

**Prohibited Transaction Exemption 84-24
(Insurance and Annuity Contracts and Mutual Fund Principal Underwriters)
OMB Control Number 1210-0158
OMB Expiration Date: 08/31/2025**

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995:
PROHIBITED TRANSACTION EXEMPTION 84-24- INSURANCE AND ANNUITY
CONTRACTS AND MUTUAL FUND PRINCIPAL UNDERWRITERS**

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.**

Section 406(a)(1)(A) through (D) of the Employee Retirement Income Security Act of 1974 (“ERISA) and Internal Revenue Code (“Code”) section 4975(c)(1)(A) through (D) prohibit certain transactions between plans or IRAs and “parties in interest,” as defined in ERISA section 3(14), or “disqualified persons,” as defined in Code section 4975(e)(2). Fiduciaries and other service providers are parties in interest and disqualified persons under ERISA and the Code. As a result, they are prohibited from engaging in (1) the sale, exchange, or leasing of property with a plan or IRA, (2) the lending of money or other extension of credit to a plan or IRA, (3) the furnishing of goods, services, or facilities to a plan or IRA and (4) the transfer to or use by or for the benefit of a party in interest of plan assets.

In the absence of an exemption, ERISA and the Code generally prohibit fiduciaries from using their authority to affect or increase their own compensation. ERISA section 406(b) and Code section 4975(c)(1)(E)-(F) are aimed at fiduciaries only. These provisions generally prohibit a fiduciary from dealing with the income or assets of a plan or IRA in his or her own interest or his or her own account and from receiving payments from third parties in connection with transactions involving the plan or IRA. Parallel regulations issued by the Departments of Labor and the Treasury explain that these provisions impose on fiduciaries of plans and IRAs a duty not to act on conflicts of interest that may affect the fiduciary’s best judgment on behalf of the plan or IRA. Under these provisions, a fiduciary may not cause a plan or IRA to pay an additional fee to such fiduciary, or to a person in which such fiduciary has an interest that may affect the exercise of the fiduciary’s best judgment.

ERISA and Code provisions (ERISA section 406 and Code section 4975(c)) generally prohibit fiduciaries and other service providers from engaging in (1) the sale, exchange, or leasing of property with a plan or IRA, (2) the lending of money or other extension of

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credit to a plan or IRA, (3) the furnishing of goods, services, or facilities to a plan or IRA and (4) the transfer to or use by or for the benefit of a party in interest of plan assets. Fiduciaries are also prohibited from self-dealing in connection with transactions involving these plans and IRAs.

The Secretary of Labor may grant and amend administrative exemptions from the prohibited transaction provisions of ERISA and the Code.¹ Before granting an exemption, the Department must find that the exemption is administratively feasible, in the interests of plans, their participants and beneficiaries and IRA owners, and protective of the rights of participants and beneficiaries of such plans and IRA owners.

The Department is proposing to amend PTE 84-24 to exclude investment advice fiduciaries from the existing relief provided in Section II, which would be redesignated as Section II(a). The proposed amendment would add Section II(b), which would provide investment advice fiduciaries with relief from the restrictions of ERISA sections 406(a)(1)(D) and 406(b) and the taxes imposed by Code section 4975(a) and (b) by reason of Code sections 4975(c)(1)(E) and (F) if:

- the fiduciary is an Independent Producer (as defined in Section X(d)),
- the transactions are described in new Section III(g), and
- the conditions set forth in new Sections VI, VII, and IX are satisfied.

These conditions are similar to the conditions contained in PTE 2020-02 but are tailored to protect Retirement Investors from the specific conflicts that can arise for Independent Producers that are compensated through commissions when providing investment advice to Retirement Investors regarding the purchase of an annuity. The Department also is proposing to add a new eligibility provision in Section VIII for investment advice transactions and amend the current recordkeeping condition in Section V(e) with a new recordkeeping provision in Section IX that is similar to the recordkeeping provision in PTE 2020-02.

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.

Collections Required for the Transactions Described in Section III(a)-(f)

Note: Under proposed Section II(b), the transactions described in Section III(a)-(f) would

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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not include transactions involving fiduciaries providing investment advice within the meaning of ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B) and regulations thereunder.

