

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.*

Section 406(a)(1)(A) through (D) of the Employee Retirement Income Security Act of 1974 (“ERISA”) and Internal Revenue Code (“Code”) section 4975(c)(1)(A) through (D) prohibit certain transactions between plans or IRAs and “parties in interest,” as defined in ERISA section 3(14), or “disqualified persons,” as defined in Code section 4975(e)(2). Fiduciaries and other service providers are parties in interest and disqualified persons under ERISA and the Code. As a result, they are prohibited from engaging in (1) the sale, exchange, or leasing of property with a plan or IRA, (2) the lending of money or other extension of credit to a plan or IRA, (3) the furnishing of goods, services, or facilities to a plan or IRA and (4) the transfer to or use by or for the benefit of a party in interest of plan assets.

In the absence of an exemption, ERISA and the 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) are aimed at fiduciaries only. ERISA section 406(b)(1) and Code section 4975(c)(1)(E) prohibit a fiduciary from dealing with the income or assets of a plan or IRA in his own interest or his own account. ERISA section 406(b)(2), which does not apply to IRAs, provides that a fiduciary shall not “in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.” ERISA section 406(b)(3) and Code section 4975(c)(1)(F) prohibit a fiduciary from receiving any consideration for his own personal account from any party dealing with the plan in connection with a transaction involving assets of 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.

The purchase or sale of an investment between a plan or IRA and a fiduciary, resulting from the fiduciary’s provision of investment advice, raises issues under ERISA section 406(a)(1)(A) and (D), and 406(b) and Code section 4975(c)(1)(A), (D) and (E).

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.

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

The Principal Transactions Exemption in Certain Assets between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (the Exemption) allows investment advice fiduciaries to engage in purchases and sales of certain investments with plans, participant and beneficiary accounts and Individual Retirement Accounts (IRAs). The Exemption is necessary because the Department anticipates that the Regulation will cover many investment professionals who do not currently consider themselves to be investment advice fiduciaries. ERISA and the Code generally prohibit fiduciaries with respect to plans, participant and beneficiary accounts and IRAs from purchasing or selling any property to the plans, participant and beneficiary accounts or IRAs. Fiduciaries also may not engage in self-dealing or, under ERISA, act in any transaction involving the plan on behalf of a party whose interests are adverse to the interests of the plan or the interests of its participants and beneficiaries. When a fiduciary sells or purchases an investment in a principal transaction or a riskless principal transaction, it violates these prohibitions.

The exemption allows advisers and the financial institutions that employ them to engage in principal transactions and riskless principal transactions involving certain investments with plans, participant and beneficiary accounts and IRAs. The exemption limits the type

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.

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of investments that may be purchased or sold and contains conditions which the adviser and financial institution must satisfy in order to rely on the exemption.

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

The exemption requires disclosure of material conflicts of interest and basic information relating to those conflicts and principal transactions and riskless principal transactions in Section II, and, except with respect to existing contracts, documentation of the retirement investor's affirmative written consent to engage in principal transactions. In addition, Section IV of the exemption requires a transaction disclosure, either orally or in writing, of the capacity in which the financial institution may act with respect to the transaction; a written confirmation of the transaction; and an annual written disclosure identifying the transactions entered into in reliance on the exemption during the annual period and the date and price of the transactions. Certain information must also be made available on the financial institution's website, including model contract disclosures or other model notice of the contract terms and a written description of the financial institution's policies and procedures.

The exemption also requires the financial institution to maintain for a period of six years from the date of each principal transaction or riskless principal transaction, in a manner that is reasonably accessible for examination, the records necessary to enable the Department or Internal Revenue Service, a plan or IRA fiduciary, an employer of participants and beneficiaries, employee organizations whose members are covered by the plan, and participants or beneficiaries of a plan or IRA owners, to determine whether the conditions of the exemption have been met.

