

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995:
VOLUNTARY FIDUCIARY CORRECTION PROGRAM (INCLUDING PTE 2002-51)**

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.**

This information collection arises from two related actions: the Voluntary Fiduciary Correction Program (the VFC Program or the Program) and Prohibited Transaction Class Exemption (PTE) 2002-51 (the VFC Exemption or the Exemption). The Department of Labor (the Department) adopted the Program and the Exemption in order to encourage members of the public to voluntarily correct transactions that violate (or are suspected of violating) the fiduciary or prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA). Both the Program and the Exemption incorporate information collection requirements in order to protect participants and beneficiaries and enable the Department to oversee the appropriate use of the Program and the Exemption. The following describes the Program and the Exemption, and their information collection requirements, in detail.

VFC Program. The Program specifies types of fiduciary breach transactions that can be corrected through the Program and instructs applicants on how to make complete and fully acceptable corrections without prior discussion or negotiation with the Department. This enables applicants to make full correction without entering into settlement negotiations with the Department, which would result in the imposition of a civil monetary penalty under section 502(l) of ERISA, which is required to be paid on amounts recovered by a plan pursuant to a settlement agreement with the Department. An entity or individual that corrects a transaction in compliance with the Program can apply to the Department for a no action letter, which assures the applicant that the transaction has been adequately corrected and that the Department will take no further enforcement action with regard to the corrected transaction.

The information collection in the Program consists of a requirement that an applicant submits an application to a Regional Office of the Employee Benefits Security Administration (EBSA), the agency within the Department charged generally with enforcement of Title I of ERISA and a recordkeeping requirement. The application must include a description of the transaction and its correction, together with other

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documentation appropriate to the specific transaction (such as bank statements showing deposits, or appraisal reports, etc.). The Program, in section 6(k), also requires an applicant to maintain copies of the application and any subsequent correspondence with EBSA for a period of six years, which is the record retention requirement generally applicable to plan records under section 107 of ERISA. The application provides sufficient information to enable the Department to fulfill its enforcement responsibilities by examining the correction, ensuring that it is complete and appropriate, and determining whether further action is necessary to protect the rights of participants and beneficiaries.

On April 19, 2006, the Department of Labor published in the Federal Register a 2006 Update of the VFC Program (71 FR 20262), which simplified and expanded the original program published in 2002. The program is designed to encourage employers to voluntarily comply with ERISA by self-correcting certain violations of the law. Many workers can benefit from the program as a result of the increased retirement security associated with restoration of plan assets and payment of additional benefits. It also will help plan officials understand the law. The 2006 update of the program describes how to apply, the 19 categories of transactions covered, acceptable methods for correcting violations, and examples of potential violations and corrective actions. The Department issued the update in response to public and internal comments on the preliminary revision of the program published in April 2005. The 2006 update was effective May 19, 2006.

VFC Exemption. The Department adopted a class exemption in connection with its 2002 adoption of the VFC Program (67 FR 70623, Nov. 25, 2002) in order to further encourage the voluntary correction of the specific types of transactions involving fiduciary breach and the prohibited transaction provisions of ERISA. A violation of the prohibited transactions provisions of ERISA is generally subject to taxation under section 4975(e)(1) of the Internal Revenue Code (the Code) if the violation involves a plan described in that section. Therefore, for certain types of transactions eligible to be corrected under the VFC Program, a fiduciary would remain liable for excise taxes under section 4975 of Code even though such transactions were fully corrected under the Program. PTE 2002-51 provides relief for certain eligible transactions from the sanctions imposed under section 4975(a) and (b) of the Code provided that the transactions are fully corrected under the Program and the additional conditions prescribed by PTE 2002-51 are met.

As first adopted, the Exemption required, as a condition to the relief, that the party seeking to correct a transaction under the Program notify “interested persons” (usually plan participants and beneficiaries) that an application has been submitted to a Regional Office of EBSA. The notice was required to describe the nature of the prohibited transaction and the resulting correction. A copy of the notice was also required to be sent

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to the EBSA Regional Office. Finally, the applicant was required to indicate the date upon which the notice was distributed to interested persons.