In order to receive commissions in conjunction with the purchase of an insurance or annuity contract or of securities issued by the investment company, the insurance agent, insurance broker, pension consultant, or principal underwriter must obtain written authorization from the authorizing fiduciary. Prior to obtaining the written authorization, the insurance agent, insurance broker, pension consultant, or principal underwriter must provide the authorizing fiduciary with sufficient materials and disclosures for the authorizing fiduciary to evaluate the appropriateness of the investment. Finally, the insurance agent, insurance broker, pension consultant, or principal underwriter must maintain sufficient records to demonstrate that the conditions of the exemption have been met.

These disclosure and written authorization requirements are designed as appropriate safeguards to ensure the protection of 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 fiduciary's activities by an independent plan fiduciary.

Collections Required for Transactions Described in Section III(g)

Note: Proposed Section III(g) would provide relief for receipt, directly or indirectly, by an Independent Producer of an Insurance Sales Commission as a result of the provision of investment advice within the meaning of ERISA section 3(21)(A)(ii) and Code section 4975(e)(3)(B), regarding the purchase of an annuity contract or other insurance product not regulated by the Securities and Exchange Commission (SEC) of an Insurer that is not an Affiliate, including as part of a rollover from a Plan to an IRA as defined in Code section 4975(e)(1)(B) or (C).

The proposed amendment would add information collections for Independent Producers seeking relief from the restrictions of ERISA sections 406(a)(1)(D) and 406(b) and the taxes imposed by Code section 4975(a) and (b) by reason of Code sections 4975(c)(1)(E) and (F). These conditions are similar to the conditions contained in PTE 2020-02 and are tailored to protect retirement investors from the specific conflicts that arise for Independent Producers when providing investment advice to retirement investors regarding the purchase of an annuity. The Department is proposing to add a new Section IX to PTE 84-24, which would require the party engaging in a transaction covered by the exemption to maintain records necessary to enable certain persons (described in proposed Section IX(a)(2)) to determine whether the conditions of this exemption have been met.

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This provision would apply to all of the conditions of PTE 84-24, replacing the more limited existing recordkeeping requirement in current Section V(e). This proposed recordkeeping requirement is consistent with PTE 2020-02. The Department is also proposing to add a new eligibility provision for investment advice transactions.

Collections Required for all Transactions PTE 84-24

The Department is proposing to add a new Section IX to PTE 84-24, which would require the party engaging in any transaction covered by PTE 84-24 to maintain records necessary to enable certain persons to determine whether the conditions of the exemption have been met. This provision would apply to all of the conditions of PTE 84-24, replacing the more limited existing recordkeeping requirement in current Section V(e).

The Department is unable to estimate how frequently records supporting the exempt transactions would be examined by either the Department or other parties. The Department has the authority to request such records and does so from time to time in connection with investigations.

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

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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 any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The Department considered conduct standards set by other regulators — such as SEC, NAIC, FINRA and state law — 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 cost 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 proposed amendments would include annual information collection requirements for entities using the class exemption.

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The 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 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.**

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, the respondents affected by this exemption (financial institutions and Independent Producers that deal with employee benefit plans), for the most part, have adopted six-year recordkeeping as standard business practice in order to satisfy those separate recordkeeping requirements.

Under the recordkeeping provisions of the exemption, parties relying on the exemption are not required to disclose records that are privileged trade secrets or privileged commercial or financial information to plan fiduciaries, participants or beneficiaries, IRA owners, or their representatives. However, if the party relying on the exemption refuses to

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disclose information on the basis that the information is exempt from disclosure, that party must, by the close of the thirtieth (30th) day following the request, provide a written notice advising the requestor of the reasons for the refusal and that the Department may request such information.

- 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.**

No assurance of confidentiality was provided.

