

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995
SUBMISSIONS

The Department of Labor, Employee Benefits Security Administration requests a revision to the information collections contained in Prohibited Transaction Exemption (PTE) 86-128, which are currently approved under OMB Control Number 1210-0059.¹ The Department is requesting to renew the information collections contained in PTE 86-128 that were in place prior to 2016.

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 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) authorizes the Secretary of Labor and the Secretary of the Treasury to grant a conditional or unconditional exemption of any fiduciary, disqualified person or class of fiduciaries, orders of disqualified persons or transactions, from all or part of the restrictions imposed by sections 406 and 407(a) of ERISA and from taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. Under section 102 of Reorganization Plan No. 4, of 1978 (Reorganization Plan No. 4), the Secretary of Labor was given the authority to grant such exemptions.

Prohibited transaction class exemption (PTE) 86-128, which was granted on November 18, 1986, exempts from the prohibited transaction restrictions a fiduciary's use of its authority to cause a plan (including an individual retirement account) or a pooled investment fund to pay a fee to the fiduciary for effecting or executing of securities transactions as agent for the plan or fund. It also permits a fiduciary to act as an agent in an agency cross transaction for both the plan and one or more other parties to the transaction, and to receive reasonable compensation for effecting or executing the agency cross transaction from one or more of the other parties to the transaction. This class exemption replaced two prior class exemptions, PTE 79-1 and PTE 84-46.

Based on an application submitted by the Securities Industry Association, in 2002, the Department amended PTE 86-128 to make the exemption available to fiduciaries that are discretionary plan trustees², subject to certain additional conditions. The conditions

¹ They were amended as part of the Department's 2016 final rule defining who is a "fiduciary" under ERISA and the Code, which was published in the Federal Register on April 8, 2016. The final rule and PTE amendments were vacated in toto by the Fifth Circuit Court of Appeal's decision in *Chamber of Commerce v. Department of Labor*, 885 F.3d 360 (5th Cir. 2018).

²Prior to the 2002 amendment, PTE 86-128 was not available to any person (or any affiliate thereof) who was a

include a minimum plan size (at least \$50 million in total net assets), and at least annual reporting to the authorizing fiduciary of both dollar and cents-per-share commissions paid to brokers that are: a) affiliated, and b) non-affiliated with the trustee.

Section 406 of ERISA prohibits various transactions between a plan and certain related parties. Those parties in interest described in section 3(14) of ERISA and disqualified persons described in section 4975(e)(2) of the Code, such as plan fiduciaries, sponsoring employers, unions, service providers and affiliates, may not engage in a transaction described in section 406 of ERISA and section 4975(c) of the Code with a plan without an exemption. Specifically, these sections prohibits sales, leases, loans, or the provision of services between a party in interest and a plan; or the use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest or a disqualified person, unless a statutory or administrative exemption applies to the transaction. In addition, unless exempted, section 406(b) of ERISA prohibits a fiduciary's dealing with the assets of a plan in his or her own interest.

Although, section 408(b)(2) of ERISA provides a conditional statutory exemption permitting a plan to make reasonable contractual arrangements with parties in interest for the provision of services necessary for the plan's operations, the statutory exemption does not extend to an act of self-dealing described in section 406(b) of ERISA. A fiduciary performing both investment management and brokerage services for the same plan is in a position where his or her decision, as an exercise of fiduciary discretion, to engage in a portfolio trade on behalf of the plan would result in the plan's paying the fiduciary an additional fee for performance of the brokerage services. In the Department's view, such a decision involves an act of self-dealing prohibited by section 406(b) of ERISA and not exempt by section 408(b)(2) of ERISA. The Department of Labor has authority pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code to grant either individual or class exemptions. In order to grant a class exemption under section 408(a) and section 4975(c)(2), the Department must determine that the exemption is:

- (1) administratively feasible,
- (2) in the interests of the plan and its participants and beneficiaries, and
- (3) protective of the rights of participants and beneficiaries of such plan.

In order to ensure that the class exemption is not abused, that the rights of the participants and beneficiaries are protected, and that the exemption's conditions are being complied with, the Department often requires minimal information collection pertaining to the affected transactions.

