Best Interest Contract Exemption
OMB Control Number 1210-0156
April 2016

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 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.*

In the absence of an exemption, the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (Code) generally prohibit fiduciaries from using their authority to affect or increase their own compensation. ERISA section 406(b) and Code section 4975(c)(1)(E)-(F) generally prohibit a fiduciary from dealing with the income or assets of a plan or IRA in his or her own interest or his or her own account and from receiving payments from third parties in connection with transactions involving the plan or IRA. Parallel regulations issued by the Departments of Labor and the Treasury explain that these provisions impose on fiduciaries of plans and IRAs a duty not to act on conflicts of interest that may affect the fiduciary's best judgment on behalf of the plan or IRA. Under these provisions, a fiduciary may not cause a plan or IRA to pay an additional fee to such fiduciary, or to a person in which such fiduciary has an interest that may affect the exercise of the fiduciary's best judgment.

Investment professionals typically receive compensation for services to retirement investors in the retail market through a variety of arrangements, which would typically violate the prohibited transaction rules applicable to plan fiduciaries. These include commissions paid by the plan, participant or beneficiary, or IRA, or commissions, sales loads, 12b-1 fees, revenue sharing and other payments from third parties that provide investment products. A fiduciary's receipt of such payments would generally violate the prohibited transaction provisions of ERISA section 406(b) and Code section 4975(c)(1)(E) and (F) because the amount of the fiduciary's compensation is affected by the use of its authority in providing investment advice, unless such payments meet the requirements of an exemption.

The Secretary of Labor may grant and amend administrative exemptions from the prohibited transaction provisions of ERISA and the Code.[1] Before granting an exemption, the Department must find that the exemption is administratively feasible, in the interests of plans, their participants and beneficiaries and IRA owners, and protective of the rights of participants and beneficiaries of such plans and IRA owners.

1 Regulations at 29 CFR section 2570.30 to 2570.52 describe the procedures for applying for an administrative exemption under ERISA. Code section 4975(c)(2) authorizes the Secretary of the Treasury to grant exemptions from the parallel prohibited transaction provisions of the Code. Reorganization Plan No. 4 of 1978 (5 U.S.C. app. at 214 (2000)) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under Code section 4975 to the Secretary of Labor.

The Department grants this prohibited transaction class exemption (PTE) in connection with its publication of a final regulation defining who is a "fiduciary" of an employee benefit plan under ERISA as a result of giving investment advice to a plan or its participants or beneficiaries (Regulation). The final rule also applies to the definition of a "fiduciary" of a plan (including an individual retirement account (IRA)) under the Code. The Regulation replaces an existing regulation dating to 1975. The Regulation takes into account the advent of 401(k) plans and IRAs, the dramatic increase in rollovers, and other developments that have transformed the retirement plan landscape and the associated investment market over the four decades since the existing regulation was issued. In light of the extensive changes in retirement investment practices and relationships, the Regulation updates existing rules to distinguish more appropriately between the sorts of advice relationships that should be treated as fiduciary in nature and those that should not.

The Best Interest Contract Exemption is designed 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. 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, may fall within these prohibitions when received by fiduciaries as a result of transactions involving advice to the plan, plan participants and beneficiaries, and IRA owners. To facilitate continued provision of advice to such retail investors under conditions designed to safeguard the interests of these investors, the exemption allows certain investment advice fiduciaries, including investment advisers registered under the Investment Advisers Act of 1940 or state law, broker-dealers and insurance agents, and their agents and representatives, to receive these various forms of compensation that, in the absence of an exemption, would not be permitted under ERISA and the Code.

Rather than create a set of highly prescriptive transaction-specific exemptions, which has been the Department's usual approach, the exemption flexibly accommodates a wide range of compensation practices, while minimizing the harmful impact of conflicts of interest on the quality of advice. As a condition of receiving compensation that would otherwise be prohibited, individual advisers and the financial institutions that employ them must adhere to conditions designed to mitigate the harmful impact of conflicts of interest. By taking a standards-based approach, the exemption permits firms to continue to rely on many common compensation and fee practices, as long as they adhere to basic fiduciary standards aimed at ensuring that their advice is in the best interest of their customers and take certain steps to minimize the impact of conflicts of interest.

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.

As a condition of receiving compensation that would otherwise be prohibited under ERISA and the Code, Section II of the exemption requires financial institutions to provide a written statement of their fiduciary status, and the fiduciary status of their advisers, to retirement investors. The financial institution and advisers must adhere to enforceable standards of fiduciary conduct and fair dealing with respect to their advice, and must adopt certain written anti-conflict policies and procedures. In the case of IRAs and non-ERISA plans, the exemption requires that the standards of fiduciary conduct be set forth in an enforceable contract with the retirement investor. Under the exemption's terms, financial institutions are not required to enter into a contract with ERISA plan investors, but they are obligated to adhere to these same standards of fiduciary conduct, which the investors can effectively enforce pursuant to sections 502(a)(2) and (3) of ERISA.

Financial institutions that receive only a level fee after they are retained (Level Fee Fiduciaries) will be required to provide the written statement of fiduciary status to retirement investors and document the reasons for a recommendation to rollover from an ERISA plan to an IRA, and for a recommendation to switch from a commission-based account to a fee-based account, but will not be subject to any of the other paperwork conditions of the exemption.

The exemption requires disclosure of material conflicts of interest and basic information relating to those conflicts and the advisory relationship in Sections II and III. The exemption requires contract disclosures and contracts (Section II(e)), pre-transaction (or point of sale) disclosures (Section III(a)), and web-based disclosures (Section III(b)). One of the chief aims of the disclosures is to ensure that the retirement investor is fairly informed of the adviser's and financial institution's conflicts of interest. The final exemption adopts a tiered approach, generally providing for automatic disclosure of basic information on conflicts of interest and the advisory relationship, but requiring more detailed disclosure, free of charge, upon request. The final exemption requires disclosure of the information retirement investors need to assess conflicts of interest and compensation structures, while reducing compliance burden.

Section IV of the exemption applies to financial institutions and advisers that restrict recommendations, in whole or in part, to investments that are proprietary products or that generate third party payments. Such financial institutions must prepare additional documentation regarding the limitations on investment recommendations, and their conclusions that the limitations will not cause the financial institution or its advisers to receive compensation in excess of reasonable compensation or to recommend imprudent investments.

Before the financial institution receives compensation permitted under the PTE, Section V(a) requires the financial institution to provide notice to the Department of its intent to rely on the PTE. Under Section V(b) and (c) of the exemption, the financial institution must maintain for six years records necessary for the Department and certain other entities, including plan fiduciaries, participants, beneficiaries and IRA owners, to determine whether the conditions of the exemption have been satisfied. These records would include, for example, records concerning the financial institution's incentive and compensation practices for its advisers, the financial institution's policies and procedures, any documentation governing the application of the policies and procedures, the documents prepared under Section IV (proprietary products and third party payments), contracts entered into with retirement investors, and disclosure documentation.