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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 differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
 - **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13.**
 - **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.**

As discussed in Item 1, above, the ERISA and Code provisions at issue generally prohibit fiduciaries and other service providers from engaging in (1) the sale, exchange, or leasing of property with a plan or IRA, (2) the lending of money or other extension of credit to a plan or IRA, (3) the furnishing of goods, services, or facilities to a plan or IRA and (4) the transfer to or use by or for the benefit of a party in interest of plan assets. Fiduciaries are also prohibited from self-dealing in connection with transactions involving these plans and IRAs. The proposed amendment would exclude investment advice fiduciaries from the existing relief and provide relief for Independent Insurance Producers that recommend annuities from unaffiliated Financial Institution, subject to conditions that mimic PTE 2020-02. The amendment would allow fiduciaries to receive compensation when plans and IRAs enter into certain insurance and mutual fund transactions recommended by the fiduciaries as well as certain related transactions.

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The Department's estimate of the hour burden associated with the ICRs is discussed below.² In the analysis discussed below, a combination of personnel would perform the tasks associated with the ICRs at an hourly wage rate of \$158.94 for an Independent Producer, \$63.45 for clerical personnel, and \$159.34 for a legal professional, and \$128.11 for a senior executive.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

12.1. Hour Burden Associated with Satisfying Conditions for Transactions Described in Section III(a)-(f)

Insurance agents and brokers, pension consultants, insurance companies, and investment company principal underwriters are expected to continue to take advantage of the exemption for transactions described in Section III(a)-(f). The Department estimates that 2,986 insurance agents and brokers, pension consultants, and insurance companies could continue to take advantage of the exemption for transactions described in Section III(a)-(f). This estimate is based on the following assumptions:

- According to the Insurance Information Institute, in 2022, there were 3,328 captive agents, which are insurance agents who work for only one insurance company.⁶ The Insurance Information Institute also found that life and annuity insurers accounted for 47.4 percent of all net premiums for the insurance industry

² The burden estimates contained in the responses to questions 12 and 13 are calculated off of unrounded figures, while in many cases the numbers presented in the text are rounded. Any discrepancies in the burden estimates are attributable to rounding.

³ Internal Department 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-eb-sa-opr-ria-and-pra-burden-calculations-june-2019.pdf>. 4 67 FR 17263 (Apr. 9, 2002).

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%).

⁶ Insurance Information Institute, *A Firm Foundation: How Insurance Supports the Economy - Captives by State, 2021-2022*, <https://www.iii.org/publications/a-firm-foundation-how-insurance-supports-the-economy/a-50-state-commitment/captives-by-state> (last visited August 25, 2023).

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in 2022.⁷ Thus, the Department estimates there are 1,577 insurance agents and brokers relying on the existing provisions.⁸

- The Department expects that pension consultants would continue to rely on the existing PTE 84-24. Based on 2021 Form 5500 data, the Department estimates that 1,011 pension consultants serve the retirement market.⁹
- In the Department's 2016 Regulatory Impact Analysis, it estimated that 398 insurance companies wrote annuities.¹⁰ The Department requests information on how the number of insurance companies underwriting annuities has changed since then.

In addition, investment company principals may rely on the exemption. In the Department's experience, investment company principal underwriters almost never use PTE 84-24. Therefore, the Department assumes that 20 investment company principal underwriters will engage in one transaction annually under PTE 84-24, 10 of which are assumed to service plans and 10 are assumed to service IRAs.

Further, the Department estimates that there are approximately 765,124 ERISA covered pension plans¹¹ and approximately 67.8 million IRAs.¹² The Department estimates that 7.5 percent of plans are new accounts or new financial advice relationships¹³ and that 3 percent of plans will use the exemption for covered transactions.¹⁴ Based on these assumptions, the Department estimates that 1,722 plans would be affected by the proposed amendments to PTE 84-24.¹⁵

⁷ Insurance Information Institute, *Facts + Statistics: Industry Overview- Insurance Industry at-a-Glance*, <https://www.iii.org/fact-statistic/facts-statistics-industry-overview>.

⁸ The number of captive insurance agents is estimated as: (3,328 captive agents x 47.4%) = 1,577 captive insurance agents serving the annuity market.

⁹ Internal Department of Labor calculations based on the number of unique service providers listed as pension consultants on the 2021 Form 5500 Schedule C.

¹⁰ This estimate is based on 2014 data from SNL Financial on life insurance companies that reported receiving either individual or group annuity considerations. (See Employee Benefits Security Administration, *Regulating Advice Markets Definition of the Term "Fiduciary" Conflicts of Interest - Retirement Investment Advice Regulatory Impact Analysis for Final Rule and Exemptions*, (April 2016), <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/completed-rulemaking/1210-AB32-2/ria.pdf>.)