2. *Indicate how, by whom, and for what purpose the information is to be used. Except for a*

discretionary trustee, plan administrator, or an employer, any of whose employees were covered by the plan.

new collection, indicate the actual use the agency has made of the information received from the current collection.

Section III of the class exemption imposes the following information collection requirements on fiduciaries of employee benefit plans that effect or execute securities transactions (“broker-dealers”) and the independent plan fiduciary authorizing the plan to engage in the transactions with the broker-dealer (“authorizing fiduciary”) under the conditions contained in the exemption:

- 1) The authorizing plan fiduciary must provide the broker-dealer with an advance written authorization for the transactions;
- 2) The broker-dealer must provide the authorizing fiduciary with information necessary to determine whether an authorization should be made, including a copy of the exemption, a form for termination, a description of the broker-dealer’s brokerage placement practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests;
- 3) The broker-dealer must provide the authorizing fiduciary with a termination form, at least annually, explaining that the authorization is terminable at will, without penalty to the plan, and that failure to return the form will result in continued authorization for the broker-dealer to engage in securities transactions on behalf of the plan;
- 4) The broker-dealer must provide the authorizing fiduciary with either (a) a confirmation slip for each individual securities transaction within 10 days of the transaction containing the information described in Rule 10b-10(a)(1-7) under the Securities Exchange Act of 1934, 17 CFR 240.10b-10 or (b) a quarterly report containing certain financial information including the total of all transaction-related charges incurred by the plan;
- 5) The broker-dealer must provide the authorizing fiduciary with an annual summary of the confirmation slips or quarterly reports, containing all security transaction-related charges, the brokerage placement practices (if changed), and a portfolio turnover ratio; and
- 6) A broker-dealer who is a discretionary plan trustee must provide the authorizing fiduciary with an annual report showing separately the commissions paid to affiliated brokers and non-affiliated brokers, on both a total dollar basis and a cents-per-share basis.

These requirements are designed as appropriate safeguards to ensure the protection of the plan assets involved in the transactions, which, in the absence of the class exemption, would not be permitted. These safeguards rely on the prior authorization and monitoring of the broker-fiduciary’s activities by a second plan fiduciary that is independent of the first. They are necessary, as required under section 408(a) of ERISA, to ensure that respondents rely on the exemption only in the circumstances protective of plan participants and beneficiaries.

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). Section 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

4. *Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.*

The reporting requirements of this class exemption are similar in some respects to the information required to be disclosed under Rule 10b-10 of the Securities Exchange Act of 1934. The requirements included in this class exemption have been designed so that compliance with the Securities and Exchange Commission (SEC) requirements could be used where applicable. Therefore, the requirements of this class exemption are not duplicative.

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

This exemption is needed primarily for brokers in large institutions, who would be most likely to engage in the covered transactions. Even if the broker works for a small firm, the information collection is the minimal burden necessary to protect the assets of the employee benefit plan.

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

The disclosure requirements of PTE 86-128 are only mandatory if a fiduciary that is a

broker-dealer or who has a broker-dealer affiliate wishes to utilize the class exemption. The frequency is dependent on the occurrence of such transactions, not on a predetermined time period. This exemption was requested by in part by the Securities Industry Association (SIA) on behalf of its members. Eliminating the information collection would make it difficult to ensure that the rights of participants and beneficiaries are being sufficiently protected, as required by Section 408(a).

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.*

There are no special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.5.

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 notice soliciting public comment and providing 60 days for that purpose as required by 5 CFR 1320.8 (d) was published in the Federal Register on April 5, 2019 (84 FR 13719). No comments were received.

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

No payments or gifts are provided to respondents.

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

No assurance of confidentiality was provided.

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

There are no questions of a sensitive nature.

