

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.*

In the absence of an exemption, the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (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.

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 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.

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 trustees², subject to certain additional conditions.

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 2016 Conflict of Interest Rulemaking

The Department is amending PTE 86-128 in connection with its 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 IRA under the Code). The Regulation amends a prior regulation specifying when a person is a fiduciary under ERISA and the Code by reason of the provision of investment advice for a fee or other compensation regarding assets of a plan or IRA. 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.

2

Prior 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.

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

The Department is adding Section I(b) of PTE 86-128 that provides relief for the transaction currently covered in PTE 75-1, Part II(2). New Section I(b) permits a broker-dealer fiduciary to use its authority to cause a plan to purchase shares of a mutual fund from the broker-dealer fiduciary and for the receipt of a commission by such fiduciary in connection with the transaction.³ 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 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.

A new Section VI to PTE 86-128 requires the fiduciary engaging in a transaction covered by the exemption to maintain for six years records necessary to enable certain persons (described in Section VI(b)) to determine whether the conditions of this exemption have been met with respect to the transaction. The recordkeeping requirement is consistent with other existing class exemptions.

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:

³ Section I(b) provides 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 new covered transaction may involve 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.

- 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.

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.

The Department is unable to estimate how frequently records supporting the exempt transactions are examined by either the Department or other parties. The Department has the authority to request such records and does so from time to time in connection with investigations.

Amendments Related to 2016 Conflict of Interest Rulemaking

The Department amended 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 amended 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.*

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.

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 2016 Conflict of Interest Rulemaking

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.*

The information collections impose the minimal burden needed to protect the assets of ERISA plans, IRAs, and non-ERISA plans from commission payments that are tainted by conflicts of interest. This exemption is needed primarily for brokers in large institutions, who would be most likely to engage in the covered transactions. 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 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.

If the disclosure and recordkeeping requirements were not included in PTE 86-128 the Department could not ensure that the exemption was 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 amended exemption, fiduciaries 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 fiduciary refuses to disclose information on the basis that the information is exempt from disclosure, the fiduciary 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. With respect to the amendments to PTE 86-128, the Department received multiple comments from one commenter questioning the basis for the wage rate inputs used to calculate burden. In response to these comments, the Department adjusted its methodology for calculating wage rates. This commenter also questioned the basis for some of the Department's other assumptions in calculating burden. The methodological change to calculating wage rates and additional transparency in the burden calculation assumptions 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.*

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 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 2013 Annual Return/Report of Employee Benefit Plan (Form 5500) data, it is estimated that there are approximately 681,000 ERISA covered pension plans. The Department has estimated that about 23.7% of these plans (161,000 plans) use a financial institution fiduciary that is potentially eligible to take advantage of the exemption.

The Department estimates that 1,800 financial institutions will use this exemption.⁴ It is further assumed that 6.5 percent⁵ of plans (10,000 plans) in a year are new plans or existing plans entering into new arrangements with covered fiduciaries in a year.

⁴ 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, of which 41 percent service ERISA-covered plans and 22 percent service IRAs. The Department is using this to form a proxy for the share of broker-dealers that service ERISA-covered plans and IRAs. The Department conservatively assumes that all of the 42 large broker-dealers, 41 percent of the 233 medium broker-dealers (96), and 41 percent of the 3,682 small broker-dealers (1,510) work with ERISA-covered plans. Therefore, of the 3,997 broker-dealers registered with the Securities and Exchange Commission, 1,648 broker-dealers service ERISA-covered plans. The Department anticipates that the exemption will be used primarily, but not exclusively, by broker-dealers. Further, the Department assumes that all broker-dealers servicing the retirement market will use the exemption. The Department believes that some Registered Investment Advisers will use the exemption, but all of those RIAs will be dually registered and accounted for in the broker-dealer counts. The Department has rounded up to 1,800 to account for any other financial institutions that may use the exemption with plans.

⁵ This estimate is from the 2011-2013 Form 5500 data sets.