¹¹ Employee Benefits Security Administration, United States Department of Labor, *Private Pension Plan Bulletin: Abstract of 2021 Form 5500 Annual Reports*, Table A1 (2023; forthcoming).

¹² Cerulli Associates, *2023 Retirement-End Investor*, Exhibit 5.12. The Cerulli Report, (2023).

¹³ EBSA identified 57,575 new plans in its 2021 Form 5500 filings, or 7.5 percent of all Form 5500 pension plan filings.

¹⁴ In 2020, 7 percent of traditional IRAs were held by insurance companies. (See Investment Company Institute, *The Role of IRAs in US Households' Saving for Retirement, 2020*, 27(1) ICI Research Perspective (2021), <https://www.ici.org/system/files/attachments/pdf/per27-01.pdf>.) This number has been adjusted downward to 3 percent to account for the fact that some transactions are not covered by this exemption.

¹⁵ 765,124 plans x 7.5 percent of plans are new x 3 percent of plans with relationships with insurance agents or pension consultants = 1,722 plans.

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The proposed amendments to PTE 84-24 would also affect new IRA accounts. The Department does not have data on the number of new IRA accounts that are opened each year. However, in 2022, of the 67.8 million IRA owners, 1.4 million, or approximately 2.1 percent, opened an IRA for the first time.¹⁶ Inferring from this statistic, the Department estimates that 2.1 percent of IRA accounts are new each year. The Department acknowledges that some IRA owners may have multiple IRAs, and as such, this statistic may underestimate the percentage of new IRAs opened.¹⁷ Additionally, the Department estimates that about 3 percent of these new IRAs, or approximately 52,000 IRAs, would use PTE 84-24 for covered transactions.¹⁸

The proposed amendment would exclude entities currently relying on the exemption, under the existing provisions for investment advice. As such, the Department acknowledges that the estimates discussed above may overestimate the entities able to rely on the exemption for relief for the transactions described in Section III(a)-(f).

12.1.1. Written Authorization from the Independent Plan Fiduciary

Based on the estimates discussed above, the Department estimates that authorizing fiduciaries for 1,722 plans and authorizing fiduciaries for 52,449 IRA holders would be required to send an advance written authorization to the 2,996 financial institutions for IRAs¹⁹ for exemptive relief for the transactions described in Section III(a)-(f). In the plan universe, it is assumed that a legal professional would spend five hours per plan reviewing the disclosures and preparing an authorization form. In the IRA universe, it is assumed that a legal professional working on behalf of the financial institution for IRAs will spend three hours drafting an authorization form for IRA holders to sign. This

¹⁶ Cerulli Associates, *U.S. Retirement End-Investor 2023: Fostering Comprehensive Relationships*, The Cerulli Report.

¹⁷ The Department lacks data on the number of IRA owners that own multiple IRAs. To provide scope of magnitude, one source reported that in 2019, 19 percent of IRA owners contributed to both a traditional IRA and Roth IRA. (See Investment Company Institute, *The Role of IRAs in US Households' Saving for Retirement, 2020*, 27(1) ICI Research Perspective (2021), <https://www.ici.org/system/files/attachments/pdf/per27-01.pdf>.) This statistic does not account for individuals who own multiple of each type of IRA or those who did not contribute in 2019, but it provides a lower bound.

¹⁸ In 2020, 7 percent of traditional IRAs were held by insurance companies. (See Investment Company Institute, *The Role of IRAs in US Households' Saving for Retirement, 2020*, 27(1) ICI Research Perspective (2021), <https://www.ici.org/system/files/attachments/pdf/per27-01.pdf>.) This number has been adjusted downward to 3 percent to reflect the removal of transactions not covered by this exemption.). The number of IRAs affected is estimated as: (83,252,750 IRAs x 2.1% IRAs assumed to be new IRAs x 3% of IRAs held by insurance companies) = 52,449 IRAs

¹⁹ This includes 2,986 insurance agents and brokers, pension consultants, and insurance companies and 10 investment company underwriters servicing IRAs.

