

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.

Insurance intermediaries, often referred to as insurance marketing organizations (IMOs) 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 and other payments from insurance companies. 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 proposes this prohibited transaction class exemption (PTE) in response to feedback received from IMOs regarding 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 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 proposed 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. The exemption would allow IMOs, independent insurance agents and insurance companies to receive compensation and other consideration in conjunction with the purchase of fixed annuities that, in the absence of an exemption, would not be permitted under ERISA and the Code.

As a condition of receiving compensation that would otherwise be prohibited, individual advisers and the IMOs with whom they contract must adhere to conditions designed to mitigate the harmful impact of conflicts of interest. Among other things, the exemption would require them to 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 IMOs to provide a written statement of their fiduciary status, and the fiduciary status of their advisers, to retirement investors. The IMO 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, IMOs 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.

Section II also requires the IMO to adopt written policies and procedures reasonably and prudently designed to ensure that advisers adhere to the exemption's standards. As part of the policies and procedures, the IMO must designate a person or persons responsible for addressing material conflicts of interest and monitoring Advisers' adherence to the Impartial Conduct Standards, to approve all recommended annuity applications in writing.

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 and annuity-specific pre-transaction 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 proposed 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 proposed 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 IMOs and advisers that restrict recommendations, in whole or in part, to investments that are proprietary products or that generate third party payments, which the Department believes includes all IMOs that will rely on the exemption. IMOs must prepare additional documentation regarding the limitations on investment recommendations, and their conclusions that the limitations will not cause them or their advisers to receive compensation in excess of reasonable compensation or to recommend imprudent investments.

Before the IMO receives compensation permitted under the PTE, Section V(a) requires it to provide notice to the Department of its intent to rely on the PTE. Under Section V(b) and (c) of the exemption, the IMO 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 IMO's policies and procedures governing its incentive and compensation practices for its advisers, , the documents prepared under Section IV (proprietary products and third party payments), contracts entered into with retirement investors, and disclosure documentation.

Section VIII(e)(2) requires an IMO to have its financial statements audited annually by an Independent certified public accountant. Section III(b)(vii) requires that the audited financial statements be disclosed on the IMO's website.

Finally, Section IX provides a transition period under which relief from these prohibitions is available for IMOs and advisers during the period between the Applicability Date (one year after the date of publication) and August 15, 2018 (the “Transition Period”). For the Transition Period, full relief under the exemption will be available for IMOs and advisers subject to more limited conditions, including that the IMOs provide notice to the Department of their intent to rely on the PTE and 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 have 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 PTE 2016-01 (OMB Control Number 1210-0156). Some of the burden included in the Department’s request for 1210-0156 would be transferred to this information collection if this proposal is finalized. 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. They are similar in nature to the information collections approved in PTE 2016-01, the Best Interest Contract Exemption, under OMB Control Number 1210-0156. 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 IMOs and advisers 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 parallel the requirements of PTE 2016-01, the Best Interest Contract Exemption, with adjustments made to address the business models of the IMOs selling fixed annuities.

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;*

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- *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 proposed 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 (IMOs that deal with employee benefit plans and IRAs), 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 proposed exemption, IMOs 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 IMO refuses to disclose information on the basis that the information is exempt from disclosure, the IMO 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 provides the public with 30 days to comment on the information collection and burden estimates.

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

No payments or gifts are provided to respondents.

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

No assurance of confidentiality was provided.

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.*

There are no questions of the nature described.

12. *Provide estimates of the hour burden of the collection of information. The statement should:*

- *Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.*
- *If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.*
- *Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.*

As described in more detail in questions 1 and 2 above, the proposed class exemption will require IMOs 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 IMO's and its adviser's advice (i.e., prohibited compensation). IMOs will have to prepare a written documentation regarding these limitations. IMOs will be required to maintain records necessary to prove that the conditions of the exemption have been met. In addition, the exemption provides a transition period from the Applicability Date until August 15, 2018. As a condition of relief during the transition period, IMOs must provide notice to the Department of their

intent to rely on the PTE and 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. 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. Based on LIMRA data on the number of fixed indexed annuity policies sold in 2015 and the marketshare held by independent agents, the Department estimates that 0.32 percent of ERISA plans and 0.39 percent of IRA holders have relationships with IMOs that might seek relief through this exemption. Therefore, the Department estimates that approximately 15,000 Retirement Investors for ERISA plans and 212,000 Retirement Investors for IRAs, and a de minimis number of Investors for non-ERISA plans will engage in transactions covered under this Exemption.

