

**SUPPORTING STATEMENT FOR STATUTORY EXEMPTION FOR THE  
PROVISION OF INVESTMENT ADVICE TO PARTICIPANTS AND BENEFICIARIES  
OF SELF-DIRECTED INDIVIDUAL ACCOUNT PLANS AND IRAS**

**OMB Control Number 1210-0134**

**This ICR seeks to extend the collection of information under OMB Control Number 1210-0134.**

**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 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.**

ERISA and regulations thereunder provide general standards for the delivery of all information required to be furnished to participants, beneficiaries, and other individuals under Title I of ERISA (29 C.F.R. § 2520.104b-1(b)). Plan administrators must use delivery methods reasonably calculated to ensure actual receipt of information by participants, beneficiaries, and other individuals (29 C.F.R. § 2520.104b-1(b)(1)). For example, in-hand delivery to an employee at his or her workplace is acceptable, as is material sent by first class mail. In response to developing internet, email, and similar technologies, the Department first amended ERISA's delivery standards in 2002 by establishing a safe harbor for the use of electronic media to furnish disclosures (the 2002 safe harbor; 29 C.F.R. § 2520.104b-1(c)). The 2002 safe harbor was not and is not the exclusive means by which a plan administrator may use electronic media to satisfy the general standard. However, plan administrators who satisfy the conditions of the safe harbor are assured that the general delivery requirements have been satisfied.

On May 27, 2020, the Department issued a final regulation providing a new, additional safe harbor for plan administrators to use electronic media, as a default, to furnish disclosures to participants and beneficiaries of pension benefit plans subject to ERISA (29 C.F.R. § 2520.104b-31). The rule allows plan administrators who satisfy specified conditions to provide participants and beneficiaries with a notice that certain disclosures will be made available on a website, or to furnish disclosures via email. Individuals who prefer to receive disclosures on paper can request paper copies of disclosures and opt out of electronic delivery entirely. The Department expects the rule to enhance the effectiveness of ERISA disclosures and significantly reduce the costs and burden associated with furnishing many of the recurring and most costly pension plan disclosures. The new, additional safe harbor does not supersede the 2002 safe harbor; the 2002 safe harbor remains in place as another option for plan administrators.

Also, 29 CFR § 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records.

**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 October 20, 2020 (85 FR 66580). 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. Instead, this cost should be included in Item 14.**

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 2019,<sup>1</sup> including wages and benefits, of \$165.63 for financial managers, \$55.14 for clerical personnel, \$138.41 for legal professionals, and \$110.34 for computer programmers.

The Department assumes that there are 11,396 investment advisory firms (including broker-dealers) who will take advantage of this statutory exemption to provide advice to both Plans and IRAs.<sup>2</sup> The number of investment advisory firms using this statutory

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<sup>1</sup> For more information on how labor cost is calculated please see <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf>

<sup>2</sup> 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 Prohibited Transaction Exemption 2020-02, *Improving Investment Advice for Workers & Retirees*.



exemptive relief is assumed to be constant over time. The Department also estimates that under the statutory exemption 83,464 Plans will seek to provide advice to their Participants. These Plans represent 18,039,974 Participants, of which 2,948,730 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 20,084,300 million IRA Participants will seek advice under this statutory exemption.

Table 1.--Number of Entities

Entities	Estimated Number
Investment advisory firms	11,396
DC Plans utilizing the statutory exemption	83,464
DC Plan Participants offered advice	18,039,974
DC Plan Participants utilizing advice	2,948,730
IRA Beneficiaries	20,084,300

**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.

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 11,396 investment advisory firms, (b) the same for all Plan Participants will average one hour and a half for each of the 83,464 Plans, and (c) individualized for IRAs will average 50 hours for each of the 11,396 investment advisory firms. Thus the annual hour burden is 729,184 with an equivalent cost of \$100,926,356.

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

<b>Disclosure Types</b>	<b>Number of Entities</b>	<b>Hours per Entity</b>	<b>Annual Hour Burden</b>	<b>Hourly Rate</b>	<b>Equivalent Cost</b>
Disclosures uniform to all recipients	11,396	3	34,188	\$138.41	\$4,731,961
Disclosures specific to individual DC plans	83,464	1.5	125,196	\$138.41	\$17,328,377
Disclosures specific to individual IRA holders	11,396	50	569,800	\$138.41	\$78,866,018
<b>TOTAL</b>			<b>729,184</b>		<b>\$100,926,356</b>

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 among DC plans, 92.7 percent of the initial and annual disclosures will be electronically distributed with 7.3 percent distributed on paper. The Department also estimates that among IRAs, 58.2 percent of the initial and annual disclosures will be electronically distributed with 41.8 percent distributed on paper. The Department further assumes that of the 7.3 percent of DC disclosures printed and 41.8 percent of IRA disclosures printed, 50 percent will be handed out in person and 50 percent will be mailed to the Participant; thus, 3.7 percent of DC Participants and 20.9 percent of IRA 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 2,948,730 Plan Participants and 20,084,300 IRA Participants seek advice, the regulation’s annual hour burden hours associated with photocopying and mailing will be 645,787 hours with an equivalent cost of \$35,608,701.

