

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995:
IMPROVING INVESTMENT ADVICE FOR WORKERS & RETIREES PROHIBITED
TRANSACTION EXEMPTION**

This information collection request (ICR) seeks approval for a revision 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 Secretary of Labor may grant and amend administrative exemptions from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and the Internal Revenue Code of 1986, as amended (the Code).¹ Before granting an exemption, the Department must find that the exemption is administratively feasible, in the interests of employee benefit plans (Plans), their participants and beneficiaries and individual retirement account and annuity owners (IRAs), and protective of the rights of participants and beneficiaries of such Plans and IRA owners.

This exemption allows investment advice fiduciaries to Plans under both Title I and the Code to receive compensation, including as a result of advice to roll over assets from a Plan to an IRA, and to engage in principal transactions, that would otherwise violate the prohibited transaction provisions of Title I and the Code. The exemption applies to Securities and Exchange Commission—and state-registered investment advisers, broker-dealers, banks, insurance companies, and their employees, agents, and representatives that are investment advice fiduciaries. The exemption includes protective conditions designed to safeguard the interests of Plans, participants and beneficiaries, and IRA owners. The class exemption affects participants and beneficiaries of Plans, IRA owners, and fiduciaries with respect to such Plans and IRAs.

Investment professionals typically receive compensation for services to retirement investors in the retail market through a variety of arrangements, which would typically violate the prohibited transaction rules applicable to plan fiduciaries. These include commissions paid by the plan, participant or beneficiary, or IRA, or commissions, sales loads, 12b-1 fees, revenue sharing and other payments from third parties that provide investment products. A fiduciary's receipt of such payments generally violates the prohibited transaction provisions of ERISA section 406(a)(1)(A), (D), 406(b) and Code

¹ Regulations at 29 CFR section 2570.30 to 2570.52 describe the procedures for applying for an administrative exemption under ERISA. Code section 4975(c)(2) authorizes the Secretary of the Treasury to grant exemptions from the parallel prohibited transaction provisions of the Code. Reorganization Plan No. 4 of 1978 (5 U.S.C. app. at 214 (2000)) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under Code section 4975 to the Secretary of Labor.

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section 4975(c)(1)(A), and (D), (E) and (F) because the amount of the fiduciary's compensation is affected by the use of its authority in providing investment advice, unless such payments meet the requirements of an exemption.

The current exemption conditions emphasize mitigating conflicts of interest and ensuring that retirement investors receive advice that is prudent and loyal. An important objective of the existing exemption is to require fiduciary investment advice providers to adhere to stringent standards that are designed to ensure that their investment recommendations reflect the best interest of plan and IRA investors. Accordingly, under the current framework of PTE 2020-02, Financial Institutions and Investment Professionals relying on the existing exemption must:

- (1) acknowledge their fiduciary status in writing;
- (2) disclose their services and material conflicts of interest;
- (3) adhere to Impartial Conduct Standards requiring them to:
 - a. investigate and evaluate investments, provide advice, and exercise sound judgment in the same way that knowledgeable and impartial professionals would (i.e., their recommendations must be "prudent");
 - b. act with undivided loyalty to retirement investors when making recommendations (in other words, they must never place their own interests ahead of the retirement investor's interest, or subordinate the retirement investor's interests to their own);
 - c. charge no more than reasonable compensation and comply with federal securities laws regarding "best execution"; and
 - d. avoid making misleading statements about investment transactions and other relevant matters;
- (4) adopt policies and procedures prudently designed to ensure compliance with the Impartial Conduct Standards and mitigate conflicts of interest that could otherwise cause violations of those standards;
- (5) document and disclose the specific reasons that any rollover recommendations are in the retirement investor's best interest; and
- (6) conduct an annual retrospective compliance review.

2023 Proposed Amendments

This proposed amendment would build on these existing conditions to provide more certainty for Retirement Investors receiving advice and Financial Institutions and Investment Professionals complying with the exemption's conditions. The Department is proposing additional disclosures to ensure that Retirement Investors have sufficient information to make informed decisions about the costs of the investment advice transaction and about the significance and severity of the investment advice fiduciary's conflicts of interest. The proposed amendment also would provide more guidance for Financial Institutions and Investment Professionals complying with the Impartial Conduct Standards and implementing the policies and procedures.

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 collection.

The information that investment advice fiduciaries are required to produce under the exemption creates protective conditions designed to safeguard the interest of Plans, participants, beneficiaries, and IRA owners. These requirements also provide plan participants with needed information to help them understand services offered and the related conflicts of interests associated with those conflicts.

To qualify for the exemption, under the existing provisions, investment advice fiduciaries are required to:

- (1) make disclosures to inform retirement investors of their fiduciary status, services offered, and material conflicts of interest;
- (2) establish, maintain, and enforce written policies and procedures designed to ensure that they and their investment professionals comply with the Impartial Conduct Standards;
- (3) document the specific reasons for any rollover recommendation and show that the rollover is in the best interest of the retirement investor and provide the documentation to the retirement investor;
- (4) conduct an annual retrospective review that is reasonably designed to prevent violations of the PTE's Impartial Conduct Standards and the institution's own policies and procedures; and
- (5) maintain records so that parties relying on an exemption can demonstrate, and the Department can verify, compliance with the conditions of the exemption.

The Department notes that more parties may need to rely on an amended PTE 2020-02, because of the Department's proposed amendment to the definition of "fiduciary investment advice." If the amended rule is adopted, parties that have not been fiduciaries under the five-part test may become fiduciaries in the future. In addition, the Department is proposing to amend other class prohibited transaction exemptions that provide relief for fiduciary investment advice. Parties that have been relying on those exemptions may choose to comply with the amended PTE 2020-02 instead.

The proposed amendments would add additional disclosure requirements that would ensure Retirement Investors have sufficient information to make informed decisions about the costs of the investment advice transaction and about the significance and severity of the investment advice fiduciary Conflicts of Interest. As amended, PTE 2020-02 would require financial institutions to provide investors with the following additional disclosures:

- (1) a written statement of the best interest standard of care owed; and
- (2) a written statement that the retirement investor has the right to obtain specific information regarding costs, fees, and compensation.

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.

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.