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.*

Section III of the class exemption imposes the following information collection requests on fiduciaries of employee benefit plans that effect or execute securities transactions (“broker-dealers”) and the independent plan fiduciary authorizing the plan to engage in the transactions with the broker-dealer (“authorizing fiduciary”) under the conditions contained in the exemption:

- 1) The authorizing plan fiduciary must provide the broker-dealer with an advance written authorization for the transactions;
- 2) The broker-dealer must provide the authorizing fiduciary with information necessary to determine whether an authorization should be made, including a copy of the exemption, a form for termination, a description of the broker-dealer’s brokerage placement practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests;
- 3) The broker-dealer must provide the authorizing fiduciary with a termination form, at least annually, explaining that the authorization is terminable at will, without penalty to the plan, and that failure to return the form will result in continued authorization for the broker-dealer to engage in securities transactions on behalf of the plan;
- 4) The broker-dealer must provide the authorizing fiduciary with either (a) a confirmation slip for each individual securities transaction within 10 days of the transaction containing the information described in Rule 10b-10(a)(1-7) under the Securities Exchange Act of 1934, 17 CFR 240.10b-10 or (b) a quarterly report containing certain financial information including the total of all transaction-related charges incurred by the plan;
- 5) The broker-dealer must provide the authorizing fiduciary with an annual summary of the confirmation slips or quarterly reports, containing all security transaction-related charges, the brokerage placement practices (if changed), and a portfolio turnover ratio;
- 6) A broker-dealer who is a discretionary plan trustee must provide the authorizing fiduciary with an annual report showing separately the commissions paid to affiliated brokers and non-affiliated brokers, on both a total dollar basis and a cents-per-share basis.

Using the 2016 Annual Return/Report of Employee Benefit Plan (Form 5500) data, the Department estimates that there are approximately 702,540 ERISA covered pension plans. The Department estimates that about 21.1% of these plans (148,236 plans) use a financial institution fiduciary that is potentially eligible to take advantage of the

exemption.³

The Department estimates that 2,407 financial institutions will use this exemption.⁴ It is further assumed that 6.4 percent⁵ of plans (9,487 plans) in a year are new plans or existing plans entering into new arrangements with covered fiduciaries in a year.

The following wage rates are assumed:⁶ an in-house rate of \$133.29 for legal professionals and \$52.09 for clerical staff.

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

Authorizing fiduciaries of new plans entering into a relationship with a broker-dealer are required to provide the broker-dealer with an advance written authorization to perform transactions for the plan. The Department estimates that there are approximately 9,487 new plans or plans entering new arrangements each year. Therefore, the Department estimates that approximately 9,487 authorizing fiduciaries are expected to send an advance written authorization. It is assumed that a legal professional will spend one hour per plan reviewing the disclosures and preparing an authorization form. This results in an hour burden of 9,487 hours⁷ with an equivalent cost of \$1,264,536.⁸

To produce and distribute the authorization, the Department assumes that 56.4 percent will be distributed electronically through traditional electronic methods at no additional burden, and the remaining 43.6 percent will be mailed.⁹ For paper authorizations, the Department assumes that clerical staff will spend two minutes preparing and sending the

3 The burden estimates contained in the responses to questions 12 and 13 are calculated off of unrounded figures, while in many cases the numbers presented in the text are rounded. Any discrepancies in the burden estimates are attributable to rounding.

4 The Department assumes that broker-dealers will be the primary users of the PTE. Internal estimates suggest that of the 3,791 broker-dealers registered with the SEC, 2,407 service ERISA plans or IRAs. .

5 This estimate is from the 2016 Form 5500 data set.

6 For more information on how the Department estimates labor costs 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>

7 9,487 plans x 1 hour per plan = 9,487 hours

8 9,487 hours x \$133.29 per hour = \$11,264,536

9 According to data from the National Telecommunications and Information Agency (NTIA), 37.7 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 31.7 percent receiving electronic disclosure at work). Additionally, the NTIA reports that 40.5 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 24.7 percent receiving electronic disclosure outside of work). Combining the 31.7 percent who receive electronic disclosure at work with the 24.7 percent who receive electronic disclosure outside of work produces a total of 56.4 percent who will receive electronic disclosure overall.

PTE 86-128 (Securities Broker-Dealers)
OMB Number 1210-0059

June 2019

authorization resulting in an hour burden of approximately 138 hours¹⁰ with an equivalent cost of \$7,175.¹¹

In total, as presented in the table below, the written authorization requirement is expected to result in a total hour burden of 9,625 hours with an equivalent cost of \$1,271,711.

