the management of the IRA’s assets (i.e., investment managers). The Department assumes that the number of IRAs with discretionary asset managers using this exemption is de minimis. Therefore, the Department concludes that the increased burden associated with this proposed amendment is de minimis.

The Department is proposing to amend Section III to allow financial institutions the choice to either obtain an annual reauthorization from the authorizing fiduciary to engage in the transactions or provide the authorizing fiduciary with a termination form, at least annually, explaining that the authorization is terminable at will, without penalty to the plan, and that failure to return the form will result in continued authorization for the broker-dealer to engage in securities transactions on behalf of the plan. The Department assumes that given the choice between obtaining affirmative consent or sending an annual termination form, all financial institutions will choose the termination form option. Therefore, the Department concludes that this amendment will create no additional burden.

The Department is proposing to amend Section VI to require 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 conditions of this exemption have been met.

Each of the 2,800 financial institutions will maintain these records on behalf of their client plans in their normal course of business. 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 at an hourly rate of \$125.95²² to organize and collate the documents. This results in 1,400 hours of burden²³ at an equivalent cost of \$176,000.²⁴ The recordkeeping requirement will also require 15 minutes of clerical time to make the documents available for inspection during normal business hours, resulting in 700 hours of burden²⁵ at an equivalent cost of \$21,000.²⁶

In total, as seen in the table below, the recordkeeping requirement is expected to impose an hour burden of 2,000 hours with an equivalent cost of \$190,000.

Activity	Burden Hours	Equivalent Burden Cost
Financial Manager	1,400	\$176,000
Clerical	700	\$21,000
Total	2,000	\$197,000

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).*

As discussed in item 12 above, the exemption imposes six information requests on authorizing fiduciaries and broker-dealers to qualify for the relief provided in the exemption. The cost burden that is associated with complying with these ICRs is discussed below. These estimates are in addition to the hour burden estimates discussed in item 12.

The Department has used the same assumptions as were used in determining the hour burden. In addition, the Department assumes that electronic means will be used to deliver 38 percent of the required information with no associated cost burden. For the required information not sent electronically, the Department estimates that a cost of 5

22 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

23 2,800 financial institutions x 30 minutes = 1,400 hours

24 1,400 hours x \$125.95 per hour = \$176,000

25 2,800 financial institutions x 15 minutes = 700 hours

26 700 hours x \$29.60 per hour = \$21,000

cents per page for paper and printing costs will be assessed. Postage of 49 cents per mailing will also be incurred.

The annual cost burden is calculated as follows:

- 1) Written authorization from the authorizing plan fiduciary to the broker-dealer

Plans must issue in writing an authorization to the financial institution prior to a transaction occurring. It is assumed that the authorization will include two pages. New plans and plans that enter into a new agreement with a broker-fiduciary will have to send the authorization; therefore about 11,000 plans will have to send the authorization each year with 38 percent being sent electronically. Paper authorizations will cost \$0.59 each, which results in a cost burden of approximately \$4,000.²⁷

- 2) Provision of materials for evaluation of authorization of transaction

New plans and plans entering into a new agreement must also receive required information from their financial institutions. This information includes a copy of the exemption, a termination form, a description of the broker-fiduciary's placement practice, and other requested item. This information is assumed to include seven pages. Once again, approximately 11,000 authorizing plan fiduciaries will receive this information and 38 percent will receive the information electronically at no cost. Paper distribution will cost \$0.84 each, which results in a cost burden of about \$6,000.²⁸

- 3) Provision of an termination form

Annually, a broker-dealer must send the authorizing plan fiduciary a termination form. Authorizing fiduciaries of all 173,000 plans will receive this form and that 38 percent will be sent electronically at no cost. It is assumed that the form will be two pages, so paper copies will cost \$0.59 each, which results in a cost burden of approximately \$63,000.²⁹

- 4) Transaction Reporting

27 11,000 authorizations x 62 percent paper x \$0.59 = \$4,000

28 11,000 materials packages x 62 percent paper x \$0.84 = \$6,000

29 173,000 termination forms x 62 percent paper x \$0.59 = \$63,000

Two options exist to satisfy the transaction reporting. Confirmation slips may be sent to the authorizing plan fiduciary or a quarterly report may be sent that includes the specified information. It is assumed that for plans that receive the slips, no additional costs will be incurred, because the information already is required to be disclosed by the SEC.

