OMB CONTROL NUMBER: 3235-0784

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
RULE 206(4)-1

A. JUSTIFICATION

1. Necessity for the Information Collection

On December 22, 2020, the Securities and Exchange Commission (the "Commission" or "SEC") adopted an amended rule, rule 206(4)-1, under the Advisers Act, which addresses advisers marketing their services to clients and investors (the "marketing rule").[1] The marketing rule amends existing rule 206(4)-1 (the "advertising rule"), which we adopted in 1961 to target advertising practices that the Commission believed were likely to be misleading.[2] The rule also replaces rule 206(4)-3 (the "solicitation rule"), which we adopted in 1979 to help ensure clients are aware that paid solicitors who refer them to advisers have a conflict of interest.[3] The amendments create a merged rule that replaces both the current advertising and cash solicitation rules.[4] These amendments reflect market developments and regulatory changes since the rules' adoptions. The Commission also adopted amendments to Form ADV to provide the Commission with additional information about advisers' marketing practices, and adopted

---

1 Investment Adviser Marketing, Release No. IA-5653 (Dec. 22, 2020) [86 FR 13024 (Mar. 5, 2021)] (the "Adopting Release").

2 17 CFR § 275.206(4)-1. *See also* Advertisements by Investment Advisers, Release No. IA-121 (Nov. 1, 1961) [26 FR 10548 (Nov. 9, 1961)].

3 17 CFR § 275.206(4)-3. *See also* Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Release No. 688 (July 12, 1979) [44 FR 42126 (Jul 18, 1979)].

4 There is no longer a collection of information burden with respect to the cash solicitation rule, rule 206(4)-3, because we are rescinding this rule and merging some of its components into the combined final marketing rule. OMB number 3235-0242 for Rule 206(4)-3 will be discontinued on November 4, 2022. *See* Release No. IA-5653 (December 22, 2020) [86 FR 13024]. The collection of information burden associated with the requirements of rule 206(4)-3 has been incorporated into the collection of information burden for rule 206(4)-1.

corresponding amendments to the books and records rule, rule 204-2, under the Advisers Act.[5]

The final marketing rule states that, as a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts, practices, or courses of business within the meaning of section 206(4) of the Act, it is unlawful for any investment adviser registered or required to be registered under section 203 of the of the Act, directly or indirectly, to disseminate any advertisement that violates any of paragraphs (a) through (d) of the rule, which include the rule's general prohibitions, as well as conditions applicable to an adviser's use of testimonials, endorsements, third-party ratings, and performance information.

The adopted rule contains several modifications from the proposed rules, which are discussed below along with a summary of the rule:[6]

- The final marketing rule includes an expanded definition of "advertisement," relative to the current advertising rule, that encompasses an investment adviser's marketing activity for investment advisory services with regard to securities. We determined not to expand the definition of advertisement to include communications addressed to one person as proposed, and instead retained the current rule's exclusion of one-on-one communications from the definition, except with regard to compensated testimonials and endorsements and certain communications that include hypothetical performance information.[7] In addition,

---

5 These collections of information are available at 3235-0049 (Form ADV) and 3235-0278 (books and records rule 204-2).

6 *See* the Adopting Release, *supra* note 1, and; Investment Adviser Advertisements; Compensation for Solicitations, Release No. IA-5407 (Nov. 4, 2019) [84 FR 67518 (Dec. 10, 2019)] ("2019 Proposing Release").

7 Hypothetical performance information that is provided in response to an unsolicited investor request or to a

the definition does not include communications designed to retain existing investors. The final definition also includes exceptions for extemporaneous, live, oral communications; and information contained in a statutory or regulatory notice, filing, or other required communication.

- Largely as proposed, the final rule applies to certain communications sent to clients and private fund investors, but does not apply to advertisements about registered investment companies or business development companies.
- A set of seven principles-based general prohibitions applies to all advertisements. These are drawn from historic anti-fraud principles under the Federal securities laws and are tailored specifically to the type of communications that are within the scope of the rule.
- The final rule permits an adviser's advertisement to include testimonials and endorsements, subject generally to the following conditions: required disclosures; adviser oversight and compliance, including a written agreement for certain promoters; and, in some cases, disqualification provisions. We adopted partial exemptions for *de minimis* compensation, affiliated personnel, registered broker-dealers, and certain persons to the extent they are covered by rule 506(d) of Regulation D under the Securities Act with respect to a securities offering.

---

private fund investor in a one-on-one communication is excluded from the first prong of the definition of advertisement.

- An adviser's advertisement may include a third-party rating, if the adviser forms a reasonable belief that the third-party rating clearly and prominently discloses certain information.
- The final rule applies to performance advertising and requires presentation of net performance information whenever gross performance is presented, and performance data over specific periods. In addition, the final rule imposes requirements on advisers that display related performance, extracted performance, hypothetical performance, and – in a change from the proposal – predecessor performance. We did not adopt, however, the proposed separate requirements for performance advertising for retail and non-retail investors.
- In a change from the proposal, the final rule does not require investment advisers to review and approve their advertisements prior to dissemination.

The adopted amendments to rule 206(4)-1 described above resulted in a new "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[8] The title of the new collection of information we proposed is "Rule 206(4)-1 under the Investment Advisers Act." OMB assigned a control number of 3235-0784 for "Rule 206(4)-1 under the Investment Advisers Act." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB number.