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results in an hour burden of 17,598 hours with an equivalent cost of \$2.8 million.²⁰

The Department expects that plans will send the written authorization through already established electronic means, and thus, the Department does not expect plans to incur any cost to send the authorization. The Department expects that 94.2 percent of written authorization for IRAs will be sent electronically at no additional burden. The remaining 5.8 percent of authorizations will be mailed. For paper authorizations, the Department assumes that clerical staff will spend two minutes preparing and sending the authorization resulting in an hour burden of approximately 101 hours with an equivalent cost of \$6,434.²¹

In total, as presented in the table below, the written authorization requirement, under the new conditions of relief, is expected to result in an annual total hour burden of 17,699 hours with an equivalent cost of \$2,810,499.

Table 1: Hour Burden and Equivalent Cost Associated with the Written Authorization				
	Year 1		Subsequent Years	
Activity	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Legal	17,598	\$2,804,065	17,598	\$2,804,065
Clerical	101	\$6,434	101	\$6,434
Total	17,699	\$2,810,499	17,699	\$2,810,499

12.1.2. Disclosure

Based on the estimates discussed above, the Department estimates that approximately 3,006 financial institutions²² would continue to utilize the exemption for exemptive relief for the transactions described in Section III(a)-(f) for each plan and IRA. In total, the Department estimates that 2,996 entities would prepare disclosures for plans and 2,996 entities would prepare disclosures for IRAs. The Department assumes that an in-house attorney will spend one hour of legal staff time drafting the disclosure for plans and one hour of legal staff time drafting the disclosure for IRAs. This results in an hour burden of

²⁰ The burden is estimated as: (1,722 plans x 5 hours) + (2,996 financial institutions x 3 hours) = 17,598 hours. A labor rate of approximately \$159.34 is used for a legal professional. The labor rate is applied in the following calculation: [(1,722 plans x 5 hours) + (2,996 financial institutions x 3 hours)] x \$159.34 per hour = \$2,804,065.

²¹ The burden is estimated as: ((52,449 IRAs x 5.8 percent paper x 2 minutes per plan) ÷ 60 minutes) = 101 hours. A labor rate of \$63.45 is used for a clerical worker. The labor rate is applied in the following calculation: ((52,449 IRAs x 5.8 percent paper x 2 minutes per plan) ÷ 60 minutes) x \$63.45 per hour = \$6,434.

²² This includes 2,986 insurance agents and brokers, pension consultants, and insurance companies and 20 investment company underwriters servicing plans and IRAs.

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5,992 hours with an equivalent cost of \$954,765.²³

The Department expects that the disclosures for plans would be distributed through already established electronic means, and thus, the Department does not expect plans to incur any cost to send the disclosures. The Department expects that 94.2 percent of disclosures for IRAs will be sent electronically at no additional burden. The remaining 5.8 percent of authorizations will be mailed. For paper copies, a clerical staff member is assumed to require two minutes to prepare and mail the required information to the plan fiduciary. This information will be sent to the 52,449 IRAs plus the 10 investment company principal underwriters for IRAs entering into an agreement with an insurance agent, pension consultant, or mutual fund principal underwriter, and based on the above, the Department estimates that this requirement results in an hour burden of 84 hours with an equivalent cost of \$6,435.²⁴

In total, as presented in the table below, providing the pre-authorization materials is expected to impose an annual total hour burden of 6,093 hours with an equivalent cost of \$961,200.

Activity	Year 1		Subsequent Years	
	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Legal	5,992	\$954,765	5,992	\$954,765
Clerical	101	\$6,435	101	\$6,435
Total	6,093	\$961,200	6,093	\$961,200

12.2. *Hour Burden Associated with Satisfying Conditions for Transactions Described in Section III(g)*

The amendment would provide investment advice fiduciaries with relief for Independent Producers for transactions in which the Independent Producer receives an insurance sales commission as a result of the provision of investment advice, regarding the purchase of an annuity contract of a financial institution that is not an Affiliate. The Department expects that the financial institutions covered by this proposal would be insurance

²³ The burden is estimated as: [2,996 financial institutions x (1 hour for plans + 1 hour for IRAs)] = 5,992 hours. A labor rate of approximately \$159.34 is used for a legal professional. The labor rate is applied in the following calculation: [2,996 financial institutions x (1 hour for plans + 1 hour for IRAs)] x \$159.34 per hour = \$954,765.

