

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.*

Under ERISA, providing “investment advice” is a fiduciary act. A fiduciary who advises participants about plan investment opportunities that pay the adviser fees or commissions may be subject to liability under the Employee Retirement Income Security Act of 1974 (ERISA) prohibited transaction rules. The Pension Protection Act of 2006 (Pub. L. 109-280) amended the ERISA and the Internal Revenue Code (Code) to include a statutory exemption for providing investment advice to participants and beneficiaries in self-directed defined contribution individual account ERISA-covered plans (Plans) and beneficiaries of individual retirement accounts, individual retirement annuities, Archer MSAs, health savings accounts and Coverdell education savings accounts (collectively IRAs) described in the Code. The statutory exemption provides relief from the prohibited transaction provisions of ERISA, and the parallel provisions of the Code.

On January 21, 2009, the Department published in the *Federal Register* final rules implementing section 408(b)(14) and 408(g) of ERISA, and the parallel provisions in the Code. The final rules also included an administrative class exemption, adopted pursuant to ERISA section 408(a), granting additional prohibited transaction relief. The effective and applicability dates of the final rules, originally set for March 23, 2009, subsequently were delayed to allow the Department to solicit and review comments from interested persons on legal and policy issues raised under the final rules. Based on a consideration of the concerns raised by commenters as to whether the conditions of the class exemption would be adequate to mitigate advisers’ conflicts, the Department decided to withdraw the final rule. Notice of the withdrawal of the final rule was published in the *Federal Register* on November 20, 2009 (74 FR 60156).

On March 2, 2010, the Department published in the *Federal Register* new proposed regulations that implement the statutory prohibited transaction exemption under ERISA sections 408(b)(14) and 408(g), and the parallel provisions in the Code (75 FR 9360). In response to the proposal, the Department received 74 comment letters. On October 25, 2011, the DOL issued final regulations which state that a financial services firm, such as a registered investment adviser, bank, or registered broker-dealer, may provide advice on investments in its proprietary investment products, or on other investments that would result in fees or other payments to the firm, if the firm complies with a fee-leveling requirement or the advice is furnished using a certified computer model. The final regulations became effective on December 27, 2011.

The final regulations are nearly identical to the provisions of the March 2010 final rule and require the following collections of information:

a. Disclosures to Plan Participants and to IRA Participants [Section 2550.408g-1(b)(7)]

Initial Disclosures

In general, under section 2550.408(g)-1(b)(7), a fiduciary adviser must furnish detailed information to a Participant about an advice arrangement before initially providing investment advice. The information includes the following: the relationship between the adviser and the parties that developed the investment advice arrangement or selected the investment options available under the Plan or IRA; to the extent such information is not otherwise provided, the past performance and historical rates of return of investments available under the Plan or IRA; all fees and other compensation the fiduciary adviser or any affiliate is to receive in connection with the provision of investment advice or in connection with the investment; the fiduciary adviser's material relationship, if any, to any investment under the arrangement; the types of services the fiduciary adviser provides in connection with the provision of investment advice; the manner in which Participant information may be used or disclosed; an acknowledgement that the fiduciary adviser is acting as a fiduciary of the Plan or IRA in connection with providing the investment advice; and notice that the recipient of the advice may separately arrange for advice from another adviser that could have no relationship to, and receive no fees in connection with, the investments. If applicable, the fiduciary adviser also furnishes in writing to the Plan fiduciary an election, as permitted under the regulation, to be treated as the sole fiduciary providing investment advice through the use of a computer model to an ERISA-covered Plan Participant.

Subsequent Disclosures (at least annual/material changes)

After the initial disclosures, 2550.408g-1(b)(7)(iv)(B) and (C) require the fiduciary adviser to provide the same initial information at least annually or upon Participant request. If there is any material change to the information, the fiduciary adviser must inform the Participant of the change. If the computer model is materially changed, the fiduciary adviser must obtain a new certification of compliance with the regulation's criteria from an eligible expert, as described below.