Each requirement under the final rule that an adviser disclose information, offer to provide information, or adopt policies and procedures constitutes a "collection of information" requirement under the PRA. The respondents to these collections of information requirements

[8] 44 U.S.C. 3501 to 3520.

will be investment advisers that are registered or required to be registered with the Commission. As of August 1, 2020, there were 13,724 investment advisers registered with the Commission.[9] Investment adviser marketing is not mandatory; however: (i) marketing is an essential part of retaining and attracting clients; (ii) marketing may be conducted easily through the internet and social media; and (iii) the definition of "advertisement" expands the scope of the advertising rule. Accordingly, we estimate that all investment advisers will disseminate at least one communication that meets the rule's definition of "advertisement" and therefore be subject to the requirements of the marketing rule.

Because the use of testimonials, endorsements, third-party ratings, and performance results in advertisements is voluntary, the percentage of investment advisers that would include these items in an advertisement is uncertain. However, we have made certain estimates of this data, as discussed below, solely for the purpose of this PRA analysis.

2. Purpose and Use of the Information Collection

The purpose of this collection of information is to provide advisory clients, prospective clients, and the Commission with information about an adviser's marketing practices. We use the information to support and manage our regulatory, examination, and enforcement programs. Clients use this information to determine whether to hire an adviser.

---

9 *See* Adopting Release, *supra* footnote 1, at section III.C.1.c.

This collection of information is found at 17 CFR.206(4)-1 and it is mandatory. The information collected takes the form of records retained by respondents and disclosures to respondents' clients, potential clients, and the Commission.

3. Consideration Given to Information Technology

The Commission's use of computer technology in connection with this information collection, which has been previously approved by OMB, would not change. Investment advisers are permitted to provide the information required by rule 206(4)-1 electronically.[10]

4. Duplication

No other rule requires investment advisers to retain records or provide clients or prospective clients with the same information that is required by rule 206(4)-1.

5. Effect on Small Entities

The requirements for rule 206(4)-1 are the same for all investment advisers registered with the Commission, including small entities. It would defeat the purpose of the rule to exempt small entities from these requirements. For purposes of Commission rulemaking, an investment adviser is a small business if it has assets under management of less than $25 million and meets certain other requirements. Advisers with assets under management of less than $25 million must register with the Commission only if they advise a registered investment company, are not regulated or required to be regulated as an investment adviser in the state in which they maintain

---

[10] Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples Under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940, Investment Advisers Act Release No. 1562 (May 9, 1996).

their principal office and place of business, or are qualified under rule 203A-2.

6. Consequences of Not Conducting Collection

Amended Rule 206(4)-1 requires certain information regarding testimonials, endorsements, third party ratings, and performances data used in investment adviser advertisements be disclosed in such advertisements to clients and potential clients; without this information, the client would be unaware of the limitations and potential misleading nature of the information contained in an advertisement.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

Not applicable.

8. Consultation Outside the Agency

The Commission and staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment adviser profession through public conferences, meetings and informal exchanges. These various forums provide the Commission and staff with a means of ascertaining and acting upon paperwork burdens confronting the industry. We published notice soliciting comments on the collection of information requirements in the 2019 Proposing Release and submitted the proposed collections of information to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission's solicitation of public comments included estimating and requesting public comments on updated burden estimates for all information collections under this OMB control number (*i.e.*, both changes associated with the rulemaking and other burden updates). Although we received no comments directly on the proposed collections of information burdens, we did receive three comments on aspects of the economic analysis that implicated estimates we used to calculate the collection of information burdens. Two commenters generally stated that

advisers would disseminate new advertisements and update existing advertisements much more frequently than estimated in our proposal, due to the proposed expanded definition of advertisement.[11] One other commenter suggested that our assumptions underestimated the amount of time and costs required to implement the proposed amendments to the advertising and solicitation rules.[12] We address these comments throughout the Burdens of Information Collection section, below. We also describe below our modifications to the final rule to address these comments, and the resulting updated estimated burdens. We have also updated the estimated number of respondents based upon updated data.[13]

9. Payment or Gift

Not applicable.

10. Confidentiality

The information collected pursuant to rule 206(4)-1 requires advisers to provide information to advisory clients and prospective clients. Accordingly, these disclosures would not be kept confidential. Responses provided to the Commission in the context of its examination and oversight program concerning the proposed amendments would be kept confidential subject to the provisions of applicable law.

11. Sensitive Questions

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection collects basic Personally

---

11 Fidelity Comment Letter; IAA Comment Letter.

12 MFA/AIMA Comment Letter I.

13 *See* Adopting Release, *supra* footnote 1, at text following footnote 1042.

Identifiable Information (PII) that may include names, job titles, work addresses, and phone numbers. However, the agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier.

12. Burden of Information Collection

a. General prohibitions

The general prohibitions under the rule do not create a collection of information and are, therefore, not discussed, with one exception. The final rule prohibits advertisements that include a material statement of fact that the adviser does not have a reasonable basis for believing that it will be able to substantiate upon demand by the Commission. Advisers would be able to demonstrate this reasonable belief in a number of ways.[14] For example, they could make a record contemporaneous with the advertisement demonstrating the basis for their belief. An adviser might also choose to implement policies and procedures to address how this requirement is met. This will create a collection of information burden within the meaning of the PRA.