PTE 2002-51 was amended to provide relief for two additional transactions: (1) Prohibited transaction violations involved in the purchase of an asset by a plan when the asset has been determined to be illiquid, and/or the subsequent sale of the illiquid asset by the plan; and (2) Use of plan assets to pay expenses to a service provider for services that are characterized as “settlor expenses,” provided such payments were not expressly prohibited in the plan documents.

Additionally, for de minimis situations involving delinquent participant contributions and/or the failure to transmit participant loan repayments, the Department eliminated the notice requirement. The de minimis amount situations provides an option for correction of transactions that involve an excise tax of \$100 or less under which the party seeking relief may choose, rather than providing notice to interested persons, to pay the amount of the otherwise applicable excise tax to the plan and include in his or her application to the Department certain additional documentation on the calculations of the excise tax due and the payment to the plan. This documentation generally consists of a copy of a completed IRS Form 5330 or equivalent written evidence containing the information required by IRS Form 5330 and proof of payment to the plan.

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

The information collection provisions of the Program and the Exemption include third-party disclosures, recordkeeping, and disclosures to the Federal government. The information collections enable the Department to fulfill its obligations to protect plan participants and beneficiaries by providing the information needed to determine whether parties that attempt to correct transactions under the Program have done so correctly and under the conditions permitted. The disclosures also serve to inform participants and beneficiaries of important actions taken by plan officials regarding transactions involving their plans. The Department believes that disclosing this information will protect the interests of participants and beneficiaries of employee benefit plans by raising their awareness of issues related to the security of plan assets and the administration of the plan. In addition, the notice provides an opportunity for interested persons to comment to the Department on the relief requested and, in turn, permits the Department to fulfill its obligations under section 408(a) of ERISA.

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.

To the extent that the information collection is a third-party disclosure, respondents may use electronic methods of communications pursuant to the standards established in the Department's regulation at 29 C.F.R. § 2520.104b-1(b) concerning plans' use of electronic communication media to satisfy ERISA disclosure requirements. That regulation provides that plan sponsors and administrators may distribute notices to employees who have access to e-mail at the place of business. In addition, notices may be distributed electronically to employees or their family members who are beneficiaries if they have electronic access at their homes and give prior approval to this type of distribution. The Department generally encourages affected entities to distribute required notices electronically whenever possible, provided that these regulatory standards are met.

Section 2520-107.1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

For the purposes of paperwork burden analysis, EBSA has developed a set of assumptions concerning the use of electronic technology generally for distribution of information to participants and beneficiaries. Based on these assumptions, EBSA has assumed in this analysis that 94.2 percent of the required disclosures will be made electronically.¹

¹ According to data from the National Telecommunications and Information Agency (NTIA), 40.0% of individuals age 25 and over have access to the Internet at work. According to a Greenwald & Associates survey, 84% of plan participants find it acceptable to make electronic delivery the default option, which is used as the proxy for the number of participants who will not opt-out of electronic disclosure that are automatically enrolled (for a total of 33.6% receiving electronic disclosure at work). Additionally, the NTIA reports that 40.4% of individuals age 25 and over have access to the internet outside of work. According to a Pew Research Center survey, 61.0% of internet users use online banking, which is used as the proxy for the number of internet users who will affirmatively consent to receiving electronic disclosures (for a total of 24.7% receiving electronic disclosure outside of work). Combining the 33.6% who receive electronic disclosure at work with the 24.7% who receive electronic disclosure outside of work produces a total of 58.2% who will receive electronic disclosure overall. According to the 2019 American Community Survey, 86.6% of the population has an internet subscription. The Department estimates that 0.5% of electronic disclosures will bounce back and will need to be sent a paper disclosure. Accordingly, for the 41.8% of participants not affected by the 2002 safe harbor (67 FR 17263), 86.1%, or an additional 36.0% (41.8% x 86.1%), are estimated to receive electronic disclosures under the 2020 safe harbor (85 FR 31884). In total, the Department estimates that 94.2% (58.2% + 36.0%) would receive electronic disclosures.