The disclosures under the proposed exemption amendments are coming from investment advice fiduciaries, rather the plan administrators. The Department does not have information on how many retirement investors, including plan beneficiaries and participants and IRA owners, receive disclosures electronically from investment advice fiduciaries. For the purposes of this analysis, the Department assumes that the percent of retirement investors receiving disclosures electronically would be similar to the percent of plan participants receiving disclosures electronically under the Department’s 2020 electronic disclosure rules.

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

The ERISA and Code rules governing advice on the investment of retirement assets overlap with SEC rules that govern the conduct of investment advisers and broker-dealers who advise retail investors. The Department considered conduct standards set by other regulators — such as SEC, NAIC, and FINRA — in developing the exemption, with the goal of avoiding overlapping or duplicative requirements. To the extent the requirements overlap, compliance with the other disclosure or recordkeeping requirements can be used to satisfy the exemption conditions, provided the conditions are satisfied. In this regard, there is no duplicate requirements because entities are able to satisfy the requirements of both this exemption and of the other applicable laws.

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

It is necessary for the information collection to apply equally to large and small entities to ensure that participants and beneficiaries and IRA owners are protected when their plans and IRAs engage in transactions that otherwise would be prohibited under ERISA and the

Code. However, because smaller entities generally have less complex business practices and arrangements than their larger counterparts, it likely will cost less for them to comply with the exemption.

The Department has attempted to minimize burden by focusing the information collection on information available to the impacted entities. For instance, much of the information required in disclosures contain information that is likely readily available to many fiduciaries, and the recordkeeping requirements include records that are otherwise maintained in the normal course of business.

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 requirements of this PTE are only mandatory if entities wish to utilize the class exemption. The frequency of some of the information collections are dependent upon the occurrence of such transactions, not on a predetermined time period.

The disclosures, policies and procedures, annual review reports and certifications, and recordkeeping information collection requirements are necessary to ensure that the exemption conditions are protective of the rights of Plan participants and beneficiaries and IRA owners, as required by ERISA section 408(a) and Code section 4975(c)(2).

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 result 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 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, the Code, and other federal laws, Financial Institutions that rely on this exemption, 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.

In accordance with 5 CFR 1320.11, the proposed exemption provides the public with 30 days to comment on the information collection and burden estimates.

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.

There is no assurance of confidentiality provided to respondents.

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 person from whom the information is requested, and any steps to be taken to obtain their consent.

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There are no questions of a sensitive nature; therefore, no additional justification is necessary.

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.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- **Provide estimates of annualized cost to respondents for the hour burdens for 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.**

The Department expects the same 19,290 entities that are affected by the existing PTE 2020-02 would be affected by the proposed amendments to the PTE. The number of entities by type and size are summarized in the table below.

The Department recognizes that the proposed amendments may change the number of financial institutions who chose to rely on PTE 2020-02. Consistent with its initial analysis of the exemption in 2020, this analysis assumes that all eligible entities currently rely on the exemption and would continue to rely on the exemption if amended as proposed. As a result, this analysis does not reflect any change in the number of entities relying on the exemption in response to these amendments. The Department requests comment on how the proposed amendments might change the number of affected entities relying on PTE 2020-02.

	Small	Large	Total
Broker-Dealer	395	1,499	1,894
Retail	287	1,034	1,321
Non-Retail	108	465	573
Registered Investment Adviser	2,996	12,986	15,982
SEC	220	7,350	7,570
Retail	74	4,570	4,644
Non-Retail	146	2,780	2,926

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State	2,776	5,636	8,412
Retail	2,166	4,399	6,566
Non-Retail	610	1,237	1,847
Insurer	151	32	183
Robo-Adviser	10	190	200
Pension Consultant	930	81	1,011
Investment Company Underwriter	20	0	20
Total	4,502	14,788	19,290

As the Department believes that referrals by banks are not likely to constitute fiduciary investment advice within the meaning of the exemption, banks are not considered in this analysis. The Department assumes that financial institutions will use the exemption in conjunction with transactions involving nearly all of their clients that are defined benefits plans, defined contribution plans, and IRA holders.²

The Department also assumes that financial institutions use existing in-house resources to prepare the disclosures, policies and procedures, rollover documentation, and retrospective reviews and to maintain the recordkeeping systems necessary to meet the requirements of the exemption.

In the analysis discussed below, a combination of personnel would perform the tasks associated with the ICRs at an hourly wage rate of \$63.45 for clerical personnel, \$133.05 for a computer programmer, and \$159.34 for a legal professional, and \$219.23 for a financial adviser.³

The Department does not have information on how many retirement investors, including plan beneficiaries and participants and IRA owners, receive disclosures electronically from investment advice fiduciaries. For the purposes of this analysis, the Department assumes that the percent of retirement investors receiving disclosures electronically would be similar to the percent of plan participants receiving disclosures electronically under the Department’s 2020 electronic disclosure rules.⁴ Accordingly, the Department estimates that 94.2 percent of the disclosures sent to retirement investors would be sent electronically, and the remaining 5.8 percent would be sent by mail.⁵

Disclosure Requirements Under the Current PTE 2020-02

² For this analysis, “IRA holders” include rollovers from ERISA plans. The Department welcomes comments on this estimate.

³ Internal DOL calculation based on 2023 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>.

⁴ 67 FR 17263.

⁵ 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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Section II(b) currently requires financial institutions to provide certain disclosures to retirement investors before engaging in a transaction pursuant to the exemption. These disclosures include:

- (1) a written acknowledgment that the financial institution and its investment professionals are fiduciaries;
- (2) a written description of the services to be provided and any conflicts of interest of the investment professional and financial institution; and
- (3) documentation of the financial institution and its investment professional's conclusions as to whether a rollover is in the retirement investor's best interest, before engaging in a rollover or offering recommendations on post-rollover investments.

The following estimates reflect the ongoing paperwork burdens of the affected entities. Broker-dealers, registered investment advisers, and insurance companies were required to prepare these disclosures under the existing PTE 2020-02. The estimates below reflect paperwork burden these entities would incur to modify such exemption, but the Department assumes that these entities have already incurred costs related to drafting such disclosures.