Finally, the exemption provides for a transition period under which relief from these prohibitions is available for financial institutions and advisers during the period between the Applicability Date (January 1, 2017) and January 1, 2018 (the "Transition Period"). For the Transition Period, full relief under the exemption will be available for financial institutions and advisers subject to more limited conditions, including that the financial institutions provide a disclosure with a written statement of fiduciary status and certain other information to all retirement investors (in ERISA plans, IRAs, and non-ERISA

plans) prior to or at the same time as the execution of recommended transactions

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

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

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

As further discussed in items 12 and 13 below, the Department has taken into account that some of the disclosures and written authorizations will be delivered electronically. The exemption provides that a retirement investor's assent to the contract may be evidenced by electronic signature and that the required disclosures may be provided electronically.

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 and confirmation statements of this class exemption are similar in some respects to the information required to be disclosed by the Securities and Exchange Commission (SEC). To the extent the disclosure requirements overlap, compliance with the SEC disclosure requirements can be used. 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.*

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The information collections impose the minimal burden needed to protect retirement investors' assets from transactions that are tainted by conflicts of interest. In response to comments received on the proposed exemption, the Department has significantly revised the information collection requirements in the final exemption by focusing on the most salient information about the recommended investment and material conflicts of interest, eliminating the proposed requirement that the financial institution obtain and disclose two price quotes from ready and willing unaffiliated counterparties, and the proposed requirement that financial institutions disclose the mark-up or mark-down on the transaction. It is necessary for the information collection to apply equally to large and small entities to ensure that participants and beneficiaries and IRA owners are protected when their plans and IRAs engage in transactions that otherwise would be prohibited under ERISA and the Code.

6. *Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*

The requirements of this PTE are only mandatory if financial institutions that are fiduciaries wish to utilize the class exemption. The frequency is dependent upon the occurrence of such transactions, not on a predetermined time period. This exemption was designed to address comments received on the proposed exemption, including from numerous groups representing the regulated community who asserted that market disruptions would occur if the Department did not provide exemptive relief allowing them to engage in principal transactions and riskless principal transactions with plans and IRAs.

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

Under the recordkeeping provisions of the final exemption, financial institutions are not required to disclose records that are privileged trade secrets or privileged commercial or financial information to plan fiduciaries, participants or beneficiaries, IRA owners, or their representatives. However, if the financial institution refuses to disclose information on the basis that the information is exempt from disclosure, the financial institution must, by the close of the thirtieth (30th) day following the request, provide a written notice advising the requestor of the reasons for the refusal and that the Department may request such information.

8. *If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.*

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

In accordance with 5 CFR 1320.11, the proposed exemption provided the public with 60 days to comment on the information collection and burden estimates. The Department received over 3,000 public comments in response to the proposed rule and accompanying

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proposed PTEs and proposed amendments to PTEs. The public comments were posted on the Department's website at the following two addresses:

<http://www.dol.gov/ebsa/regs/cmt-1210-AB32-2.html> and

<http://www.dol.gov/ebsa/regs/cmt-1210-ZA25.html>.

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

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

The proposed Principal Transactions Exemption would have required financial institutions to provide a pre-transaction disclosure that included pricing information about the security to be purchased or sold in the principal transaction. The pricing information included two price quotes with respect to the transaction, obtained from ready and willing non-affiliated counterparties, as well as the mark-up or mark-down to be charged with respect to the transaction. The mark-up or mark-down also would have been required to be disclosed in the confirmation statement and proposed annual disclosure. Commenters stated that the disclosure of the two price quotes and mark-up or mark-down on the transaction would be difficult to implement operationally. In the final exemption, the Department retained the pre-transaction disclosure, confirmation statement and annual disclosure, but did not require the disclosures to include these specific items of pricing information.

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

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

No payments or gifts are provided to respondents.

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

No assurance of confidentiality was provided.

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification*

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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.*

Based on 2013 Form 5500 data and Internal Revenue Service Statistics of Income data, the Department estimates that the retirement market consists of approximately 44,000 defined benefit (DB) plans, 119,000 defined contribution (DC) plans that do not allow participants to direct investments, 69.9 million DC plan participants in participant-directed plans, and 54.4 million IRA investors. The Department estimates that 20 percent of DB plans, 24 percent of DC plans,² and 45 percent of IRAs³ have relationships with financial institutions that might use this exemption. According to the Profit Sharing Council of America's 58th Annual Survey, only 6.42 percent of DC plan participants are offered and utilize investment advice through their plans. Further, the Department assumes that only 10 percent of DB plans, DC plans that do not allow participants to direct investments, and IRAs, and only 1 percent of DC plan participants will engage in principal transactions and riskless principal transactions. Therefore, the Department estimates that approximately 900 DB plans,⁴ 3,000 DC plans that do not allow

