

Prohibited Transaction Class Exemption 2002-12
Cross-Trades of Securities by Index and Model-Driven Funds
OMB Number 1210-0115
Expiration Date: 04/30/2022

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 OF
SUBMISSIONS: PROHIBITED TRANSACTION CLASS EXEMPTION 2002-12,
CROSS-TRADES OF SECURITIES BY INDEX AND MODEL-DRIVEN FUNDS**

This ICR seeks approval for an extension of an existing control number.

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.

The Department of Labor (the Department) has the authority, pursuant to section 408(a) of the Employee Retirement Income Security Act (ERISA), section 8477(c)(3) of the Federal Employees Retirement Savings Act (FERSA), and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code), to grant an exemption from all or part of the restrictions imposed, respectively, by sections 406 and 407(a) of ERISA and section 8477(c)(2)(B) of FERSA, and from taxes imposed by sections 4975(a) and (b) of the Code by reason of section 4975(c)(1) of the Code.

In 2002, the Department issued a prohibited transaction class exemption, PTE 2002-12, (Prohibited Transaction Class Exemption for Cross-Trades of Securities by Index¹ and Model-Driven Funds²), to permit private-sector pension plans and the Federal Thrift Savings Plan to buy and sell securities between certain types of investment funds that participate in passive or model-driven “cross-trading” programs pursuant to objective criteria specified in the exemption.³ Cross-trades occur whenever a manager causes the purchase and sale of a particular security to be made directly between two or more investment funds under his/her management. If one or both of the funds contain invested

¹ Generally, the exemption defines an “Index Fund” as any investment fund, account, or portfolio sponsored, maintained, trustee, or managed by the Manager or an Affiliate, in which one or more investors invests that is designed to track the rate of return, risk profile, and other characteristics of a specified independently maintained securities index, by either replicating the combination of securities that compose the index or by sampling the securities that compose the index based on objective criteria and data.

² Generally, the exemption defines a “Model-Driven Fund” as any investment fund, account, or portfolio sponsored, maintained, trustee, or managed by the Manager or an Affiliate, in which one or more investors invests and is composed of securities selected by a computer model that is based on prescribed objective criteria using independent third-party data, not within the control of the Manager, to transform an Index.

³ The exemption requires cross-trading to occur under a program only upon the occurrence of specified “triggering events” that are described in advance to the plan fiduciary.

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assets of a pension plan, the cross-trade could constitute a prohibited transaction, in the absence of the exemption.

The Department determined that the exemption was appropriate in order to allow plans to share in the significant economic benefits (including reduced fees and transactional expenses) derived from this type of cross-trading. The exemption extends only to crossing-trading conducted according to index- or model-driven programs that meet the specific requirements of the exemption, which generally seeks to create objective criteria sufficient to confine or eliminate the manager's discretion to affect the identity or amount of securities to be cross-traded and the timing of cross-trades. The exemption covers cross-trades of securities among Index Funds and Model-Driven Funds, as defined, managed by a Manager.⁴ It also covers cross-trades among such Funds and certain large accounts⁵ (Large Accounts) that engage Managers to carry out a specific portfolio restructuring program in order to convert the Large Account into a Fund, or to otherwise act as a "trading adviser" for such a restructuring program.

In order to grant a class exemption under section 408(a) of ERISA, section 8477(c)(3) of FERSA, and section 4975(c)(2) of the Code, the Department must determine that the exemption is administratively feasible, in the interest of the plan and its participants and beneficiaries, and protective of the rights of the participants and beneficiaries. In order to protect the participants and beneficiaries of plans that invest in cross-traded funds, the Department included specific disclosure and recordkeeping requirements as conditions to the exemption. These information collections are designed to safeguard plan assets by requiring that Managers relying on the exemption to both periodically provide information on the cross-trading programs to independent plan fiduciaries and keep detailed records about cross-trades conducted in reliance on the exemption.

2. **Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

⁴ The exemption defines "Manager" to include banks and trust companies (and affiliates) supervised by state or federal agencies and investment advisers (and affiliates) registered under the Investment Advisers Act of 1940.

⁵ Generally, the exemption defines a "Large Account" as any investment fund, account, or portfolio that is not an Index Fund or a Model-Driven Fund sponsored, maintained, trusteeed (other than a Fund for which the Manager is a nondiscretionary trustee), or managed by the Manager and that either holds assets of an employee benefit plan that has \$50 million or more in total assets or is an institutional investor with total assets in excess of \$50 million or an investment company other than a Manager; provided that a Manager has been authorized to restructure all of a part of the portfolio of the Large Account or to act as a "trading adviser" in connection with a portfolio restructuring program for the Large Account.