The Program requires submission of a written application because the Department is requiring the applicant to sign the application “under penalty of perjury.” The application process, however, is designed to take advantage of computerized processes. In particular, the Program has been configured to include an Online Calculator, which is an Internet based compliance assistance tool provided on EBSA’s website that permits applicants to determine the amount of Lost Earnings, any interest on Lost Earnings, and the interest amount for Restoration of Profits, if applicable, necessary under the Program to correct certain transactions. Instead of submitting detailed documentation in support of their own calculations, applicants that make use of the Online Calculator to perform the correction calculations may simply print out and provide to EBSA a copy of the final page(s) that results from using the “Print Viewable Results” feature of the Online Calculator.

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 VFC Program requires applicants to provide the Department a narrative description of the particular transaction being corrected and the correction method, basic identifying information, a penalty of perjury statement. The Exemption also has a notice requirement. This program is not a duplicate, but rather an alternative form of compliance. Because each transaction is unique, there is no duplication in this information collection. However, aside from collection provisions that will document the transactions in question for the Department and for the participants and beneficiaries, most of the underlying documentation is already available to the plan.

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

The VFC Program is a voluntary enforcement program. Only those entities that seek to take advantage of the Program’s methods of correcting breaches (or suspected breaches) of fiduciary responsibility need comply with its information collection requirements. Similarly, reliance on the VFC Exemption is also a voluntary undertaking. Plan officials of small plans will decide on a case by case basis whether it is economically advantageous to use the Program and to take advantage of the Exemption. The Program describes the appropriate corrections for the types of transactions identified and the documentation required for the application. The model application form, reduced supporting documentation, Online Calculator, and checklist (Appendix B) assist applicants with completing an application and reduce their paperwork burden.

For parties that decide to send interested persons notices under the Exemption, no new information need be gathered by a plan; all of the required information will have already been gathered for the purpose of completing the application under the Program. If a plan official of a small plan concludes that it is economically advantageous to rely on the Exemption, they will experience cost savings based on the tax relief granted. Finally, participants and beneficiaries of small plans are entitled to the same protections as those provided to participants and beneficiaries of large plans. The Department has therefore not adjusted the Program or Exemption requirements specifically for small plans.

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 information collection will be conducted only if applicants choose to participate in the Program and/or to take advantage of the relief offered by the Exemption. The Department requires the information to ensure that plan officials comply with the requirements of ERISA. The information collections cannot therefore be conducted less frequently.

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.

The Program requires an applicant to maintain copies of the application and any subsequent correspondence with EBSA for a period of six years, which is the period of time required under section 107 of ERISA generally for recordkeeping relevant to the plan's operations. This requirement allows the Department (and other interested persons) to determine whether the conditions of the Program have been met. The six-year recordkeeping requirement is consistent with the requirements of section 107, as well as general recordkeeping requirements for tax information under the Internal Revenue Code.

- 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.

EBSA's notice providing the public with 60 days to comment on the proposed Extension of the Information Collections in the Voluntary Fiduciary Correction Program and Prohibited Transaction Class Exemption was published in the Federal Register on November 9, 2021 (86 FR 62208). 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.

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

No assurances of confidentiality are offered to respondents under either the VFC Program or the VFC Exemption. Parties who rely on the Exemption must provide notice to interested persons, unless the transaction involves an excise tax of \$100 or less, in which case an alternative correction process is available.

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.**
- **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.**

VFC Program. The Department estimates that approximately 3,325 plans will take advantage of the VFC Program annually.² The Department assumes that the information collection requirements will be satisfied through a combination of work performed by staff of the applicant (typically the plan sponsor/employer) and by outside service providers hired by the applicant. The work performed in-house by the applicant and service provider work is estimated as hour burden and described in this item 12. The costs arising from materials and postage are accounted for under item 13.

² All estimates are based on filings submitted to the Department between FY 2018 and FY 2020.

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The Department estimates that each applicant will require 3.5 hours to gather information required for an application under the VFC Program. The Department estimates that one hour of this time will be spent by a benefits manager at a labor rate of \$121.78.³ This results in an hour burden of 3,325 hours with an equivalent cost of \$404,920.⁴ The Department also estimates that 2.5 hours will be spent by clerical staff at a labor rate of \$55.23.⁵ This results in an hour burden of 8,313 hours at an equivalent cost of \$459,073.⁶ Overall, gathering information required for an application under the VFC Program results in an annual hour burden of 11,638 hours with an equivalent cost of \$863,993.