Finally, Section IX provides a transition period under which relief from these prohibitions is available for financial institutions and advisers during the period between the Applicability Date (one year after the date of publication) and January 1, 2018 (the "Transition Period"). For the Transition Period, full relief under the exemption will be available for financial institutions and advisers subject to more limited conditions, including that the financial institutions provide a disclosure with a written statement of fiduciary status and certain other information to all retirement investors (in ERISA plans, IRAs, and non-ERISA plans) prior to or at the same time as the execution of recommended transactions.

These contract, policies and procedures, and disclosure requirements are designed as appropriate safeguards to ensure the protection of the plan and IRA assets involved in the transactions, which, in the absence of the class exemption, would not be permitted. Moreover, the recordkeeping requirement is intended to be protective of rights of plan participants and beneficiaries and IRA owners by ensuring they and the Department can confirm that the conditions of the exemption has been satisfied.

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.

As further discussed in items 12 and 13 below, the Department has taken into account that some of the disclosures and written authorizations will be delivered electronically.

The exemption provides that a retirement investor's assent to the contract may be evidenced by electronic signature and that the required disclosures may be provided electronically. All financial institutions must notify the Employee Benefits Security Administration (EBSA) of the Department of Labor of their intention to rely on the exemption. The notice must be provided electronically.

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 disclosure requirements of this class exemption are similar in some respects to the information required to be disclosed by the Securities and Exchange Commission (SEC). To the extent the disclosure requirements overlap, compliance with the SEC disclosure requirements can be used to satisfy the exemption conditions. It is also 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. The Department is not aware of any other already available information that could be used or modified for the ICRs associated with the exemption.

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. In response to comments received on the proposed exemption, the Department has significantly revised the information collection requirements in the final exemption by requiring only the most salient information about the recommended investment and material conflicts of interest to be disclosed and eliminating provisions in the proposal that would have required (1) individually tailored calculations to be made for pre-transaction and (2) financial institutions to maintain specific data for 6 years regarding investment inflows, outflows, and holdings by retirement plan investors and returns on their portfolios. It is necessary for the information collection to apply equally to large and small entities to ensure that participants and beneficiaries and IRA owners are protected when their plans and IRAs engage in transactions that otherwise would be prohibited under ERISA and the Code.

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 that 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 received on the proposed exemption, including from

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.

The contract, policies and procedures, disclosure and recordkeeping requirements are necessary to ensure that the exemption is protective of the rights of participants and beneficiaries as required under ERISA section 408(a) and Code section 4975(c)(2).

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.

Under the recordkeeping provisions of the final exemption, financial institutions are not required to disclose records that are privileged trade secrets or privileged commercial or financial information to plan fiduciaries, participants or beneficiaries, IRA owners, or their representatives. However, if the financial institution refuses to disclose information

on the basis that the information is exempt from disclosure, the financial institution must, by the close of the thirtieth (30th) day following the request, provide a written notice advising the requestor of the reasons for the refusal and that the Department may request such information.

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 provided the public with 60 days to comment on the information collection and burden estimates. The Department received over 3,000 public comments in response to the proposed rule and accompanying proposed PTEs and proposed amendments to PTEs. The public comments were posted on the Department's website at the following two addresses: http://www.dol.gov/ebsa/regs/cmt-1210-AB32-2.html and http://www.dol.gov/ebsa/regs/cmt-1210-ZA25.html.

Additionally, the Department held four days of public hearings during August 2015 on the proposed rule and accompanying proposed PTEs and proposed amendments to PTEs. Transcripts, archived video, and other hearing materials were posted on the Department's website here: http://www.dol.gov/ebsa/regs/1210-AB32-2-Hearing.html.

In the public comments and the public hearing, the Department received considerable feedback regarding the workability of the proposed rule and accompanying proposed PTEs and proposed amendments to PTEs. Much of this workability discussion centered on the burden associated with the information collections.

In response to the commenters, the Department has significantly revised the transaction disclosure requirement in the final PTE to reduce burden, focus on the most salient information about the contractual relationship and material conflicts of interest, and eliminate the highly tailored calculation above. More detailed disclosures are required only upon request to Retirement Investors who are interested in receiving such detail. The final PTE requires the transaction disclosure to:

- State the Best Interest standard of care owed by the adviser and financial institution to the rRetirement iInvestor; disclose any material conflicts of interest with respect to the recommended transaction; and the existence and nature of any financial interest that the financial institution and adviser have in the recommended transaction;

- Inform the retirement investor that the investor has the right to obtain copies of the financial institution's required written policies and procedures, as well as specific disclosure of costs, fees and other compensation associated with the purchase, sale, exchange and holding of the investment product, including the direct and indirect compensation payable to the adviser and financial institution in connection with the recommended transaction.[2] The information required under this section must be provided to the retirement investor before the transaction, if requested prior to the transaction, and if the request occurs after the transaction, the information must be provided within five business days after the request; and

- Advise the retirement investor of the financial institution's website required by the exemption and its address, and inform the retirement investor that: (i) model contract disclosures updated as necessary on a quarterly basis are maintained on the website, and (ii) the financial institution's written policies and procedures are available free of charge on the website.

These pre-transaction disclosures do not require individually tailored calculations, permit the preparation of standardized materials that can be uniformly presented to numerous investors, and do not have to be repeated for subsequent recommendations by the adviser and financial institution of the same investment product within one year, unless there are material changes in the subject of the disclosure.

As revised, the pre-transaction disclosure adopted in the final PTE involves significant reductions in burden and costs, compared with the proposed pre-transaction disclosure. The proposed PTE would have required a customized disclosure for each recommended investment and the adviser and financial institution would have been required to calculate cost projections based on the retirement investor's dollar amount, and convert the costs into dollar figures over the three holding periods. In comparison, the pre-transaction disclosure in the final PTE is more general and requires more specific information only to be provided upon request. Even if more specific information is requested, the final PTE does not require calculation of a specific amount expressed in dollars, but rather allows the information to be disclosed in dollar amounts, percentages, formulas, or other means reasonably designed to present materially accurate disclosure of their scope, magnitude,

2 The costs, fees, and other compensation may be described in dollar amounts, percentages, formulas, or other means reasonably designed to present materially accurate disclosure of their scope, magnitude, and nature in sufficient detail to permit the retirement investor to make an informed judgment about the costs of the transaction and about the significance and severity of the material conflicts of interest.

and nature in sufficient detail to permit the Retirement Investor to make an informed judgment about the costs of the transaction and about the significance and severity of the material conflicts of interest.

In response to the commenters, the Department has eliminated the annual disclosure, which was included in the proposed PTE. The Department received numerous comments expressing concerns about the burden, cost, and utility of the annual disclosure requirement. In response to such comments, the Department did not adopt the annual disclosure requirement in the final PTE. The Department is confident that the elimination of the annual disclosure results in a substantial cost reduction. The potential magnitude of the reduction was illustrated in a comment from one of the world's largest financial services providers. The commenter estimated that it would incur total costs to implement the annual disclosure requirement of more than $46 million during the first year and more than $18 million dollars annually thereafter based on a detailed cost assessment process for each affected area of its business.[3] The Department notes that these cost estimates exceed the anticipated costs for large firms to comply with the rule and exemptions that were contained in the SIFMA report. The commenter noted that some of the magnitude of the expense is related to the firm's large size, but many of the same expenses would be incurred by smaller firms as well.