It is assumed that 60 percent of the authorizing plan fiduciaries will receive a two page quarterly report instead of the confirmation slips, and that 38 percent of the quarterly report will be sent electronically. Paper reports will cost \$0.59 each. Therefore, the cost burden of mailing the quarterly transaction report is estimated to be nearly \$152,000.³⁰

5) Annual Statement

An annual statement is also required to be delivered by the financial institution to the 173,000 authorizing plan fiduciaries. The statement is an annual summary of the transaction reports and contains all transaction-related charges, a description of brokerage placement practices and the portfolio turnover ratio. It is assumed the report contains five pages and 38 percent are sent electronically. Postage cost is not included here as it is assumed that the annual statement will be sent with the annual termination form and postage costs are accounted for there. The paper and print costs are \$0.25 each. The cost burden for the paper and print costs are about \$27,000.³¹

6) Report of Commissions Paid

A financial institution who is a discretionary trustee must provide the authorizing plan fiduciary with an annual report showing commissions paid to affiliated and non-affiliated brokers, on both a total dollar and a cents-per-share basis. The report is assumed to be two pages, and the Department estimates that 38 percent of the reports will be sent electronically. As the report is sent annually, it is assumed that it could be sent with the transaction report, therefore postage costs are not counted here. The paper and print costs are \$0.10 each. Therefore, the cost burden of the paper and print costs is nearly \$11,000.³²

Requirements 4, 5, and 6 also require the financial institution to report specific transaction fees and information to the plan fiduciaries. The information must be tracked, assigned to specific plans, and reported. It is assumed that it costs the financial

³⁰ 173,000 plans x 60 percent receiving quarterly reports x 62 percent paper x 4 reports per year x \$0.59 = \$152,000

³¹ 173,000 plans x 62 percent paper x \$0.25 = \$27,000.

³² 173,000 plans x 62 percent paper x \$0.10 = \$11,000

institution \$3 per plan to track this information.³³ With approximately 173,000 affected plans, this results in a cost burden of approximately \$520,000 annually.³⁴

Summary

In total, the conditions of this exemption will result in the production of 958,000 disclosures. Electronic methods will be used to distribute 38 percent of disclosures, at de minimis cost, while 594,000 disclosures will be on paper. As seen in the table below, tracking and reporting costs for the disclosures, plus production of paper disclosures will total approximately \$1.1 million.

Activity	Cost
1. Written authorization from the authorizing plan fiduciary to the broker-dealer	\$4,000
2. Provision of materials for evaluation of authorization of transaction	\$6,000
3. Provision of an annual termination form	\$63,000
4. Transaction Reporting	\$152,000
5. Annual Statement	\$27,000
6. Report of Commissions Paid	\$11,000
4-6. Tracking and Reporting	\$520,000
Total	\$783,000

Amendments Related to 2015 Conflict of Interest Rule

The amended PTE 86-128 would restrict relief under this exemption to IRA fiduciaries that have discretionary authority or control over the management of the IRA’s assets (i.e., investment managers). The Department assumes that the number of IRAs with discretionary asset managers using this exemption is de minimis. Therefore, the Department concludes that the increased burden associated with this proposed amendment is de minimis.

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 ongoing costs to the Federal government.

³³ This estimate is based on information from an RFI and from industry sources.

³⁴ 173,000 plans x \$3 = \$520,000

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

This analysis updates wage rates, postage rates, and counts of plans with broker-dealer relationships, which are the likeliest users of the exemption and the recipients of the disclosures.³⁵ It also includes the 2,000 hours of burden resulting from the proposed amendments.

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.*

This is not a collection of information for statistical use.

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."*

Not applicable; no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

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

³⁵ For the prior submission, the Department estimated that 35 percent of plans have relationships with broker-dealers. For this submission, the Department estimates that 25.6 percent of plans have relationships with broker-dealers. Both estimates are weighted averages of the Department's estimates for DB plans and DC plans with relationships with broker-dealers. The Department assumes that approximately 20 percent of DB plans have relationships with broker-dealers. As a proxy for the share of DC plans with broker-dealer relationships, the Department uses the sum of the percent of load mutual funds in 401(k) plans and the percent of 401(k) stock mutual fund assets paying 12b-1 fees between >.0 to 0.25. Both data are published by the Investment Company Institute. The Department used June 2011 data for the prior submission, which suggested that 36 percent of DC plans have broker-dealer relationships. For this submission the Department used July 2014 data, which suggested that 26 percent of DC plans have broker-dealer relationships.