Activity	Burden Hours	Equivalent Burden Cost
Legal	9,487	\$1,264,536
Clerical	138	\$7,175
Total	9,625	\$1,271,711

2) Provision of materials for evaluation of authorization of transaction

Prior to a written authorization being made, the authorizing fiduciary must be provided by the financial institution with a copy of the exemption, a form for termination of authorization, a description of broker's placement practices, and any other reasonably available information. This information is assumed to be readily available.¹² To produce and distribute the materials, the Department assumes that 56.4 percent will be distributed electronically through traditional electronic methods at no additional burden, and the remaining 43.6 percent will be mailed. For paper copies, a clerical staff member is assumed to require two minutes to prepare and mail the required information to the plan fiduciary. This information will be sent to the 9,487 plans entering into an agreement with a financial institution, and based on the above, the Department estimates that this requirement results in an hour burden of 138 hours¹³ with an equivalent cost of \$7,175.¹⁴

3) Provision of an annual termination form

Each plan's authorizing fiduciary must be supplied annually with a form expressly providing an election to terminate the written authorization. It is assumed that legal professionals with each of the 2,407 financial institutions will spend 1 hour preparing the termination forms, which results in an hour burden of 2,407 hours¹⁵ with an equivalent cost of \$320,816.¹⁶

¹⁰ 9,487 plans x 43.6 percent paper x 2 minutes per plan = 138 hours

¹¹ 138 hours x \$52.09 per hour = \$7,175

¹² The cost of preparing the termination form is accounted for under requirement three.

¹³ 9,487 plans x 56.4 percent paper x 2 minutes per plan = 1380 hours

¹⁴ 138 hours x \$52.09 per hour = \$7,175

¹⁵ 2,407 financial institutions x 1 hour per financial institution = 2,407 hours

¹⁶ 2,407 hours x \$133.29 per hour = \$320,816

PTE 86-128 (Securities Broker-Dealers)
OMB Number 1210-0059

June 2019

To produce and distribute the termination form, the Department assumes that 56.4 percent will be distributed electronically through traditional electronic methods at no additional burden, and the remaining 43.6 percent will be mailed. The Department estimates that clerical staff will spend two minutes per plan preparing and distributing the paper termination forms resulting in an hour burden of 2,154 hours¹⁷ with an equivalent cost of \$112,113.¹⁸

In total, as seen in the table below, providing the annual termination form is expected to impose an hour burden of 4,561 hours with an equivalent cost of \$432,929.

Activity	Burden Hours	Equivalent Burden Cost
Legal	2,407	\$320,816
Clerical	2,154	\$112,113
Total	4,561	\$432,929

4) Transaction Reporting

The broker-dealer engaging in a covered transaction must furnish the authorizing fiduciary with either a conformation slip for each securities transaction or a quarterly report containing specified information. As discussed above, the provision of the confirmation already is required under SEC regulations. Therefore, if the transaction reporting requirement is satisfied by sending conformation slips, no additional hour burden will occur.

It is estimated that 60 percent of plans receive quarterly reports. The collecting and generation of the information for the quarterly report is reported as a cost burden. To produce and distribute the quarterly report, the Department assumes that 56.4 percent will be distributed electronically through traditional electronic methods at no additional burden, and the remaining 43.6 percent will be mailed. Clerical staff may be required to prepare and distribute the reports. It is assumed that clerical staff will spend two minutes per plan for preparing and mailing each of the quarterly reports to the 88,942 plans that receive quarterly reports.¹⁹ This results in an hour burden of 5,170 hours²⁰ and equivalent cost of \$269,071.²¹

5) Annual Statement

¹⁷ 148,236 plans x 43.6 percent paper x 2 minutes per plan = 2,154 hours

¹⁸ 2,154 hours x \$52.09 per hour = \$112,113

¹⁹ 148,236 plans x 60 percent receiving quarterly reports = 88,942 plans receiving quarterly reports