The Department has also accounted for, in this ICR, an additional hour burden for recordkeeping. Although the required records concerning application under the Program generally would be kept in the normal course of business, the Department assumes that one hour annually of clerical time for each of the plans will be spent reviewing and maintaining records as a result of this information collection. This results in an annual hour burden of 3,325 hours with an equivalent cost of \$183,629.⁷

The Department has assumed that each applicant under the Program will hire a service provider to prepare and review the application and the financial documentation required in the application and that the service provider generally will be a financial specialist (accountant, financial manager, etc.). The Department estimates that the service provider will require an average of 2 hours for each application, resulting in a total of 6,650 hours⁸ of service provider time. Using a labor rate of \$100.64 per hour⁹ for an accountant or similar professional, the equivalent cost for preparation of the applications is estimated at \$669,256.¹⁰

The total hour burden for the VFC Program is 21,613 hours (11,638 hours + 3,325 hours + 6,650 hours) with an equivalent cost of \$1,716,878 (\$863,993 + \$183,629 + \$669,256).

³ Internal DOL calculation based on 2020 labor cost data. For a description of the Department's methodology for calculating labor rates, see: <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebbsa-opr-ria-and-pra-burden-calculations-june-2019.pdf>

⁴ 3,325 plans x 1 hour=3,325 hours; 3,325 hours x \$121.78 = \$404,920.

⁵ 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-ebbsa-opr-ria-and-pra-burden-calculations-june-2019.pdf>

⁶ 3,325 plans x 2.5 hours=8,313 hours; 8,313 hours x \$55.23 = \$459,073

⁷ 3,325 plans x 1 hour=3,325 hours; 3,325 hours x \$55.23 = \$183,629

⁸ 3,325 plans x 2 hours = 6,650 hours

⁹ 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-ebbsa-opr-ria-and-pra-burden-calculations-june-2019.pdf>

¹⁰ 3,325 plans x 2 hours x \$100.64 = 6,650 hours

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VFC Exemption. The Department has estimated 119 of the applicants to the VFC Program will also rely on the notice part of the Exemption. Because of the expertise required, most Program applicants using the Exemption will likely hire a professional service provider to prepare the notice required under the Exemption. For those 119 applicants, the Department assumes that the preparation of the information to be submitted to the Department (and to interested persons when required) will require one hour of a financial professional's time. This results in an hour burden of 119 hours with an equivalent cost of \$11,976.¹¹

For the estimated 119 applicants that send notices to interested persons (participants and beneficiaries in the affected plan), there will be approximately 243,593 notices sent (119 plans x 5.8 percent¹² x 2,047 participants and beneficiaries per plan = 14,128 notices).¹³ The Department assumes that it will take clerical staff about 2 minutes per notice to prepare the notices. This results in a hour burden of 471 hours at an equivalent of \$37,985.¹⁴

The total hour burden for the VFC Exemption is 590 hours (119 hours + 471 hours) with an equivalent cost of \$37,985 (\$11,976 + \$26,009).

Summary. The total annual hour burden for the final VFC Program is therefore estimated at 22,202 (21,613 for VFC Program + 590 for VFC Exemption) hours with an equivalent cost of \$1,754,863 (\$1,716,878 for VFC Program + \$37,985 for VFC Exemption).