As stated above, we estimate that all investment advisers will disseminate at least one communication that meets the rule's definition of "advertisement" and therefore be subject to the requirements of the marketing rule. We also estimate that such advertisements will include at least one statement of material fact that will be subject to this general prohibition, for which an adviser will create and/or maintain a record documenting its reasonable belief that it can substantiate the statement. This estimate reflects that many types of statements typically

---

[14] *See* Adopting Release, *supra* footnote 1, at, at section II.B.2.

included in an advertisement (e.g. performance) can likely be substantiated by other records that an adviser will be required to create and maintain under the final rule.[15] Table 1 summarizes the final PRA estimates for the internal and external burdens associated with this requirement.

Table 1: General Prohibitions

	Internal Hour Burden		Wage Rate[1]	Internal Time Costs	Annual External Cost Burden
FINAL ESTIMATES FOR RULE 204-1 FOR GENERAL PROHIBITIONS					
Determine whether statements in an advertisement are material facts	0.5	×	$309 (compliance manager)	$156	
	0.5	×	$365 (compliance attorney)	$183	
Creation and maintenance of records substantiating material facts in any advertisements	4	×	$62 (general clerk)	$248	
	1	×	$70 (compliance clerk)	$70	
Total burden per adviser	6			$657	
Total number of affected advisers	×13,724			× 13,724	
Total burden for general prohibitions	**82,344 hours**			**$9,016,668**	

Notes:
1. *See* SIFMA Report, *infra* footnote 21.

b. Testimonials and endorsements in advertisements

Under the marketing rule, investment advisers are prohibited from including in any advertisement, or providing any compensation for, any testimonial or endorsement unless the adviser discloses, or the investment adviser reasonably believes that the person giving the testimonial or endorsement discloses: (i) clearly and prominently: (A) that the testimonial was given by a current client or investor, or the endorsement was given by a person other than a current client or investor; (B) that cash or non-cash compensation was provided for the testimonial or endorsement, if applicable; and (C) a brief statement of any material conflicts of

15 *See id.*

interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person; (ii) the material terms of any compensation arrangement, including a description of the compensation provided or to be provided, directly or indirectly, to the person for the testimonial or endorsement; and (iii) a description of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person and/or any compensation arrangement.[16] The rule also imposes an oversight obligation that requires that an investment adviser have a reasonable basis to believe that the testimonial or endorsement complies with the marketing rule and have a written agreement with the person giving a testimonial or endorsement (except for certain affiliated persons of the adviser) that describes the scope of the agreed upon activities and the terms of the compensation for those activities when making payments for compensated testimonials and endorsements that are above the *de minimis* threshold.[17] This collection of information consists of two components: (i) the requirement to disclose certain information in connection with the testimonial and endorsement, and (ii) the requirement to oversee the testimonial or endorsement, including a written agreement with certain persons giving the testimonial or endorsement.

The final rule's definitions of testimonials and endorsements generally contain three elements: (i) statements about the client's/non-client's or investor's experience with the investment adviser or its supervised persons, (ii) statements that directly or indirectly solicit any prospective client or investor in a private fund for the investment adviser, or (iii) statements that

---

16 Final rule 206(4)-1(b)(1).

17 Final rule 206(4)-1(b)(2).

refer any prospective client or investor in a private fund to the investment adviser. The first element is drawn from the definitions of these terms in our proposed advertising rule. The second and third elements are drawn from the scope of our proposed solicitation rule. Accordingly, our PRA analysis will be drawn from our proposed estimates and discussion of both proposed rules in the 2019 Proposing Release.[18]

In our advertising rule proposal, from which the first element of these definitions is drawn, we estimated that 50 percent of advisers would include a testimonial or endorsement under the proposed advertising rule. We also estimated in our advertising proposal that an investment adviser that includes testimonials or endorsements in advertisements would use approximately 5 testimonials or endorsements per year, and would create new advertisements with new or updated testimonials and endorsements approximately once per year. In the solicitation rule proposal, from which elements two and three of the definitions are drawn, we estimated that 47.8 percent of advisers would compensate a solicitor for solicitation activity under the proposed solicitation rule.[19] We also estimated in our proposal that for each registered investment adviser that would conduct solicitation activity, they would use approximately 30 referrals annually, distributed by an average of three solicitors. We did not receive comment on any of these estimates.

We are revising our estimates from the advertising rule proposal to account for the merger of solicitation concepts into the definitions of testimonial and endorsement. We continue to estimate that 50 percent of advisers will use a testimonial or endorsement; however, we are

---

[18] *See* 2019 Proposing Release, *supra* footnote 6, at section IV.

[19] *See* 2019 Proposing Release, *supra* footnote 6, at section IV.

increasing our estimate of the amount of testimonials and estimates each adviser will use to reflect the definitions' inclusion of solicitation concepts. Accordingly, we estimate that each adviser will use an average of five promoters and use 35 testimonials or endorsements annually, which includes testimonials and endorsements incorporated into an adviser's own advertisement and those communicated by promoters directly. This estimate also reflects the elimination of the proposed exemptions for solicitations for impersonal advisory services or by non-profit referral programs, as well as the addition of the final rule's exemptions for registered broker-dealers and "covered persons" under rule 506(d) of Regulation D.