The Department estimates that approximately 19 large IMOs will seek relief under this Exemption to engage in transactions with their clients, that 28.7 percent of plans are new clients to a Financial Institution in an advisory capacity,² and that 20 percent of IRAs are new clients to a Financial Institution in any advisory capacity annually.³

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 the head of an IMO's compliance department to review all recommendations made by the IMO's advisers.

Specifically, this exemption requires respondents to provide transition disclosures, contracts and contract disclosures, pre-transaction disclosures,⁴ a notice to the Department, a web disclosure, a detailed pre-transaction information on demand, an annuity transaction disclosure, and it requires the head of the respondents' compliance departments to review all recommendations covered by this exemption.

² 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

³ 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.

⁴ The burden for the 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.

Transition Disclosures

The Department estimates that 15,000 Retirement Investors with respect to ERISA plans and 212,000 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 investors⁵ and 44.1 percent of IRAs and non-ERISA plan investors⁶ 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 126,000 paper transition disclosures⁷ will require two minutes of clerical time per disclosure, at an hourly rate of \$54.74,⁸ to print and mail the disclosure, resulting in 4,000 hours⁹ at an equivalent cost of \$230,000 during the first year only.¹⁰

Contract Disclosures and Contracts

The Department estimates that 15,000 Retirement Investors with respect to ERISA plans will receive a fifteen-page contract disclosure, and 212,000 Retirement Investors with respect to IRAs and non-ERISA plans will receive a fifteen-page contract during the first year. In subsequent years, 4,000 Retirement Investors with respect to ERISA plans who are entering new relationships with advisers¹¹ will receive a fifteen-page contract disclosure and 42,000 Retirement Investors with respect to IRAs and non-ERISA plans who are entering new relationships with advisers¹² will receive a fifteen-page contract.

5 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

6 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.

7 (15,000 ERISA Plan Investors x 48.2 percent paper) + (212,000 IRAs and non-ERISA Plan Investors x 55.9 percent paper) = 126,000 paper transition disclosures

8 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-august-2016.pdf>.

9 126,000 paper transition disclosures x 2 minutes per disclosure = 4,000 hours

10 4,000 hours x \$54.74 per hour = \$230,000

11 15,000 ERISA Plan Investors x 28.7 percent entering new advisory relationships = 4,000 ERISA Plan Investors entering new relationships with advisers

12 212,000 IRAs and non-ERISA Plan Investors x 20 percent entering new advisory relationships = 42,000 IRAs and non-ERISA Plan Investors entering new relationships with advisers

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 126,000 paper contract disclosures and contracts during the first year¹³ and 26,000 paper contract disclosures and contracts during subsequent years¹⁴ will require two minutes of clerical time per contract or disclosure, at any hourly rate of \$54.74, to print and mail the disclosure or contract, resulting in 4,000 hours¹⁵ at an equivalent cost of \$230,000 during the first year¹⁶ and 900 hours¹⁷ at an equivalent cost of \$47,000 during subsequent years.¹⁸

Pre-Transaction Disclosures

The Department estimates Retirement Investors seeking advice from IMO advisers under this exemption will engage in one transaction per year. Therefore, IMOs will produce 227,000 pre-transaction disclosures 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 126,000 paper pre-transaction disclosures¹⁹ will require two minutes of clerical time per disclosure, at any hourly rate of \$54.74, to print and mail the disclosure, resulting in 4,000 hours²⁰ at an equivalent cost of \$230,000 annually beginning in the second year.²¹

Notice to the Department and Web Disclosure

All burden associated with these requirements is discussed in question 13.

Detailed Pre-Transaction Information On Demand

The Department estimates that IMOs will receive ten requests per year for more detailed

13 (15,000 ERISA Plan Investors x 48.2 percent paper) + (212,000 IRAs and non-ERISA Plan Investors x 55.9 percent paper) = 126,000 paper contract disclosures and contracts

14 (4,000 ERISA Plan Investors x 48.2 percent paper) + (42,000 IRAs and non-ERISA Plan Investors x 55.9 percent paper) = 26,000 paper contract disclosures and contracts

15 126,000 paper contract disclosures and contracts x 2 minutes per contract or disclosure = 4,000 hours

16 4,000 hours x \$54.74 per hour = \$230,000

17 26,000 paper contract disclosures and contracts x 2 minutes per contract or disclosure = 900 hours

18 900 hours x \$54.74 per hour = \$47,000

19 (15,000 ERISA Plan Investors x 48.2 percent paper) + (212,000 IRAs and non-ERISA Plan Investors x 55.9 percent paper) = 126,000 paper pre-transaction disclosures

20 126,000 paper pre-transaction disclosures x 2 minutes per disclosure = 4,000 hours

21 4,000 hours x \$54.74 per hour = \$230,000

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 105 detailed disclosures will be distributed on paper.²² 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 \$54.74, resulting in 4 hours²³ at an equivalent cost of \$192 annually beginning in the second year.²⁴