²⁴ The burden is estimated as: {[52,449 IRAs + 10 investment company principal underwriters for IRAs) x 5.8 percent paper x 2 minutes] ÷ 60 minutes = 101 hours. A labor rate of \$63.45 is used for a clerical worker. The labor rate is applied in the following calculation: {[52,449 IRAs + 10 investment company principal underwriters for IRAs) x 5.8 percent paper x 2 minutes] ÷ 60 minutes} x \$63.45 = \$6,435.

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companies that directly write annuities. The proposed amendments outline conditions pertaining to disclosure, policies and procedures, and retrospective reviews that need to be satisfied to rely on the exemption. These conditions are tailored to protect retirement investors from the specific conflicts that arise for Independent Producers when providing investment advice to retirement investors regarding the purchase of an annuity. The Independent Insurance Agents and Brokers of America estimated that there were 40,000 Independent Producers in 2022.²⁵ The Department does not have data on what percent of Independent Producers service the retirement market. For the purposes of this analysis, the Department assumes that 10 percent, or 4,000, of these Independent Producers service the retirement market.

Insurance companies are primarily regulated by states and no single regulator records a nationwide count of insurance companies. Although state regulators track insurance companies, the total number of insurance companies cannot be calculated by aggregating individual state totals, because individual insurance companies often operate in multiple states. In the Department's 2016 Regulatory Impact Analysis, it estimated that 398 insurance companies wrote annuities.²⁶ The Department requests information on how the number of insurance companies underwriting annuities has changed since then. Some of these insurance companies may not sell any annuity contracts in the IRA or plans. Because of these data limitations, the Department includes all 398 insurance companies in its cost estimate, though this likely represents an upper bound.

Insurance companies sell insurance products through (1) captive insurance agents that work for an insurance company as employees or as independent contractors who exclusively sell the insurance company's products and (2) independent agents who sell multiple insurance companies' products. In recent years, the market has seen a shift away from captive distribution more towards independent distribution.²⁷

The Department does not have data on the number of insurance companies using captive agents or Independent Producers. Based on data on the sales of individual annuities by

25 Annemarie McPherson Spears, *7 Findings From the 2022 Agency Universe Study*, (October 13, 2022), https://www.iamagazine.com/news/7-findings-from-the-2022-agency-universe-study?_hstc=79369803.5fd6a87d75ca95f942e9dc33fed281b9.1691447156981.1691447156981.1691447156981.1&_hsc=79369803.3.1691447156981&_hsfp=2180945085.

26 This estimate is based on 2014 data from SNL Financial on life insurance companies reported receiving either individual or group annuity considerations. (See Conflict of Interest Final Rule, *Regulatory Impact Analysis for Final Rule and Exemptions*, U.S. Department of Labor (April 2016), www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/completed-rulemaking/1210-AB32-2/ria.pdf).

27 Ramnath Balasubramanian, Rajiv Dattani, Asheet Mehta, & Andrew Reich, *Unbundling Value: How Leading Insurers Identify Competitive Advantage*, McKinsey & Company, (June 2022), <https://www.mckinsey.com/industries/financial-services/our-insights/unbundling-value-how-leading-insurers-identify-competitive-advantage>; Sheryl Moore, *The Annuity Model Is Broken*, Wink Intel, (June 2022), <https://www.winkintel.com/2022/06/the-annuity-model-is-broken-reprint/>.

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distribution channel, the Department estimates that approximately 46 percent of insurance companies underwriting annuities sell annuities through captive distribution channels, while 54 percent sell annuities through independent distribution channels.²⁸ For the purposes of this analysis, the Department estimates that 215 insurance companies distribute annuities through independent channels and would rely on PTE 84-24 for transactions involving investment advice.²⁹

The Department estimates that 70 of the 398 insurance companies are large entities.³⁰ For the purposes of this analysis, the Department assumes the percent of small insurance companies using each distribution channel is the same as for all insurance companies. That is, the Department assumes that 46 percent of insurance companies (183 insurance companies) sell annuities through captive distribution channels, of which 151 are estimated to be small insurance companies and the remaining 32 large insurance companies.³¹ Additionally, 54 percent (215 insurance companies) sell annuities through independent distribution channels, of which 177 are estimated to be small insurance companies and the remaining 38 are large.³² The Department recognizes that the distribution of sales by distribution channel is likely different from the distribution of insurance companies by distribution channel.