Wage rates are assumed as the following: an in-house rate of \$133.61 for legal professionals and \$55.21 for clerical staff. All dollar amounts are measured in 2016 dollars.⁶

1) Written authorization from the authorizing 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 10,000 new plans or plans entering new arrangements each year. Therefore, the Department estimates that approximately 10,000 authorizing fiduciaries are expected to send an advance written authorization. It is assumed that a legal professional will spend five hours per plan reviewing the disclosures and preparing an authorization form.⁷ This results in an hour burden of 52,000 hours⁸ with an equivalent cost of \$7.0 million.⁹

To produce and distribute the authorization, the Department assumes that 51.8 percent will be distributed electronically through traditional electronic methods at no additional burden, and the remaining 48.2 percent will be mailed.¹⁰ 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 hours¹¹ with an equivalent cost of \$9,000.¹²

⁶ 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 amendment to this PTE to the final amendment to this PTE. In the proposal, 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.

⁷ This estimate has been increased from one hour of legal time per plan in the proposal in response to a public comment. The proposal did not take into account any burden for reviewing the pre-authorization disclosures before granting authorization.

⁸ 10,000 plans x 5 hours per plan = 52,000 hours

⁹ 52,000 hours x \$133.61 per hour = \$7.0 million

¹⁰ 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.

¹¹ 10,000 plans x 48.2 percent paper x 2 minutes per plan = 200 hours

¹² 200 hours x \$55.21 per hour = \$7,000

In total, as seen in the table below, the written authorization requirement is expected to result in a total hour burden of 52,000 hours with an equivalent cost of \$7.0 million.

Activity	Burden Hours	Equivalent Burden Cost
Legal	52,000	\$7.0 million
Clerical	200	\$9,000
Total	52,000	\$7.0 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.¹³ To produce and distribute the materials, the Department assumes that 51.8 percent will be distributed electronically through traditional electronic methods at no additional burden, and the remaining 48.2 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 10,000 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 hours¹⁴ with an equivalent cost of \$9,000.¹⁵

3) Provision of a termination form

Each of the 161,000 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 termination forms, which results in an hour burden of 2,000 hours¹⁶ with an equivalent cost of \$240,000.¹⁷

To produce and distribute the termination form, the Department assumes that 51.8 percent will be distributed electronically through traditional electronic methods at no additional burden, and the remaining 48.2 percent will be mailed. The Department estimates that clerical staff will spend two minutes per plan preparing and distributing the

¹³ The cost of preparing the termination form is accounted for under requirement three.

¹⁴ 10,000 plans x 48.2 percent paper x 2 minutes per plan = 200 hours

¹⁵ 200 hours x \$55.21 = \$9,000

¹⁶ 1,800 financial institutions x 1 hour per financial institution = 2,000 hours

¹⁷ 2,000 hours x \$133.61 per hour = \$240,000

paper termination forms resulting in an hour burden of 3,000 hours¹⁸ with an equivalent cost of \$143,000.¹⁹

In total, as seen in the table below, providing the annual termination form is expected to impose an hour burden of 5,000 hours with an equivalent cost of \$383,000.

Activity	Burden Hours	Equivalent Burden Cost
Legal	2,000	\$240,000
Clerical	3,000	\$143,000
Total	5,000	\$383,000

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 51.8 percent will be distributed electronically through traditional electronic methods at no additional burden, and the remaining 48.2 percent will be mailed. Clerical staff may be required to prepare and distribute the reports. It is assumed that clerical staff will spend two minutes per plan for preparing and mailing each of the quarterly reports to the 97,000 plans that receive quarterly reports.²⁰ This results in an hour burden of 6,000 hours²¹ and equivalent cost of \$344,000.²²

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

¹⁸ 161,000 plans x 48.2 percent paper x 2 minutes per plan = 3,000 hours

¹⁹ 3,000 hours x \$55.21 per hour = \$143,000

²⁰ 161,000 plans x 60 percent receiving quarterly reports = 97,000 plans receiving quarterly reports

²¹ 97,000 plans receiving quarterly reports x 48.2 percent paper x 2 minutes per plan x 4 reports per year = 6,000 hours

²² 6,000 hours x \$55.21 per hour = \$344,000

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 893,000 disclosures. Electronic methods will be used to distribute 51.8 percent of disclosures, at de minimis burden, while 430,000 disclosures will be on paper. Production and distribution of paper disclosures will result in an overall burden of 63,000 hours with an equivalent cost of \$7.7 million.