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The information collection requirements that are conditions for reliance on the class exemption include third-party disclosures and recordkeeping. The exemption does not require any reporting or filing with the Federal government, but the designated records must be made available to specified parties, including the Department and the IRS, upon request.

Cross-Trading among Funds

Initial Authorization Disclosures. PTE 2002-12 requires that a Manager furnish detailed information to an independent plan fiduciary about the cross-trading program, and obtain a written authorization for the plan's participation, before the plan makes an initial investment in a Fund. This disclosure/authorization requirement applies whether the Manager is implementing a new cross-trading program or accepting new plan investments into a Fund that participates in an existing cross-trading program. Prior to the initial authorization, the plan fiduciary that is independent of the Manager must receive any reasonably available information necessary for the fiduciary to determine whether the authorization should be given, including (but not limited to) a copy of the exemption, detailed information on the procedures to be implemented under the cross-trading program, a statement that the Manager will have a potentially conflicting division of loyalties, and an explanation of how the authorization may be terminated.

Subsequent Notices (at least annual/for significant changes). After the initial authorization, the Manager must give each plan investing in a Fund at least an annual notice providing the plan with an opportunity to terminate its participation in the cross-trading program, information on each Fund in which the plan is invested, and notification that the fiduciary may request additional information on any new Funds added to the program or any changes to the program's triggering events. (Triggering events are the events specified in advance to the plan fiduciaries that cause cross-trading to occur under the program.) The annual notice must provide a termination form or permit the fiduciary to use another written instruction to terminate participation or request a termination form. In addition to the annual notice, the Manager must also provide a notice prior to or within 10 days of adding any Fund to the cross-trading program or making any change to the program's triggering events specified in the initial (or most recent) disclosures. This notice must describe the changes and provide the plan with an opportunity to terminate its participation without penalty, as soon as is necessary to effectuate the withdrawal in an orderly manner.

Large Accounts Restructuring Programs

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Initial Authorization Disclosures. The exemption permits a fiduciary of a plan that has a Large Account to authorize a Manager to engage in a portfolio restructuring program to restructure the Large Account into a portfolio of securities that will be an Index Fund or a Model-Driven Fund or to carry out a liquidation of a specified portfolio of securities in the Large Account, provided that the Manager gives the plan fiduciary initial disclosures similar to those required for cross-trading programs and obtains advance authorization from the fiduciary.

Disclosure upon Completion. Following completion of the restructuring of a Large Account, the Manager must also provide additional information to the fiduciary about all cross-trades executed in connection with the portfolio-restructuring program.

Recordkeeping

Consistent with other prohibited transaction class exemptions granted by the Department, the exemption requires Managers to create records of cross-trades undertaken in reliance on the exemption and maintain those records for a period of 6 years from the date of each cross-trade. The records must identify, on a Fund by Fund basis, the specific triggering events that result in the actual buying and selling that constitutes cross-trading under the program as described in the portfolio model or algorithm. The records must also track the actual cross-trades executed by the Manager for the Fund(s) on a particular day and which of those resulted from a triggering event. The Manager is required to make these records available unconditionally on request at its customary location during normal business hours to the Department, the IRS, fiduciaries of plans participating in the cross-trading program, any contributing employer of any such plan, and any participant or beneficiary of any plan sponsored by a Manager that is participating in a cross-trading program. If any of these parties (except the Department) seeks to examine trade secrets, privileged or confidential commercial, or financial information, the Manager may refuse to disclose the information, provided the Manager gives the party the reasons for such refusal and indicates that the Department may request the information.

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.**

Nothing in this class exemption requires that disclosures be made through distribution methods that would preclude use of electronic technology. Accordingly, the collection of this information may be satisfied electronically by any Manager that maintains the

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documents electronically, if the party to which the disclosures must be made is able to receive the documents electronically. Discussions with industry experts indicate that the parties that engage in cross-trading programs are large, financially sophisticated entities. A study by the Securities Industry Association indicated that virtually all large, sophisticated financial institutions “have invested in complex information technology (IT) systems.”⁶ Consequently, the Department has assumed that trades, record-keeping, and more routine interactions between parties (especially the annual/subsequent disclosures following initial authorization) will be carried out electronically. For purposes of this burden estimate, however, the Department has assumed that the initial disclosures, which must precede an initial authorization for a plan to invest assets in a Fund, will be provided in writing to provide desired formality of compliance.