The Department estimates that preparing a disclosure indicating fiduciary status would take a legal professional at affected robo-advisers, pension consultants, and investment company underwriters 30 minutes, resulting in an hour burden of 616 hours and a cost burden of \$98,074.⁶

The proposed amendment makes minor edits to the written acknowledgment that the financial institution and its investment professional are fiduciaries. The Department does not have data on how many financial institutions would need to modify their disclosures in response to this amendment; however, the Department expects that the disclosures required under the existing form of PTE 2020-02 likely satisfy this requirement for most financial institutions covered under the existing exemption. For the purposes of this analysis, the Department assumes that 10 percent of financial entities under the existing exemption would need to update their disclosures and that it would take a legal professional at a financial institution, on average, 10 minutes to update existing disclosures. Robo-advisers, pension consultants, and investment company underwriters, who are not covered under the existing exemption would need to draft the acknowledgement. Updating the acknowledgement is estimated to result in an hour burden of 301 hours with an equivalent cost of \$47,961.⁷

⁶ The burden is estimated as: [(200 robo-advisers + 1,011 pension consultants + 20 investment company underwriters) x 30 minutes] ÷ 60 minutes = 616 hours. The burden is estimated as: [(200 robo-advisers + 1,011 pension consultants + 20 investment company underwriters) x 30 minutes] ÷ 60 minutes x \$159.34 = \$98,074.

⁷ The number of financial entities needing to update their written acknowledgement is estimated as: (1,894 broker-dealers x 10%) + (7,570 SEC-registered investment advisers x 10%) + (8,412 state-registered investment advisers x 10%) + (183 insurers x 10%) = 1,806 financial institutions updating existing disclosures. [(1,806 financial institutions x 10 minutes) ÷ 60 minutes] = 301 hours. The equivalent cost is estimated as: 301 hours x \$159.34 = \$47,961.

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Table 2: Hour Burden and Equivalent Cost Associated with the Fiduciary Acknowledgement				
	Year 1		Subsequent Years	
Activity	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Legal	917	\$146,035	0	\$0
Total	917	\$146,035	0	\$0

The Department estimates that preparing a disclosure identifying services provided and conflicts of interest would take a legal professional at affected robo-advisers, pension consultants, and investment company underwriters one hour at small financial institutions and five hours at large financial institutions, resulting in an hour burden of 2,315 hours and an equivalent cost burden of \$368,872.⁸

The proposed amendments would also expand on the existing requirement for a written description of the services provided to also require a statement on whether the retirement investor would pay for such services, directly or indirectly, including through third-party payments. The Department assumes it would take a legal professional at a financial institution under the existing exemption 30 minutes to update existing disclosures to include this information. This results in an hour burden of 9,030 hours and an equivalent cost burden of \$1,438,761 in the first year.⁹

Table 3: Hour Burden and Equivalent Cost Associated with the Written Description of Services Provided				
	Year 1		Subsequent Years	
Activity	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Legal	11,345	\$1,807,633	0	\$0
Total	11,345	\$1,807,633	0	\$0

According to Cerulli Associates, in 2022, almost 4.5 million DC plan accounts with \$779 billion in assets were rolled over to an IRA. Additionally, 0.7 million DC plan accounts with \$66 billion in assets were rolled over to other employer-sponsored plans.¹⁰ It is challenging to obtain reliable data on other types of rollovers such as IRA-to-IRA and

⁸ The burden is estimated as: [(930 small pension consultants + 10 small robo-adviser + 20 small investment company underwriters) x 1 hour] + [(81 large pension consultants + 190 large robo-advisers) x 5 hours] = 2,315 hours. The equivalent cost is estimated as: {[(930 small pension consultants + 10 small robo-adviser + 20 small investment company underwriters) x 1 hour] + [(81 large pension consultants + 190 large robo-advisers) x 5 hours]} x \$159.34 = \$368,872.

⁹ The number of financial entities needing to update their written description of services is estimated as: 1,894 broker-dealers + 15,982 registered investment advisers + 183 insurers = 18,059 financial institutions updating existing disclosures. The burden is estimated as follows: [(18,059 financial institutions x 30 minutes) ÷ 60 minutes] = 9,030 hours. The equivalent cost is estimated as: [(18,059 financial institutions x 30 minutes) ÷ 60 minutes] x \$159.34 = \$1,438,761.

¹⁰ According to Cerulli, in 2022, there were 4,485,059 DC plan-to-IRA rollovers and 707,104 DC plan-to-DC plan rollovers. (See Cerulli Associates, *U.S. Retirement End-Investor 2023: Personalizing the 401(k) Investor Experience*, Exhibit 6.02. The Cerulli Report.)

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DB plan-to-IRA. The Department uses Internal Revenue Service (IRS) data from 2020 on overall rollovers into IRAs, which is 5.7 million taxpayers and \$618 billion.¹¹ Adding in the figures for plan-to-plan rollovers, the Department estimates the total number of rollovers at 6.4 million accounts with \$684 billion in assets.

Only rollovers overseen by an ERISA fiduciary would be affected by the proposed amendments to PTE 2020-02. The Department does not have compelling data on the percentage of rollovers that are overseen by an ERISA fiduciary. In 2022, 49 percent of DC plan-to-IRA rollovers, accounting for 63 percent of DC plan rollover assets, were intermediated by an adviser.¹² For purposes of this analysis, the Department assumes that advisers intermediating rollovers are ERISA fiduciaries, which means the estimate is an upper bound. The Department applies the estimate made for DC plan-to-IRA rollovers to all types of rollovers. Accordingly, the Department estimates that 3.1 million rollovers and \$431 billion in rollover assets would be affected by the proposed amendments to PTE 2020-02.¹³

The current PTE required rollover documentation from plans to IRAs. As a best practice, the SEC already encourages firms to record the basis for significant investment decisions, such as rollovers, although doing so is not required. In addition, some firms may voluntarily document significant investment decisions to demonstrate compliance with applicable law, even if not required. A report commissioned by this commenter found that slightly more than half (52 percent) of asset management firms implementing Regulation Best Interest require their financial service professionals to document rollover recommendations.¹⁴ The Department estimates that documenting each rollover recommendation will require 30 minutes for a personal financial adviser whose firms currently do not require rollover documentations and five minutes for financial advisers whose firms already require them to do so. The Department estimates that this will result in an hour burden of 883,953 hours with an equivalent cost of approximately \$193.8 million.¹⁵

Table 4: Hour Burden and Equivalent Cost Associated with the Rollover Documentation		
	Year 1	Subsequent Years

¹¹ Internal Revenue Service, *SOI Tax Stats – Accumulation and Distribution of Individual Retirement Arrangement (IRA)*, Table 1: Taxpayers with Individual Retirement Arrangement (IRA) Plans, By Type of Plan, Tax Year 2020 (2023).