In response to the commenters, the Department has significantly revised the required information provided on the Web. The proposed PTE required a Financial Institution to maintain a Web page, freely accessible to the public, which shows the following information:

(A) The direct and indirect material compensation payable to the adviser, financial institution and any affiliate for services provided in connection with each asset (or, if uniform across a class of assets, the class of assets) that a plan, participant or beneficiary account, or an IRA is able to purchase, hold, or sell through the adviser or financial institution, and that a plan, participant or beneficiary account, or an IRA has purchased, held, or sold within the last 365 days. The compensation may be expressed as a monetary amount, formula or percentage of the assets involved in the purchase, sale or holding; and

(B) The source of the compensation, and how the compensation varies within and among assets.

The financial institution's website would have been required to provide access to the information described in (A) and (B) above in a machine readable format.

3 The comment states that many employees participated in the cost assessment process including, among others, personnel in finance, technology, risk and compliance, product management, analytics, digital communications, distribution services, and platform support.

The Department's intent in proposing the web disclosure was to provide broad transparency about the pricing and compensation structures adopted by financial institutions and advisers. The Department contemplated that the data could be used by financial information companies to analyze and provide information comparing the practices of different advisers and financial institutions. This information would allow retirement investors to evaluate and compare the practices of particular advisers and financial institutions.

A number of commenters viewed the proposed web disclosure as too costly, burdensome, and unlikely to be used by IRA investors, or expressed confidentiality and privacy concerns. In particular, commenters opposed disclosure of adviser-level compensation. A few commenters misinterpreted the proposal to require disclosure of the precise total compensation amounts earned by each individual adviser, and strongly opposed such disclosure. Other commenters took the position that the requirements of the proposed web disclosure would violate other legal or regulatory requirements applicable to advertising, and antitrust law.

The Department has reworked the final web disclosure requirement to be based on a more principles-based approach to address commenters' concerns. The Department accepted the suggestion of a commenter that the web disclosure should contain: a schedule of typical account or contract fees and service charges, and a list of product manufacturers with whom the financial institution maintains arrangements that provide payments to the adviser and financial institution, and a description of the arrangements and their impact on adviser compensation. Another commenter suggested that the Department require disclosure of the financial institution's business model and the material conflicts of interest associated with the model. The commenter further suggested the Department should require disclosure of the financial institution's compensation practices with respect to advisers, including payout grids and non-cash compensation and rewards. The Department has adopted these suggestions as well.

With respect to the level of detail required, the Department has modified the web disclosure requirement by providing financial institutions with considerable flexibility regarding how best to present the information subject to the following principle: the website must "fairly disclose the scope, magnitude, and nature of the compensation arrangements and material conflicts of interest in sufficient detail to permit visitors to the website to make an informed judgment about the significance of the compensation practices and material conflicts of interest with respect to transactions recommended by the financial institution and its advisers."

In response to comments, the final web disclosure requirement also reduces cost and burden by permitting financial institutions to rely on other public disclosures, including

those required by the SEC and/or the Department to provide information required by the exemption by posting them to its website.[4]

The Department is confident that the revision to the web disclosure requirement in the final exemption will result in significant cost savings. The proposed web disclosure required the financial institution to calculate and disclose compensation payable to itself, its advisers and its affiliates with respect to each asset recommended or a class of assets. In the final exemption, the Department reduced this burden by minimizing the specificity of the information provided. The financial institution must disclose its third party compensation arrangements with investment product providers, and its compensation and incentive arrangements with advisers. The final exemption allows such disclosures to be grouped together based on reasonably-defined categories of investment products or classes, product manufacturers, advisers, and arrangements, and financial institutions may disclose reasonable ranges of values, rather than specific values, as appropriate. The final PTE also makes clear that individual adviser compensation is not required to be disclosed. The final PTE also did not adopt the requirement that the information in the web disclosure be made available in machine readable format.

Finally, in response to the commenters, the Department made adjustments to its methodology in calculating burden. These changes are discussed in Questions 12 and 13, where applicable.

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.

4 These commenters argued that the information required to be disclosed as part of the exemption may already be part of other existing disclosures, such as those provided pursuant to ERISA Sections 404(a)(5) and 408(b)(2) and the SEC's required mutual fund summary prospectuses and Form ADV. The Department has accepted these comments insofar as the information required disclosed pursuant to other requirements also satisfies the conditions of the exemption, and so long as the Financial Institution provides an explanation that the information can be found in the disclosures and a link to where it can be found.

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.*

As described in more detail in questions 1 and 2 above, the final class exemption will require financial institutions to enter into a contractual arrangement with retirement investors regarding investments in IRAs and plans not subject to Title I of ERISA (non-ERISA plans), adopt certain written policies and procedures and make certain disclosures to retirement investors (including with respect to ERISA plans), the Department, and on the web, in order to receive relief from ERISA's prohibited transaction rules for the receipt of compensation as a result of a financial institution's and its adviser's advice (i.e., prohibited compensation). Financial institutions that limit recommendations in whole or in part to proprietary products or investments that generate third party payments will have to prepare a written documentation regarding these limitations. Financial institutions will be required to maintain records necessary to prove that the conditions of the exemption have been met. Financial institutions that receive only a level fee after they are retained (Level Fee Fiduciaries) will be required to make disclosures to retirement investors stating their fiduciary status and, justify the recommendation to rollover assets from an ERISA plan to an IRA, or switch from a commission-based arrangement to a fee-based arrangement, but will not be subject to any of the other paperwork conditions of the exemption. In addition, the exemption provides a transition period from the Applicability Date until January 1, 2018. As a condition of relief during the transition period, financial institutions must make a disclosure (transition disclosure) to all retirement investors (in ERISA plans, IRAs, and non-ERISA plans) prior to or at the same time as the execution of recommended transactions.

Based on 2013 Form 5500 data and Internal Revenue Service Statistics of Income data, the Department estimates that the retirement market consists of approximately 44,000 defined benefit (DB) plans, 119,000 defined contribution (DC) plans that do not allow participants to direct investments, 69.9 million DC plan participants in participant-directed plans, and 54.4 million IRA investors. The Department estimates that 20 percent

of DB plans, 24 percent of DC plans,[5] and 55 percent of IRAs[6] have relationships with financial institutions that might seek the full extent of exemptive relief through this exemption. According to the Profit Sharing Council of America's 58th Annual Survey, only 6.42 percent of DC plan participants are offered and utilize investment advice through their plans. Therefore, the Department estimates that approximately 9,000 DB plans,[7] 29,000 DC plans that do not allow participants to direct investments,[8] 1.1 million DC plan participants,[9] 29.9 million IRAs,[10] and a de minimis number of non-ERISA plans will engage in transactions covered under this Exemption.