Annuity Transaction Disclosure

As discussed previously, the Department estimates Retirement Investors seeking advice from IMO advisers under this exemption will engage in one transaction per year. Therefore, IMOs will produce 227,000 annuity transaction disclosures 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 126,000 paper annuity transaction disclosures²⁵ will require two minutes of clerical time per disclosure, at any hourly rate of \$54.74, to print and mail the disclosure, resulting in 4,000 hours²⁶ at an equivalent cost of \$230,000 annually beginning in the second year.²⁷

Compliance Review

The Department estimates that it will require 15 minutes of a financial manager's time, at an hourly rate of \$167.39, to review and approve each of the 227,000 annuity transaction recommendations made each year. This results in an annual burden of 57,000 hours at an equivalent cost of \$9.5 million.

Summary

As seen in the tables below, the overall burden associated with this exemption totals 69,000 hours during the first year and 66,000 hours in subsequent years. The equivalent costs are \$10.2 million during the first year and \$10.0 million in subsequent years.

22 $(19 \text{ IMOs using exemption} \times 10 \text{ requests per year}) \times ((9,000 \text{ DB plans} \times 48.2 \text{ percent paper}) + (29,000 \text{ DC plans} \times 48.2 \text{ percent paper}) + (1.1 \text{ million DC plan participants} \times 48.2 \text{ percent paper}) + (29.9 \text{ million IRAs} \times 55.9 \text{ percent paper})) / (9,000 \text{ DB plans} + 29,000 \text{ DC plans} + 1.1 \text{ million DC plan participants} + 29.9 \text{ million IRAs}) = 105 \text{ detailed disclosures on paper}$

23 $105 \text{ detailed disclosures on paper} \times 2 \text{ minutes per disclosure} = 4 \text{ hours}$

24 $4 \text{ hours} \times \$54.74 \text{ per hour} = \192

25 $(15,000 \text{ ERISA Plan Investors} \times 48.2 \text{ percent paper}) + (212,000 \text{ IRAs and non-ERISA Plan Investors} \times 55.9 \text{ percent paper}) = 126,000 \text{ paper annuity transaction disclosures}$

26 $126,000 \text{ paper annuity transaction disclosures} \times 2 \text{ minutes per disclosure} = 4,000 \text{ hours}$

27 $4,000 \text{ hours} \times \$54.74 \text{ per hour} = \$230,000$

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First Year Activity	Total Annual Burden (Hours)	Hourly Rate	Monetized Value of Respondent Time
Distribution of Transition Disclosures	4,000	\$54.74	\$230,000
Distribution of Contract Disclosures and Contracts	4,000	\$54.74	\$230,000
Distribution of Annuity Transaction Disclosures	4,000	\$54.74	\$230,000
Compliance Review	57,000	\$167.39	\$9.5 million
Totals for First Year	69,000		\$10.2 million

Subsequent Year Activity	Total Annual Burden (Hours)	Hourly Rate	Monetized Value of Respondent Time
Distribution of Contract Disclosures and Contracts	900	\$54.74	\$47,000
Distribution of Pre-Transaction Disclosures	4,000	\$54.74	\$230,000
Distribution of Detailed Pre-Transaction Disclosure On Demand	4	\$54.74	\$192
Distribution of Annuity Transaction Disclosures	4,000	\$54.74	\$230,000
Compliance Review	57,000	\$167.39	\$9.5 million
Totals for Subsequent Years	66,000		\$10.0 million

For purposes of reginfo.gov database entries the burden has been annualized over the three-year approval the Department seeks to 67,000 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 IMOs will contract with outside service providers to implement the various compliance requirements of this exemption. The methodology for calculating the per-firm costs for IMOs is the same as the methodology for insurance companies described in Chapter 5 of the regulatory impact analysis for the Department’s Conflict of Interest final rule. The Department estimates the per-firm costs to be as follows:

- Start-Up Costs for Large IMOs: \$6.6 million
- Ongoing Costs for Large IMOs: \$1.7 million

In order to receive compensation covered under this Exemption, Section II requires IMOs to acknowledge, in writing, their fiduciary status and adopt written policies and procedures designed to ensure compliance with the Impartial Conduct Standards. IMOs must make certain disclosures to Retirement Investors. IMOs 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 IMO to provide pre-transaction disclosures (including disclosures specific to annuities and 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, IMOs must prepare additional documentation regarding the limitations on investment recommendations, and their conclusions that the limitations will not cause the IMO or its advisers to receive compensation in excess of reasonable compensation or to recommend imprudent investments.