¹² According to Cerulli, 49 percent of rollovers were mediated by an adviser, while 37 percent were self-directed. The remaining 14 percent were plan-to-plan rollovers. (See Cerulli Associates, *U.S. Retirement-End Investor 2023: Personalizing the 401(k) Investor Experience Fostering Comprehensive Relationships*, Exhibit 6.04. The Cerulli Report.)

¹³ The number of affected rollovers is estimated as: $(6,367,005 \times 49\%) = 3,119,832$.

¹⁴ Deloitte, *Regulation Best Interest: How Wealth Management Firms are Implementing the Rule Package*, (March 6, 2020).

¹⁵ The burden is estimated as follows: $(3,119,833 \text{ rollovers} \times 48\% \times 30 \text{ minutes}) + (3,119,833 \text{ rollovers} \times 52\% \times 5 \text{ minutes}) = 883,953 \text{ hours}$. A labor rate of \$219.23 is used for a personal financial adviser. The labor rate is applied in the following calculation: $\{[(3,119,833 \text{ rollovers} \times 48\% \times 30 \text{ minutes}) + (3,119,833 \text{ rollovers} \times 52\% \times 5 \text{ minutes})] \div 60 \text{ minutes}\} \times \$219.23 = \$193,788,961$.

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Activity	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Financial Adviser	883,953	\$193,788,961	883,953	\$193,788,961
Total	883,953	\$193,788,961	883,953	\$193,788,961

New Disclosure Requirements Under the Proposed Amended PTE 2020-02

As amended, PTE 2020-02 would require financial institutions to provide investors with the following additional disclosures:

- (1) a written statement of the best interest standard of care owed; and
- (2) a written statement that the retirement investor has the right to obtain specific information regarding costs, fees, and compensation.

Under the SEC’s Investment Advisers Act and Regulation Best Interest, most investment advisers and broker-dealers with retail investors already provide disclosures that the Department expects would satisfy these requirements.

The proposed amendments would add a requirement for financial institutions to provide a written statement of the Best Interest standard of care owed. Under the SEC’s Investment Advisers Act Regulation Best Interest, most investment advisers and broker-dealers with retail investors are already required to provide disclosures that the Department expects would satisfy these requirements.

The Department expects that the written statement of the Best Interest standard of care owed would not take a significant amount of time to prepare and would be uniform across clients. The Department assumes it would take a financial institution 30 minutes to prepare the statement, resulting in an hour burden of 10,352 hours and an equivalent cost burden of \$1,649,488 in the first year.¹⁶

Table 5: Hour Burden and Equivalent Cost Associated with the Best Interest Standard Disclosure				
	Year 1		Subsequent Years	
Activity	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Legal	10,352	\$1,649,488	0	\$0
Total	10,352	\$1,649,488	0	\$0

For the added requirement of a written statement informing the investor of their right to obtain a written description of the financial institution’s policies and procedures and information regarding costs, fees, and compensation, the Department expects that many financial institutions’ disclosures already substantially comply with this regulation or

¹⁶ The burden is estimated as follows: $[(19,290 \text{ financial institutions} \times 30 \text{ minutes}) \div 60 \text{ minutes}] = 10,352 \text{ hours}$. A labor rate of \$159.34 is used for a lawyer. The labor rate is applied in the following calculation: $[(19,290 \text{ financial institutions} \times 30 \text{ minutes}) \div 60 \text{ minutes}] \times \$159.34 = \$1,649,488$.

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would require modest adjustments to do so. The Department estimates that, on average, it would take a legal professional at broker-dealers and registered investment advisers, on average, 30 minutes to modify existing statements and that it would take insurers, robo-advisers, pension consultants, and investment company underwriters, on average, one hour to prepare the statement. This results in an hour burden of 10,352 hours and a cost burden of \$1,649,488 in the first year.¹⁷

The Department does not have data on how often investors would request a written description of the financial institutions' policies and procedures and information regarding costs, fees, and compensation. The Department assumes that, on average, each financial institution would receive 10 such requests annually and that most financial institutions already have such information available. The Department estimates it would take a clerical worker five minutes to prepare and send the disclosure, regardless of whether it is sent electronically or by mail. This results in an annual hour burden of 16,075 with an equivalent cost of \$1,019,959.¹⁸

Table 6: Hour Burden and Equivalent Cost Associated with the Written Description Statement of the Right to Obtain a Written Description of the Financial Institution's Policies and Procedures and Provision of Requested Policies and Procedures				
Activity	Year 1		Subsequent Years	
	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Legal	10,352	\$1,649,488	0	\$0
Clerical	16,075	\$1,019,959	16,075	\$1,019,959
Total	26,427	\$2,669,447	16,075	\$1,019,959

Provision of Disclosures

Similar to the 2020 analysis, the Department assumes most required disclosures will be electronically delivered to plan fiduciaries. As discussed above, the Department assumes that approximately 5.8 percent of participants who roll over their plan assets to IRAs would not receive required disclosures electronically. The Department estimates that approximately 3.2 million retirement investors¹⁹ have relationships with financial

¹⁷ The burden is estimated as follows: [(1,894 broker-dealers + 15,982 registered investment advisers) x 30 minutes] + [(183 insurers + 200 robo-advisers + 1,011 pension consultants, and 20 investment company underwriters) x 1 hour] = 10,352 hours. A labor rate of \$159.34 is used for a legal professional. The labor rate is applied in the following calculation: {(1,894 broker-dealers + 15,982 registered investment advisers) x 30 minutes} + [(183 insurers + 200 robo-advisers + 1,011 pension consultants, and 20 investment company underwriters) x 1 hour] x \$159.34 = \$1,649,488.