Section 2550.408g-1(b)(6) requires any fiduciary adviser relying on the regulation to engage, at least annually, an independent auditor to conduct an audit of the investment advice arrangement for compliance with the regulation. The fiduciary adviser must issue a written report to a fiduciary of each Plan and each IRA Participant who authorized the use of the investment advice arrangement setting forth the auditor's findings. With respect to an IRA, the fiduciary adviser may instead make the report available on its website. In addition, if the audit report finds noncompliance with respect to an IRA, the fiduciary adviser must send a copy to the U.S. Department of Labor within 30 days of receipt.

b. Independent Certification [Section 2550.408g-1(b)(4)(ii)]

If the fiduciary adviser provides the investment advice through the use of a computer model, then before providing the advice, the fiduciary adviser must obtain the written certification of an eligible investment expert as to the computer model's compliance with certain standards (e.g., applies generally accepted investment theories, unbiased operation, objective criteria) set forth in the regulation.

c. Recordkeeping Requirements [Section 2550.408g-1(d)]

Consistent with the statutory exemption, the final regulation requires fiduciary advisers to maintain records with respect to the investment advice provided in reliance on the regulation necessary to determine whether the applicable requirements of the regulation have been satisfied. In addition to records of the disclosures described above, the fiduciary adviser must maintain records necessary to determine, among other things, that an independent fiduciary has provided express authorization of the arrangement under which the investment advice is provided, that an independent expert has provided the requisite certification, that the compensation to the fiduciary adviser and its affiliates in connection with the investments is reasonable, that the terms of the purchase, sale, or holding of the investment are at least as favorable to the Plan or IRA as those in an arm's length transactions would be, and that in cases where the advice is not provided through the use of a computer model, the compensation of the fiduciary adviser is not affected by the particular investments with respect to which the investment advice is provided.

d. Audit Requirement [Section 2550.408g-1(b)(6)]

The regulation requires any fiduciary adviser relying on the exemption to engage, at least annually, an independent auditor to conduct an audit of the investment advice arrangement for compliance with the conditions of the exemption. The audit report must be disclosed, and in some cases filed, as described under the answer 1.a., above.

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.*

The information collection requests that are conditions of the regulation include, third-party disclosures, recordkeeping, and audit requirements. With one exception, the regulation does not require any reporting or filing with the Federal government, but the designated records must be made available upon request. The exception is the requirement that the fiduciary adviser is required under certain circumstances to forward the audit report which is also a required disclosure under the regulation to the Department. These information collections are designed to safeguard plan assets involved in transactions flowing from investment advice arrangements covered by the regulation. The information collection requirements allow beneficiaries of accounts described in section 4975(e)(1)(B) through (g) (IRAs) and plan fiduciaries and

participants to assess the initial and continued appropriateness of investing assets subject to an investment advice arrangement. The information will enable the plan fiduciary to fulfill its fiduciary duties under the plan and enable participants to protect the assets of their plan asset accounts, and enable IRA Participants to protect the assets in their accounts.

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

Under 29 C.F.R. § 2520.104b-1(b) of ERISA, “where certain material, including reports, statements, and documents, is required under Part I of the Act and this part to be furnished either by direct operation of law or an individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries.” Section 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b).

The regulation expressly states in Section 2550.408g-1(b)(7)(iii) that the required disclosures can be provided in written or electronic form in accordance with 29 C.F.R. § 2520.104b-1(b).

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 Department has attempted to avoid duplication of information collection requirements. The required disclosures are unique to the circumstances of a particular investment advice arrangement and do not replicate any other requirements imposed by state or federal regulations. Although the SEC requires somewhat similar information in Form ADV, the information required under the regulation is more specifically tailored to the investments recommended under an investment advice arrangement. Accordingly, the information is not duplicative of that required by the SEC.

Many of the records required to be kept for this regulation are most likely records the parties are already required to generate and store to satisfy other requirements of federal and state securities and accounting laws, as well in the course of following usual and customary business practices.

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

The information collections apply only if a fiduciary adviser, and if applicable a plan fiduciary, decides to rely on the regulation in undertaking investment advice

arrangements. Because reliance on the regulation is voluntary, and because the information collections are designed specifically to protect the rights of Participants in Plans or IRAs for which such reliance is sought, the regulation does not provide special reduced requirements for small plans or small employers. The Department believes that the information collections are as important to Participants in small plans (or associated with small employers) as they are to Participants in large plans (or associated with large employers).