Activity	Burden Hours	Equivalent Burden Cost
1. Written authorization from the authorizing fiduciary to the broker-dealer	52,000	\$7.0 million
2. Provision of materials for evaluation of authorization of transaction	200	\$9,000
3. Provision of an annual termination form	5,000	\$383,000
4. Transaction Reporting	6,000	\$344,000
5. Annual Statement	0	\$0
6. Report of Commissions Paid	0	\$0
Total	63,000	\$7.7 million

Amendments Related to 2016 Conflict of Interest Rule

The amended PTE 86-128 will restrict relief under this exemption to all ERISA plans and then non-ERISA plan and IRA fiduciaries that have discretionary authority or control over the management of the non-ERISA plan's or IRA's assets (i.e., investment managers). Previously the conditions of the exemption were only applicable to ERISA plans, while the relief was granted to ERISA plans, non-ERISA plans, and IRAs (with no

burden placed on non-ERISA plans and IRAs). The conditions to obtain relief under this exemption are newly required of non-ERISA plan and IRA investment managers. The Department assumes that the number of non-ERISA plans and IRAs with discretionary asset managers is approximately 10,000.

The Department assumes that non-ERISA plans and IRAs with investment managers use the same types of financial institutions at the same rates as ERISA plans. Thus, the Department assumes that about 23.7% of these non-ERISA plans and IRAs (2,000 non-ERISA plans and IRAs) use a financial institution fiduciary that is potentially eligible to take advantage of the exemption.

The Department estimates that an additional 1,000 financial institutions will use this exemption as a result of these amendments.²³ It is further assumed that 6.5 percent²⁴ of these managed non-ERISA plans and managed IRAs (150 non-ERISA plans and IRAs) in a year are new non-ERISA plans and IRAs or existing non-ERISA plans and IRAs entering into new arrangements with covered fiduciaries in a year.

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

Authorizing fiduciaries of managed non-ERISA plans and IRAs entering into a new relationship with a broker-dealer are required to provide the broker-dealer with an advance written authorization to perform transactions for the plan. During the first year after the amendments, managed non-ERISA plans and IRAs with existing broker-dealer relationships will also need to grant authorization. The Department believes that authorization for existing relationships will be obtained through a negative consent disclosure produced by the broker-dealers. As discussed above, the Department estimates that there are approximately 2,000 managed non-ERISA plans and IRAs with existing relationships with 1,000 broker-dealers during the first year, and 150 managed non-ERISA plans and IRAs entering new arrangements each subsequent years or plans

²³ 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, of which 41 percent service ERISA-covered plans and 22 percent service IRAs. The Department is using this to form a proxy for the share of broker-dealers that service ERISA-covered plans and IRAs. The Department conservatively assumes that all of the 42 large broker-dealers, 22 percent of the 233 medium broker-dealers (51), and 22 percent of the 3,682 small broker-dealers (810) work with ERISA-covered plans. Therefore, of the 3,997 broker-dealers registered with the Securities and Exchange Commission, 903 broker-dealers service managed IRAs. The Department anticipates that the exemption will be used primarily, but not exclusively, by broker-dealers. Further, the Department assumes that all broker-dealers servicing the retirement market will use the exemption. The Department believes that some Registered Investment Advisers will use the exemption, but all of those RIAs will be dually registered and accounted for in the broker-dealer counts. The Department has rounded up to 1,000 to account for any other financial institutions that may use the exemption with managed IRAs.

²⁴ The Department is using new ERISA plans as a proxy for new non-ERISA plans and managed IRAs.

entering new arrangements each year. Therefore, the Department estimates that approximately 1,000 broker-dealers are expected to send a negative consent authorization disclosure during the first year and 150 authorizing fiduciaries are expected to send an advance written authorization in subsequent years. It is assumed that a legal professional will spend three hours per broker-dealer producing a negative consent authorization disclosure during the first year and five hours per managed non-ERISA plan or IRA reviewing the disclosures and preparing an authorization form in subsequent years.²⁵ This results in an hour burden of 3,000 hours during the first year²⁶ and 800 hours during subsequent years²⁷ with equivalent costs of \$401,000²⁸ and \$103,000,²⁹ respectively.