Under the marketing rule, an adviser that uses a testimonial or endorsement will be required to disclose certain information at the time it is disseminated, which incorporates many of the disclosure elements required under the proposed solicitation rule. As such, we are drawing from the burden estimate we attributed to solicitation disclosures in the 2019 Proposing Release in developing the burden estimate for *all* testimonials and endorsements under the final rule, not just for the types of testimonials and endorsements that were drawn from the proposed rule. To address one commenter's contention that we underestimated this burden, and recognizing the changes from the proposal, we are revising this estimate upwards to 0.20 hours per disclosure.[20] We believe that advisers will incur this same burden each year, since each testimonial and/or endorsement used will likely be different and thus require updated disclosures. An investment adviser's in-house compliance managers and compliance attorneys will likely prepare disclosures, which will likely be included in the advertisement.[21]

---

[20] MFA/AIMA Comment Letter I.

[21] We estimate the hourly wage rate for compliance manager is $309 and a compliance attorney is $365. The

Some of these third-party testimonials and endorsements will require delivery; thus, we estimate that 20 percent of the disclosures would be delivered by the U.S. Postal Service, with the remaining 80 percent delivered electronically or as part of another delivery of documents. For the 20% of advisers that will use physical mail, we estimate that the average annual costs associated with printing and mailing this information will be collectively $500 for all disclosure documents associated with a single registered investment adviser.[22]

We estimate the average burden hours each year per adviser to oversee testimonials and endorsements will be one hour for each promoter, or five hours in total for each adviser that is subject to this collection of information.[23] While the final rule provides flexibility as to how advisers conduct this oversight, we generally believe that this burden will include contacting solicited clients, pre-reviewing testimonials or endorsements, or other similar methods. Additionally, we estimate that each adviser will incur an average burden hour of one hour for each promoter, or five hours in total, to prepare the required written agreements. In-house compliance managers and compliance attorneys are likely to provide oversight of the third party

---

hourly wages used are from SIFMA's *Management & Professional Earnings in the Securities Industry 2013* ("SIFMA Report"), modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

22 We do not have specific data regarding how the cost of printing and mailing the underlying information would differ, nor are we able to specifically identify how the cost of printing and mailing the underlying information might be affected by the rule. For these reasons, we estimate $500 per year to collectively print and mail, upon request, the underlying information associated with hypothetical performance for purposes of our analysis. In addition, investors may also request to receive the underlying information electronically. We estimate that there would be negligible external costs associated with emailing electronic copies of the underlying information.

23 This estimate is based on the following calculation: 1 hour per each solicitor relationship x 5 promoter relationships. Although in our proposal we estimated that the oversight requirement would impose a burden of 2 hours per adviser, we believe that because the marketing rule does not require a written agreement, the burden to oversee the promoter relationship will be less than proposed.

testimonials and endorsements and prepare the written agreements.

Finally, in response to one commenter who argued that we did not account for upfront implementation costs for using testimonials and endorsements, we estimate that each adviser that uses a compensated testimonial or endorsement will incur an initial burden of two hours to modify its policies and procedures to reflect the adviser's oversight of testimonials and endorsements.[24] We believe that an adviser's chief compliance officer will complete this task.[25] Table 2 summarizes the final PRA estimates for the internal and external burdens associated with these requirements.

Table 2: Testimonials and Endorsements

	Internal Hour Burden		Wage Rate[1]	Internal Time Costs	Annual External Cost Burden
FINAL ESTIMATES FOR TESTIMONIALS AND ENDORSEMENTS					
Modify policies and procedures[2]	0.67 hours	×	$530 (chief compliance officer)	$355.10	
Revise and update each required disclosure	0.1 hours × 35 disclosures	×	$309 (compliance manager)	$1,081.50	--
	0.1 hours × 35 disclosures	×	$365 (compliance attorney)	$1,277.50	
Oversight of compensated testimonials and endorsements and preparation of written agreements	1 hours × 5 promoters	×	$309 (compliance manager)	$1,545	
	1 hours × 5 promoters	×	$365 (compliance attorney)	$1,825	
Total burden per adviser	17.67 hours			$6,084.1	$500
Total number of affected advisers	× 6,862			× 6,862	× 6,862 (× 20% of advisers that will use physical mail)
Total burden for	**121,252 hours**			**$41,749,094.2**	**$686,200**

[24] MFA/AIMA Comment Letter I. Accordingly, the amortized average burden will be 0.67 hours for each of the first 3 years.

[25] We estimate that the hourly wage for a chief compliance officer is $530. The hourly wage is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

testimonials and endorsements	

Notes:
1. See SIFMA Report, *supra* footnote 21 and 25.
2. Amortized over a three year period.

c. Third-party ratings in advertisements

As referenced above, rule 206(4)-1(c) will prohibit an investment adviser from including a third-party rating in an advertisement unless certain conditions are met, including that the adviser must clearly and prominently disclose (or reasonably believe that the third-party rating clearly and prominently discloses): (i) the date on which the rating was given and the period of time upon which the rating was based, (ii) the identity of the third-party that created and tabulated the rating, and (iii) if applicable, that cash or non-cash compensation has been provided directly or indirectly by the adviser in connection with obtaining or using the third-party rating.