¹⁸ The burden is estimated as follows: [(19,290 financial institutions x 10 disclosures x 5 minutes) ÷ 60 minutes] = 16,075 hours. A labor rate of \$63.45 is used for a clerical worker. The labor rate is applied in the following calculation: [(16,075 financial institutions x 10 disclosures x 5 minutes) ÷ 60 minutes] x \$63.45 = \$1,019,959.

¹⁹ According to Cerulli, in 2022, there were 707,104 DC plan-to-DC plan rollovers. (See Cerulli Associates, U.S. Retirement End-Investor 2023: Personalizing the 401(k) Investor Experience, Exhibit 6.02. The Cerulli Report.) The Department also uses Internal Revenue Service (IRS) data from 2020 on overall rollovers into IRAs, which is 5,659,901 taxpayers. (See Internal Revenue Service, SOI Tax Stats – Accumulation and Distribution of Individual

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institutions and are likely to engage in transactions covered under this PTE. Of these 3.2 million retirement investors, it is estimated that 5.8 percent, or 184,643 retirement investors, would receive paper disclosures.²⁰ The Department estimates that preparing and sending each disclosure would take a clerical worker, on average, five minutes, resulting in an hour burden of 15,387 hours with an equivalent cost of \$976,301.²¹

Table 7: Hour Burden and Equivalent Cost Associated Preparing and Sending Disclosures				
	Year 1		Subsequent Years	
Activity	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Clerical	15,387	\$976,301	15,387	\$976,301
Total	15,387	\$976,301	15,387	\$976,301

Disclosure Requirements for PEPs

Financial institutions providing investment advice for PEPs must provide to each participating employer an additional disclosure detailing any amounts the financial institution pays to or receives from the PPP or its affiliates in addition to any conflicts of interest that arise in connection with the investment advice it provides to a PEP. According to filings submitted to the Department, the Department estimates that there are 382 PEPs.²²

The Department does not have data on what percent of PEPs would be affected by the exemption. The Department assumes that on average, one financial institution would need to prepare one disclosure for each PEP. The Department estimates that, on average, it would take legal staff for each entity two hours to draft the disclosure, resulting in an hour burden of 764 hours with an equivalent cost of \$121,736 in the first year.²³ According to filings submitted to the Department, the Department estimates that there are 955 employers in PEPs.²⁴ The Department assumes that all of these disclosures will be

Retirement Arrangement (IRA), Table 1: Taxpayers with Individual Retirement Arrangement (IRA) Plans, By Type of Plan, Tax Year 2020, (2023).) The Department estimates the number of affected plans and IRAs to be equal to 50 percent of rollovers from retirement plans to IRAs. The total number of retirement investors that have relationships with financial institutions and are likely to engage in transacted covered under this PTE is estimated as: (707,104 DC plan-to-DC plan rollovers + 5,659,901 taxpayer with IRA rollovers) x 50 percent = 3,183,503.

²⁰ This is estimated as: 3,183,503 rollovers x 5.8% = 184,643 disclosures.

²¹ This burden is estimated as: [(184,643 disclosures x 5 minutes) ÷ 60 minutes] = 15,387 hours. [(184,643 disclosures x 5 minutes) ÷ 60 minutes] x \$63.45 = \$976,301.

²² Department of Labor, *Form PR*, <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-pr>.

²³ The burden is estimated as follows: 382 PEPs x 2 hours = 764 hours. A labor rate of \$159.34 is used for a lawyer. The labor rate is applied in the following calculation: 382 PEPs x 2 hours x \$159.34 = \$121,736.

²⁴ Based on 2021 EFAST filings as of August 22, 2023, the Department estimates that there were 955 employers in 382 PEPs. The Department does not have data on the number of employers since October 2022. To estimate the number of employees, the Department applies the ratio of employers to PEPs in October 2021 (955/382 ~2.5) to the updated number of PEPs. Accordingly, the Department estimates that there are 955 employers in PEPs (382 x 2.5 = 955). The inaugural filing deadline for Form 5500 filings for PEPs with plan years beginning after January 1, 2021 was July 31, 2022. The Department based its estimates on those filings it had received by August 22, 2023.

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sent electronically. Distributing the disclosures is estimated to take clerical personnel one minute per disclosure. This results in an hour burden of 16 hours, and assuming an hourly wage rate for clerical personnel of \$63.45, the estimated equivalent cost burden is \$1,010.²⁵

Activity	Year 1		Subsequent Years	
	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Legal	764	\$121,736	0	\$0
Clerical	16	\$1,010	16	\$1,010
Total	780	\$122,746	16	\$1,010

Retrospective Review Requirements

The proposed amendment would require financial institutions to conduct a retrospective review at least annually. The review would be required to be reasonably designed to detect and prevent violations of, and achieve compliance with (1) the conditions of this exemption, (2) the Impartial Conduct Standards, and (3) the policies and procedures governing compliance with the exemption. The Department is clarifying that the Financial Institution must update the policies and procedures as business, regulatory, and legislative changes and events dictate, and ensure they remain prudently designed, effective, and compliant with the exemption. This report would need to be certified by a Senior Executive.

Many of the entities affected by PTE 2020-02 likely already have retrospective review requirements. Broker-dealers are subject to retrospective review requirements under FINRA Rule 3110,²⁶ FINRA Rule 3120,²⁷ and FINRA Rule 3130;²⁸ SEC-registered investment advisers are already subject to retrospective review requirements under SEC Rule 206(4)-7; and insurance companies in many states are already subject to state insurance law based on the NAIC's Model Regulation.²⁹ Accordingly, in this analysis, the Department assumes that these entities will incur minimal costs to meet this requirement.

However, since this is the first year PEPs could file, the Department anticipates that this understates the true number of PEPs affected by this proposed rule.

²⁵ The burden is estimated as follows: [(955 employers x 1 minute) ÷ 60 minutes] = 16 hours. A labor rate of \$63.45 is used for a clerical worker. The labor rate is applied in the following calculation: [(955 employers x 1 minute) ÷ 60 minutes] x \$63.45 = \$1,010.

²⁶ *Rule 3110. Supervision*, FINRA Manual, <https://www.finra.org/rules-guidance/rulebooks/finra-rules/3110>.

²⁷ *Rule 3120. Supervisory Control System*, FINRA Manual, <https://www.finra.org/rules-guidance/rulebooks/finra-rules/3120>.