The Department estimates that approximately 7,000 Financial Institutions will seek the full extent of exemptive relief under this Exemption to engage in transactions with their clients,[11] that 28.7 percent of plans are new clients to a Financial Institution in an

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5 This number is calculated by adding the 13% of load mutual funds in 401(k) plans according to Figure A2 and the 11% 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. 21 No.3 of August 2015

6 Figure A15 of ICI's February 2016 Appendix: Additional Data on IRA Ownership in 2015 states that 82 percent of traditional IRAs with rollovers are held by investment professionals. The Department estimates that 55 percent of these IRAs would be held by financial institutions using the Best Interest Contract Exemption under non-level fee conditions. The remaining 27 percent would be held by RIAs operating under level fee conditions.

7 44,000 DB plans x 20 percent = 9,000 DB plans engaging in transactions.

8 119,000 DC plans x 24 percent = 29,000 DC plans engaging in transactions.

9 69.9 million DC plan participants x 24 percent x 6.42 percent = 1.1 million DC plan participants engaging in transactions.

10 54.4 million IRAs x 55 percent = 29.9 million IRAs engaging in transactions.

11 One commenter questioned the basis for the Department's assumption regarding the number of Financial Institutions likely to use the exemption. According to the "2015 Investment Management Compliance Testing Survey," Investment Adviser Association, cited in the regulatory impact analysis for the accompanying rule, 63 percent of Registered Investment Advisers service ERISA-covered plans and IRAs. The Department conservatively interprets this to mean that all of the 113 large Registered Investment Advisers (RIAs), 63 percent of the 3,021 medium RIAs (1,903), and 63 percent of the 24,475 small RIAs (15,419) work with ERISA-covered plans and IRAs. The Department assumes that all of the 42 large broker-dealers, and similar shares of the 233 medium broker-dealers (147) and the 3,682 small broker-dealers (2,320) work with ERISA-covered plans and IRAs. According to SEC and FINRA data, cited in the regulatory impact analysis, 18 percent of broker-dealers are also registered as RIAs. Removing these firms from the RIA counts produces counts of 105 large RIAs, 1,877 medium RIAs, and 15,001 small RIAs that work with ERISA-covered plans and IRAs and are not also registered as broker-dealers. SNL Financial data show that 398 life insurance companies reported receiving either individual or group annuity considerations in 2014, of which 22 companies are large, 175 companies are medium, and 201 companies are small. The Department has used these data as the count of insurance companies working in the ERISA-covered plan and IRA markets. Further, according to Hung et al. (2008) (see regulatory impact analysis for complete citation), approximately 13 percent of RIAs report receiving commissions. Additionally, 20 percent of RIAs report receiving performance based fees; however, at least 60 percent of these RIAs are likely to be hedge funds. Thus, as much as 8 percent of RIAs providing investment advice receive performance based fees. Combining the 8 percent of RIAs receiving performance based fees with the 13 percent of RIAs receiving commissions creates an estimate of the number of RIAs that could be ineligible to be Level Fee Fiduciaries (21 percent). In total, the Department estimates that 2,509 broker-dealers, 3,566 RIAs ineligible to be Level Fee Fiduciaries, and 398 insurance companies will use this exemption. As described in detail in the regulatory impact analysis, the Department believes a de minimis number of banks may also use the exemption. The remaining 13,417 RIAs could be Level Fee Fiduciaries eligible for exemptive relief under Level Fee Conditions, which is discussed later.

advisory capacity,[12] and that 20 percent of IRAs are new clients to a Financial Institution in any advisory capacity annually.[13]

Additionally, the Department estimates that 13,000 RIAs serving as level fee fiduciaries will seek exemptive relief under level fee conditions[14] and that 80 percent of DB plans, 76 percent of DC plans,[15] and 27 percent of IRAs[16] have relationships with RIAs that might seek exemptive relief under level fee conditions. The Department assumes that Advisers will convert ten percent of these relationships from commission-based to fee-based compensation models annually. Therefore, these RIAs will provide advice to 3.0 million Retirement Investors with respect to ERISA plans, IRAs, and non-ERISA plans.[17]

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12 According to an analysis of Form 5500 Schedule C data conducted by Brightscope, Inc. and provided to the Department, 66,962 plans reported advisers in 2012, 22,302 plans changed advisers from 2012 to 2013, and 16,196 plans changed advisers from 2013 to 2014. [(22,302 + 16,196)/2] / 66,962 = 28.7 percent

13 2012 Cerulli data shows that 20 percent of households opened a new account as a result of a new contact. See page 118 of Retail Investor Advice Relationships 2012.

14 One commenter questioned the basis for the Department's assumption regarding the number of Financial Institutions likely to use the exemption under level fee conditions. According to the "2015 Investment Management Compliance Testing Survey," Investment Adviser Association, cited in the regulatory impact analysis for the accompanying rule, 63 percent of Registered Investment Advisers service ERISA-covered plans and IRAs. The Department conservatively interprets this to mean that all of the 113 large Registered Investment Advisers (RIAs), 63 percent of the 3,021 medium RIAs (1,903), and 63 percent of the 24,475 small RIAs (15,419) work with ERISA-covered plans and IRAs. The Department assumes that all of the 42 large broker-dealers, and similar shares of the 233 medium broker-dealers (147) and the 3,682 small broker-dealers (2,320) work with ERISA-covered plans and IRAs. According to SEC and FINRA data, cited in the regulatory impact analysis, 18 percent of broker-dealers are also registered as RIAs. Removing these firms from the RIA counts produces counts of 105 large RIAs, 1,877 medium RIAs, and 15,001 small RIAs that work with ERISA-covered plans and IRAs and are not also registered as broker-dealers. Further, according to Hung et al. (2008) (see regulatory impact analysis for complete citation), approximately 13 percent of RIAs report receiving commissions. Additionally, 20 percent of RIAs report receiving performance based fees; however, at least 60 percent of these RIAs are likely to be hedge funds. Thus, as much as 8 percent of RIAs providing investment advice receive performance based fees. Combining the 8 percent of RIAs receiving performance based fees with the 13 percent of RIAs receiving commissions creates an estimate of the number of RIAs that could be ineligible to be Level Fee Fiduciaries (21 percent). The remaining 13,417 RIAs could be Level Fee Fiduciaries eligible for exemptive relief under Level Fee Conditions.

15 These estimates assume that all DB and DC plans receive investment advice and is the remainder of plans after removing the firms with relationships with financial institutions using the more expansive version of the exemption.

16 As discussed above, figure A15 of ICI's February 2016 Appendix: Additional Data on IRA Ownership in 2015 states that 82 percent of traditional IRAs with rollovers are held by investment professionals. The Department estimates that 55 percent of these IRAs would be held by financial institutions using the expansive BIC. The remaining 27 percent would be held by RIAs operating under level fee conditions.