Before the IMO receives compensation permitted under the PTE, Section V(a) requires the IMO to provide notice to the Department of its intent to rely on the PTE. Under Section V(b) and (c) of the exemption, the IMO 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 IMO's policies and procedures governing its incentive and compensation practices for its advisers, the documents prepared under Section IV (proprietary products and third party payments), contracts entered into with retirement investors, and disclosure documentation.

Section VIII requires the IMO to have its financial statements audited annually by an Independent certified public accountant.

Finally, Section IX provides that during the Transition Period, full relief under the exemption will be available for IMOs and advisers subject to more limited conditions, including that the IMOs provide notice to the Department of their intent to rely on the PTE and make 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.

For the conditions above that are substantially similar to the conditions in the Best Interest Contract Exemption (PTE 2016-01; approved under OMB Control Number 1210-0156), 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.

In response to a recommendation made during the Department's August 2015, public hearing on the proposed fiduciary 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, and 2 hours and 5 minutes to draft sample transition disclosures. 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,²⁸ will cost an average of \$3,857 per IMO²⁹ for a total of \$73,000 during the first year. In subsequent years, it will cost an average of \$3,076 per financial institution³⁰ for a total of \$58,000 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 \$126.0 million during the first year and \$31.4 million in subsequent years.

²⁸ 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

²⁹ (3 hours and 47 minutes to draft contracts for IRAs and contract disclosures for plans + 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

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

**Insurance Marketing Organization Exemption
OMB Control Number 1210-NEW
January 2017**

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 Costs	Total Service Provider Costs
	(A)	(B)	(C)	A*B	A*C	A*(B+C)
Start-Up Costs Per Large IMO	19	\$3,857	\$6,631,035	\$73,287	\$125,989,665	\$126,062,952

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 IMO	19	\$3,076	\$1,651,294	\$58,437	\$31,374,582	\$31,433,020

IMOs will also incur legal cost burden associated with creating templates for the annuity-specific pre-transaction disclosure. The Department estimates that it will take 1.5 hours of legal time to draft and/or update the annuity disclosure annually. Each of the 19 IMOs are assumed to hire legal assistance billed at \$335.00 per hour to draft and/or update this disclosure. Therefore, the total cost of this legal assistance is \$10,000.³¹

The Department does not believe that IMOs will incur any costs associated with the annual audit requirement because having a financial institution's financial records audited on an annual basis is generally considered to be a usual and customary business practice.

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 \$0.47 per disclosure in postage costs.

As discussed in question 12, the Department estimates that respondents will mail 126,000 3-page paper transition disclosures during the first year; 126,000 15-page paper contract disclosures and contracts during the first year and 26,000 15-page paper contract disclosures and contracts in subsequent years; 126,000 3-page paper pre-transaction disclosures during the second year and all subsequent years; 105 5-page paper detailed disclosures during the second year and all subsequent years; and 126,000 1-page paper annuity-specific pre-transaction disclosures annually. Therefore, respondents will incur a materials and postage cost of \$297,000 during the first year³² and \$175,000 during subsequent years.³³

Summary

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 \$126.4 million during the first year³⁴ and \$31.6 million during subsequent years.³⁵ For purposes of reginfo.gov database entries the burden has been annualized over the three-year approval the DOL seeks to \$63.2 million (rounded) per year.

31 19 IMOs x 1.5 hours x \$335.00 per hour = \$10,000

32 (126,000 paper transition disclosures x ((3 pages x \$0.05 per page) + \$0.47 postage)) + (126,000 paper contract disclosures and contracts x (15 pages x \$0.05 per page) + \$0.47 postage)) + (126,000 paper annuity-specific pre-transaction disclosures x ((1 page x \$0.05 per page) + \$0.47 postage)) = \$297,000

33 (26,000 paper contract disclosures and contracts x (15 pages x \$0.05 per page) + \$0.47 postage)) + (126,000 paper pre-transaction disclosures x (3 pages x \$0.05 per page) + \$0.47 postage)) + (105 paper detailed disclosures x (5 pages x \$0.05 per page) + \$0.47 postage)) + (126,000 paper annuity-specific pre-transaction disclosures x ((1 page x \$0.05 per page) + \$0.47 postage)) = \$175,000

34 \$126.1 million service provider costs + \$10,000 annuity-specific legal costs + \$297,000 materials and postage costs = \$126.4 million total costs

35 \$31.4 million service provider costs + \$10,000 annuity-specific legal costs + \$175,000 materials and postage costs = \$31.6 million total costs

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

The agency associates no Federal cost with this information collection.

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

This is a new information collection.

16. *For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.*

There are no plans to publish results of this information collection.

17. *If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*

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

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

None.

B. Statistical Methods

This information collection does not employ statistical methods.