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

	<b>Participants</b>	<b>Hours Required</b>	<b>Annual Hour Burden</b>	<b>Hourly Rate</b>	<b>Equivalent Cost</b>
Total Photocopying	8,610,495	0.067	574,033	\$55.14	\$31,652,179
Plans	215,257	0.067	14,350	\$55.14	\$791,286
IRAs	8,395,237	0.067	559,682	\$55.14	\$30,860,893
Total Mailing	4,305,247	0.0167	71,754	\$55.14	\$3,956,522
Plans	107,629	0.0167	1,794	\$55.14	\$98,911
IRAs	4,197,619	0.0167	69,960	\$55.14	\$3,857,612
<b>TOTAL</b>			645,787		\$35,608,701

Thus the hour burden under the statutory exemption for updating the annual disclosure package is 729,184 hours at an equivalent cost of \$100,926,356 and the hour burden for producing and distributing the annual disclosure package 645,787 hours at an equivalent cost of \$35,608,701. The overall hour burden for the annual disclosure package 1,374,971 hours at an equivalent cost of \$136,535,057.

Table 4.--Annual Disclosure Package Hour Burden Estimates

	<b>Annual Hour Burden</b>	<b>Equivalent Cost</b>
Updating Content	729,184	\$100,926,356
Production and Distribution	645,787	\$35,608,701
<b>TOTAL</b>	1,374,971	\$136,535,057

**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 model<sup>3</sup> 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 11,396 investment advisory firms to whom the computer model providers supply their models. Thus the investment advice computer model providers have an hour burden of 228,040 hours for an equivalent cost of about \$31,563,016.

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 83,464 plans and on average 25 hours for each of the 11,396 investment advisory firms. Thus the investment advisory firm’s hour burden for the annual re-certification of the investment advice computer model is 702,220 hours with an equivalent cost of \$97,194,266.

The total hour burden attributable to the annual re-certification of the investment computer model is 930,260 hours with an equivalent cost of \$128,757,283.

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

	<b>Estimated Number</b>	<b>Hours Required</b>	<b>Annual Hour Burden</b>	<b>Hourly Rate</b>	<b>Equivalent Cost</b>
Model provider			228,040	\$138.41	\$31,563,016
Models	6	20	120		\$16,609
IRA (advice firms)	11,396	20	227,920		\$31,546,407
Advice Firm			702,220	\$138.41	\$97,194,266
DC Plan	83,464	5	417,320		\$57,761,257
IRA (advice firms)	11,396	25	284,900		\$39,433,009
<b>TOTAL</b>			<b>930,260</b>		<b>\$128,757,283</b>

<sup>3</sup> 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.

**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.<sup>4</sup> 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 230,330 audits of 23,033,030 total participants. As each participant receives advice on average four times per year, there are 921,321 Participant transactions audited under the statutory exemption each year. Overall, the annual in-house hour burden for the annual audit requirement is 118,160 hours, with equivalent costs of \$10,311,143.

Table 6.--Annual Audit Hour Burden Estimates

	<b>Estimated Number</b>	<b>Hours Required</b>	<b>Hour Burden</b>	<b>Hourly Rate</b>	<b>Equivalent Cost</b>
Clerical Work (Per Firm)	11,396	3	34,188	\$55.14	\$1,885,126
Clerical Work (Per Participant)	230,330	0.167	38,388	\$55.14	\$2,116,735
Legal Work (Per Firm)	11,396	4	45,584	\$138.41	\$6,309,281
<b>TOTAL</b>			<b>118,160</b>		<b>\$10,311,143</b>

**Summary of Hour Burden Estimates**

<sup>4</sup> 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.

The Department estimates that the statutory exemption hour burden is 2,423,391 annually with an equivalent cost of \$275,603,483.

Table 7.--Total Hour Burden Estimates

	<b>Annual Hour Burden</b>	<b>Equivalent Cost</b>
Disclosures	1,374,971	\$136,535,057
Model Certification	930,260	\$128,757,283
Audit	118,160	\$10,311,143
<b>TOTAL</b>	<b>2,423,391</b>	<b>\$275,603,483</b>

**Estimated Annualized Respondent Cost and Hour Burden**

<b>Activity</b>	<b>No. of Respondents</b>	<b>No. of Responses per Respondent</b>	<b>Total Responses</b>	<b>Average Burden (Hours)</b>	<b>Total Burden (Hours)</b>	<b>Hourly Wage Rate</b>	<b>Total Burden Cost</b>
Preparing disclosures uniform to all recipients	11,396	1	11,396	3	34,188	\$138.41	\$4,731,961
Preparing disclosures specific to individual DC plans	83,464	1	83,464	1.5	125,196	\$138.41	\$17,328,377
Preparing disclosures specific to individual IRA holders	11,396	1	11,396	50	569,800	\$138.41	\$78,866,018
Photocopying disclosure packages to plans	83,464	2.579040	215,257	0.067	14,350	\$55.14	\$791,286
Photocopying disclosure packages to IRAs	11,396	736.682783	8,395,237	0.067	559,682	\$55.14	\$30,860,893
Mailing disclosure packages to plans	83,464	1.289526	107,629	0.0167	1,794	\$55.14	\$98,911
Mailing disclosure packages to IRAs	11,396	368.341436	4,197,619	0.0167	69,960	\$55.14	\$3,857,612
Legal professionals working at companies supply in-house	6	1	6	20	120	\$138.41	\$16,609