As discussed in the advertising rule proposal, we continue to believe that approximately 50 percent of advisers will use third-party ratings in advertisements, and that they will typically use one third-party rating on an annual basis. We believe that advisers will incur an initial internal burden of 3.0 hours to draft and finalize the required disclosures for third-party ratings, which we are adjusting upwards from 1.5 hours in the advertising rule proposal to address one commenter's concern that we underestimated this burden.[26] As discussed in the advertising rule proposal, because many of these ratings or rankings are done yearly *(e.g.,* 2018 Top Wealth Adviser), we continue to estimate that an adviser that continues to use a third-party rating will

[26] *See* MFA/AIMA Comment Letter I. Accordingly, we estimate that the amortized average burden will be 1 hour for each of the first 3 years for each investment adviser to comply with the conditions for including third-party ratings in an advertisement (3.0 hours / 3 years = 1 hour). We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager.

incur ongoing, annual costs of 0.75 burden hours to draft the third-party rating disclosure updates.[27] Table 3 summarizes the final PRA estimates for the internal and external burdens associated with these requirements.

Table 3: Third-Party Ratings

	Internal Hour Burden[1]		Wage Rate[2]	Internal Time Costs	Annual External Cost Burden
FINAL ESTIMATES FOR THIRD PARTY RATINGS					
Draft initial disclosures[1]	0.5 hours		$309 (compliance manager)	$154.50	
	0.5 hours		$365 (compliance attorney)	$182.50	
Update required disclosures	0.375 hours	×	$309 (compliance manager)	$115.88	
	0.375 hours	×	$365 (compliance attorney)	$136.88	
Total burden per adviser	1.75 hours			$589.76	
Total number of affected advisers	× 6,862			× 6,862	
Total burden for third-party ratings	**12,009 hours**			**$4,046,933**	

Notes:
1. Amortized over a three-year period.
2. See SIFMA Report, *supra* footnotes 21, 26 & 27.

d. Performance Advertising

The marketing rule will impose certain conditions on the presentation of performance results in advertisements, as discussed above. Below we discuss the conditions that create "collection of information" requirements within the meaning of the PRA. First, the rule will prohibit any presentation of gross performance unless the advertisement also presents net performance that meets certain criteria.[28] Second, the rule will prohibit any presentation of

---

27 We believe that this burden will also be split evenly between an adviser's compliance attorney and compliance manager.

28 Final rule 206(4)-1(d).

performance results of any portfolio or any composite aggregation of related portfolios, other than any private fund, unless the advertisement includes performance results of the same portfolio or composite aggregation for one-, five-, and ten-year periods, except that if the relevant portfolio did not exist for a particular prescribed period, then the life of the portfolio must be substituted for that period.[29] Third, the rule will prohibit an advertisement from including related performance, unless it includes all related portfolios, subject to a conditional exception.[30] Fourth, the rule will prohibit an advertisement from including extracted performance, unless the advertisement provides, or offers to provide promptly, the performance results of the total portfolio from which the performance was extracted.[31] Fifth, the rule will also prohibit an advertisement from including predecessor performance, unless certain conditions are satisfied.[32] Finally, the rule will require that an adviser that advertises hypothetical performance: (i) adopts and implements policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement; (ii) provide reasonably sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating such hypothetical performance; and (iii) provide (or, if the intended audience is an investor in a private fund provide, or offers to provide promptly) reasonably sufficient information to enable the intended audience to understand the risks and limitations of using such hypothetical

---

29 *Id.* at (d)(2).

30 *Id.* at (d)(4).

31 *Id.* at (d)(5).

32 *Id.* at (d)(7).

performance in making investment decisions

We estimate that almost all advisers provide, or seek to provide, performance information to their clients. Based on staff experience, we estimate that 95 percent, or 13,038 advisers, provide performance information in their advertisements. The estimated numbers of burden hours and costs regarding performance results in advertisements may vary depending on, among other things, the complexity of the calculations, the type of performance and the risks that investors may not understand the limitations of the information, and whether preparation of the disclosures is performed by internal staff or outside counsel.

i. Presentation of Net Performance in Advertisements

We estimate that an investment adviser that elects to present gross performance in an advertisement will incur an initial burden of 15 hours in preparing net performance for each portfolio, including the time spent determining and deducting the relevant fees and expenses to apply in calculating the net performance and then actually running the calculations.[33] We have adjusted this estimate upwards from the proposal to reflect one commenter's claim that we underestimated this burden in the proposal.[34] Based on staff experience, we estimate that the average investment adviser will present performance for 3 portfolios over the course of a year, excluding any related portfolios that an adviser may need to include for purposes of presenting related performance.[35] As noted above, we estimate that 95 percent, or 13,038 advisers, provide

---

33 Accordingly, we estimate that the amortized initial burden will be 5 hours for each of the first 3 years for each investment adviser to prepare net performance (15 hours / 3 years = 5 hours / year). We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (2.5 hours each).

34 *See* MFA/AIMA Comment Letter I.