²⁸ *Rule 3130. Annual Certification of Compliance and Supervisory Processes*, FINRA Manual, <https://www.finra.org/rules-guidance/rulebooks/finra-rules/3130>.

²⁹ NAIC Model Regulation, Section 6.C.(2)(i) (The same requirement is found in the NAIC Suitability in Annuity Transactions Model Regulation (2010), Section 6.F.(1)(f).)

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In 2018, the Investment Adviser Association estimated that 92 percent of SEC-registered investment advisers voluntarily provide an annual compliance program review report to senior management.³⁰ The Department assumes that state-registered investment advisers exhibit similar retrospective review patterns as SEC-registered investment advisers. Accordingly, the Department estimates that eight percent, or 1,279 investment advisers advising retirement plans will incur costs associated with producing a retrospective review report.

The Department assumes that only ten percent of financial institutions will incur the total costs of producing the retrospective review report. This is estimated to take a legal professional five hours for small firms and 10 hours for large firms. This results in an annual hour burden of 3,715 hours and an equivalent cost burden of \$591,948.³¹ Financial Institutions that already produce retrospective review reports voluntarily or in accordance with other regulators' rules likely will spend additional time to fully comply with this exemption condition such as revising their current retrospective review reports. This is estimated to take a financial professional one hour for small firms and two hours for large firms. This results in an annual hour burden of 33,335 hours and an equivalent cost burden of \$5,311,672.³²

The proposed amendments would add a requirement to review policies and procedures at least annually and to update them as needed to ensure they remain prudently designed, effective, and current. This includes a requirement to update and modify the policies and procedures, as appropriate, after considering the findings in the retrospective review report. For entities currently covered by PTE 2020-02, the Department estimates that it would take a legal professional an additional 30 minutes for all entities covered under the

³⁰ 2018 Investment Management Compliance Testing Survey, Investment Adviser Association (Jun. 14, 2018), https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/publications/2018-Investment-Management_Compliance-Testing-Survey-Results-Webcast_pptx.pdf.

³¹ The burden is estimated as: [(395 small broker-dealers + (2,996 small registered-investment advisers x 8%) + 151 small insurers + 10 small robo-advisers + 930 small pension consultants + 20 small investment company underwriters) x 10% x 5 hours] + [(1,499 large broker-dealers + (12,986 large registered-investment advisers x 8%) + 32 large insurers + 190 large robo-advisers + 81 large pension consultants) x 10% x 10 hours] = 3,715 hours. The equivalent cost is estimated as: {[(395 small broker-dealers + (2,996 small registered-investment advisers x 8%) + 151 small insurers + 10 small robo-advisers + 930 small pension consultants + 20 small investment company underwriters) x 10% x 5 hours] + [(1,499 large broker-dealers + (12,986 large registered-investment advisers x 8%) + 32 large insurers + 190 large robo-advisers + 81 large pension consultants) x 10% x 10 hours]} x \$159.34 = \$591,948.

³² The burden is estimated as: [(395 small broker-dealers + (2,996 small registered-investment advisers x 92%) + 151 small insurers + 10 small robo-advisers + 930 small pension consultants + 20 small investment company underwriters) x 90% x 5 hours] + [(1,499 large broker-dealers + (12,986 large registered-investment advisers x 92%) + 32 large insurers + 190 large robo-advisers + 81 large pension consultants) x 90% x 10 hours] = 33,335 hours. The equivalent cost is estimated as: {[(395 small broker-dealers + (2,996 small registered-investment advisers x 92%) + 151 small insurers + 10 small robo-advisers + 930 small pension consultants + 20 small investment company underwriters) x 90% x 5 hours] + [(1,499 large broker-dealers + (12,986 large registered-investment advisers x 92%) + 32 large insurers + 190 large robo-advisers + 81 large pension consultants) x 90% x 10 hours]} x \$159.34 = \$5,311,672.

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existing and amended exemption. The Department estimates this would result an annual hour burden of 9,645 with an equivalent cost of \$1,536,834.³³

In addition to conducting the audit and producing a report, financial institutions also will need to review the report and certify the exemption. This is estimated to take the certifying officer two hours for small firms and four hours for large firms. This results in an hour burden of 68,156 and an equivalent cost burden of \$12,992,578.³⁴

Activity	Year 1		Subsequent Years	
	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Legal	46,695	\$7,440,454	46,695	\$7,440,454
Senior Executive Staff	68,156	\$12,992,578	68,156	\$12,992,578
Total	114,851	\$20,433,032	114,851	\$20,433,032

Requirements for Written Policies and Procedures

Under the original exemption, financial institutions were already required to maintain their policies and procedures. Robo-advisers, pension consultants, and investment company underwriters, who are not covered under the existing exemption may need to develop policies and procedures. The Department estimates that initially establishing, maintaining, and enforcing written policies and procedures prudently designed to ensure compliance with the Impartial Conduct Standards will take a legal professional five hours for small entities and 10 hours for large entities. The Department estimates the requirement would have an hour burden of 7,510 hours with an equivalent cost of \$1,196,643 in the first year.³⁵

³³ The burden is estimated as follows: $[(19,290 \times 30 \text{ minutes}) \div 60 \text{ minutes}] = 9,645 \text{ hours}$. A labor rate of \$159.34 is used for a legal professional. The labor rate is applied in the following calculation: $[(19,290 \times 30 \text{ minutes}) \div 60 \text{ minutes}] \times \$159.34 = \$1,536,834$.

³⁴ The burden is estimated as: $[(395 \text{ small broker-dealers} + (2,996 \text{ small registered-investment advisers}) + 151 \text{ small insurers} + 10 \text{ small robo-advisers} + 930 \text{ small pension consultants} + 20 \text{ small investment company underwriters}) \times 2 \text{ hours}] + [(1,499 \text{ large broker-dealers} + (12,986 \text{ large registered-investment advisers}) + 32 \text{ large insurers} + 190 \text{ large robo-advisers} + 81 \text{ large pension consultants}) \times 4 \text{ hours}] = 68,156 \text{ hours}$. The equivalent cost is estimated as: $\{[(395 \text{ small broker-dealers} + (2,996 \text{ small registered-investment advisers}) + 151 \text{ small insurers} + 10 \text{ small robo-advisers} + 930 \text{ small pension consultants} + 20 \text{ small investment company underwriters}) \times 2 \text{ hours}] + [(1,499 \text{ large broker-dealers} + (12,986 \text{ large registered-investment advisers}) + 32 \text{ large insurers} + 190 \text{ large robo-advisers} + 81 \text{ large pension consultants}) \times 4 \text{ hours}]\} \times \$190.63 = \$12,992,578$.