² This number is calculated by adding the 13% of load mutual funds in 401(k) plans according to Figure A2 and the 11% of 12b-1 fees in >.0 to 0.25 of 401(k) Stock Mutual Fund Assets in Figure A6 both of ICI Research Perspective, Vol. 21 No.3 of August 2015

³ Figure A15 of ICI's February 2016 Appendix: Additional Data on IRA Ownership in 2015 states that 82 percent of traditional IRAs with rollovers are held by investment professionals. This number was revised downward to reflect IRAs held by Insurance Companies and RIAs that would not need to seek exemptive relief.

⁴ 44,000 DB plans x 20 percent x 10 percent = 900 DB plans engaging in transactions.

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participants to direct investments,⁵ 11,000 DC plan participants,⁶ 2.4 million IRAs,⁷ and a de minimis number of non-ERISA plans will engage in transactions covered under this Exemption.

The Department estimates that approximately 6,000 Financial Institutions will utilize the Exemption to engage in principal transactions and riskless principal transactions with their clients,⁸ that 28.7 percent of plans are new clients to a Financial Institution in an advisory capacity,⁹ and that 20 percent of IRAs are new clients to a Financial Institution in any advisory capacity annually.¹⁰

As described in more detail in question 1 above, this exemption requires respondents to provide transition disclosures, contract disclosures and contracts, pre-transaction disclosures, confirmation notices, annual statements, and salient information on demand. Respondents are also required to maintain detailed records.

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.

Transition Disclosures

5 119,000 DC plans x 24 percent x 10 percent = 3,000 DC plans engaging in transactions.

6 69.9 million DC plan participants x 24 percent x 6.42 percent x 1 percent = 11,000 DC plan participants engaging in transactions.

7 54.4 million IRAs x 45 percent x 10 percent = 2.4 million IRAs engaging in transactions.

8 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, 63 percent of Registered Investment Advisers service ERISA-covered plans and IRAs. The Department assumes that a similar share of small and medium broker-dealers service ERISA-covered plans and IRAs and that all large broker-dealers service ERISA-covered plans and IRAs. Additionally, the Department assumed that RIAs that engage in principal transactions would need to seek exemptive relief. Further, according to Hung et al. (2008) (see regulatory impact analysis for complete citation), approximately 13 percent of RIAs report receiving commissions. Additionally, 20 percent of RIAs report receiving performance based fees; however, at least 60 percent of these RIAs are likely to be hedge funds. Therefore, as much as 8 percent of RIAs providing investment advice receive performance based fees. Combining the 8 percent of RIAs receiving performance based fees with the 13 percent of RIAs receiving commissions produces a conservative estimate of 21 percent of RIAs that might need to seek exemptive relief. Although the Department believes that very few RIAs that are not also BDs engage in Principal Transactions, its data to support this belief is limited, so the Department is conservatively assuming that the same RIAs that receive performance-based fees and commissions are the types of RIAs that might engage in Principal Transactions. Therefore, the Department estimates that approximately 6,000 BDs and RIAs could use the Exemption.

9 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

10 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.

The Department estimates that 14,000 Retirement Investors with respect to ERISA plans¹¹ and 2.4 million Retirement Investors with respect to IRAs and non-ERISA plans will receive a three-page transition disclosure during the first year. The transition disclosure will be distributed electronically to 51.8 percent of ERISA plan investors¹² and 44.1 percent of IRAs and non-ERISA plan investors¹³ 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 1.2 million paper transition disclosures¹⁴ will require two minutes of clerical time per disclosure,¹⁵ at an hourly rate of \$55.21,¹⁶ to print and mail the disclosure, resulting in 40,000 hours¹⁷ at an equivalent cost of \$2.2 million during the first year only.¹⁸

Contract Disclosures and Contracts

The Department estimates that 14,000 Retirement Investors with respect to ERISA plans will receive a five-page contract disclosure, and 2.4 million Retirement Investors with respect to IRAs and non-ERISA plans will receive a five-page contract during the first year. In subsequent years, 4,000 Retirement Investors with respect to ERISA plans who

11 900 DB plans + 3,000 DC plans that do not allow participants to direct investments + 11,000 DC plan participants = 14,000 ERISA Plan Investors

12 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

13 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.