12.2.1. Disclosures

²⁸ According to the Insurance Information Institute, in 2022, 20 percent of individual annuities were sold through independent broker-dealers, 18 percent through independent agents, 15 percent through career agents, 24 percent through banks, 17 percent through full-service national broker-dealers, 3 percent through direct-response, and 2 percent through other methods. For the purposes of this analysis, the Department considers those sales made by career agents and full-service national broker-dealers to be “captive,” and those made by independent broker-dealers and independent agents to be “independent.” The Department assumes that 46 percent of sales by banks are captive, while 54 percent of sales by banks are independent. As such, the Department assumes that 46 percent of sales are sold through captive channels $\{[15\% + 17\% + (46\% \times 24\%)] / (100\% - 6\%)\}$, while 54 percent of sales are sold through independent channels $\{[20\% + 18\% + (54\% \times 24\%)] / (100\% - 6\%)\}$.

²⁹ The number of insurance companies using captive distribution channels is estimated as $(398 \times 46\%) = 183$ insurance companies. The number of insurance companies using independent distribution channels is estimated as $(398 - 183) = 215$ insurance companies.

³⁰ LIMRA estimates that, in 2016, 70 insurers had more than \$38.5 million in sales, which is the Small Business Administration’s threshold for a large entity within the insurance industry. (See LIMRA, *U.S. Individual Annuity Yearbook: 2016 Data*, LIMRA Secure Retirement Institute (2017)).

³¹ The number of large insurance companies using a captive distribution channel is estimate as: $(70 \text{ large insurance companies} \times 46\%) = 32$ insurance companies. The number of small insurance companies using a captive distribution channel is estimated as: $(183 \text{ insurance companies} - 32 \text{ large insurance companies}) = 151$ small insurance companies.

³² The number of large insurance companies using an independent distribution channel is estimated as: $(70 \text{ large insurance companies} \times 54\%) = 38$ insurance companies. The number of small insurance companies using an independent distribution channel is estimated as: $(215 \text{ insurance companies} - 38 \text{ large insurance companies}) = 177$ small insurance companies.

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As discussed above, the Department assumes that 4,000 Independent Producers service the retirement market, selling the products of 215 insurance companies. For more generalized disclosures, the Department assumes that insurance companies would prepare and provide disclosures to Independent Producers selling their products. However, some of the disclosures are tailored specifically to the Independent Producer. The Department assumes that these disclosures would need to be prepared by the Independent Producer themselves. The Department recognizes that some may rely on intermediaries in the distribution channel to prepare more specific disclosures; however, the Department expects that the costs associated with the preparation would be covered by commissions retained by the intermediary for its services.

12.2.1.1. Written Acknowledgement that the Independent Producer is a Fiduciary by the Independent Producer

The Department is including a model statement in the preamble to PTE 84-24 that details what should be included in a fiduciary acknowledgment for financial institutions.³³ The Department assumes that the time associated with preparing the disclosures would be minimal. Further, these disclosures are expected to be uniform in nature. Accordingly, the Department estimates that these disclosures would not take a significant amount of time to prepare.

Due to the nature of Independent Producers, the Department assumes that most financial institutions would make draft disclosures available to Independent Producers pertaining to their fiduciary status. However, the Department expects that a small percentage of Independent Producers may draft their own disclosures. The Department assumes that an in-house attorney for all 215 financial institutions as well as 5 percent of Independent Producers, or 200 Independent Producers, would spend 10 minutes of legal staff time to produce a written acknowledgement in the first year. This results in an estimated hour burden of approximately 69 with an equivalent cost of \$11,021 in the first year.³⁴

Table 3: Hour Burden and Equivalent Cost Associated with the Fiduciary Acknowledgement				
Activity	Year 1		Subsequent Years	
	Burden Hours	Equivalent	Burden Hours	Equivalent

³³ 85 FR 82798, 82827 (Dec. 18, 2020). The model statement was also included in Frequently Asked Questions in April 2021, New Fiduciary Advice Exemption: PTE 2020-02 *Improving Investment Advice for Workers & Retirees* Frequently Asked Questions, Q13, (April 2021), <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/new-fiduciary-advice-exemption.pdf>.