To produce and distribute the authorizations, the Department assumes that 44.1 percent will be distributed electronically through traditional electronic methods at no additional burden, and the remaining 55.9 percent will be mailed.³⁰ 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 44 hours during the first year³¹ and 3 hours in subsequent years³² with an equivalent cost of \$2,000³³ and \$200,³⁴ respectively.

In total, as seen in the table below, the written authorization requirement for managed non-ERISA plans and IRAs is expected to result in an additional total hour burden of 10,000 hours with an equivalent cost of \$6.7 million.

Activity	Burden Hours	Equivalent Burden Cost
Legal (First Year)	3,000	\$401,000
Clerical (First Year)	44	\$2,000
Total (First Year)	3,000	\$403,000
Legal (Subsequent Years)	800	\$103,000

²⁵ This subsequent year estimate has been increased from one hour of legal time per plan in the proposal in response to a public comment. The proposal did not take into account any burden for reviewing the pre-authorization disclosures before granting authorization.

²⁶ 1,000 broker-dealers x 3 hours per broker-dealer = 3,000 hours

²⁷ 150 plans and IRAs x 5 hours per plan or IRA = 800 hours

²⁸ 3,000 hours x \$133.61 per hour = \$401,000

²⁹ 800 hours x \$133.61 per hour = \$103,000

³⁰ 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.

³¹ 2,000 plans and IRAs x 55.9 percent paper x 2 minutes per plan or IRA = 44 hours.

³² 150 plans and IRAs x 55.9 percent paper x 2 minutes per plans or IRA = 3 hours

³³ 44 hours x \$55.21 per hour = \$2,000

³⁴ 3 hours x \$55.21 per hour = \$200

Clerical (Subsequent Years)	3	\$200
Total (Subsequent Years)	800	\$103,000

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.³⁵ To produce and distribute the materials, the Department assumes that 44.1 percent will be distributed electronically through traditional electronic methods at no additional burden, and the remaining 55.9 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 2,000 managed non-ERISA plans and IRAs with existing agreements with a financial institution during the first year and 150 managed non-ERISA plans and IRAs entering into an agreement with a financial institution in subsequent years. Based on the above, the Department estimates that this new requirement for managed non-ERISA plans and IRAs results in an hour burden of approximately 44 hours during the first year³⁶ and 3 hours in subsequent years³⁷ with an equivalent cost of \$2,000³⁸ and \$200,³⁹ respectively.

3) Provision of a termination form

Each of the 2,000 managed non-ERISA plans’ and IRAs’ 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 termination forms, which results in an hour burden of 1,000 hours⁴⁰ with an equivalent cost of \$134,000.⁴¹

To produce and distribute the termination form, the Department assumes that 44.1 percent will be distributed electronically through traditional electronic methods at no additional burden, and the remaining 55.9 percent will be mailed. The Department estimates that clerical staff will spend two minutes per managed non-ERISA plan or IRA

³⁵ The cost of preparing the termination form is accounted for under requirement three.

³⁶ 2,000 plans and IRAs x 55.9 percent paper x 2 minutes per plan or IRA = 44 hours.

³⁷ 150 plans and IRAs x 55.9 percent paper x 2 minutes per plans or IRA = 3 hours

³⁸ 44 hours x \$55.21 per hour = \$2,000

³⁹ 3 hours x \$55.21 per hour = \$200

⁴⁰ 1,000 financial institutions x 1 hour per financial institution = 1,000 hours

⁴¹ 1,000 hours x \$133.61 per hour = \$134,000

preparing and distributing the paper termination forms resulting in an hour burden of 44 hours⁴² with an equivalent cost of \$2,000.⁴³

In total, as seen in the table below, providing the annual termination form to managed non-ERISA plans and IRAs is expected to impose an hour burden of 1,000 hours with an equivalent cost of \$136,000.