²⁰ 88,942 plans receiving quarterly reports x 43.6 percent paper x 2 minutes per plan x 4 reports per year = 5,170 hours

²¹ 5,170 hours x \$52.09 per hour = \$269,071

PTE 86-128 (Securities Broker-Dealers)
OMB Number 1210-0059

June 2019

In addition to the transaction reporting requirement, broker-dealers are required to send an annual report to each authorizing plan fiduciary containing the same information as the quarterly report and also containing all security transaction-related charges, the brokerage placement practices, and a portfolio turnover ratio. Collecting and generating the information required for the annual report is reported as a cost burden. In addition, it is assumed that the information that must be sent annually could be sent together; therefore, the clerical staff hours required to prepare and distribute the report has been included with the provision of annual termination form requirement. Therefore, no additional hour burden has been reported.

6) Report of Commissions Paid

A discretionary trustee must provide an authorizing fiduciary with an annual report showing separately the commissions paid to affiliated brokers and non-affiliated brokers, on both a total dollar basis and a cents-per-share basis. The collecting and generation of the information for the quarterly report is reported as a cost burden. The clerical hour burden to prepare and distribute the report is included with the provision of annual termination form requirement, because both items are required to be sent annually.

Summary

In total, the conditions of this exemption will result in the production of 819,448 disclosures. Electronic methods will be used to distribute 56.4 percent of disclosures, at de minimis burden, while 462,168 disclosures will be on paper. Production and distribution of paper disclosures will result in an overall burden of 19,495 hours with an equivalent cost of \$1,980,877.

Activity	Burden Hours	Equivalent Burden Cost
1. Written authorization from the authorizing plan fiduciary to the broker-dealer	9,625	\$1,271,711
2. Provision of materials for evaluation of authorization of transaction	138	\$7,175
3. Provision of an annual termination form	4,561	\$432,930
4. Transaction Reporting	5,170	\$269,071
5. Annual Statement	0	\$0
6. Report of Commissions Paid	0	\$0
Total	19,495	\$1,980,877

13. *Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 or 14).*

As discussed in item 12 above, the exemption imposes six information requests on authorizing fiduciaries and broker-dealers to qualify for the relief provided in the exemption. The cost burden that is associated with complying with these ICRs is discussed below. These estimates are in addition to the hour burden estimates discussed in item 12.

The Department has used the same assumptions as were used in determining the hour burden. In addition, the Department assumes that electronic means will be used to deliver 56.4 percent of the required information with no associated cost burden. For the required information not sent electronically, the Department estimates that a cost of 5 cents per page for paper and printing costs will be assessed. Postage of 55 cents per mailing will also be incurred.

The annual cost burden is calculated as follows:

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

Plans must issue in writing an authorization to the financial institution prior to a transaction occurring. It is assumed that the authorization will include two pages. New plans and plans that enter into a new agreement with a broker-fiduciary will have to send the authorization; therefore about 9,487 plans will have to send the authorization each year with 56.4 percent being sent electronically. Paper authorizations will cost \$0.65 each, which results in a cost burden of approximately \$2,689.²²

- 2) Provision of materials for evaluation of authorization of transaction

New plans and plans entering into a new agreement must also receive required information from their financial institutions. This information includes a copy of the exemption, a termination form, a description of the broker-fiduciary's placement practice, and other requested item. This information is assumed to include seven pages. Once again, approximately 9,487 authorizing plan fiduciaries will receive this information and 56.4 percent will receive the information electronically at no cost. Paper distribution will cost \$0.90 each, which results in a cost burden of about \$3,723.²³

- 3) Provision of an annual termination form

Annually, a broker-dealer must send the authorizing plan fiduciary a termination form. Authorizing fiduciaries of all 148,236 plans will receive this form and that 56.4 percent will be sent electronically at no cost. It is assumed that the form will be two pages, so paper copies will cost \$0.65 each, which results in a cost burden of approximately

²² 9,487 authorizations x 43.6 percent paper x \$0.65 = \$2,689

²³ 9,487 materials packages x 43.6 percent paper x \$0.90 = \$3,723

\$42,010.²⁴

4) Transaction Reporting

Two options exist to satisfy the transaction reporting. Confirmation slips may be sent to the authorizing plan fiduciary or a quarterly report may be sent that includes the specified information. It is assumed that for plans that receive the slips, no additional costs will be incurred, because the information already is required to be disclosed by the SEC.