11 1 hr. x 119 applicants= 119 hours; 119 hours x \$100.64 per hour = \$11,976

12 According to data from the National Telecommunications and Information Agency (NTIA), 40.0% of individuals age 25 and over have access to the Internet at work. According to a Greenwald & Associates survey, 84% of plan participants find it acceptable to make electronic delivery the default option, which is used as the proxy for the number of participants who will not opt-out of electronic disclosure that are automatically enrolled (for a total of 33.6% receiving electronic disclosure at work). Additionally, the NTIA reports that 40.4% of individuals age 25 and over have access to the internet outside of work. According to a Pew Research Center survey, 61.0% of internet users use online banking, which is used as the proxy for the number of internet users who will affirmatively consent to receiving electronic disclosures (for a total of 24.7% receiving electronic disclosure outside of work). Combining the 33.6% who receive electronic disclosure at work with the 24.7% who receive electronic disclosure outside of work produces a total of 58.2% who will receive electronic disclosure overall. According to the 2019 American Community Survey, 86.6% of the population has an internet subscription. The Department estimates that 0.5% of electronic disclosures will bounce back and will need to be sent a paper disclosure. Accordingly, for the 41.8% of participants not affected by the 2002 safe harbor, 86.1%, or an additional 36.0% (41.8% x 86.1%), are estimated to receive electronic disclosures under the 2020 safe harbor. In total, the Department estimates that 94.2% (58.2% + 36.0%) would receive electronic disclosures. Thus, the Department estimates that 5.8% (100%- 94.2%) would receive paper disclosures.

13 Plans using the VFC Program from FY 2018 to FY 2020 had an average of 2,047 participants and beneficiaries.

14 243,593 notices x 5.8 percent x 2 minutes= 471 hours; 8,120 hours x \$55.23 = \$37,985

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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
Gather Information for Program: Human Resource	3,325	1	3,325	1	3,325	\$121.78	\$404,920
Gather Information for Program: Clerical Staff	3,325	1	3,325	2.5	8,313	\$55.23	\$459,073
Record Keeping for Program: Clerical Staff	3,325	1	3,325	1	3,325	\$55.23	\$183,629
Prepare Application for Program: Service Provider	3,325	1	3,325	2	6,650	\$100.64	\$669,256
Prepare Information for Exemption: Service Provider	119	1	119	1	119	\$100.64	\$11,976
Prepare Notices for Exemption: Clerical Staff	14,128	1	14,128	2/60	471	\$55.23	\$26,009
Total **	3,325*	74.26	246,918	0.09	22,202	-	\$1,754,863

Note:

*As discussed previously, the Department estimates that approximately 3,325 plans or respondents will take advantage of the VFC Program annually.

**The number of responses is calculated in the following manner: 243,593 notices sent to participants + 3,325 notices sent to the Department = 246,918. Numbers may not sum to totals due to rounding.

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 startup 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.**

VFC Program.

The Department assumes that the required documentation will be submitted to the Department via certified mail. Mailing and material costs are estimated at \$10 per application¹⁵ for 3,325 applicants. The total annual cost burden for the VFC Program is therefore estimated as \$33,250 (\$10 per application x 3,325 applications).

¹⁵ \$9.75 for certified mail and \$0.25 for the 5 sheets of paper at \$0.05 per sheet for printing and material costs.

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VFC Exemption. The Department has assumed that approximately 119 of the annual 3,325 applicants to the VFC Program will rely on the exemption by sending notice to affected participants and beneficiaries.

For the estimated 119 applicants that send notices to interested persons (participants and beneficiaries in the affected plan), there will be approximately 243,593 notices sent (119 plans x 2,047 participants and beneficiaries per plan = 243,593 notices).¹⁶ The Department further assumes, based on its understanding of current employee benefit practices, that 94.2 percent of these notices will be sent by electronic means at de minimis cost;¹⁷ the remaining 5.8 percent of the notices will be sent by first class mail. Therefore, the total number of notices sent by mail will be 14,128 (243,593 notices x 5.8%) and the cost of mailing is estimated at \$8,901 ($\0.63^{18} x 14,128). The Department assumes, however, that all applicants who send interested-person notices will send the Department its copy of the notice by mail, using certified or overnight delivery services and that this copy will be included in the application package described above under costs for the VFC Program.

For those parties choosing the alternate process of the exemption of paying the excise tax to the plan instead of to the IRS, the Department attributes a minimal additional burden. Plans are required to include in their applications to the Department a bank statement. This is expected to be approximately 4 pages and will be included with the rest of the submission -- thus costing each plan approximately \$0.20, generating a total cost burden of \$24 (119 plans x \$0.20/plan).

Thus, the total annual cost burden for the VFC Exemption is \$8,925 (\$8,901 + \$24).