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 conditions of the regulation are only mandatory if a fiduciary adviser voluntarily decides to rely on the regulation and Participants and Plan fiduciaries voluntarily elect to receive investment advice under arrangements described in the regulation. Without the disclosure and audit requirements, Plan fiduciaries may not receive information about an investment advice arrangement needed to fulfill their fiduciary responsibilities with respect to a Plan and Participants may not have sufficient information to evaluate investment recommendations. Consequently, Participants' investments under Plans and IRAs may not be adequately protected. The Department has determined that, after a Participant has made an initial decision to participate in an investment advice arrangement, annual subsequent disclosures are the minimum protection necessary to the Participant or Plan fiduciary to re-evaluate the appropriateness of the investment advice arrangement.

Without the recordkeeping requirements, the Department would not be able to enforce the conditions to which the investment advice arrangements described in the regulation are subject.

7. *Explain any special circumstances that would cause an information collection to be conducted in a manner:*
- *requiring respondents to report information to the agency more often than quarterly;*
 - *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
 - *requiring respondents to submit more than an original and two copies of any document;*
 - *requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;*
 - *in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;*
 - *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*
 - *that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data*

- *security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

After a material modification in certain previously disclosed information, a written response may be required within 30 or fewer days. Under the regulation, the fiduciary adviser must disclose at a time reasonably contemporaneous with a material modification to the following information: the relationship between the adviser and the parties that developed the investment advice arrangement or selected the investment options available under the Plan or IRA; if not otherwise publicly available, past performance and historical rates of return of investments available under the plan or IRA; publicly available; all fees and other compensation the fiduciary adviser or any affiliate is to receive in connection with the investment; the fiduciary adviser's material relationship, if any, to any investment under the arrangement; and types of services the fiduciary adviser provides in connection with the investment advice. Further, if there is a material change to the computer model used to generate the investments in the initial disclosure, the fiduciary adviser must obtain a new certification before using the modified model. It is important that the information be provided and certification be obtained in a timely manner so that Participants and Plan fiduciaries can promptly monitor the investment advice arrangement in order to safeguard Plan and IRA assets.

Because the regulation provides guidance on statutory provisions which themselves are subject to a record retention requirement of a period of not less than six years under ERISA section 107, the exclusion from the three-year guideline for record retention set forth in 5 CFR 1320.5 is applicable.

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.

The Department's Federal Register Notice soliciting comments on the extension of the information collection, as required by 5 CFR 1320.8(d), was published in the Federal Register on May 22, 2017 (82 FR 23303). The public was provided with 60 days to comment on the submission, and no public comments were received.

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

Not applicable.

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

Not applicable.

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.*

Not applicable.

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.*

The Department has made certain specific basic assumptions in order to establish a reasonable estimate of the paperwork burden of this information collection. Most importantly, given the nature of the information collection requirements, the Department assumes a combination of personnel will perform the information collection. The

Department assumes an hourly wage rate for 2017,¹ including wages and benefits, of \$157.90 for financial managers, \$43.73 for clerical personnel, \$133.29 for legal professionals, and \$102.74 for computer programmers.

The Department assumes that there are 9,946 investment advisory firms (including broker-dealers) will take advantage of this statutory exemption to provide advice to both Plans and IRAs.² The number of investment advisory firms using this statutory exemptive relief is assumed to be constant over time. The Department also estimates that under the statutory exemption 79,083 Plans will seek to provide advice to their Participants. These Plans represent 14,757,860 Participants, of which 2,408,801 will seek advice from the investment advisory firm servicing their employer sponsored retirement investment plan. IRAs can also make use of this statutory exemption, and the Department estimates that 19,093,129 million IRA Participants will seek advice under this statutory exemption.