It is assumed that 60 percent of the authorizing plan fiduciaries will receive a two page quarterly report instead of the confirmation slips, and that 56.4 percent of the quarterly reports will be sent electronically at no additional burden. Paper reports will cost \$0.65 each. Therefore, the cost burden of mailing the quarterly transaction report is estimated to be nearly \$100,824.²⁵

5) Annual Statement

An annual statement is also required to be delivered by the financial institution to the 148,236 authorizing plan fiduciaries. The statement is an annual summary of the transaction reports and contains all transaction-related charges, a description of brokerage placement practices and the portfolio turnover ratio. It is assumed the report contains five pages and 56.4 percent are sent electronically. Postage cost is not included here as it is assumed that the annual statement will be sent with the annual termination form and postage costs are accounted for there. The paper and print costs are \$0.25 each. Therefore, the overall cost burden for the paper and print costs are about \$16,158.²⁶

6) Report of Commissions Paid

A financial institution who is a discretionary trustee must provide each of the 148,236 authorizing plan fiduciaries with an annual report showing commissions paid to affiliated and non-affiliated brokers, on both a total dollar and a cents-per-share basis. The report is assumed to be two pages, and the Department estimates that 56.4 percent of the reports will be sent electronically. As the report is sent annually, it is assumed that it could be sent with the transaction report, therefore postage costs are not counted here. The paper and print costs are \$0.10 each. Therefore, the overall cost burden of the paper and print costs is nearly \$6,463.²⁷

Requirements 4, 5, and 6 also require the financial institution to report specific

²⁴ 148,236 termination forms x 43.6 percent paper x \$0.65 = \$42,010

²⁵ 148,236 plans x 60 percent receiving quarterly reports x 43.6 percent paper x 4 reports per year x \$0.65 = \$100,824

²⁶ 148,236 plans x 43.6 percent paper x \$0.25 = \$16,158

²⁷ 148,236 plans x 43.6 percent paper x \$0.10 = \$6,463

PTE 86-128 (Securities Broker-Dealers)
OMB Number 1210-0059

June 2019

transaction fees and information to the plan fiduciaries. The information must be tracked, assigned to specific plans, and reported. It is assumed that it costs the financial institution \$3.30 per plan to track this information.²⁸ With approximately 148,236 affected plans, this results in a cost burden of approximately \$489,179 annually.²⁹

Summary

In total, the Department estimates that the exemption conditions will result in the production of 819,448 disclosures. Electronic methods will be used to distribute 56.4 percent of disclosures, at de minimis cost, while 462,169 disclosures will be on paper. As presented in the table below, tracking and reporting costs for the disclosures, plus production of paper disclosures will total approximately \$661,045.

Activity	Cost
1. Written authorization from the authorizing plan fiduciary to the broker-dealer	\$2,689
2. Provision of materials for evaluation of authorization of transaction	\$3,723
3. Provision of an annual termination form	\$42,010
4. Transaction Reporting	\$100,824
5. Annual Statement	\$16,158
6. Report of Commissions Paid	\$6,463
4-6. Tracking and Reporting	\$489,179
Total	\$661,045

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

There are no ongoing costs to the Federal government.

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

The Department is renewing the information collections contained in PTE 86-128 that were in place prior to 2016. This analysis uses updated labor cost estimates. Costs of postage have been updated. Additionally, the number of plans affected has been updated to reflect updated Form 5500 data. The estimated number of new plans has also been

²⁸ This estimate is based on information from an RFI and from industry sources.

²⁹ 148,236 plans x \$3.30 = \$489,179

updated to reflect updated Form 5500 data. The estimated number of affected broker-dealer fiduciaries has been updated to reflect current Securities and Exchange Commission data. These updates resulted in an increase in the number of disclosures produced and in the cost burden.

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

This is not a collection of information for statistical use.

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

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."*

There are no exceptions to the certification statement.