14 (14,000 ERISA Plan Investors x 48.2 percent paper) + (2.2 million IRAs and non-ERISA Plan Investors x 55.9 percent paper) = 1.1 million paper transition disclosures

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

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

17 1.2 million paper transition disclosures x 2 minutes per disclosure = 40,000 hours

18 40,000 hours x \$55.21 per hour = \$2.2 million

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are entering new relationships with advisers¹⁹ will receive a five-page contract disclosure and 490,000 Retirement Investors with respect to IRAs and non-ERISA plans who are entering new relationships with advisers²⁰ will receive a five-page contract. To the extent that Financial Institutions use both the Best Interest Contract Exemption (approved under OMB Control Number 1210-0156) and this Exemption, this estimate may represent an overestimate because significant overlap exists between the requirements of the contract disclosure and the contract for both exemptions. If Financial Institutions choose to use both exemptions with the same clients, they will probably combine the documents.

The contract disclosure will be distributed electronically to 51.8 percent of the ERISA plan investors during the first year or during any subsequent year in which the plan investor begins a new advisory relationship. Paper contract disclosures will be mailed to 48.2 percent of ERISA plan investors. The contract will be distributed electronically to 44.1 percent of IRAs and non-ERISA plan participants during the first year or during any subsequent year in which the investor begins a new advisory relationship. Paper contracts will be mailed to 55.9 percent of IRAs and non-ERISA plan investors. Electronic distribution will result in de minimis burden. Distribution of the 1.4 million paper contract disclosures and contracts during the first year²¹ and 276,000 paper contract disclosures and contracts during subsequent years²² will require two minutes of clerical time per contract or disclosure, at any hourly rate of \$55.21, to print and mail the disclosure or contract, resulting in 46,000 hours²³ at an equivalent cost of \$2.5 million during the first year²⁴ and 9,000 hours²⁵ at an equivalent cost of \$508,000 during subsequent years.²⁶

Pre-Transaction Disclosures and Confirmation Slips

The Department believes that pre-transaction disclosures will be provided orally with de minimis additional burden and providing confirmation slips is a regular and customary business practice producing de minimis additional burden.

Annual Disclosures

The Department estimates that 2.5 million Retirement Investors for ERISA plans, IRAs

19 14,000 ERISA Plan Investors x 28.7 percent entering new advisory relationships = 4,000 ERISA Plan Investors entering new relationships with advisers

20 2.4 million IRAs and non-ERISA Plan Investors x 20 percent entering new advisory relationships = 490,000 IRAs and non-ERISA Plan Investors entering new relationships with advisers

21 (14,000 ERISA Plan Investors x 48.2 percent paper) + (2.4 million IRAs and non-ERISA Plan Investors x 55.9 percent paper) = 1.4 million paper contract disclosures and contracts

22 (4,000 ERISA Plan Investors x 48.2 percent paper) + (490,000 IRAs and non-ERISA Plan Investors x 55.9 percent paper) = 276,000 paper contract disclosures and contracts

23 1.4 million paper contract disclosures and contracts x 2 minutes per contract or disclosure = 46,000 hours

24 46,000 hours x \$55.21 per hour = \$2.5 million

25 276,000 paper contract disclosures and contracts x 2 minutes per contract or disclosure = 9,000 hours

26 9,000 hours x \$55.21 per hour = \$508,000

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and non-ERISA plans²⁷ will receive a two-page annual disclosure during the second year and all subsequent years. The disclosure 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 statements 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 1.4 million paper annual disclosures²⁸ will require two minutes of clerical time per disclosure, at any hourly rate of \$55.21, to print and mail the disclosure, resulting in 46,000 hours²⁹ at an equivalent cost of \$2.5 million annually.³⁰