17 In addition to the 10 percent of plans and IRAs receiving advice from Registered Investment Advisers who operate under a level fee compensation model that will be converted to level fee accounts annually, 27 percent of rollovers will be recommended by advisers operating under a level fee compensation model. According to Internal Revenue Service Statistics of Income data, 4.3 million IRA rollovers occurred in 2010. (44,000 DB plans x 80 percent working with level fee fiduciaries x 10 percent converted to level fee accounts) + (119,000 DC plans without participant direction x 76 percent working with level fee fiduciaries x 10 percent converted to level fee accounts) + (69.9 million DC plan participants x 6.16 percent receiving advice x 76 percent working with level fee fiduciaries x 10 percent converted to level fee accounts) + (54.4 million IRAs x 27 percent working with level fee fiduciaries x 10 percent converted to level fee accounts) + (4.3 million IRA rollovers x 27 percent working with level fee fiduciaries) = 3.0 million Retirement Investors receiving advice under level fee conditions.

The Department believes that nearly all Financial Institutions will contract with outside service providers to implement the various compliance requirements of this exemption, and those costs are described in detail in question 13. The only burden associated with these information collections that is categorized as hour burden is the time necessary for clerical staff to distribute the required disclosures and the time necessary for a financial adviser to document the reasons for a recommendation made under level fee conditions.

Specifically, this exemption requires respondents to provide transition disclosures, contracts and contract disclosures, pre-transaction disclosures,[18] a notice to the Department, a web disclosure, and detailed pre-transaction information on demand. Level-fee fiduciaries are required to provide a disclosure stating their fiduciary status. Respondents are also required to maintain detailed records including documented justifications for advice from a limited investment menu containing proprietary products, conversion of accounts to a level fee compensation model, and IRA rollovers.

<u>Transition Disclosures</u>
The Department estimates that 1.1 million Retirement Investors with respect to ERISA plans[19] and 29.9 million Retirement Investors with respect to IRAs and non-ERISA plans will receive a three-page transition disclosure during the first year. The transition disclosure will be distributed electronically to 51.8 percent of ERISA plan investors[20] and 44.1 percent of IRAs and non-ERISA plan investors[21] during the first year. Paper disclosures will be mailed to the remaining 48.2 percent of ERISA plan investors and 55.9 percent of IRAs and non-ERISA plan investors. Electronic distribution will result in de minimis burden. Distribution of the 17.3 million paper transition disclosures[22] will

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18 The burden for any disclosures required for advisers recommending proprietary products as part of a limited investment menu, as required in Section IV, is included in the estimates for this disclosure.

19 9,000 DB plans + 29,000 DC plans that do not allow participants to direct investments + 1.0 million DC plan participants = 1.1 million ERISA Plan Investors

20 According to data from the National Telecommunications and Information Agency (NTIA), 33.4 percent of individuals age 25 and over have access to the internet at work. According to a Greenwald & Associates survey, 84 percent of plan participants find it acceptable to make electronic delivery the default option, which is used as the proxy for the number of participants who will not opt out that are automatically enrolled (for a total of 28.1 percent receiving electronic disclosure at work). Additionally, the NTIA reports that 38.9 percent of individuals age 25 and over have access to the internet outside of work. According to a Pew Research Center survey, 61 percent of internet users use online banking, which is used as the proxy for the number of internet users who will opt in for electronic disclosure (for a total of 23.7 percent receiving electronic disclosure outside of work). Combining the 28.1 percent who receive electronic disclosure at work with the 23.7 percent who receive electronic disclosure outside of work produces a total of 51.8 percent who will receive electronic disclosure overall

21 According to data from the NTIA, 72.4 percent of individuals age 25 and older have access to the internet. According to a Pew Research Center survey, 61 percent of internet users use online banking, which is used as the proxy for the number of internet users who will opt in for electronic disclosure. Combining these data produces an estimate of 44.1 percent of individuals who will receive electronic disclosures.

22 (1.1 million ERISA Plan Investors x 48.2 percent paper) + (29.9 million IRAs and non-ERISA Plan Investors x 55.9 percent paper) = 17.3 million paper transition disclosures

require two minutes of clerical time per disclosure,[23] at an hourly rate of $55.21,[24] to print and mail the disclosure, resulting in 576,000 hours[25] at an equivalent cost of $31.8 million during the first year only.[26]

Contract Disclosures and Contracts

The Department estimates that 1.1 million Retirement Investors with respect to ERISA plans will receive a fifteen-page contract disclosure, and 29.9 million Retirement Investors with respect to IRAs and non-ERISA plans will receive a fifteen-page contract during the first year. In subsequent years, 320,000 Retirement Investors with respect to ERISA plans who are entering new relationships with advisers[27] will receive a fifteen-page contract disclosure and 6.0 million Retirement Investors with respect to IRAs and non-ERISA plans who are entering new relationships with advisers[28] will receive a fifteen-page contract. To the extent that Financial Institutions use both the Prohibited Transaction Exemption for Principal Transactions (approved under OMB Control Number 1210-0157) and this Exemption, this estimate may represent an overestimate because significant overlap exists between the requirements of the contract disclosure and the contract for both exemptions. If Financial Institutions choose to use both exemptions with the same clients, they will probably combine the documents.

The contract disclosure will be distributed electronically to 51.8 percent of the ERISA plan investors during the first year or during any subsequent year in which the plan investor begins a new advisory relationship. Paper contract disclosures will be mailed to 48.2 percent of ERISA plan investors. The contract will be distributed electronically to 44.1 percent of IRAs and non-ERISA plan participants during the first year or during any subsequent year in which the investor begins a new advisory relationship. Paper contracts will be mailed to 55.9 percent of IRAs and non-ERISA plan investors. Electronic distribution will result in de minimis burden. Distribution of the 17.3 million paper contract disclosures and contracts during the first year[29] and 3.5 million paper

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23 One commenter questioned the basis for this estimate. The Department worked with clerical staff to determine that most notices and disclosures can be printed and prepared for mailing in less than one minute per disclosure. Therefore, an estimate of two minutes per disclosure is a conservative estimate.

24 For a description of the Department's methodology for calculating wage rates, see http://www.dol.gov/ebsa/pdf/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-march-2016.pdf. The Department's methodology for calculating the overhead cost input of its wage rates was adjusted from the proposed PTE to the final PTE. In the proposed PTE, the Department based its overhead cost estimates on longstanding internal EBSA calculations for the cost of overhead. In response to a public comment stating that the overhead cost estimates were too low and without any supporting evidence, the Department incorporated published US Census Bureau survey data on overhead costs into its wage rate estimates.

25 17.3 million paper transition disclosures x 2 minutes per disclosure = 576,000 hours

26 576,000 hours x $55.21 per hour = $31.8 million

27 1.1 million ERISA Plan Investors x 28.7 percent entering new advisory relationships = 320,000 ERISA Plan Investors entering new relationships with advisers

28 29.9 million IRAs and non-ERISA Plan Investors x 20 percent entering new advisory relationships = 6.0 million IRAs and non-ERISA Plan Investors entering new relationships with advisers

29 (1.1 million ERISA Plan Investors x 48.2 percent paper) + (29.9 million IRAs and non-ERISA Plan Investors x

contract disclosures and contracts during subsequent years[30] will require two minutes of clerical time per contract or disclosure, at any hourly rate of $55.21, to print and mail the

disclosure or contract, resulting in 576,000 hours[31] at an equivalent cost of $31.8 million

during the first year[32] and 117,000 hours[33] at an equivalent cost of $6.4 million during

subsequent years.[34]

Pre-Transaction Disclosures

The Department estimates DB plans and DC plans that do not allow participants to direct investments will engage in 24 transactions per year, while DC plan participants in participant-directed plans and IRA investors will engage in two transactions per year.

