

PTE 86-128 (Securities Broker-Dealers)
OMB Number 1210-0059
Expiration Date: 08/31/2022

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995: PTE
86-128 (SECURITIES BROKER-DEALERS)**

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.

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

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

Based on an application submitted by the Securities Industry Association, in 2002, the Department amended PTE 86-128 to make the exemption available to fiduciaries that are discretionary plan trustees¹, subject to certain additional conditions. The conditions include a minimum plan size (at least \$50 million in total net assets), and at least annual reporting to the authorizing fiduciary of both dollar and cents-per-share commissions paid to brokers that are: a) affiliated, and b) non-affiliated with the trustee.

Section 406 of ERISA prohibits various transactions between a plan and certain related

¹Prior to the 2002 amendment, PTE 86-128 was not available to any person (or any affiliate thereof) who was a discretionary trustee, plan administrator, or an employer, any of whose employees were covered by the plan.

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

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

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

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

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

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

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conditions contained in the exemption:

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

Financial institutions must submit this information to the Department in support of their exemption application. The information is used by the agency to monitor the broker-fiduciary's activities and protect the plan assets involved in the transactions, which, in the absence of the class exemption, would not be permitted. These safeguards rely on the prior authorization and monitoring of the broker-fiduciary's activities by a second plan fiduciary that is independent of the first. They are necessary, as required under section 408(a) of ERISA, to ensure that respondents rely on the exemption only in the circumstances protective of plan participants and beneficiaries.

3. **Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also**

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describe any consideration for using information technology to reduce burden.

Under 29 C.F.R. § 2520.104b-1(b) of ERISA, “where certain material, including reports, statements, and documents, is required under Part I of the Act and this part to be furnished either by direct operation of law or an individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries.” Section 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b). Section 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

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

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

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

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

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

The disclosure requirements of PTE 86-128 are required only if a fiduciary that is a broker-dealer or who has a broker-dealer affiliate wishes to utilize the class exemption. The frequency is dependent on the occurrence of such transactions, not on a predetermined time period. This exemption was requested by in part by the Securities Industry Association (SIA) on behalf of its members. Eliminating the information

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collection would make it difficult to ensure that the rights of participants and beneficiaries are being sufficiently protected, as required by Section 408(a).

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

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

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

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

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

The Department's notice soliciting public comment and providing 60 days for that purpose as required by 5 CFR 1320.8 (d) was published in the Federal Register on March 17, 2022 (87 FR 15267). No comments were received.

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

No payments or gifts are provided to respondents.

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

No assurance of confidentiality was provided.

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

There are no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of difference 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**

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collection 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.

Using the 2019 Annual Return/Report of Employee Benefit Plan (Form 5500) data, the Department estimates that there are approximately 733,678 ERISA covered pension plans. Of these plans, the Department assumes that 6.6 percent are new plans, new accounts, or new financial advice relationships. The Department also assumes that 12 percent of these plans will engage in transactions covered under this class exemption.²

The Department estimates that 5,811 plans will use the exemption for PTE 1986-128.³ The Department estimates that 2,237 broker-dealers will use this exemption.⁴

The following wage rates are assumed an in-house rate of \$140.96 for legal professionals and \$55.23 for clerical staff.⁵ In addition, the Department assumes that 100 percent of plans will use electronic means to deliver the required information with no associated cost burden. The Department also assumes that 94.2 percent of broker-dealers will use electronic means to deliver the required information with no associated cost burden.⁶

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

² This is a weighted average of the Department's estimates of the share of DB plans and DC plans with broker-dealer relationships. The Department assumes that approximately 20 percent of DB plans have relationships with broker dealers. As a proxy for the share of DC plans with broker-dealer relationships, the Department uses the sum of the percent of load mutual funds in 401(k) plans (6 percent) and the percent of 401(k) stock mutual fund assets paying 12b-1 fees between >.0 to 0.25 (6 percent). Both data are published by the 2021 Investment Company Institute report. (See *The Economics of Providing 401(k) Plans: Services, Fees, and Expenses, 2020*, Investment Company Institute, June 2021. <https://www.ici.org/system/files/2021-06/per27-06.pdf>) The weighted average is calculated in the following manner: $[(733,678 \text{ DC plans}) / (46,870 \text{ DB plans} + 733,678 \text{ DC plans})] \times (6 \text{ percent of load mutual funds in } 401(k) \text{ plans} + 6 \text{ percent of } 401(k) \text{ stock mutual fund assets paying } 12b-1 \text{ fees between } >.0 \text{ to } 0.25)] + [((46,870 \text{ DB plans}) / (46,870 \text{ DB plans} + 733,678 \text{ DC plans})) \times (20 \text{ percent of DB plans have relationships with broker dealers})] = 12 \text{ percent}$