Salient Information On Demand

The Department estimates that Financial Institutions will receive ten requests per year for more detailed investment information during the second year and all subsequent years. The detailed disclosures will be distributed electronically for 51.8 percent of the ERISA plan investors and 44.1 percent of the IRA holders and non-ERISA plan participants. The Department believes that requests for additional information will be proportionally likely with each Retirement Investor type. Therefore, approximately 34,000 detailed disclosures will be distributed on paper.³¹ Electronic distribution will result in de minimis burden. Paper distribution will also require two minutes of clerical time to print and mail the statement, at any hourly rate of \$55.21, resulting in 1,000 hours³² at an equivalent cost of \$62,000 annually.³³

Summary

As seen in the tables below, the overall burden associated with this exemption totals 85,000 hours during the first year and 56,000 hours in subsequent years. The equivalent costs are \$4.7 million during the first year and \$3.1 million in subsequent years.

First Year Activity	Total Annual Burden (Hours)	Hourly Rate	Monetized Value of Respondent Time
Distribution of Transition Disclosures	40,000	\$55.21	\$2.2 million
Distribution of Contract Disclosures and Contracts	46,000	\$55.21	\$2.5 million
Totals for First Year	85,000		\$4.7 million

27 900 DB plans + 3,000 DC plans that do not allow participants to direct investments + 10,000 DC plan participants + 2.4 million IRAs and non-ERISA Plan Investors = 2.5 million Retirement Investors for ERISA plans, IRAs, and non-ERISA plans

28 (14,000 ERISA Plan Investors x 48.2 percent paper) + (2.4 million IRAs and non-ERISA Plan Investors x 55.9 percent paper) = 1.4 million paper annual disclosures

29 1.4 million paper annual disclosures x 2 minutes per disclosure = 46,000 hours

30 46,000 hours x \$55.21 per hour = \$2.5 million

31 (6,000 Financial Institutions using exemption x 10 requests per year) *(((14,000 ERISA Plan Investors x 48.2 percent paper) + (2.4 million IRAs and non-ERISA Plan Investors x 55.9 percent paper)) / (14,000 ERISA Plan Investors + 2.4 million IRAs and non-ERISA Plan Investors)) = 34,000 detailed disclosures on paper

32 34,000 detailed disclosures on paper x 2 minutes per disclosure = 1,000 hours

33 1,000 hours x \$55.21 per hour = \$62,000

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Subsequent Year Activity	Total Annual Burden (Hours)	Hourly Rate	Monetized Value of Respondent Time
Distribution of Contract Disclosures and Contracts	9,000	\$55.21	\$508,000
Distribution of Annual Disclosures	46,000	\$55.21	\$2.5 million
Distribution of Market Information on Demand	1,000	\$55.21	\$62,000
Totals for Subsequent Years	56,000		\$3.1 million

For purposes of reginfo.gov database entries the burden has been annualized over the three-year approval the Department seeks to 66,000 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 Financial Institutions will contract with outside service providers to implement the various compliance requirements of this exemption. Per-firm costs for broker-dealers (BDs) were calculated by allocating the total cost reductions in the medium assumptions scenario across the firm size categories, and then subtracting the cost reductions from the per-firm average costs derived from the Oxford Economics study, as described in Chapter 5 of the regulatory impact analysis. The methodology for calculating the per-firm costs for registered investment advisers (RIAs) is described in detail in Chapter 5 of the regulatory impact analysis. The Department is attributing 50 percent of the compliance costs for BDs and RIAs to this Exemption and 50 percent of the compliance costs for BDs and RIAs to the Best Interest Contract Exemption (OMB Control Number 1210-0156). The Department estimates the per-firm costs to be as follows:

- Start-Up Costs for Large BDs: \$3.7 million
- Start-Up Costs for Large RIAs: \$3.2 million
- Start-Up Costs for Medium BDs: \$889,000
- Start-Up Costs for Medium RIAs: \$662,000
- Start-Up Costs for Small BDs: \$278,000
- Start-Up Costs for Small RIAs: \$219,000
- Ongoing Costs for Large BDs: \$918,000
- Ongoing Costs for Large RIAs: \$803,000
- Ongoing Costs for Medium BDs: \$192,000
- Ongoing Costs for Medium RIAs: \$143,000
- Ongoing Costs for Small BDs: \$60,000
- Ongoing Costs for Small RIAs: \$47,000