35 The burden associated with calculating net performance in connection with presenting related performance

performance information in their advertisements and thus will be subject to this collection of information burden.

We expect that the calculation of net performance may be modified every time an adviser chooses to update the advertised performance. We estimate that after initially preparing net performance for each portfolio, investment advisers will incur a burden of 3 hours to update the net performance for each subsequent presentation. Again, we adjusted this estimate upwards from the proposal to reflect one commenter's claim that we underestimated this burden in the analysis.[36] For purposes of this analysis, we estimate that advisers will update the relevant performance of each portfolio 3.5 times each year.[37]

ii. Time Period Requirement in Advertisements

We estimate that an investment adviser that elects to present performance results in an advertisement will incur an initial burden of 35 hours in preparing performance results of the same portfolio for one-, five-, and ten-year periods (excluding private funds), taking into account that these results must be prepared on a net basis (and may also be prepared and presented on a gross basis).[38] We estimate that after initially preparing one-, five-, and ten-year performance for each portfolio, investment advisers will incur a burden of 8 hours to update the performance for

---

is discussed below.

36 *See* MFA/AIMA Comment Letter I.

37 We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (3 hours x 3.5 times per year = 10.5 hours; 10.5 hours / 2 = 5.25 hours each).

38 Accordingly, we estimate that the amortized initial burden will be 11.67 hours for each of the first 3 years for each investment adviser to prepare performance results that comply with this requirement (35 hours / 3 years = 11.67 hours / year). We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (5.83 hours each).

these time periods for each subsequent presentation. For purposes of this analysis, we estimate that advisers will update the relevant performance 3.5 times each year.[39] We received no comments on these estimates and continue to believe they are appropriate.

iii. RELATED PERFORMANCE

We estimate that an investment adviser that elects to present related performance in an advertisement will incur an initial burden of 30 hours, with respect to each advertised portfolio or composite aggregation of portfolios, in preparing the relevant performance of all related portfolios.[40] We have revised this estimate upwards to address one commenter's claim that we underestimated this time burden in the proposal.[41] This time burden will include the adviser's time spent classifying which portfolios meet the rule's definition of "related portfolio" – *i.e.*, which portfolios have "substantially similar investment policies, objectives, and strategies as those of the services offered in the advertisement."[42] This burden also will include time spent determining whether to exclude any related portfolios in accordance with the rule's provision allowing exclusion of one or more related portfolios if "the advertised performance results are not materially higher than if all related portfolios had been included" and "the exclusion of any related portfolio does not alter the presentation of the time periods prescribed by paragraph

---

39 We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (8 hours x 3.5 times per year = 28 hours; 28 hours / 2 = 14 hours each).

40 Accordingly, we estimate that the amortized initial burden will be 10 hours for each of the first 3 years for each investment adviser to prepare related performance in connection with this requirement (30 hours / 3 years = 10 hours / year). We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (5 hours each).

41 *See* MFA/AIMA Comment Letter I.

42 *See* final rule 206(4)-1(e)(16). Our estimate accounts for advisers that may already be familiar with any composites that meet the definition of "related portfolio."

(d)(2)."[43] Finally, this time burden will include the adviser's time calculating and presenting the net performance of any related performance presented.

We continue to estimate that 80 percent of advisers (or 10,979 advisers) will have other portfolios with substantially similar investment policies, objectives, and strategies as those offered in the advertisement and choose to include related performance. We estimate that after initially preparing related performance for each portfolio or composite aggregation of portfolios, investment advisers will incur a burden of 5 hours to update the performance for each subsequent presentation. Although we expect that advisers might update their performance fewer times per year than we had proposed because the final rule permits performance to be shown as of the most recent calendar year end, we continue to estimate that advisers will update the relevant related performance 3.5 times each year.[44] We received no comments on these estimates and continue to believe they are appropriate.

iv. EXTRACTED PERFORMANCE

As in the advertising rule proposal, we estimate that an investment adviser that elects to present extracted performance in an advertisement will incur an initial burden of 10 hours in preparing the performance results of the total portfolio from which the performance is extracted in order to provide or offer to provide such performance results to investors.[45] For purposes of

---

43 *See* final rule 206(4)-1(d)(4).

44 We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (5 hours x 3.5 times per year = 17.5 hours; 17.5 hours / 2 = 8.75 hours each).

45 Accordingly, we estimate that the amortized initial burden will be 3.33 hours for each of the first 3 years for each investment adviser to prepare the performance of the total portfolio from which the presentation of extracted performance is extracted (10 hours / 3 years = 3.33 hours / year). We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (1.67 hours each).

this analysis, we continue to assume 5 percent of advisers will include extracted performance. We estimate that after initially preparing the performance of the total portfolio from which extracted performance is extracted, investment advisers will incur a burden of 2 hours to update the performance for each subsequent presentation. For purposes of this analysis, we estimate that advisers will update the relevant total portfolio performance 3.5 times each year.[46] We also estimate that registered investment advisers may incur external costs in connection with the requirement to provide performance results of a total portfolio from which extracted hypothetical performance is extracted. We estimate that the average annual costs associated with printing and mailing this information upon request will be collectively $500 for all documents associated with a single registered investment adviser. We received no comments on these estimates and continue to believe they are appropriate.

v. HYPOTHETICAL PERFORMANCE

We estimate that an investment adviser that elects to present hypothetical performance in an advertisement will incur an initial burden of 7 hours in preparing and adopting policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement.[47] We have revised this estimate upwards from the advertising rule proposal to address one commenter's claim that we underestimated this time burden.[48] For purposes of this

---

46 We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (2 hours x 3.5 times per year = 7 hours; 7 hours / 2 = 3.5 hours each).