Therefore, financial institutions will produce 62.9 million pre-transaction disclosures[35] during the second year and all subsequent years. The disclosures will be distributed electronically to 51.8 percent of ERISA plan investors and 44.1 percent of IRA holders and non-ERISA plan investors. Paper disclosures will be mailed to 48.2 percent of ERISA plan investors and 55.9 percent of IRA owners and non-ERISA plan participants. Electronic distribution will result in de minimis burden. Distribution of the 34.9 million

paper pre-transaction disclosures[36] will require two minutes of clerical time per disclosure, at any hourly rate of $55.21, to print and mail the disclosure, resulting in 1.2

million hours[37] at an equivalent cost of $64.3 million annually beginning in the second

year.[38]

Notice to the Department and Web Disclosure
All of the burden associated with these requirements is discussed in question 13.

Detailed Pre-Transaction Information On Demand
The Department estimates that Financial Institutions will receive ten requests per year for more detailed investment information during the second year and all subsequent years. The detailed disclosures will be distributed electronically for 51.8 percent of the ERISA plan investors and 44.1 percent of the IRA holders and non-ERISA plan participants. The Department believes that requests for additional information will be proportionally likely with each Retirement Investor type. Therefore, approximately 36,000 detailed

disclosures will be distributed on paper.[39] Electronic distribution will result in de minimis burden. Paper distribution will also require two minutes of clerical time to print

and mail the statement, at any hourly rate of $55.21, resulting in 1,000 hours[40] at an

equivalent cost of $66,000 annually beginning in the second year.[41]

Fiduciary Acknowledgment for Level Fee Fiduciaries

The Department estimates that 3.0 million Retirement Investors with respect to ERISA plans, IRAs, and non-ERISA plans will receive disclosures from level fee fiduciaries stating their fiduciary status under level fee conditions each year. The disclosures will be distributed electronically for 51.8 percent of Retirement Investors with respect to ERISA plans and 44.1 percent of Retirement Investors with respect to IRAs and non-ERISA plans, while 48.2 percent and 55.9 percent, respectively, will be distributed on paper. Electronic distribution will result in de minimis burden. Distribution of the 1.6 million

paper disclosures[42] will require two minutes of clerical time per disclosure, at any hourly

rate of $55.21, to print and mail the disclosure, resulting in 55,000 hours[43] at an

equivalent cost of $3.0 million annually.[44]

Recordkeeping (Including Recording Documentation of Recommendations)
Advisers will also have to document the justification for the recommendation to roll over from an ERISA plan to an IRA, or to switch from a commission-based account to a fee-based account, which the Department estimates will take 30 minutes per Retirement Investor, at any hourly rate of $198.58. This produces an annual burden of 1.5 million

hours[45] at an equivalent cost of $296.9 million.[46] All other burden associated with recordkeeping is discussed in question 13.

Summary

As seen in the tables below, the overall burden associated with this exemption totals 2.7 million hours during the first year and 2.8 million hours in subsequent years. The equivalent costs are $363.5 million during the first year and $370.7 million in subsequent years.

First Year Activity	Total Annual Burden (Hours)	Hourly Rate	Monetized Value of Respondent Time
Distribution of Transition Disclosures	576,000	$55.21	$31.8 million
Distribution of Contract Disclosures and Contracts	576,000	$55.21	$31.8 million
Distribution of Fiduciary Acknowledgment for Level Fee Fiduciaries	55,000	$55.21	$3.0 million
Recording Documentation of Recommendations for Level Fee Fiduciaries	1.5 million	$198.58	$296.9 million
Totals for First Year	***2.7 million***		***$363.5 million***

Subsequent Year Activity	Total Annual Burden (Hours)	Hourly Rate	Monetized Value of Respondent Time
Distribution of Contract Disclosures and Contracts	117,000	$55.21	$6.4 million
Distribution of Pre-Transaction Disclosures	1.2 million	$55.21	$64.3 million
Distribution of Detailed Pre-Transaction Disclosure On Demands	1,000	$55.21	$66,000
Distribution of Fiduciary Acknowledgment for Level Fee Fiduciaries	55,000	$55.21	$3.0 million
Recording Documentation of Recommendations for Level Fee Fiduciaries	1.5 million	$198.58	$296.9 million
Totals for Subsequent Years	***2.8 million***		***$370.7 million***

For purposes of reginfo.gov database entries the burden has been annualized over the three-year approval the Department seeks to 2.8 million hours (rounded) per year.

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 believes that nearly all Financial Institutions will contract with outside service providers to implement the various compliance requirements of this exemption. Per-firm costs for broker-dealers (BDs) were calculated by allocating the total cost reductions in the medium assumptions scenario across the firm size categories, and then subtracting the cost reductions from the per-firm average costs derived from the Oxford Economics study, as described in Chapter 5 of the regulatory impact analysis. The methodology for calculating the per-firm costs for registered investment advisers (RIAs) and insurance companies is described in detail in Chapter 5 of the regulatory impact analysis. The Department is attributing 50 percent of the compliance costs for BDs and

RIAs[47] to this Exemption and 50 percent of the compliance costs for BDs and RIAs to the Prohibited Transaction Exemption for Principal Transactions (OMB Control Number 1210-0157). The Department is attributing all of the compliance costs for insurance companies to this Exemption. The Department estimates the per-firm costs to be as follows:

- Start-Up Costs for Large BDs: $3.7 million
- Start-Up Costs for Large RIAs: $3.2 million
- Start-Up Costs for Large Insurance Companies: $6.6 million
- Start-Up Costs for Medium BDs: $889,000
- Start-Up Costs for Medium RIAs: $662,000
- Start-Up costs for Medium Insurance Companies: $1.4 million
- Start-Up Costs for Small BDs: $278,000
- Start-Up Costs for Small RIAs: $219,000
- Start-Up Costs for Small Insurance Companies: $464,000
- Ongoing Costs for Large BDs: $918,000
- Ongoing Costs for Large RIAs: $803,000
- Ongoing Costs for Large Insurance Companies: $1.7 million
- Ongoing Costs for Medium BDs: $192,000
- Ongoing Costs for Medium RIAs: $143,000
- Ongoing Costs for Medium Insurance Companies: $306,000
- Ongoing Costs for Small BDs: $60,000
- Ongoing Costs for Small RIAs: $47,000
- Ongoing Costs for Small Insurance Companies: $100,000

In order to receive compensation covered under this Exemption, Section II requires Financial Institutions to acknowledge, in writing, their fiduciary status and adopt written policies and procedures designed to ensure compliance with the Impartial Conduct Standards. Financial Institutions must make certain disclosures to Retirement Investors. Financial institutions must generally enter into a written contract with Retirement Investors with respect to IRAs and non-ERISA plans and provide a contract disclosure to Retirement Investors with respect to ERISA plans.