¹⁶Plans using the VFC Program from FY 2018 to FY 2020 had an average of 2,047 participants and beneficiaries.

¹⁷According to data from the National Telecommunications and Information Agency (NTIA), 40.0% of individuals age 25 and over have access to the Internet at work. According to a Greenwald & Associates survey, 84% of plan participants find it acceptable to make electronic delivery the default option, which is used as the proxy for the number of participants who will not opt-out of electronic disclosure that are automatically enrolled (for a total of 33.6% receiving electronic disclosure at work). Additionally, the NTIA reports that 40.4% of individuals age 25 and over have access to the internet outside of work. According to a Pew Research Center survey, 61.0% of internet users use online banking, which is used as the proxy for the number of internet users who will affirmatively consent to receiving electronic disclosures (for a total of 24.7% receiving electronic disclosure outside of work). Combining the 33.6% who receive electronic disclosure at work with the 24.7% who receive electronic disclosure outside of work produces a total of 58.2% who will receive electronic disclosure overall. According to the 2019 American Community Survey, 86.6% of the population has an internet subscription. The Department estimates that 0.5% of electronic disclosures will bounce back and will need to be sent a paper disclosure. Accordingly, for the 41.8% of participants not affected by the 2002 safe harbor, 86.1%, or an additional 36.0% (41.8% x 86.1%), are estimated to receive electronic disclosures under the 2020 safe harbor. In total, the Department estimates that 94.2% (58.2% + 36.0%) would receive electronic disclosures.

¹⁸\$0.58 for postage and \$0.05 for printing and material costs.

Summary. The total aggregate annual cost burden for the information collection arising from the VFC Program and the Exemption is estimated at \$42,175 (\$33,250 for VFC Program + \$8,925 for VFC Exemption).

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

The cost to the Federal government of the VFC Program and the Exemption is estimated at \$1.5 million annually in labor costs. This is based on an estimated 0.3 FTEs (GS 14 Step 5) coordinating the program at the National office at a cost of \$82,420,¹⁹ 5 FTEs (GS 13 Step 5) at the 10 field offices (.5 FTEs/office) coordinating the regional coordination at a cost of 1,162,431,²⁰ 1 FTE (GS 6 Step 5) who is administrative staff at a cost of \$88,167,²¹ and 2 FTEs (GS 7 Step 5) who are law student interns at a cost of \$195,936.²² There is also an estimated \$200,000 in material costs for communication of the Program to the public. The total cost to the government is approximately \$1.5 million annually.

15. Explain the reasons for any program changes or adjustments

When the Department calculates burden estimates for the information collections contained in the VFC Program, it uses the experience of the three most recent fiscal years data are available. There are no plan size restrictions regarding which plans are permitted to participate in the VFC Program; however, the plans that participate in the VFC Program tend to be small. Average usage from FY 2018 to FY 2020 increased relative to the preceding period.

Additionally, the burden of the outside service providers is now counted toward the hour burden. Finally, the Department has revised the labor and postal rates and updated the Federal burden to reflect increased labor rates. As a result, the total hour burden and the

¹⁹ \$143,064 (GS-14, Step 5 salary) x 1.35 (overhead) / .703 (share of total compensation taken up by wages and salaries) x 0.3 FTEs = \$82,420.

²⁰ \$121,065 (GS-13, Step 5 salary) x 1.35 (overhead) / .703 (share of total compensation taken up by wages and salaries) x 5 FTEs = \$1,162,431.

²¹ \$51,651 (GS-6, Step 5 salary) x 1.2 (overhead) / .703 (share of total compensation taken up by wages and salaries) x 1 FTE = \$88,167.

²² \$57,393 (GS-7, Step 5 salary) x 1.2 (overhead) / .703 (share of total compensation taken up by wages and salaries) x 2 FTEs = \$195,936.

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equivalent cost of the total hour burden has increased and the total cost burden has decreased.

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.

The results of the information collections will not be published.

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.

A valid OMB control number is displayed on the Model VFCP Application. The OMB control number and expiration date will be published in the Federal Register following OMB approval.

18. Explain each exception to the certification statement identified in Item 19.

Not applicable; no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable. The use of statistical methods is not relevant to the collections of information.