³⁵ The burden is estimated as follows: $[(930 \text{ small pension consultants} + 10 \text{ small robo-adviser} + 20 \text{ small investment company underwriters}) \times 5 \text{ hours}] + [(81 \text{ large pension consultants} + 190 \text{ large robo-advisers}) \times 10 \text{ hours}] = 7,510 \text{ hours}$. A labor rate of \$159.34 is used for a legal professional. The labor rate is applied in the following calculation: $\{[(930 \text{ small pension consultants} + 10 \text{ small robo-adviser} + 20 \text{ small investment company underwriters}) \times 5 \text{ hours}]\} \times \$159.34 = \$1,196,643$.

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Activity	Year 1		Subsequent Years	
	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Clerical	7,510	\$1,196,463	0	\$0
Total	7,510	\$1,196,643	0	\$0

The proposed amendments would require financial institutions to provide their complete policies and procedures to the Department upon request. Based on the number of cases in the past and current open cases that would merit such a request, the Department estimates that the Department would request 165 policies and procedures in the first year and 50 policies and procedures in subsequent years. The Department estimates that it will take a clerical worker 15 minutes to prepare and send their complete policies and procedures to the Department resulting in an hourly burden of approximately 41 hours in the first year. Assuming an hourly wage rate for clerical personnel of \$63.45, the estimated cost burden in the first year is \$2,617.³⁶ In subsequent years, the Department estimates that the requirement would result in an hour burden of approximately 13 hours with an equivalent cost of \$793.³⁷ The Department assumes financial institutions would send the documents electronically and thus would not incur costs for postage or materials.

Activity	Year 1		Subsequent Years	
	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Clerical	41	\$2,617	13	\$793
Total	41	\$2,617	13	\$793

Overall Summary

In total, the Department estimates that in order to satisfy existing and added requirements in the proposed amendments, 19,290 Financial Institutions will produce 6,504,119 disclosures and notices annually. These disclosures and notices will result in an hour burden of 1,071,562 hours during the first year and 1,030,295 hours in subsequent years, at an equivalent cost burden of \$22.8 million and \$215.2 million respectively.

³⁶ The burden is estimated as follows: [(165 policies and procedures x 15 minutes) ÷ 60 minutes] = 41 hours. A labor rate of \$63.45 is used for a clerical worker. The labor rate is applied in the following calculation: [(165 policies and procedures x 15 minutes) ÷ 60 minutes] x \$63.45 = \$2,617.

³⁷ The burden is estimated as follows: [(50 policies and procedures x 15 minutes) ÷ 60 minutes] = 13 hours. A labor rate of \$63.45 is used for a clerical worker. The labor rate is applied in the following calculation: [(50 policies and procedures x 15 minutes) ÷ 60 minutes] x \$63.45 = \$793.

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Table 12: Estimated Annualized Respondent Hour Burden and Equivalent Cost of Hour Burden for Existing and Proposed Requirements							
Activity	Number of Respondents	Number of Responses per Respondent*	Total Responses	Average Burden (Hours)	Total Burden (Hours)	Hourly Wage Rate	Equivalent Cost of Hour Burden
Comply with current requirements of PTE 2020-02 (first year)	19,290	165.03	3,183,503	3/60	136,104	-	\$22,249,887
Comply with current requirements of PTE 2020-02 (subsequent years)	19,290	165.03	3,183,503	2/60	115,487	-	\$18,964,913
Prepare written acknowledgment of fiduciary status (first year)	1,231	1	1,231	30/60	616	\$159.34	\$98,074
Update written acknowledgment of fiduciary status for updated text (first year)	1,806	1	1,806	10/60	301	\$159.34	\$47,961
Prepare written statement of Best Interest Standard of Care (first year)	19,290	1	19,290	32/60	10,352	\$159.34	\$1,649,488
Prepare written description of service provided (first year)	1,231	1	1,231	1.88	2,315	\$159.34	\$368,872
Update written description of service provided to include statement on whether the retirement investor will pay for such services directly or indirectly (first year)	18,059	1	18,059	30/60	9,030	\$159.34	\$1,438,761
Prepare written statement of right to obtain copies of written description of P&P adopted for II(c) (first year)	19,290	1	19,290	32/60	10,352	\$159.34	\$1,649,488

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PEPs prepare disclosure to each employer any amounts the financial institution pays to or receives from the PPP or its affiliates and any conflicts of interest (first year)	382	1	382	2	764	\$159.34	\$121,736
Provision of disclosures to employers of PEPs	955	1	955	1/60	16	\$63.45	\$1,010
Provide written statement of right to obtain copies of written description of P&P adopted for II(c)	19,290	10	192,900	5/60	16,075	\$63.45	\$1,019,959
Before engaging in a rollover, the financial institution provides the and investment professional must consider and document their prudent analysis of why the rollover is in the retirement investor's best interest	3,119,833	1	3,119,833	17/60	883,953	\$219.23	\$193,788,961
Written policies & procedures to comply with the Impartial Conduct Standards (first year)	1,231	1	1,231	6.10	7,510	\$159.34	\$1,196,643
Provide policies and procedures upon request to Department	50	1	50	50/60	41	\$63.45	\$2,617
Update policies and procedures/respond to retrospective review (first year)	19,290	1	19,290	30/60	9,645	\$159.34	\$1,536,834
Update policies and procedures/respond to retrospective review (subsequent years)	19,290	1	19,290	30/60	9,645	\$159.34	\$1,536,834
Review report & certify exemption related audit part only	1,231	1	1,231	2.44	3,004	\$190.63	\$572,653
Develop audit report (those currently not producing audit reports)	123	1	123	6.10	750	\$159.34	\$119,505
Add/modify audit report according to the	1,108	1	1,108	1.22	1,352	\$159.34	\$215,428

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PTE (including all entities even those already produce reports)							
Total (Three-Year Average) **	19,290	176.70	6,504,119		1,044,050		\$219,505,996

Note:

*The number of responses per respondent has been rounded to the hundredth digit.