In order to receive compensation covered under this Exemption, Section II requires Financial Institutions to acknowledge, in writing, their fiduciary status and adopt written policies and procedures designed to ensure compliance with the Impartial Conduct

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Standards. Financial Institutions must make certain disclosures to Retirement Investors. Financial institutions must generally enter into a written contract with Retirement Investors with respect to principal transactions and riskless principal transactions with IRAs and non-ERISA plans with certain required provisions, including affirmative agreement to adhere to the Impartial Conduct Standards and to comply with FINRA rules 2121 and 5310.

Section IV requires Financial Institutions and Advisers to make certain disclosures to the Retirement Investor. These disclosures include: (1) a pre-transaction disclosure; (2) a disclosure, on demand, of information regarding the principal traded asset, including its salient attributes; (3) an annual disclosure; (4) transaction confirmations; and (5) a web-based disclosure.

Section VII requires Financial Institutions and Advisers to make a transition disclosure, acknowledging their fiduciary status and that of their Advisers with respect to the advice, stating the best interest standard of care, describing the circumstances under which principal transactions and riskless principal transactions may occur and the associated material conflicts of interest, prior to engaging in any transactions during the transition period from January 1, 2017 to January 1, 2018.

The Department is able to disaggregate an estimate of legal costs from the costs above; however, it is unable to disaggregate any of the other costs. The Department received a comment on the proposed PTE stating that the estimates for legal professional time to draft disclosures were not supported by any empirical evidence. The Department also received multiple comments on the proposed PTE stating that its estimate of 24 hours of legal professional time during the first year a financial institution used the exemption and then no legal professional time in subsequent years was without evidence.

In response to a recommendation made during the Department's August 2015, public hearing on the proposed rule and exemptions, and in an attempt to create estimates with a clearer empirical evidentiary basis, the Department drafted certain portions of the required disclosures, including a sample contract, 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 20 minutes to draft sample annual disclosures, 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, pre-transaction disclosures, disclosures regarding the principal traded assets, or confirmation slips. 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 further believes that pre-transaction disclosures will be provided orally at de minimis cost, facts and circumstances will vary too widely to accurately depict the disclosures regarding the principal traded assets, and providing confirmation slips is a regular and customary business practice producing de minimis additional burden.

Considered in conjunction with the estimates provided in the proposal, the Department estimates that outsourced legal assistance to draft standard contracts, contract disclosures, annual disclosures, and transition disclosures, billed at \$335.00 per hour,³⁴ will cost an average of \$3,676 per financial institution³⁵ for a total of \$22.3 million during the first year. In subsequent years, it will cost an average of \$2,978 per financial institution³⁶ for a total of \$18.1 million annually to update the contracts, contract disclosures, and annual disclosures.

The tested disclosures were those that are generally expected to be relatively uniform across users and straight-forward. The Department acknowledges that these estimates may understate the costs of outsourced legal assistance because the total time necessary to create all of the disclosures in the experiment was less than half of the 24 hour first year burden estimate described in the proposed PTE; however, the Department notes that the disclosures that were not tested in the experiment are those that are expected to be the most time consuming. Thus, the Department believes that the experiment's results are consistent with the estimates in the proposed PTE. Importantly, in the event that these legal estimates understate the time necessary to create and update the disclosures, they do not do so at the expense of the total burden estimates because they were derived from all-inclusive costs. Therefore, in the event that legal costs are understated, other cost estimates in this analysis would be overstated in an equal manner.

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

³⁴ 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

³⁵ (3 hours and 47 minutes to draft contracts and contract disclosures + 1 hour and 20 minutes to draft annual disclosures + 2 hours and 5 minutes to draft transition disclosures) x \$335.00 per hour = \$3,676

³⁶ (3 hours and 47 minutes to update contracts and contract disclosures + 1 hour and 20 minutes to update annual disclosures) x \$335.00 per hour = \$2,978

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procedures, producing the disclosures regarding principal traded assets on request, and any other steps necessary to ensure compliance with the conditions of the exemption not described elsewhere. These costs total \$1.9 billion during the first year and \$412.2 million in subsequent years.