Activity	Burden Hours	Equivalent Burden Cost
Legal	1,000	\$134,000
Clerical	44	\$2,000
Total	1,000	\$136,000

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 managed non-ERISA plans and IRAs will 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 44.1 percent will be distributed electronically through traditional electronic methods at no additional burden, and the remaining 55.9 percent will be mailed. Clerical staff may be required to prepare and distribute the reports. It is assumed that clerical staff will spend two minutes per non-ERISA plan or IRA preparing and mailing each of the quarterly reports to the 1,000 managed non-ERISA plans and IRAs that receive quarterly reports.⁴⁴ This results in an additional hour burden of 100 hours⁴⁵ and equivalent cost of \$6,000.⁴⁶

5) Annual Statement

In addition to the transaction reporting requirement, broker-dealers are required to send an annual report to each authorizing fiduciary containing the same information as the

42 2,000 plans and IRAs x 55.9 percent paper x 2 minutes per plan = 44 hours

43 44 hours x \$55.80 per hour = \$2,000

44 2,000 plans and IRAs x 60 percent receiving quarterly reports = 1,000 plans and IRAs receiving quarterly reports

45 1,000 plans and IRAs receiving quarterly reports x 55.9 percent paper x 2 minutes per plan x 4 reports per year = 100 hours

46 100 hours x \$55.21 per hour = \$6,000

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, as applied to managed non-ERISA plans and IRAs, will result in the production of 18,000 disclosures during the first year and 13,000 disclosures in subsequent years. Electronic methods will be used to distribute 44.1 percent of disclosures, at de minimis burden, while 10,000 disclosures during the first year and 7,000 disclosures in subsequent years will be on paper. Production and distribution of paper disclosures will result in an overall burden of 4,000 hours with an equivalent cost of \$520,000 during the first year and 2,000 hours with an equivalent cost of \$233,000 during subsequent years.

Activity	Burden Hours (First Year)	Equivalent Burden Cost (First Year)	Burden Hours (Subsequent Years)	Equivalent Burden Cost (Subsequent Years)
1. Written authorization from the authorizing fiduciary to the broker-dealer	3,000	\$403,000	800	\$103,000
2. Provision of materials for evaluation of authorization of transaction	44	\$2,000	3	\$200
3. Provision of an annual termination form	1,000	\$136,000	1,000	\$136,000
4. Transaction Reporting	100	\$6,000	100	\$6,000

5. Annual Statement	0	\$0	0	\$0
6. Report of Commissions Paid	0	\$0	0	\$0
Total	4,000	\$547,000	2,000	\$245,000

The Department is also amending 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.

Finally, the Department is amending 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 \$167.32 to organize and collate the documents. This results in 1,400 hours of burden⁴⁷ at an equivalent cost of \$179,000.⁴⁸ 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 burden⁴⁹ at an equivalent cost of \$39,000.⁵⁰

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 \$273,000.

Activity	Burden Hours	Equivalent Burden Cost
Financial Manager	1,400	\$234,000

⁴⁷ 2,800 financial institutions x 30 minutes = 1,400 hours

⁴⁸ 1,400 hours x \$167.32 per hour = \$234,000

⁴⁹ 2,800 financial institutions x 15 minutes = 700 hours

⁵⁰ 700 hours x \$55.21 per hour = \$39,000

Clerical	700	\$39,000
Total	2,000	\$273,000

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 51.8 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 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 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 10,000 plans will have to send the authorization each year with 51.8 percent being sent electronically. Paper authorizations will cost \$0.59 each, which results in a cost burden of approximately \$3,000.⁵¹

- 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 10,000 authorizing plan fiduciaries will receive this information and 51.8 percent will receive the information electronically at no cost. Paper distribution will cost \$0.84 each, which results in a cost burden of about \$4,000.⁵²

⁵¹ 10,000 authorizations x 48.2 percent paper x \$0.59 = \$3,000

⁵² 10,000 materials packages x 48.2 percent paper x \$0.84 = \$4,000

3) Provision of an termination form

Annually, a broker-dealer must send the authorizing plan fiduciary a termination form. Authorizing fiduciaries of all 161,000 plans will receive this form and that 51.8 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 \$46,000.⁵³