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 cross-trading program and do not replicate any other disclosures required by state or federal regulations. The records required to be kept for this exemption 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 as usual and customary business practices. However, no duplication of effort is created by these requirements because the same records of transactions may be used to satisfy the requirements of state and federal law and the exemption.

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

This collection of information is unlikely to adversely affect small businesses or small entities. As noted by the SIA study referenced in the answer to question 3, above, the Managers affected by this information collection are generally very large, highly sophisticated financial institutions, not small entities. In addition, the Department believes that the disclosures are essential to plan fiduciaries, who must determine whether to cause plans to invest in cross-traded Funds. Managers that choose to rely on the exemption should uniformly be required to provide adequate information to plan fiduciaries and to maintain adequate records, regardless of whether the Manager is considered a large or small entity.

⁶ Mills, Rob, “Regional Firms: Increasingly Retail-Oriented, But Holding Their Own,” SIA Research Reports, Vol. VI, No. 6, (June 29, 2005) at 12.

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

The disclosure and recordkeeping requirements of the class exemption are only mandatory if Managers voluntarily decide to rely on the class exemption and plans voluntarily elect to invest in Funds that involve cross-trading. Without the disclosure and recordkeeping requirements, plan fiduciaries may not receive information about a Manager's cross-trading program needed to fulfill their fiduciary responsibilities with respect to a plan, and consequently participants' and beneficiaries' investments in a pension plan may not be adequately protected. The Department has determined that, after a plan has made an initial decision to participate in a cross-trading program, annual subsequent disclosures are the minimum protection necessary to enable the plan fiduciary to re-evaluate the appropriateness of the investment on behalf of the plan's participants and beneficiaries.

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.**

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Because this exemption is granted under section 408(a) of ERISA, section 8477(c)(3) of FERSA, and section 4975(c)(2) of the Code, the exclusion from the three year guideline for record retention set forth in 5 CFR 1320.5 is applicable. Furthermore, as a result of statutory recordkeeping requirements in ERISA, FERSA, the Code and other federal laws, the respondents affected by this exemption (financial institutions that deal with employee benefit plans), for the most part, have adopted six-year recordkeeping as standard business practice in order to satisfy those separate recordkeeping requirements.

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

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

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

The Department's notice requesting public comment on the proposed extension of the information collection request was published in the Federal Register on November 9, 2021 (86 FR 62208), provided 60 days for public comment, as required by 5 CFR 1320.8(d). No comments were received.

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

Not applicable.

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

No assurance of confidentiality has been provided.

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

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 in Item 13.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.**

The Department has made certain specific basic assumptions in order to establish a reasonable estimate of the paperwork burden of this information collection.

First, the Department assumes that Managers, which are large, sophisticated financial

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institutions, will use existing in-house resources to provide the disclosures and maintain the recordkeeping systems to satisfy the information collection requirements, rather than hiring outside service providers to do this work.

Second, given the nature of the information collection requirements, the Department assumes a combination of professional financial or investment and clerical personnel will perform the information collections. The Department estimates an hourly labor cost rate of \$165.45 for a professional financial manager and an hourly labor cost rate of \$55.23 for clerical personnel.⁷

Third, the Department assumes that approximately 60 Managers currently manage Funds involved in cross-trading programs; that 40 of those Managers manage Funds that previously constituted a Large Account of a single plan; and that the remaining 20 Managers manage Funds participating in a cross-trading program into which approximately 40 plans invest plan assets with respect to each Manager.

Finally, the Department assumes, based on information obtained from industry experts, that not all plans with Large Accounts have previously been restructured and that no new Large Accounts are likely to take advantage of the exemption during the next three years. This submission, therefore, does not include any burden attributable to the specific information collections relating to restructuring or liquidation of Large Accounts.

Initial Authorization Disclosures

The Department estimates that annually two new cross-trading programs will be created, and that the Manager of Funds that are part of a new cross-trading program will annually provide initial disclosures to an average of 40 plans' fiduciaries in order to obtain authorizations for investment of plan assets in the Funds. Thus, the Department estimates that annually Managers will be required to provide initial disclosures to 80 plans (2 Managers x 40 plans) in connection with the creation of new cross-trading programs.

In addition, Managers must provide initial disclosures to any plans that newly invest in an existing cross-traded Fund. Because investment returns to Funds are not dependent on an individual Manager's investment decisions due to the nature of cross-trading, the Department assumes a lower turnover rate among plans that invest in cross-traded Funds than among plans generally. For the purposes of this burden analysis, therefore, the Department assumes that annually no more than five percent of the plans that currently

⁷ Internal DOL calculation based on 2020 labor cost data. For a description of the Department's methodology for calculating wage rates, 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>

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invest in cross-traded Funds will change their investments and therefore receive an initial disclosure. Based on the Department's prior estimate that approximately 800 plans invest in Funds subject to cross-trading programs generally, the Department estimates that 40 plans (800 x 5 percent) annually will change their investments and receive an initial disclosure.