³ The number of plans that will use the exemption for PTE 1986-128 is estimated in the following manner: $(733,678 \text{ plans} \times 6.6 \text{ percent}) \times 12 \text{ percent} = 5,811 \text{ plans}$.

⁴ The Department assumes that broker-dealers will be the primary users of the PTE. According to the Security Exchange Commission, approximately 3,551 BDs were SEC-registered and that 63 percent of broker-dealers are registered with the SEC and service ERISA plans. (Source: Estimates based on SEC's FOCUS filings and SEC's Form ADV filings). Thus, the Department estimates that 2,237 broker-dealers will be affected by the exemption $(3,551 \text{ broker-dealers} \times 63\% = 2,237)$.

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 The Department estimates approximately 94.2% of Retirement Investors receive disclosures electronically, which is the sum of the estimated share of Retirement Investors receiving electronic disclosures under the 2002 electronic disclosure safe harbor (58.2%) and the estimated share of Retirement Investors receiving electronic disclosures under the 2020 electronic disclosure safe harbor (36.0%).

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Authorizing fiduciaries of new plans entering into a relationship with a broker-dealer are required to provide the broker-dealer with an advance written authorization to perform transactions for the plan. The Department estimates that there are approximately 5,811 plans that are new or that enter new arrangements each year. Therefore, the Department estimates that approximately 5,811 authorizing fiduciaries are expected to send an advance written authorization. It is assumed that a legal professional, at a wage rate of \$140.96⁷, will spend 15 minutes per plan reviewing the disclosures and preparing an authorization form. Thus, it will take a legal professional a total hour burden of 1,453 hours and an equivalent cost of \$204,780 to prepare the written authorization requirement.⁸

To produce and distribute the authorization, the Department assumes that 100 percent of plans will be distributed electronically. Thus, the hour burden to produce and distribute the authorizations is de minimis.

- 2) Provision of materials for evaluation of authorization of transaction (provided by the financial institution)

Prior to a written authorization being made, the authorizing fiduciary must be provided by the financial institution with a copy of the exemption, a form for termination of authorization, a description of broker's placement practices, and any other reasonably available information. This information is assumed to be readily available.⁹

The Department estimates that a clerical staff member will spend two minutes per plan to prepare and distribute the required information to the authorizing fiduciary. To produce and distribute the required information, the Department assumes that 94.2 percent of broker-dealers will use traditional electronic methods at no additional burden, while the remaining 5.8 percent of broker-dealers will mail the required information. This information will be sent to the 5,811 plans entering into an agreement with a financial institution, and based on the above, the Department estimates that this requirement results in an hour burden of 11 hours with an equivalent cost of \$620.¹⁰

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>.

8 The burden is estimated as follows: 5,811 plans x 1 hour per plan = 5,811 hours. A labor rate of \$140.96 is used for a legal professional. The labor rate is applied in the following calculation: 5,811 plans x 1 hour x \$140.96 per hour = \$204,780

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

10 The burden is estimated as follows: 5,811 plans x 5.8 percent paper x 2 minutes per plan = 11 hours; A labor rate of \$55.23 is used for a clerical worker. The labor rate is applied in the following calculation: 5,811 plans x 5.8 percent paper x 2 minutes per plan x \$55.23 = \$620

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3) Provision of an annual termination form (provided by the financial institution)

Each authorizing fiduciary must be supplied annually with a form expressly providing an election to terminate the written authorization. It is assumed that legal professionals with each of the 2,237 broker-dealers¹¹ will spend 15 minutes preparing the termination forms, which results in an hour burden of 559 hours with an equivalent cost of \$78,832.¹²

The termination form will be sent to 88,041 plans.¹³ To produce and distribute the required information, the Department assumes that 94.2 percent of broker-dealers will use traditional electronic methods at no additional burden, while the remaining 5.8 percent of broker-dealers will mail the required information. The Department estimates that clerical staff will spend two minutes per plan preparing and distributing the termination forms in paper format to 5,106 plans resulting in an hour burden of 170 hours with an equivalent cost of \$9,401.¹⁴

In total, providing the annual termination form is expected to impose an hour burden of 729 hours with an equivalent cost of \$88,233.