Table 1.--Number of Entities

Entities	Estimated Number
Investment advisory firms	9,946
DC Plans utilizing the statutory exemption	79,083
DC Plan Participants offered advice	14,757,860
DC Plan Participants utilizing advice	2,408,801
IRA Beneficiaries	19,093,129

a. Disclosure Package from Investment Advisory Firms to Participants

Each investment advisory firm is required to make certain disclosures initially (in advance of giving advice), annually and upon request. As more fully discussed in the answer to Item 1.a., above, the disclosure package required under the statutory exemption includes the following information regarding the investment advice arrangement: the relationship between the advisory firm and the investments recommended; if not otherwise publicly available, investment past performance; all fees and other compensation the fiduciary and its affiliates receive in connection with investments, services the fiduciary adviser provides in connection with the investment advice; acknowledgment that the adviser will act as a fiduciary; the manner in which the advisee's information may be used or disclosed; and a notice of opportunity to engage in non-conflicted advice arrangements. The Department assumes that investment advisory firms will compile all of these notices into a single four page disclosure package for each participant given advice.

¹For more information on how labor cost is calculated please see <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-july-2017.pdf>

² The Department assumes 50% of firms providing investment advice to plans and IRAs will use the exemption based on feedback from the Industry. Firm counts are derived from registrations with the SEC and the SEC Dodd-Frank Report (*Study on Investment Advisers and Broker-Dealers, As Required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act* (Jan.2011)).

The Department assumes that investment advisory firms will distribute this disclosure package only to participants who seek advice under this statutory exemption. The Department further assumes that the initial disclosure package will be disbursed at the time the participant initiates contact with the firm. The Department acknowledges that investment advisory firms might for other reasons decide to make disclosures to all of the participants of any particular plan; the Department assumes that investment advisory firms will only do so if disbursement through electronic means is available, thus there is no distribution costs associated with this type of mass market disclosure.

Under the statutory exemption, investment advisory firms are required to provide disclosures annually as well as initially. The Department assumes that investment advisory firms will distribute the same disclosures throughout the year and that they only update their disclosure content for the annual disclosures. The Department further assumes that few disclosures are requested each year (one per firm on average) and most requested disclosures are distributed either electronically at a negligible cost or in person at small costs.

Annual Disclosure Package Updates

For the annual updating of disclosures the Department assumes that the preparation time needed for updating the notices that are (a) the same for all Participants will be about three hours for each of the 9,946 investment advisory firms, (b) the same for all Plan Participants will average one hour and a half for each of the 79,083 Plans, and (c) individualized for IRAs will average 50 hours for each of the 9,946 investment advisory firms. Thus the annual hour burden is 645,769 with an equivalent cost of \$86,073,694.

Table 2.--Annual Disclosure Package Update Hour Burden Estimates

Disclosure Types	Number of Entities	Hours per Entity	Annual Hour Burden	Hourly Rate	Equivalent Cost
Disclosures uniform to all recipients	9,946	3	29,838	\$133.29	\$3,977,107
Disclosures specific to individual DC plans	79,083	1.5	118,625	\$133.29	\$15,811,470
Disclosures specific to individual IRA holders	9,946	50	497,300	\$133.29	\$66,285,117
TOTAL			645,763		\$86,073,694

Annual Distribution of Disclosure Package

All of these disclosures (initial, annual and upon request) can be distributed either electronically or in paper. The Department estimates that those disclosures distributed upon request will be distributed mostly through electronic means, and, thus, will have a negligible cost to advice firms. The Department estimates that 53.7 percent of the initial and annual disclosures will be electronically distributed with 46.3 percent distributed on

paper.³ The Department further assumes that of the 46.3 percent of disclosures printed, 50 percent will be handed out in person and 50 percent will be mailed to the Participant; thus, 23.2 percent of Participants will receive disclosures through the mail (with associated costs burdens for photocopying and mailing discussed in response 13.a. below). The Department estimates that an in-house clerical professional will require approximately four minutes per disclosure package (one minute per page) to make photocopies and about one minute to prepare each disclosure package for mailing. Assuming 2,408,801 Plan Participants and 19,093,129 IRA Participants seek advice, the regulation's annual hour burden hours associated with photocopying and mailing will be 746,655 hours with an equivalent cost of \$32,651,202.