support relating to investment advice computer model providers							
Legal professionals working at companies supply in-house support relating to investment advisory firms	11,396	1	11,396	20	227,920	\$138.41	\$31,546,407
Legal professionals working at advisory firms provide in-house support relating to plans	83,464	1	83,464	5	417,320	\$138.41	\$57,761,257
Legal professionals working at advisory firms provide in-house support relating to investment advisory firms	11,396	1	11,396	25	284,900	\$138.41	\$39,433,009
Clerical work relating to audit (per firm)	11,396	1	11,396	3	34,188	\$55.14	\$1,885,126
Clerical work relating to audit (per participant)	11,396	20.211478	230,330	0.167	38,388	\$55.14	\$2,116,735
Legal work relating to audit (per firm)	11,396	1	11,396	4	45,584	\$138.41	\$6,309,281
Unduplicated Total	11,396	2021.150404	23,033,030	0.105214	2,423,391	--	\$275,603,483

**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 cost estimate should be split into two components: (a) a total capital and start up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of service component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software;**

**monitoring, sampling, drilling and testing equipment; and record storage facilities.**

- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

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;<sup>5</sup> thus the cost burden, given there are 11,396 investment advisory firms, will be \$6,837,600 annually.

Table 8.--Disclosures Generation Computer Program Cost Estimates

<b>Advice Firms</b>	<b>Annual Cost per Advice Firm</b>	<b>Annual Cost Burden</b>
11,396	\$600	\$6,837,600

Annual Distribution of Disclosure Package

As a result of the final Default Electronic Disclosure regulation issued by the Department on May 27, 2020 (85 FR 31884), the Department increased the percent of required disclosures that will be sent electronically for DC plans from 56.4 percent to 92.7 percent. The Department estimates that 7.3 percent of the disclosures to DC participants

<sup>5</sup> The Department has based this cost estimate on limited industry data.



and 41.8 percent of the disclosures to IRA 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 \$0.55 per disclosure package for regular First Class mail. Given that there will be 23,033,030 participants (2,948,730 plan participants and 20,084,300 IRA holders), the associated cost burden for generating paper copies of the disclosures to participants under the statutory exemption is \$1,722,099 annually. The postage cost burden of the statutory exemption will be \$2,367,886 annually. Thus, the overall cost burden associated with distributing disclosures to participants is estimated to be \$4,089,985 per year.

Table 9.--Annual Distribution Cost Burden Estimates

	<b>Participants</b>	<b>Annual Cost per Participant</b>	<b>Annual Cost Burden</b>
Total Photocopying	8,610,495	\$0.20	\$1,722,099
Plans	215,257		\$43,051
IRAs	8,395,237		\$1,679,047
Total Mailing	4,305,247	\$0.00	\$2,367,886
Plans	107,629		\$59,196
IRAs	4,197,619		\$2,308,690
<b>TOTAL</b>			<b>\$4,089,985</b>

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 \$11,220,816.

Table 10.--Summary of Disclosures Cost Burden

	<b>Annual Cost Burden</b>
IRA Computer Program	\$6,837,600
Distribution	\$4,383,216
<b>TOTAL</b>	<b>\$11,220,816</b>

**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;<sup>6</sup> thus the cost burden, given there are 11,396 investment advisory firms, will be \$102,564,000 each year.

<sup>6</sup> The Department has based this cost estimate on limited industry data.

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

Advice Firms	Cost per Advice Firm	Annual Cost Burden
11,396	\$9,000	\$102,564,000

**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 11,396 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.<sup>7</sup> Thus, the annual cost burden will be \$205,128,000.

Table 12.--Annual Audit Cost Burden Estimates

Number of Advice Firms	Cost per Advice Firm	Annual Cost Burden
11,396	\$18,000	\$205,128,000

**Summary of Statutory Exemption Cost Burden Estimates**

The Department estimates that the statutory exemption has an annual cost burden of \$318,912,816.

Table 13.--Total Cost Burden

	Annual Cost Burden
Disclosures	\$11,220,816
Model Certification	\$102,564,000
Audit	\$205,128,000
<b>TOTAL</b>	<b>\$318,912,816</b>

- 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 annualized costs to the Federal government for this information collection.

<sup>7</sup> The Department has based this cost estimate on limited industry data.

**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 for DC plans and IRAs. As a result of final Default Electronic Disclosure regulation issued by the Department on May 27, 2020 (85 Fed. Reg. 31884), EBSA has revised the electronic disclosure assumption from 56.4 to 92.7 percent for DC plans. EBSA has also revised the electronic disclosure assumption for IRAs to 58.2 percent.

**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.**

There are no exceptions to the certification statement.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

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