Activity	Burden Hours	Equivalent Burden Cost
Legal	559	\$78,832
Clerical	170	\$9,401
Total	729	\$88,233

4) Transaction Reporting (provided by the financial institution)

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

¹¹ The Department assumes that broker-dealers will be the primary users of the PTE. According to the Security Exchange Commission, 63 percent of broker-dealers are registered with the SEC and service ERISA plans. (Source: Estimates based on SEC’s FOCUS filings and SEC’s Form ADV filings). Thus, the Department estimates that 2,237 broker-dealers will be affected by the exemption (3,551 broker-dealers x 63% = 2,237).

¹² The burden is estimated as follows: 2,237 broker-dealers x 15 minutes per financial institution = 559 hours; A labor rate of \$140.96 is used for a legal professional. The labor rate is applied in the following calculation: 559 broker-dealers x 1 hour per financial institution x \$140.96 per hour = \$78,832

¹³ The number of plans that will receive a termination form is calculated in the following manner: 733,678 DC plans * 12 percent of plans that have broker-dealer relationships = 88,041 plans.

¹⁴ The burden is estimated as follows: 88,041 plans x 5.8 percent paper x 2 minutes per plan = 170 hours. A labor rate of \$55.23 is used for a clerical worker. The labor rate is applied in the following calculation: 88,041 plans x 5.8 percent paper x 2 minutes per plan x \$55.23 = \$9,401

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5) Annual Statement (provided by the financial institution)

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

6) Report of Commissions Paid (provided by the financial institution)

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

Summary

In total, the conditions of this exemption will result in the production of 275,745 disclosures.¹⁵ The Department assumes that 100 percent of plans will use electronic methods to distribute the required information, at de minimis burden. The Department also assumes that 94.2 percent of broker-dealers will use electronic methods to distribute the required information, at de minimis burden, while 15,656¹⁶ disclosures will be on paper. As presented in the table below, the production and distribution of paper disclosures will result in an overall hour burden of 2,193 hours with an equivalent cost of \$293,633.

Activity	Burden Hours	Equivalent Burden Cost
1. Written authorization from the authorizing plan fiduciary to the broker-dealer (provided by the	1,453	\$204,780

¹⁵ The total number of disclosures is calculated in the following manner: 5,811 (Written authorization disclosures) + 5,811 (Provision of materials for evaluation of authorization of transaction) + 88,041 (Annual termination form) + 88,041 (Annual Statement) + 88,041 (Report of Commissions Paid) = 275,745 disclosures

¹⁶ The total number of paper disclosures is calculated in the following manner: (5,811 Provision of materials for evaluation of authorization of transaction x 5.8 percent paper) + (88,041 Annual termination form x 5.8 percent paper) + (88,041 Annual Statement x 5.8 percent paper) + (88,041 Report of Commissions Paid x 5.8 percent paper) = 15,656 disclosures

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plan)		
2. Provision of materials for evaluation of authorization of transaction (provided by financial institution)	11	\$620
3. Provision of an annual termination form (provided by financial institution)	729	\$88,233
4. Transaction Reporting (provided by financial institution)	0	0
5. Annual Statement (provided by financial institution)	0	\$0
6. Report of Commissions Paid (provided by financial institution)	0	\$0
Total	2,193	\$293,633

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
Written authorization from the authorizing plan fiduciary to the broker-dealer (Legal)	5,811	1	5,811	0.25	1,453	\$140.96	\$204,780
Provision of materials for evaluation of authorization of transaction	5,811	1	5,811	2/60	11	\$55.23	\$620
Provision of an annual termination form (Distribution)	5,106	1	5,106	2/60	170	\$55.23	\$9,401
Provision of an annual termination form (Legal)	2,237	1	2,237	0.25	559	\$140.96	\$78,832
Total	8,048*	34.26	275,745**	0.008	2,193	-	\$293,633