4) Transaction Reporting

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 51.8 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 \$110,000.⁵⁴

5) Annual Statement

An annual statement is also required to be delivered by the financial institution to the 161,000 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 51.8 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 printing costs are \$0.25 each. The cost burden for the paper and print costs are about \$19,000.⁵⁵

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 51.8 percent of the reports will be sent

53 161,000 termination forms x 48.2 percent paper x \$0.59 = \$46,000

54 161,000 plans x 60 percent receiving quarterly reports x 48.2 percent paper x 4 reports per year x \$0.59 = \$110,000

55 161,000 plans x 48.2 percent paper x \$0.25 = \$19,000.

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 \$8,000.⁵⁶

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.⁵⁷ It is assumed that it costs the financial institution \$3.30 per plan to track this information.⁵⁸ With approximately 161,000 affected plans, this results in a cost burden of approximately \$533,000 annually.⁵⁹

Summary

In total, the conditions of this exemption will result in the production of 893,000 disclosures. Electronic methods will be used to distribute 51.8 percent of disclosures, at de minimis burden, while 430,000 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 \$723,000.

Activity	Cost
1. Written authorization from the authorizing fiduciary to the broker-dealer	\$3,000
2. Provision of materials for evaluation of authorization of transaction	\$4,000
3. Provision of an annual termination form	\$46,000
4. Transaction Reporting	\$110,000
5. Annual Statement	\$19,000
6. Report of Commissions Paid	\$8,000
4-6. Tracking and Reporting	\$533,000
Total	\$723,000

Amendments Related to 2015 Conflict of Interest Rule

The amended PTE 86-128 would restrict relief under this exemption to non-ERISA plan and IRA fiduciaries that have discretionary authority or control over the management of the IRA’s assets (i.e., investment managers) and subject these plans and IRAs to the same conditions that ERISA plans are currently subject to.

⁵⁶ 161,000 plans x 48.2 percent paper x \$0.10 = \$8,000

⁵⁷ The Department received one comment suggesting that the burden analysis in the proposal did not account for any costs to compile data necessary to produce the quarterly transaction reports, annual statements, and report of commissions paid. In fact, this burden was taken into account in the proposal and has been updated here.

⁵⁸ This estimate is based on information from an RFI and from industry sources in 2008 and then inflated to current dollars using the Consumer Price Index.

⁵⁹ 161,000 plans x \$3.30 = \$533,000

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 44.1 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 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 fiduciary to the broker-dealer

Authorizing fiduciaries of managed non-ERISA plans and IRAs entering into a new relationship with a broker-dealer are required to provide the broker-dealer with an advance written authorization to perform transactions for the plan. During the first year after the amendments, managed non-ERISA plans and IRAs with existing broker-dealer relationships will also need to grant authorization. The Department believes that authorization for existing relationships will be obtained through a negative consent disclosure produced by the broker-dealers. It is assumed that the authorization will include two pages. Existing managed non-ERISA plans and IRAs will receive the authorization during the first year and managed non-ERISA plans and IRAs entering new relationships will have to send the authorization in subsequent years. Therefore, about 2,000 managed non-ERISA plans and IRAs will send the authorization during the first year and 150 managed non-ERISA plans and IRA will send the authorization in subsequent years, with 44.1 percent being sent electronically. Paper authorizations will cost \$0.59 each, which results in a cost burden of approximately \$800 during the first year⁶⁰ and \$50 during subsequent years.⁶¹

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.⁶² To produce and distribute the materials, the Department assumes that 44.1 percent will be distributed electronically through traditional electronic methods at no cost, and the remaining 55.9 percent will be mailed. This information is assumed to include seven pages. Once again, approximately 2,000 managed non-ERISA plans and IRAs will receive this information during the first year and 150 managed non-ERISA plans and IRAs will receive this

⁶⁰ 2,000 authorizations x 55.9 percent paper x \$0.59 = \$800

⁶¹ 150 authorizations x 55.9 percent paper x \$0.59 = \$50

⁶² The cost of preparing the termination form is accounted for under requirement three.