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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 BD	42	\$3,676	\$3,679,342	\$154,392	\$154,532,364	\$154,686,756
Start-Up Costs Per Large RIA	22	\$3,676	\$3,216,770	\$80,872	\$70,768,940	\$70,849,812
Start-Up Costs Per Medium BD	147	\$3,676	\$885,169	\$540,372	\$130,119,843	\$130,660,215
Start-Up Costs Per Medium RIA	394	\$3,676	\$658,539	\$1,448,344	\$259,464,366	\$260,912,710
Start-Up Costs Per Small BD	2,320	\$3,676	\$274,475	\$8,528,320	\$636,782,000	\$637,056,475
Start-Up Costs Per Small RIA	3,150	\$3,676	\$215,767	\$11,579,400	\$679,666,050	\$679,881,817
Total	6,000			\$22.3 million	\$1.9 billion	\$2.0 billion

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Service Provider Cost Burden Summary Table for Years 2 and 3						
	Number of Financial Institutions	Itemized Legal Costs Per Firm	Remaining Cost Per Firm	Total Legal Costs	Total Remaining Service Provider Costs	Total Service Provider Costs
	(A)	(B)	(C)	A*B	A*C	A*(B+C)
Ongoing Costs Per Large BD	42	\$2,978	\$915,360	\$125,076	\$38,445,120	\$38,570,196
Ongoing Costs Per Large RIA	22	\$2,978	\$800,020	\$65,516	\$17,600,440	\$17,665,956
Ongoing Costs Per Medium BD	147	\$2,978	\$189,413	\$437,766	\$27,843,711	\$28,281,477
Ongoing Costs Per Medium RIA	394	\$2,978	\$140,359	\$1,173,332	\$55,301,446	\$56,474,778
Ongoing Costs Per Small BD	2,320	\$2,978	\$57,228	\$6,908,960	\$132,768,960	\$139,677,920
Ongoing Costs Per Small RIA	3,150	\$2,978	\$44,521	\$9,380,700	\$140,241,150	\$149,621,850
Total	6,000			\$18.1 million	\$412.2 million	\$430.3 million

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

As discussed in question 12, the Department estimates that respondents will mail 1.2 million 3-page paper transition disclosures during the first year; 1.4 million 15-page paper contract disclosures and contracts during the first year and 276,000 15-page paper contract disclosures and contracts in subsequent years; 1.4 million 2-page paper annual disclosures during the second year and all subsequent years; and 34,000 5-page paper detailed disclosures during the second year and all subsequent years. Therefore, respondents will incur a materials and postage cost of \$2.5 million during the first year³⁷ and \$1.2 million during subsequent years.³⁸

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 \$2.0 billion during the first year³⁹ and \$431.5 million during subsequent years.⁴⁰ For purposes of reginfo.gov database entries the burden has been annualized over the three-year approval the DOL seeks to \$939.7 million (rounded) per year.

14. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as 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.*

No cost to the Federal Government.

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*

37 $(1.2 \text{ million paper transition disclosures} \times ((3 \text{ pages} \times \$0.05 \text{ per page}) + \$0.49 \text{ postage})) + (1.4 \text{ million paper contract disclosures and contracts} \times (15 \text{ pages} \times \$0.05 \text{ per page}) + \$0.49 \text{ postage}) = \2.5 million

38 $(276,000 \text{ paper contract disclosures and contracts} \times (15 \text{ pages} \times \$0.05 \text{ per page}) + \$0.49 \text{ postage}) + (1.4 \text{ million paper annual disclosures} \times (2 \text{ pages} \times \$0.05 \text{ per page}) + \$0.49 \text{ postage}) + (34,000 \text{ paper detailed disclosures} \times (5 \text{ pages} \times \$0.05 \text{ per page}) + \$0.49 \text{ postage}) = \1.2 million

39 $\$2.0 \text{ billion service provider costs} + \$2.5 \text{ million materials and postage costs} = \$2.0 \text{ billion total costs}$

40 $\$430.3 \text{ million service provider costs} + \$1.2 \text{ million materials and postage costs} = \$431.5 \text{ million total costs}$

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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.