Note:

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*The total number of respondents is calculated in the following manner: 5,811 plans entering into an agreement with a financial institution + 2,237 broker-dealers = 8,048

**The total number of responses is calculated in the following manner: 5,811 (Written authorization disclosures) + 5,811 (Provision of materials for evaluation of authorization of transaction) + 88,041 (Annual termination form) + 88,041 (Transaction Reporting) + 88,041 (Annual Statement) + 88,041 (Report of Commissions Paid) = 275,745 disclosures

- 13. Provide an estimate of the total annual cost burden to respondents or record keepers 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 2 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.**

As discussed in item 12 above, the exemption imposes six information requests on authorizing fiduciaries and broker-dealers to qualify for the relief provided in the

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exemption. The cost burden that is associated with complying with these ICRs is discussed below. These estimates are in addition to the hour burden estimates discussed in item 12.

The Department has used the same assumptions as were used in determining the hour burden. In addition, the Department assumes that 100 percent of plans will use electronic to deliver the required information with no associated cost burden. The Department also assumes that 94.2 percent of broker-dealers will use electronic means to deliver the required information with no associated cost burden.¹⁷ For the required information not sent electronically, the Department estimates that a cost of 5 cents per page for paper and printing costs will be assessed. Postage of 58 cents per mailing will also be incurred.

The annual cost burden is calculated as follows:

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

Plans must issue in writing an authorization to the financial institution prior to a transaction occurring. It is assumed that the authorization will include two pages. Plans that are new or that enter into a new agreement with a broker-fiduciary will have to send the authorization; therefore about 5,811 plans will have to send the authorization each year.

To produce and distribute the authorization, the Department assumes that 100 percent of plans will use traditional electronic methods at no additional burden. Thus, the cost burden to produce and distribute the authorization is de minimis.

- 2) Provision of materials for evaluation of authorization of transaction (provided by the financial institution)

Plans that are new or that are entering into a new agreement must also receive required information from their broker-dealer. This information includes a copy of the exemption, a termination form, a description of the broker-fiduciary's placement practice, and other

¹⁷ The Department estimates approximately 94.2% of Retirement Investors receive disclosures electronically, which is the sum of the estimated share of Retirement Investors receiving electronic disclosures under the 2002 electronic disclosure safe harbor (58.2%) and the estimated share of Retirement Investors receiving electronic disclosures under the 2020 electronic disclosure safe harbor (36.0%).

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requested item. This information is assumed to include seven pages. Once again, approximately 5,811 authorizing fiduciaries will receive this information from broker-dealers.

To produce and distribute the materials, the Department assumes that 94.2 percent of broker-dealers will use traditional electronic methods at no additional burden, while the remaining 5.8 percent of broker-dealers will mail the materials. It is assumed that this information will be seven pages and paper distribution will cost \$0.93 each, which results in a cost burden of about \$620.¹⁸

3) Provision of an annual termination form (provided by the financial institution)

Annually, a broker-dealer must send the authorizing fiduciary a termination form. Authorizing fiduciaries of all 88,041¹⁹ plans will receive this form from broker-dealers.

To produce and distribute the termination form, the Department assumes that 94.2 percent of broker-dealers will use traditional electronic methods at no additional burden, while the remaining 5.8 percent of broker-dealers will mail the termination forms. It is assumed that the form will be two pages, so paper copies will cost \$0.68 each, which results in a cost burden of approximately \$9,401.²⁰

4) Transaction Reporting (provided by the financial institution)

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

5) Annual Statement (provided by the financial institution)

An annual statement is also required to be delivered by the financial institution to the 88,041 authorizing fiduciaries. The statement is an annual summary of the transaction reports and contains all transaction-related charges, a description of brokerage placement practices and the portfolio turnover ratio. Postage cost is not included here as it is assumed that the annual statement will be sent with the annual termination form and

¹⁸ The burden is estimated as follows: 7 pages x \$0.05 per page + \$0.58 for postage = \$0.93; The mailing rate is applied in the following calculation: 5,811 plans x 5.8 percent paper x \$0.93 = \$620