** The three-year average burden has been reported. There are some activities which are incurred only in the first year.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 or 14).

- **The cost estimate should be split into two components: (a) a total capital and start up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of service component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

The Department does not have information on how many retirement investors, including plan beneficiaries and participants and IRA owners, receive disclosures electronically from investment advice fiduciaries. For the purposes of this analysis, the Department assumes that the percent of retirement investors receiving disclosures electronically would be similar to the percent of plan participants receiving disclosures electronically

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under the Department’s 2020 electronic disclosure rules.³⁸ Accordingly, the Department estimates that 94.2 percent of the disclosures sent to retirement investors would be sent electronically, and the remaining 5.8 percent would be sent by mail.³⁹

The Department assumes any documents sent by mail would be sent by first class mail, incurring a postage cost of \$0.66 for each piece of mail.⁴⁰ Additionally, the Department assumes that documents sent by mail would incur a material cost of \$0.05 for each page.

Provision of Disclosures

The Department does not have data on how often investors would make such a request a written description of the financial institutions’ policies and procedures and information regarding costs, fees, and compensation. The Department assumes that, on average, each financial institution would receive 10 such requests annually and that most financial institutions already have such information available.

As discussed above, the Department assumes that 5.8 percent, or 11,188, of these disclosures would not be sent electronically. Financial institutions would incur \$0.66 for postage and \$0.10 for the paper and printing costs of two pages for each of the disclosures that would not be sent electronically, which the Department estimates to cost \$8,503.⁴¹

Table 13: Material and Postage Cost Associated with the Written Description Statement of the Right to Obtain a Written Description of the Financial Institution’s Policies and Procedures and Provision of Requested Policies and Procedures				
	Year 1		Subsequent Years	
Activity	Pages	Cost	Pages	Cost
Material Cost	2	\$8,503	2	\$8,503
Total	2	\$8,503	2	\$8,503

Similar to the 2020 analysis, the Department assumes most required disclosures will be electronically delivered to plan fiduciaries. As discussed above, the Department assumes that approximately 5.8 percent of participants who roll over their plan assets to IRAs would not receive required disclosures electronically. The Department estimates that approximately 3.2 million retirement investors⁴² have relationships with financial

³⁸ 67 FR 17263.

³⁹ 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%).

⁴⁰ U.S. Post Office, *First-Class Mail*, (2023), <https://www.usps.com/ship/first-class-mail.htm>.

⁴¹ $((19,290 \text{ financial institutions} \times 10 \text{ disclosures} \times 2 \text{ pages} \times \$0.05) + (19,290 \text{ financial institutions} \times 10 \text{ disclosures} \times \$0.66)) \times 5.8\% = \$8,503$.

⁴² According to Cerulli, in 2022, there were 707,104 DC plan-to-DC plan rollovers. (See Cerulli Associates, *U.S. Retirement End-Investor 2023: Personalizing the 401(k) Investor Experience*, Exhibit 6.02. The Cerulli Report.) The

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institutions and are likely to engage in transactions covered under this PTE. Of these 3.2 million retirement investors, it is estimated that 5.8 percent, or 184,643 retirement investors, would receive paper disclosures.⁴³

The Department assumes that the disclosures would require four pages in total, resulting in a material and postage cost of \$158,793.⁴⁴

Activity	Year 1		Subsequent Years	
	Pages	Cost	Pages	Cost
Material Cost	4	\$158,793	4	\$158,793
Total	4	\$158,793	4	\$158,793

Overall Summary

In total, the Department estimates that in order to satisfy existing and added requirements in the proposed amendments, 19,290 Financial Institutions will produce 6,504,119 disclosures and notices annually. These disclosures and notices will result in an annual cost burden of \$167,296.

14. Provide estimates of annualized cost to the federal government. Also, provide an description of the method used to estimate cost, which should include quantification of hours, operations 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 any reasons for any program changes or adjustments.

The Department is proposing an amendment to PTE 2020-02 building on existing conditions of PTE 2020-02 to provide more certainty for Retirement Investors receiving advice and Financial Institutions and Investment Professionals complying with the exemption’s conditions. In this regard, the Department is proposing additional disclosures to ensure that Retirement Investors have sufficient information to make informed

Department also uses Internal Revenue Service (IRS) data from 2020 on overall rollovers into IRAs, which is 5,659,901 taxpayers. (See *Internal Revenue Service, SOI Tax Stats – Accumulation and Distribution of Individual Retirement Arrangement (IRA)*, Table 1: Taxpayers with Individual Retirement Arrangement (IRA) Plans, By Type of Plan, Tax Year 2020, (2023).) The Department estimates the number of affected plans and IRAs to be equal to 50 percent of rollovers from retirement plans to IRAs. The total number of retirement investors that have relationships with financial institutions and are likely to engage in transacted covered under this PTE is estimated as: (707,104 DC plan-to-DC plan rollovers + 5,659,901 taxpayer with IRA rollovers) x 50 percent = 3,183,503.

⁴³ This is estimated as: 3,183,503 rollovers x 5.8% = 184,643 disclosures.

⁴⁴ The material and postage cost is estimated as: (184,643 disclosures x 4 pages x \$0.05) + (184,643 disclosures x \$0.66 postage) = \$158,793.

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decisions about the costs of the investment advice transaction and about the significance and severity of the investment advice fiduciary Conflicts of Interest. The proposed amendment also would provide more guidance for Financial Institutions and Investment Professionals complying with the Impartial Conduct Standards and implementing the policies and procedures.

In addition, the Department has revised the number of broker-dealers, the number of investment advisers, the number of insurers, the number of robo-advisers, the number of insurance agents and brokers, the number of plan-to-plan rollovers, the number of plan to IRAs rollovers, and the number of IRA to IRA rollovers. The Department has also revised its estimate of the wage and postage costs due to increased labor costs and inflation. As a result, the number of responses has increased by 4,748,160 responses, the hour burden has increased by 642,799 hours, and the cost burden as increased by \$75,233.

16. For collection 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 and there are no plans to publish the results of this collection.

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

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