47 Accordingly, we estimate that the amortized initial burden will be 2.33 hours for each of the first 3 years for each investment adviser to comply with this requirement (7 hours / 3 years = 2.33 hours / year). We believe that an adviser's chief compliance officer will complete this task.

48 *See* MFA/AIMA Comment Letter I.

analysis, we continue to estimate that 50 percent of advisers will include hypothetical performance in advertisements.

We continue to estimate that advisers that use hypothetical performance will disseminate advertisements containing hypothetical performance 20 times each year, including in certain one-on-one communications that meet the final rule's definition of advertisement. We estimate that after adopting appropriate policies and procedures, an adviser will incur a burden of 0.25 hours to categorize investors according to their likely financial situation and investment objectives pursuant to the adviser's policies and procedures.[49]

Additionally, we estimate that an investment adviser that elects to present hypothetical performance in an advertisement will incur an initial burden of 20 hours in preparing the information sufficient to understand the criteria used and assumptions made in calculating, as well as risks and limitations in using, the hypothetical performance, in order to provide such information, which may in certain circumstances be upon request.[50] We have also revised this estimate upwards from the proposal to address one commenter's claim that we underestimated this time burden.[51] We estimate that after initially preparing the underlying information, investment advisers will incur a burden of 3 hours to update the information for each subsequent

---

49 We believe that an adviser's chief compliance officer will complete this task (20 presentations per year x 0.25 hours each = 5 hours per year).

50 Accordingly, we estimate that the amortized initial burden will be 6.67 hours for each of the first 3 years for each investment adviser to comply with this requirement (20 hours / 3 years = 6.67 hours / year). We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (3.33 hours each). This estimate includes the time spent by an adviser in preparing the information. The time spent calculating the hypothetical performance that is based on such information is not accounted for in this estimate, as the rule does not require that an advertisement present hypothetical performance.

51 *See* MFA/AIMA Comment Letter I.

presentation. For purposes of this analysis, we estimate that advisers will update their hypothetical performance, and thus the underlying information, 3.5 times each year.[52]

We estimate that registered investment advisers may incur external costs in connection with the requirement to provide this underlying information upon the request of an investor or prospective investor in a private fund. We estimate that the average annual costs associated with printing and mailing this underlying information upon request will be collectively $500 for all documents associated with a single registered investment adviser.[53]

vi. PREDECESSOR PERFORMANCE

The final rule will impose conditions on an adviser's use of predecessor performance. We estimate that an investment adviser that elects to present predecessor performance in an advertisement will incur an initial burden of 10 hours in preparing the relevant performance results and associated disclosures.[54] This time burden will include the adviser's time spent classifying which performance results are eligible to be ported – i.e., to determine whether accounts at a predecessor adviser are "sufficiently similar" and the persons are "primarily responsible" for the performance, or that the relevant algorithm was responsible for achieving the prior performance results.[55] This burden also will include time spent determining whether to

---

52 We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (3 hours x 3.5 times per year = 10.5 hours; 10.5 hours / 2 = 5.25 hours each).

53 *See supra* footnote 22 for a discussion of estimated mailing costs.

54 Accordingly, we estimate that the amortized initial burden will be 3.33 hours for each of the first 3 years for each investment adviser to prepare predecessor performance in connection with this requirement (10 hours / 3 years = 3.33 hours / year). We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (1.67 hours each).

55 Final rule 206(4)-1(d)(7)(i)-(ii).

exclude any account in accordance with the rule's provision allowing exclusion of one or more accounts if the advertised performance results "would not result in materially higher performance." Finally, this time burden will include the adviser's time calculating and presenting the net performance and appropriate time periods of any predecessor performance presented.

We estimate that 2% of advisers (or 275 advisers) will include predecessor performance in an advertisement. We estimate that after initially preparing predecessor performance, investment advisers will incur a burden of 1 hour to update the relevant disclosures and performance information for each subsequent presentation. For purposes of this analysis, we estimate that advisers will update the relevant disclosures 3.5 times each year.[56] Table 4 summarizes the final PRA estimates for the internal and external burdens associated with these requirements.

Table 4: Performance

	Internal Hour Burden		Wage Rate[2]	Internal Time Costs	Annual External Cost Burden
FINAL ESTIMATES FOR NET PERFORMANCE					
Initial performance calculations[1]	2.5	×	$309 (compliance manager)	$772.5	
	2.5	×	$365 (compliance attorney)	$912.5	
Updating performance	5.25	×	$309 (compliance manager)	$1,622.25	
	5.25	×	$365 (compliance attorney)	$1,916.25	
Total burden per adviser	15.5			$5,223.50	
Total number of affected advisers	× 13,038			× 13,038	
Sub-total burden	**202,089 hours**			**$68,103,993**	

[56] We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (1 hour x 3.5 times per year = 3.5 hours; 3.5 hours / 2 = 1.75 hours each).