Based on these estimates, the Department assumes that 120 plans (80 + 40) will receive initial disclosures annually.

The information required to be included in initial disclosures to plan fiduciaries is assumed to have already been prepared for other purposes, such as SEC filings, or as part of the Manager's usual and customary business practice. However, the Department has assumed that the exemption will require a Manager to spend one additional hour of professional time per plan investor, to ensure that an initial disclosure is complete and to review its contents for accuracy. Further, the Department assumes that 30 (thirty) minutes of clerical time per plan investor will be needed to gather the required information, collate and package the information for distribution, ensure the information is distributed, and file the required authorization when received from the plan fiduciary. As described in the answer to question 13, below, the Department has assumed that the initial disclosures will be provided in writing through certified mail with return receipt, and the costs of such distribution are accounted for in the answer to question 13, below.

In sum, the Department estimates that annually Managers will provide initial disclosures to 120 plans (80 plans plus 40 plans), with a resulting annual hour burden of 120 hours of professional time (120 plans x 1 hour per plan) and 60 hours (120 plans x ½ hour) of clerical time, for a total of 180 annual burden hours.

The equivalent cost of this annual hour burden for initial disclosures is \$23,168, consisting of the cost for professional time, calculated at \$19,854 (120 hours x \$165.45 per hour) plus the cost for clerical time, calculated at \$3,314 (60 hours x \$55.23 per hour).

Subsequent Notices (at least Annual/Significant Changes).

Managers must provide subsequent notices to each plan investor at least annually (and in connection with any addition of a Fund to the cross-trading program or any change in the program's triggering events). In its previous submissions, the Department estimated that a total of 60 Managers would annually rely on the exemption, with 40 of those Managers assumed to be managing Funds that resulted from the restructuring of Large Accounts. The Department believes, based on discussions with industry experts, that this number

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has remained relatively static. Although some new cross-trading programs are anticipated to be created each year, an approximately equal number of programs are anticipated to be discontinued, with the result that the Department continues to estimate 60 Managers annually managing Funds subject to cross-trading programs.

Managers are required to provide notices at least annually to fiduciaries of plans investing in cross-traded Funds in order to provide the plans with an opportunity to withdraw from the cross-trading program and provide information on the Funds in which the plan is invested. Managers are also required to provide a notice within 10 days of any addition of Funds or changes to triggering events. Because the Department believes that such changes are rare, however, it is assumed that Managers will provide on average one notice annually to each plan fiduciary and that, for each annual disclosure, the Manager will prepare one informational/disclosure package that will be distributed to all plans in its particular cross-trading program. The Department assumes that each Manager (60 in total) will need one hour annually of professional time to identify and collect the appropriate information to be included in the package. The annual hour burden for creating the annual disclosure is therefore 60 hours (60 Managers x 1 hour per Manager).

Based on discussions with industry experts and a review of literature in the field of investment management, the Department has assumed that the Managers and plans that engage in cross-trading will be well-versed in modern investment practices and technologically sophisticated. The Department therefore believes that the annual disclosures will be distributed electronically. The Department further assumes that Managers will use modern customer tracking database software and existing e-mail address lists to distribute the disclosure packages to plan fiduciaries. Therefore, the Department estimates that each Manager (60 in total) will require 15 minutes of clerical time to distribute via e-mail the required annual disclosure to each of its plan investors (estimated at 40 plans per Manager) for a total of 15 hours of clerical time (60 Managers x 15 minutes per manager).

The total annual hour burden for compliance with the annual disclosure is therefore 75 hours (60 hours professional + 15 hours clerical = 75 hours).

The equivalent cost of the annual disclosure for subsequent disclosures is estimated at \$10,755, consisting of the professional cost to prepare the annual disclosure of \$9,927 (60 Managers x 1 hour professional x \$165.45 per hour) plus clerical cost of \$828 (60 Managers x 15 minutes per clerical x \$55.23 per hour).

Recordkeeping

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Managers are required to maintain specific records for a period of 6 years from the date of each cross-trade. Because of the sophisticated nature of the securities industry, the Department assumes that records pertaining to individual cross-trades will be automatically recorded and retained by an existing information system and that no additional time is required on the part of a Manager to create these records. The Department does, however, assume that Managers, as part of their ongoing relationship with Funds and plans, will examine these records on a quarterly basis to ensure that they are accurate and easily accessible.