Table 3.--Annual Disclosure Package Distribution Hour Burden Estimates

	Participants	Hours Required	Annual Hour Burden	Hourly Rate	Equivalent Cost
Total Photocopying	9,955,393	0.067	663,693	\$43.73	\$29,023,290
Plans	1,115,275	0.067	74,352	\$43.73	\$3,251,398
IRAs	8,840,119	0.067	589,341	\$43.73	\$25,771,892
Total Mailing	4,977,697	0.0167	82,962	\$43.73	\$3,627,911
Plans	557,637	0.0167	9,294	\$43.73	\$406,425
IRAs	4,420,059	0.0167	73,668	\$43.73	\$3,221,487
TOTAL			746,655		\$32,651,202

Thus the hour burden under the statutory exemption for updating the annual disclosure package is 645,763 hours at an equivalent cost of \$86,073,694 and the hour burden for producing and distributing the annual disclosure package is 746,655 hours at an equivalent cost of \$32,651,202. The overall hour burden for the annual disclosure package is 1,392,417 hours at an equivalent cost of \$118,724,895.

Table 4.--Annual Disclosure Package Hour Burden Estimates

	Annual Hour Burden	Equivalent Cost
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³ According to data from the National Telecommunications and Information Agency (NTIA), 36.0 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 of electronic disclosure that are automatically enrolled (for a total of 30.2 percent receiving electronic disclosure at work). Additionally, the NTIA reports that 38.5 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 affirmatively consent to receiving electronic disclosures (for a total of 23.5 percent receiving electronic disclosure outside of work). Combining the 30.2 percent who receive electronic disclosure at work with the 23.5 percent who receive electronic disclosure outside of work produces a total of 53.7 percent who will receive electronic disclosure overall.

Updating Content	645,763	\$86,073,694
Production and Distribution	746,655	\$32,651,202
TOTAL	1,392,417	\$118,724,895

b. Disclosure Package from Investment Advisory Firms to Authorizing Fiduciary

Under paragraph (b)(8) of the final rule, a fiduciary adviser must provide written notification to authorizing fiduciaries stating that it: (i) intends to comply with the conditions of the statutory exemption under ERISA sections 408(b)(14) and 408(g) and these final regulations; (ii) will be audited annually by an independent auditor for compliance with the conditions of the exemption and regulations; and, (iii) that the auditor will furnish the authorizing fiduciary with a copy of the auditor’s findings within 60 days of completion of the audit. The Department estimates that no additional hour or cost burden will be associated with this disclosure, because it will be provided in the normal course of engaging in an eligible investment advice engagement.

c. Computer Model Certification

Under the statutory exemption, a fiduciary adviser that chooses to rely on the conditions of the exemption that require computer model generated investment selections must obtain the certification of an eligible investment expert as to the computer model’s compliance with the criteria set forth in the regulation. The Department assumes that there are six companies that will provide the investment advice computer model⁴ and that legal professionals working at these six companies supply in-house support by providing documentation and other information to the eligible investment expert who re-certifies the company’s investment advice computer model on an annual basis. These legal professionals spend about 20 hours per investment advice computer model provider and on average 20 hours for each of the 9,946 investment advisory firms to whom the computer model providers supply their models. Thus the investment advice computer model providers have an hour burden of 199,040 hours for an equivalent cost of about \$25,203,000.

The Department also assumes that the investment advisory firm will need in-house legal professionals to provide documentation and other information to the eligible investment expert who re-certifies the investment advisory firm’s investment advice computer model. These legal professionals will spend on average five hours for each of the 79,083 plans and on average 25 hours for each of the 9,946 investment advisory firms. Thus the investment advisory firm’s hour burden for the annual re-certification of the investment advice computer model is 644,065 hours with an equivalent cost of \$85,847,457.

The total hour burden attributable to the annual re-certification of the investment computer model is 843,065 hours with an equivalent cost of \$112,377,499.

⁴ Based on limited information with respect to the investment computer model industry, the Department estimates that there are six companies that produce investment advice computer models.