FINAL ESTIMATES FOR PERFORMANCE TIME PERIOD REQUIREMENT					
Initial performance calculations[1]	5.83	×	$309 (compliance manager)	$1,801.47	
	5.83	×	$365 (compliance attorney)	$2,127.95	
Updating performance	14	×	$309 (compliance manager)	$4,326	
	14	×	$365 (compliance attorney)	$5,110	
Total burden per adviser	39.7			$13,365.42	
Total number of affected advisers	× 13,038			× 13,038	
Sub-total burden	**517,608.6 hours**			**$174,258,346**	
FINAL ESTIMATES FOR RELATED PERFORMANCE					
Preparing initial performance for all related portfolios[1]	5	×	$309 (compliance manager)	$1,545	
	5	×	$365 (compliance attorney)	$1,825	
Updating performance for all related portfolios	8.75	×	$309 (compliance manager)	$2,703.75	
	8.75	×	$365 (compliance attorney)	$3,139.75	
Total burden per adviser	27.5			$9,267.50	
Total number of affected advisers	× 10,979			× 10,979	
Sub-total burden	**301,922.5 hours**			**$101,747,882.50**	
FINAL ESTIMATES FOR EXTRACTED PERFORMANCE					
Initial performance calculations[1]	1.67	×	$309 (compliance manager)	$516.03	
	1.67	×	$365 (compliance attorney)	$609.55	
Updating performance	3.5	×	$309 (compliance manager)	$1,081.50	
	3.5	×	$365 (compliance attorney)	$1,277.50	
Total burden per adviser	10.3			$3,484.58	$500
Total number of affected advisers	× 686			× 686	× 686
Sub-total burden	**7,065.8 hours**			**$2,390,421.90**	$343,000
FINAL ESTIMATES FOR HYPOTHETICAL PERFORMANCE					
Initially adopting and implementing policies and procedures[1]	2.33	×	$530 (chief compliance officer)	$1,234.90	

Updating policies and procedures	5	×	$530 (chief compliance officer)	$2,650	
Initially preparing disclosures and underlying information[1]	3.33	×	$309 (compliance manager)	$1,028.97	
	3.33	×	$365 (compliance attorney)	$1,215.45	
Updating disclosures and underlying information	5.25	×	$309 (compliance manager)	$1,622.25	
	5.25	×	$365 (compliance attorney)	$1,916.25	
Total burden per adviser	24.5			$9,667.82	$500
Total number of affected advisers	× 6,862			× 6,862	X 6,862
Sub-total burden	**168,119 hours**			**$66,340,581**	$3,431,000
FINAL ESTIMATES FOR PREDECESSOR PERFORMANCE					
Initially determining performance that is eligible to be ported, draft disclosures, and calculate performance[1]	1.67	×	$309 (compliance manager)	$516.03	
	1.67	×	$365 (compliance attorney)	$609.55	
Updating disclosures and performance	1.75	×	$309 (compliance manager)	$540.75	
	1.75	×	$365 (compliance attorney)	$638.75	
Total burden per adviser	6.84			$2,305.08	
Total number of affected advisers	× 275			× 275	
Sub-total burden	**1,881 hours**			**$633,897**	
TOTAL ESTIMATED TIME BURDEN FOR PERFORMANCE REQUIREMENTS					
	1,198,686 hours			**$413,475,121**	**$3,774,000**

Notes:
1. Amortized over a three-year period.
2. See SIFMA Report, *supra* footnote 21.

e. Total Hour Burden Associated with Rule 206(4)-1

Accordingly, we estimate the total annual hour burden for investment advisers registered or required to be registered with the Commission under proposed rule 206(4)-1 to prepare testimonials and endorsements, third-party ratings, and performance results disclosures will be 1,414,291 hours, at a time cost of $468,287,816. The total external burden costs would be

$4,460,200. The following chart summarizes the various components of the total annual burden for investment advisers.

Table 5: Totals

	Internal hour burden	Internal burden time cost	External cost burden
General Prohibitions	**82,344 hours**	**$9,016,668**	
Testimonials and Endorsements	**121,252** hours	$**41,749,094**	$**686,200**
Third-Party Ratings	**12,009** hours	$**4,046,933**	-
Performance	1,198,686 hours	$413,475,121	$3,774,000
Total annual burden	**1,414,291 hours**	**$468,287,816**	**$4,460,200**

13. Cost to Respondents

Cost burden is the cost of goods and services purchased to comply with rule 206(4)-1, such as legal and accounting services. The cost burden does not include the hour burden discussed in Item 12 above. Estimates are based on the Commission's examination and oversight experience. As summarized in Table 5 above, we estimate the total external cost per all advisers per year to be $4,460,200, with the total per adviser per year to be $325.[57]

14. Cost to the Federal Government

Rule 206(4)-1 does not impose any costs on the Federal government because there are no separate filing requirements with the Commission.

---

[57] This estimate is based upon the following calculations: $4,460,200 (total annual external cost burden) / 13,724 (number of advisers) = $325.

15. Changes in Burden

This is a new information collection.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

Not applicable.

18. Exceptions to Certification Statement for Paperwork Reduction Act Submission

Not applicable.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.