information in subsequent year. Paper distribution will cost \$0.84 each, which results in a cost burden of about \$1,000 during the first year⁶³ and \$70 during subsequent years.⁶⁴

3) Provision of an termination form

Annually, a broker-dealer must send the authorizing plan fiduciary a termination form. Authorizing fiduciaries of all 2,000 managed non-ERISA plans and IRAs will receive this form and 44.1 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 \$800.⁶⁵

4) Transaction Reporting

Two options exist to satisfy the transaction reporting. Confirmation slips may be sent to the authorizing fiduciary or a quarterly report may be sent that includes the specified information. It is assumed that for fiduciaries 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 fiduciaries will receive a two page quarterly report instead of the confirmation slips, and that 44.1 percent of the quarterly reports 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 \$2,000.⁶⁶

5) Annual Statement

An annual statement is also required to be delivered by the financial institution to the 2,000 authorizing 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 44.1 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 printing costs are \$0.25 each. The cost burden for the paper and printing costs are about \$300.⁶⁷

6) Report of Commissions Paid

63 2,000 materials packages x 55.9 percent paper x \$0.84 = \$1,000

64 150 materials packages x 55.9 percent paper x \$0.84 = \$70

65 2,000 termination forms x 55.9 percent paper x \$0.59 = \$800

66 2,000 plans and IRAs x 60 percent receiving quarterly reports x 55.9 percent paper x 4 reports per year x \$0.59 = \$2,000

67 2,000 plans and IRAs x 55.9 percent paper x \$0.25 = \$300.

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 44.1 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 \$100.⁶⁸

Requirements 4, 5, and 6 also require the financial institution to report specific transaction fees and information to the authorizing fiduciaries. The information must be tracked, assigned to specific accounts, and reported. It is assumed that it costs the financial institution \$3.30 per plan or IRA to track this information.⁶⁹ With approximately 2,000 affected managed non-ERISA plans and IRAs, this results in a cost burden of approximately \$8,000 annually.⁷⁰

Summary

In total, the conditions of this exemption, as applied to managed non-ERISA plans and IRAs, will result in the production of 18,000 disclosures during the first year and 13,000 disclosures in subsequent years. Electronic methods will be used to distribute 44.1 percent of disclosures, at de minimis burden, while 10,000 disclosures during the first year and 7,000 disclosures in subsequent years 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 \$13,000 during the first year and \$11,000 during subsequent years.

Activity	Cost
1a. Written authorization from the authorizing fiduciary to the broker-dealer (First Year)	\$800
1b. Written authorization from the authorizing fiduciary to the broker-dealer (Subsequent Years)	\$50
2a. Provision of materials for evaluation of authorization of transaction (First Year)	\$1,000
2b. Provision of materials for evaluation of authorization of transaction (Subsequent Years)	\$70
3. Provision of an annual termination form	\$800
4. Transaction Reporting	\$2,000
5. Annual Statement	\$300

⁶⁸ 2,000 plans and IRAs x 55.9 percent paper x \$0.10 = \$100

⁶⁹ This estimate is based on information from an RFI and from industry sources in 2008 and then inflated to current dollars using the Consumer Price Index.

⁷⁰ 2,000 plans x \$3.30 = \$8,000

6. Report of Commissions Paid	\$100
4-6. Tracking and Reporting	\$8,000
Total (First Year)	\$13,000
Total (Subsequent Years)	\$11,000

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

There are no ongoing costs to the Federal government.

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

This analysis updates wage rates, postage rates, electronic disclosure rates, and counts of plans with broker-dealer relationships, which are the likeliest users of the exemption and the recipients of the disclosures.⁷¹ It also includes the burden resulting from the expansion of the exemption's conditions to include managed non-ERISA plans and IRAs, as well as the new recordkeeping requirement.

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.*

71 For the prior submission, the Department estimated that 35 percent of plans have relationships with broker-dealers. For this submission, the Department estimates that 23.7 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 2015 data, which suggested that 24 percent of DC plans have broker-dealer relationships.

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.