Table 5.--Annual Computer Model Re-Certification Hour Burden Estimates

	Estimated Number	Hours Required	Annual Hour Burden	Hourly Rate	Equivalent Cost
Model provider			199,040	\$133.29	\$26,530,042
Models	6	20	120		\$15,995
IRA (advice firms)	9,946	20	198,920		\$26,514,047
Advice Firm			644,065	\$133.29	\$85,847,457
DC Plan	79,083	5	395,415		\$52,704,899
IRA (advice firms)	9,946	25	248,650		\$33,142,559
TOTAL			843,105		\$112,377,499

d. Recordkeeping Requirements

The Department also assumes that all investment advisory firms need to maintain recordkeeping systems. The Department assumes that all records that are required to be maintained will be kept electronically under normal business practices; therefore no printing and negligible holding costs are anticipated to be associated with records maintenance.

e. Audit Requirements

An annual audit performed by an independent auditor is required under the statutory exemption, and all firms are assumed to outsource this service but use some internal clerical and legal professional time to assist the auditor.⁵ The clerical staff is expected to spend about three hours per advisory firm and on average ten minutes per participant to gather documentation and other information. The in-house legal professional is expected to need approximately four hours to assist the auditor with the statutory exemption audit. The Department estimates that about one percent of participants will be audited per year, resulting in 215,019 audits of 21,501,930 total participants. As each participant receives advice on average four times per year, there are 860,077 Participant transactions audited under the statutory exemption each year. Overall, the annual in-house hour burden for the annual audit requirement is 105,459 hours, with equivalent costs of \$8,174,757.

Table 6.--Annual Audit Hour Burden Estimates

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[?] Audit firms are expected to transmit the final audit report to the advisory firm through electronic means at no additional costs. The advisory firms must either furnish a copy of the audit report to IRA Participants or make the audit report available on their website and inform IRA Participants of the purpose of the report and how and where to locate the report applicable to their account with the other disclosures discussed above. The Department assumes that all advisory firms will make the audit report available on their website and add a few sentences to the single disclosure package at negligible costs. Any advisory firm whose audit report identifies noncompliance with the requirements of this rule must send a copy of the report to the Department within 30 days following receipt of the report. The Department assumes that the majority of advisory firms will comply with the exemption; therefore, the costs associated with sending the audit reports to the Department are expected to be negligible.

Statutory Exemption for the Provision of Investment Advice to Participants
and Beneficiaries of Self-Directed Individual Account Plans and IRAs
December 2017

	Estimated Number	Hours Required	Hour Burden	Hourly Rate	Equivalent Cost
Clerical Work (Per Firm)	9,946	3	29,838	\$43.73	\$1,304,816
Clerical Work (Per Participant)	215,019	0.167	35,837	\$43.73	\$1,567,132
Legal Work (Per Firm)	9,946	4	39,784	\$43.73	\$5,302,809
TOTAL			105,459		\$8,174,757

Summary of Hour Burden Estimates

The Department estimates that the statutory exemption hour burden is 2,340,981 annually with an equivalent cost of \$239,277,152.

Table 7.--Total Hour Burden Estimates

	Annual Hour Burden	Equivalent Cost
Disclosures	1,392,417	\$118,724,895
Model Certification	843,105	\$112,377,499
Audit	105,459	\$8,174,757
TOTAL	2,340,981	\$239,277,152

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 costs arising from the information collection requirements of the statutory exemption derive from the outsourcing of the legal counsel review of disclosure notifications, the direct costs of distribution of disclosures, the costs of having an outside independent expert audit the transactions that use the statutory exemption and the costs of having an outside independent expert certify the firm’s investment advice computer model.

a. Disclosure Package to Participants (corresponding to the disclosures discussed in the response to Question 12. Section a. above)

The Department assumes that all firms will outsource the creation of a computer program to enable them to prepare disclosures discussed in section 12.a. above for IRA Participants. The Department estimates that the computer programmer will charge on average \$600 each year to update the program;⁶ thus the cost burden, given there are 9,946 investment advisory firms, will be \$5,967,600 annually.

Table 8.--Disclosures Generation Computer Program Cost Estimates

Advice Firms	Annual Cost per Advice	Annual Cost Burden
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⁶ The Department has based this cost estimate on limited industry data.