Sections III and IV require Financial Institutions to provide pre-transaction disclosures (including disclosures associated with selling proprietary products on restricted investment menus, as well as more detailed disclosures on demand) and web-based disclosures. Additionally, under Section IV, financial institutions must prepare additional documentation regarding the limitations on investment recommendations, and their conclusions that the limitations will not cause the financial institution or its advisers to receive compensation in excess of reasonable compensation or to recommend imprudent investments.

Before the financial institution receives compensation permitted under the PTE, Section V(a) requires the financial institution to provide notice to the Department of its intent to rely on the PTE. Under Section V(b) and (c) of the exemption, the financial institution must maintain for six years records necessary for the Department and certain other entities, including plan fiduciaries, participants, beneficiaries and IRA owners, to determine whether the conditions of the exemption have been satisfied. These records would include, for example, records concerning the financial institution's incentive and compensation practices for its advisers, the financial institution's policies and procedures, any documentation governing the application of the policies and procedures, the documents prepared under Section IV (proprietary products and third party payments), contracts entered into with retirement investors, and disclosure documentation.

Finally, Section IX provides that during the Transition Period, full relief under the exemption will be available for financial institutions and advisers subject to more limited conditions, including that the financial institutions provide a disclosure with a written statement of fiduciary status and certain other information to all retirement investors (in ERISA plans, IRAs, and non-ERISA plans) prior to or at the same time as the execution of recommended transactions.

The Department is able to disaggregate an estimate of many of the legal costs from the costs above; however, it is unable to disaggregate any of the other costs. The Department received a comment on the proposed PTE stating that the estimates for legal professional time to draft disclosures were not supported by any empirical evidence. The Department also received multiple comments on the proposed PTE stating that its estimate of 60 hours of legal professional time during the first year a financial institution used the exemption and then no legal professional time in subsequent years was too low.

In response to a recommendation made during the Department's August 2015, public hearing on the proposed rule and exemptions, and in an attempt to create estimates with a clearer empirical evidentiary basis, the Department drafted certain portions of the required disclosures, including a sample contract, a sample pre-transaction disclosure, the one-time disclosure to the Department, and the transition disclosure. The Department's legal staff took an average of 3 hours and 47 minutes to draft sample contracts and sample contract disclosures, 1 hour and 38 minutes to draft sample pre-transaction disclosures, 15 minutes to draft sample notices to the Department, 2 hours and 5 minutes to draft sample transition disclosures, and 1 hour and 25 minutes to draft sample level fee fiduciary acknowledgments under level fee conditions. The Department believes that the time spent updating existing contracts and disclosures in future years would be no longer than the time necessary to create the original contracts and disclosures. The Department did not attempt to draft the complete set of required disclosures because it expects that the amount of time necessary to draft such disclosures will vary greatly among firms. For example the Department did not attempt to draft sample policies and procedures, disclosures describing in detail the costs, fees, and other compensation associated with

the transaction, documentation of the limitations regarding proprietary products or investments that generate third party payments, or a sample web disclosure. The Department expects the amount of time necessary to complete these disclosures will vary significantly based on a variety of factors including the nature of a firm's compensation structure, and the extent to which a firm's policies and procedures require review and signatures by different individuals.

The Department estimates that outsourced legal assistance to draft standard contracts, contract disclosures, pre-transaction disclosures, notices to the Department, and transition

disclosures, billed at $335.00 per hour,[48] will cost an average of $3,857 per financial

institution[49] for a total of $25.0 million during the first year. In subsequent years, it will

cost an average of $3,076 per financial institution[50] for a total of $19.9 million annually to update the contracts, contract disclosures, and pre-transaction disclosures.

In addition to legal costs for creating the contracts and disclosures, the start-up cost estimates include the costs of implementing and updating the IT infrastructure, gathering and maintaining the records necessary to produce the various disclosures, developing policies and procedures, and any other steps necessary to ensure compliance with the conditions of the Exemption not described elsewhere. In addition to legal costs for updating the contracts and disclosures, the ongoing cost estimates include the costs of updating the IT infrastructure, reviewing processes for gathering and maintaining the records necessary to produce the various disclosures, reviewing the policies and procedures, producing the detailed pre-transaction disclosures on request, and any other steps necessary to ensure compliance with the conditions of the exemption not described elsewhere. These costs total $2.4 billion during the first year and $520.4 million in subsequent years.

Service Provider Cost Burden Summary Table for Year 1						
	Number of Financial Institutions	Itemized Legal Costs Per Firm	Remaining Cost Per Firm	Total Legal Costs	Total Remaining Service Provider	Total Service Provider Costs

55.9 percent paper) = 17.3 million paper contract disclosures and contracts

30 (320,000 ERISA Plan Investors x 48.2 percent paper) + (6.0 million IRAs and non-ERISA Plan Investors x 55.9 percent paper) = 3.5 million paper contract disclosures and contracts

31 17.3 million paper contract disclosures and contracts x 2 minutes per contract or disclosure = 576,000 hours

32 576,000 hours x $55.21 per hour = $31.8 million

33 3.5 million paper contract disclosures and contracts x 2 minutes per contract or disclosure = 117,000 hours

34 117,000 hours x $55.21 per hour = $6.4 million

35 (9,000 DB plans x 24 transactions) + (29,000 DC plans x 24 transactions) + (1.1 million DC plan participants x 2 transactions) + (29.9 million IRAs x 2 transactions) = 62.9 million pre-transaction disclosures

36 (9,000 DB plans x 24 transactions x 48.2 percent paper) + (29,000 DC plans x 24 transactions x 48.2 percent paper) + (1.1 million DC plan participants x 2 transactions x 48.2 percent paper) + (29.9 million IRAs x 2 transactions x 55.9 percent paper) = 34.9 million paper pre-transaction disclosures

37 34.9 million paper annual disclosures x 2 minutes per disclosure = 1.1 million hours

38 1.2 million hours x $55.21 per hour = $64.3 million

39 (7,000 Financial Institutions using exemption x 10 requests per year) *((9,000 DB plans x 24 transactions x 48.2 percent paper) + (29,000 DC plans x 24 transactions x 48.2 percent paper) + (1.1 million DC plan participants x 2 transactions x 48.2 percent paper) + (29.9 million IRAs x 2 transactions x 55.9 percent paper)) / (9,000 DB plans x 24 transactions) + (29,000 DC plans x 24 transactions) + (1.1 million DC plan participants x 2 transactions) + (29.9 million IRAs x 2 transactions) = 36,000 detailed disclosures on paper

40 36,000 detailed disclosures on paper x 2 minutes per disclosure = 1,000 hours

41 1,000 hours x $55.21 per hour = $66,000

42 (4,000 DB plan disclosures x 48.2 percent paper) + (9,000 DC plan disclosures x 48.2 percent paper) + (327,000 DC plan participant disclosures x 48.2 percent paper) + (1.5 million IRA disclosures x 55.9 percent paper) + (1.2 million IRA rollover disclosures x 55.9 percent paper) = 1.6 million paper disclosures

43 1.6 million paper disclosures x 2 minutes per disclosure = 55,000 hours

44 55,000 hours x $55.21 per hour = $3.0 million

45 3.0 million recommendations x 30 minutes per recommendation = 1.5 million hours

46 1.5 million hours x $198.58 per hour = $296.9 million

47 This estimate is limited to RIAs who will be using the full exemption and will not be operating under level fee conditions.