¹⁹ 733,678 plans x 12 percent of these plans will engage in transactions covered under this class exemption = 88,041 plans

²⁰ The burden is estimated as follows: 2 pages x \$0.05 per page + \$0.58 for postage = \$0.68; The mailing rate is applied in the following calculation: 88,041 plans x 5.8 percent paper x \$0.68 = \$9,401

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postage costs are accounted for there. It is assumed that the annual statement will be five pages, and the paper and print costs are \$0.25 each.²¹ Therefore, the overall cost burden for the paper and print costs are about \$1,277.²²

6) Report of Commissions Paid (provided by the financial institution)

A financial institution who is a discretionary trustee must provide each of the 88,041 authorizing fiduciaries with an annual report showing commissions paid to affiliated and non-affiliated brokers, on both a total dollar and a cents-per-share basis. The Department estimates that 94.2 percent of broker-dealers will use traditional electronic methods at no additional burden, while the remaining 5.8 percent of broker-dealers will mail the annual reports. As the report is sent annually, it is assumed that it could be sent with the transaction report, therefore postage costs are not counted here. It is assumed that the report will be two pages, and the paper and print costs are \$0.10 each.²³ Therefore, the overall cost burden of the paper and print costs is \$511.²⁴

Requirements 4, 5, and 6 also require the financial institution to report specific transaction fees and information to the plan fiduciaries. The information must be tracked, assigned to specific plans, and reported. It is assumed that it costs the financial institution \$3.30 per plan to track this information.²⁵ With approximately 88,041 affected plans, this results in a cost burden of approximately \$290,535 annually.²⁶

Summary

In total, the conditions of this exemption will result in the production of 275,745 disclosures.²⁷ The Department assumes that 100 percent of plans will use electronic methods to distribute the required information, at de minimis burden. The Department also assumes that 94.2 percent of broker-dealers will use electronic methods to distribute the required information, at de minimis burden, while 15,656²⁸ disclosures will be on paper. As presented in the table below, tracking and reporting costs for the disclosures, plus production of paper disclosures will total approximately \$296,108

21 5 pages x \$0.05 per page = \$0.25

22 88,041 plans x 5.8 percent paper x \$0.25 = \$1,277

23 2 pages x \$0.05 per page + \$0.58 for postage = \$0.68

24 88,041 plans x 5.8 percent paper x \$0.10 = \$511

25 This estimate is based on information from industry sources.

26 88,041 plans x \$3.30 = \$290,535

27 The total number of disclosures is calculated in the following manner: 5,811 (Written authorization disclosures) + 5,811 (Provision of materials for evaluation of authorization of transaction) + 88,041 (Annual termination form) + 88,041 (Annual Statement) + 88,041 (Report of Commissions Paid) = 275,745 disclosures

28 The total number of paper disclosures is calculated in the following manner: (5,811 Provision of materials for evaluation of authorization of transaction x 5.8 percent paper) + (88,041 Annual termination form x 5.8 percent paper) + (88,041 Annual Statement x 5.8 percent paper) + (88,041 Report of Commissions Paid x 5.8 percent paper) = 15,656 disclosures

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Activity	Cost
1. Written authorization from the authorizing fiduciary to the broker-dealer (provided by the plan)	\$0
2. Provision of materials for evaluation of authorization of transaction (provided by financial institution)	\$313
3. Provision of an annual termination form (provided by financial institution)	\$3,472
4. Transaction Reporting (provided by financial institution)	\$0
5. Annual Statement (provided by financial institution)	\$1,277
6. Report of Commissions Paid (provided by financial institution)	\$511
4-6. Tracking and Reporting (provided by financial institution)	\$290,535
Total	\$296,108

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

There are no ongoing costs to the Federal government.

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

This analysis uses updated labor cost estimates. Costs of postage have been updated. Additionally, the number of plans affected has been updated to reflect updated Form 5500 data. The estimated number of new plans has also been updated to reflect updated Form 5500 data. The estimated number of affected broker-dealer fiduciaries has been updated to reflect current Securities and Exchange Commission data.

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

This is not a collection of information for statistical use.

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

The collection of information will display a currently valid OMB control number.

- 18. Explain each exception to the certification statement.**

There are no exceptions to the certification statement.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

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