	Firm	
9,946	\$600	\$5,967,600

Annual Distribution of Disclosure Package

As stated in the response to Question 12.a above, the Department estimates that 46.3 percent of the disclosures to participants will be delivered through paper, with 50 percent of these delivered in person and 50 percent mailed to the participants, thus ten percent of participants receive their disclosure package through the mail. The per page photocopy costs are assumed to be five cents and the mailing costs are assumed to be \$0.49 per disclosure package for regular First Class mail. Given that there will be 21,501,930 participants (2,408,801 plan participants and 19,093,129 IRA holders), the associated cost burden for generating paper copies of the disclosures to participants under the statutory exemption is \$1,991,079 annually. The postage cost burden of the statutory exemption will be \$2,439,071 annually. Thus, the overall cost burden associated with distributing disclosures to participants is estimated to be \$2,165,829 per year.

Table 9.--Annual Distribution Cost Burden Estimates

	Participants	Annual Cost per Participant	Annual Cost Burden
Total Photocopying	9,955,393	\$0.20	\$1,991,079
Plans	1,115,275		\$223,055
IRAs	8,840,119		\$1,768,024
Total Mailing	4,977,697	\$0.00	\$2,439,071
Plans	557,637		\$273,242
IRAs	4,420,059		\$2,165,829
TOTAL			\$4,430,150

When the costs of the IRA computer disclosure program generation and distribution of disclosure packages are added together, the statutory exemption has an annual cost burden of \$10,397,750.

Table 10.--Summary of Disclosures Cost Burden

	Annual Cost Burden
IRA Computer Program	\$5,967,600
Distribution	\$4,430,150
TOTAL	\$10,397,750

b. Computer Model Certification

As discussed in the response to Question 12.c., above, the Department assumes that all firms will outsource the annual re-certification of the financial investment advice

computer model to an independent expert. The Department estimates that the independent expert will charge on average \$9,000 per financial investment advice firm each year;⁷ thus the cost burden, given there are 9,946 investment advisory firms, will be \$89,514,000 each year.

Table 11.--Investment Advice Computer Model Certification Cost Estimates

Advice Firms	Cost per Advice Firm	Annual Cost Burden
9,946	\$9,000	\$89,514,000

c. Audit Requirements

As discussed in the response to Question 12.e., above, all investment advisory firms are required have an independent audit every year. The Department assumes that the statutory exemption audits will be performed by a legal professional for each of the 9,946 investment advisory firms and will cost on average \$18,000 for each investment advisory firm, which includes any costs necessary to notify the Department of non-compliance.⁸ Thus, the annual cost burden will be \$179,028,000.

Table 12.--Annual Audit Cost Burden Estimates

Number of Advice Firms	Cost per Advice Firm	Annual Cost Burden
9,946	\$18,000	\$179,028,000

Summary of Statutory Exemption Cost Burden Estimates

The Department estimates that the statutory exemption has an annual cost burden of \$278,939,750.

Table 13.--Total Cost Burden

	Annual Cost Burden
Disclosures	\$10,397,750
Model Certification	\$89,514,000
Audit	\$179,028,000
TOTAL	\$278,939,750

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.*

⁷ The Department has based this cost estimate on limited industry data.

⁸ The Department has based this cost estimate on limited industry data.

There are no annualized costs to the Federal government for this information collection.

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

Changes to four burden estimate inputs caused burden estimates to increase for this submission:

1. Increased usage of this exemption;
2. Increased labor costs due to inflation;
3. Increased postage costs due to inflation; and
4. A change to EBSA's assumption regarding electronic transmission of the disclosures. During the last submission, EBSA assumed that 80 percent of disclosures would be transmitted electronically. This assumption is inconsistent with what EBSA typically uses as its electronic disclosure assumption and EBSA believes this is an overestimate of electronic transmission. Therefore, for this submission, EBSA has revised the electronic disclosure assumption to 53.7 percent, which is consistent with what EBSA typically assumes when it calculates burden for disclosures.

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 the results of this collection of information.

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 agency will communicate the expiration date to the public after OMB approval.

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

There are no exceptions to the certification statement.

B. Statistical Methods

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