					Costs	
	(A)	(B)	(C)	A*B	A*C	A*(B+C)
Start-Up Costs Per Large BD	42	$3,857	$3,679,161	$162,002	$154,524,745	$154,686,747
Start-Up Costs Per Large RIA	22	$3,857	$3,216,589	$84,858	$70,764,950	$70,849,808
Start-Up Costs Per Large Insurance Company	22	$3,857	$6,631,035	$84,858	$145,882,770	$145,967,629
Start-Up Costs Per Medium BD	147	$3,857	$884,987	$567,007	$130,093,094	$130,660,101
Start-Up Costs Per Medium RIA	394	$3,857	$658,357	$1,519,733	$259,392,660	$260,912,393
Start-Up Costs Per Medium Insurance Company	175	$3,857	$1,407,688	$675,008	$246,345,406	$247,020,415
Start-Up Costs Per Small BD	2,320	$3,857	$274,293	$8,948,681	$636,360,046	$645,308,727
Start-Up Costs Per Small RIA	3,150	$3,857	$215,586	$12,150,149	$679,095,312	$691,245,460
Start-Up Costs Per Small Insurance Company	201	$3,857	$459,650	$775,295	$92,389,730	$93,165,025
Total	7,000			$25.0 million	$2.4 billion	$2.4 billion

48 This rate is the average of the hourly rate of an attorney with 4-7 years of experience and an attorney with 8-10 years of experience, taken from the Laffey Matrix. See http://www.justice.gov/sites/default/files/usao-dc/legacy/2014/07/14/Laffey%20Matrix_2014-2015.pdf

49 (3 hours and 47 minutes to draft contracts and contract disclosures + 1 hour and 38 minutes to draft pre-transaction disclosures + 15 minutes to draft notices to the Department + 2 hours and 5 minutes to draft transition disclosures) x $335.00 per hour = $3,857

50 (3 hours and 47 minutes to update contracts and contract disclosures + 1 hour and 38 minutes to update annual disclosures) x $335.00 per hour = $3,076

Service Provider Cost Burden Summary Table for Years 2 and 3						
	Number of Financial Institutions	Itemized Legal Costs Per Firm	Remaining Cost Per Firm	Total Legal Costs	Total Remaining Service Provider Costs	Total Service Provider Costs
	(A)	(B)	(C)	A*B	A*C	A*(B+C)
Ongoing Costs Per Large BD	42	$3,076	$915,262	$129,177	$38,441,010	$38,570,186
Ongoing Costs Per Large RIA	22	$3,076	$799,923	$67,664	$17,598,299	$17,665,963
Ongoing Costs Per Large Insurance Company	22	$3,076	$1,651,294	$67,664	$36,328,464	$36,396,128
Ongoing Costs Per Medium BD	147	$3,076	$189,315	$452,118	$27,829,289	$28,281,407
Ongoing Costs Per Medium RIA	394	$3,076	$140,261	$1,211,800	$55,262,744	$56,474,544
Ongoing Costs Per Medium Insurance Company	175	$3,076	$302,454	$538,236	$52,929,386	$53,467,622
Ongoing Costs Per Small BD	2,320	$3,076	$57,130	$7,135,473	$132,541,740	$139,677,214
Ongoing Costs Per Small RIA	3,150	$3,076	$44,423	$9,688,250	$139,931,979	$149,620,229
Ongoing Costs Per Small Insurance Company	201	$3,076	$97,251	$618,203	$19,547,387	$20,165,590
Total	7,000			$19.9 million	$520.4 million	$540.3 million

Level-fee fiduciaries will also incur cost burden associated with legal assistance. As discussed above, the Department estimates that the average time necessary to draft a fiduciary acknowledgment for a level fee fiduciary is 1 hour and 25 minutes. Each of the 13,000 RIAs operating under level fee conditions are assumed to hire legal assistance billed at $335.00 per hour to draft this acknowledgment. Therefore, the total cost of this legal assistance is $6.4 million.[51]

In addition to service provider costs, respondents will also incur cost burden associated with the distribution of disclosures. Electronic distribution is assumed to result in a de minimis cost. Paper distribution will incur costs at a rate of $0.05 per page of materials costs and $0.49 per disclosure in postage costs.

As discussed in question 12, the Department estimates that respondents will mail 17.3 million 3-page paper transition disclosures during the first year; 17.3 million 15-page paper contract disclosures and contracts during the first year and 3.5 million 15-page paper contract disclosures and contracts in subsequent years; 34.9 million 3-page paper pre-transaction disclosures during the second year and all subsequent years; 36,000 5-page paper detailed disclosures during the second year and all subsequent years; and 1.6 million 1-page paper level fee fiduciary acknowledgements annually. Therefore, respondents will incur a materials and postage cost of $33.4 million during the first year[52] and $27.6 million during subsequent years.[53]

<u>Summary</u>
The total cost burden for the information collections in this exemption, including outside legal assistance, other service provider assistance, and materials and postage costs, is $2.5 billion during the first year[54] and $574.3 million during subsequent years.[55] For purposes of reginfo.gov database entries the burden has been annualized over the three-year approval the DOL seeks to $1.2 billion (rounded) per year.

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*

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51 13,000 RIAs operating under level fee conditions x 1 hour and 25 minutes x $335.00 per hour = $6.4 million
52 (17.3 million paper transition disclosures x ((3 pages x $0.05 per page) + $0.49 postage)) + (17.3 million paper contract disclosures and contracts x (15 pages x $0.05 per page) + $0.49 postage)) + (1.6 million paper level fee fiduciary acknowledgments x ((1 page x $0.05 per page) + $0.49 postage)) = $33.4 million
53 (3.5 million paper contract disclosures and contracts x (15 pages x $0.05 per page) + $0.49 postage)) + (34.9 million paper pre-transaction disclosures x (3 pages x $0.05 per page) + $0.49 postage)) + (36,000 paper detailed disclosures x (5 pages x $0.05 per page) + $0.49 postage)) + (1.6 million paper level fee fiduciary acknowledgments x ((1 page x $0.05 per page) + $0.49 postage)) = $27.6 million
54 $2.4 billion service provider costs + $6.4 million level fee fiduciary legal costs + $33.4 million materials and postage costs = $2.5 billion total costs
55 $540.3 million service provider costs + $6.4 million level fee fiduciary legal costs + $27.6 million materials and postage costs = $574.3 million total costs

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."*

None.

B. Statistical Methods

This information collection does not employ statistical methods.