The Department makes three further assumptions with respect to recordkeeping. First, it is assumed that a Manager's records retention system will group transactions chronologically by quarters, such that each quarter's records will be amalgamated and collated as a separate report. Second, it is assumed that Managers will need 30 minutes of professional time to review each quarter's records for accuracy, for a total of 2 hours annually per Manager. Finally, it is assumed that Managers quarterly will also review all prior quarterly record reports (a total of 23 reports) covering the six-year retention period to ensure their existence and accessibility, requiring 5 additional minutes of professional time per report each quarter, or approximately 8 hours annually per Manager. Each Manager therefore will need 10 hours annually to satisfy the recordkeeping requirements of the exemption. As noted, the Department assumes that 60 Managers operate cross-trading programs annually. Consequently, the Managers annually will require 600 hours to maintain the records required under the exemption. Using a rate of \$165.45 per hour for professional time, the equivalent cost of this hour burden for recordkeeping is \$99,270.

In summary, the Department estimates that the total annual hour burden imposed by the exemption is 855 hours (75 hours + 180 hours + 600 hours). The equivalent cost of this annual hour burden is \$133,193 (\$23,168 + \$10,755 + \$99,270).

Estimated Annualized Respondent Cost and Hour Burden

Activity	No. of Respondents	No. of Responses per Respondent	Total Responses	Average Burden (Hours)	Total Burden (Hours)	Hourly Wage Rate	Total Burden Cost
Initial Disclosure: Financial Manager	60	2	120	1	120	\$165.45	\$19,854
Initial	60	2	120	30/60	60	\$55.23	\$3,314

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Disclosure: Clerical							
Annual Disclosure: Financial manager	60	1	60	1	60	\$165.45	\$9,927
Annual Disclosure: Clerical	60	1	60	15/60	15	\$55.23	\$828
Recordkeeping	60	1	60	10	600	\$165.45	\$99,270
Total	60		840		855	-	\$133,193

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.

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The only additional costs arising from this information collection derive from the direct costs of distribution. Although the Department believes that Managers will use electronic methods of distribution for the annual disclosures to existing plan investors and for recordkeeping, the Department believes that initial disclosures will be prepared in paper form and distributed by certified mail, mail delivery service, courier, or some other means of distribution that will create a record of delivery. For the initial disclosures to the assumed 120 plans that will receive such disclosures annually, the Department assumes a distribution cost of on average \$10.75 per plan. This includes the actual cost of distribution, which is \$9.75,⁸ plus any overhead costs associated with printing the documentation. The Department assumes material and printing cost is \$0.05 and that the initial disclosure is approximately 20 pages. The total annual cost burden for distributing the required notice is \$1,290 ((120 notices for initial disclosure) x (\$9.75 + 20 pages x \$0.05)).

Given the sophisticated nature of securities cross-trading practices and the nature of the parties involved (large, technically sophisticated organizations), the Department assumes that the annual disclosures to plans already invested in Funds will be distributed through electronic means of communication (e.g., e-mail) already in existence at the plans and the Managers. Because these disclosures are assumed to be distributed using established client databases, the Department assumes no additional cost burden because the costs arising from electronic distribution will be negligible.

Lastly, because of the nature of the securities industry and the increasing prevalence of electronic securities trading, particularly in connection with cross-trading programs, the Department also assumes that the maintenance of records of trades through electronic means is generally a usual and customary business practice that would be undertaken regardless of the exemption. Further, the declining costs of electronic recordkeeping leads the Department to assume that any additional cost incurred for recordkeeping as a result of this exemption is minimal; no additional burden has been assumed for any additional recordkeeping costs.

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

⁸ The cost of certified mail with restricted delivery and an adult signature required is \$9.75. For more information on mailing rates, see at https://pe.usps.com/text/dmm300/Notice123.htm?gl=1*1e2kxda*_ga*MzY1MzQ2NTE0LjE2Mjc2NDg3MDY.*_ga_3NXP3C8S9V*MTY0MTkxMjc5MC45LjEuMTY0MTkxMzE1MC4w#_c037.

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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 because it does not require any reporting or filing with the Federal government.

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

There have been no program changes to the exemption since the last submission. However, the Department has updated the labor rates and mailing and material costs resulting in a small increase in the cost burden. The hour burden remains the same, but due to the increase in the labor rates, the equivalent cost burden increased.

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 OMB expiration date will be published in the Federal Register following OMB approval.

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

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.