³⁴ The burden is estimated as: $\{(215 \text{ financial institutions} + 200 \text{ Independent Producers}) \times (10 \text{ minutes})\} \div 60 \text{ minutes} = 69 \text{ hours}$. A labor rate of approximately \$159.34 is used for a legal professional. The labor rate is applied in the following calculation: $\{(215 \text{ financial institutions} + 200 \text{ Independent Producers}) \times (10 \text{ minutes})\} \div 60 \text{ minutes} \times \$159.34 = \$11,021$.

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		Burden Cost		Burden Cost
Legal	69	\$11,021	0	\$0
Total	69	\$11,021	0	\$0

12.2.1.2. Written Statement of the Best Interest Standard of Care owed by the Independent Producer

As discussed above, the Department assumes that 4,000 Independent Producers service the retirement market, selling the products of 215 financial institutions. Due to the nature of Independent Producers, the Department assumes that most financial institutions would make draft disclosures available to Independent Producers, pertaining to the annuities they offer. The Department assumes that an in-house attorney for all 215 financial institutions as well as 5 percent of Independent Producers, or 200 Independent Producers, would spend 30 minutes of legal staff time to prepare the statement in the first year. This results in an hour burden of 208 hours with an equivalent cost of \$33,063 in the first year.³⁵

Table 4: Hour Burden and Equivalent Cost Associated with the Written Statement of the Best Interest Standard of Care Owed				
Activity	Year 1		Subsequent Years	
	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Legal	208	\$33,063	0	\$0
Total	208	\$33,063	0	\$0

12.2.1.3. Written Statement of the Services Provided and the Products the Independent Producer is Licensed and Authorized to Sell

As discussed above, the Department assumes that 4,000 Independent Producers service the retirement market, selling the products of 215 insurance companies. For disclosures tailored more specifically to an individual Independent Producer, the Department assumes that the disclosure would need to be prepared by the Independent Producer. The Department recognizes that many Independent Producers may not have the internal resources to prepare such disclosure. The Department expects that some may rely on intermediaries in the distribution channel to prepare the disclosures and some may seek external legal support. However, the Department expects that the costs associated with

³⁵ The burden is estimated as: $\{(215 \text{ financial institutions} + 200 \text{ Independent Producers}) \times (30 \text{ minutes})\} \div 60 \text{ minutes} = 208 \text{ hours}$. A labor rate of approximately \$159.34 is used for a legal professional. The labor rate is applied in the following calculation: $\{(215 \text{ financial institutions} + 200 \text{ Independent Producers}) \times (30 \text{ minutes})\} \div 60 \text{ minutes} \times \$159.34 = \$33,063$.

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the preparation would be covered by commission retained by the intermediary for its services or by the fee paid to external legal support. As such, the Department still attributes this cost back to the Independent Producer.

Accordingly, the Department assumes that all 4,000 Independent Producers in this analysis would need to prepare the disclosure. The Department assumes that, for each of these Independent Producers, an attorney would spend 30 minutes of legal staff time drafting the written description. This results in an hour burden of 2,000 hours with an equivalent cost of \$318,680 in the first year.³⁶

Table 5: Hour Burden and Equivalent Cost Associated with the Written Description of Service Provided				
Activity	Year 1		Subsequent Years	
	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Legal	2,000	\$318,680	0	\$0
Total	2,000	\$318,680	0	\$0

12.2.1.4. Written Statement of the Independent Producer’s Material Conflicts of Interest, and the Amount of the Insurance Commission that Will be Paid to the Independent Producer in Connection with the Purchase by a Retirement Investor of the Recommended Annuity

As discussed above, for disclosures tailored more specifically to an individual Independent Producer, the Department assumes that the disclosure would need to be prepared by the Independent Producer. The Department recognizes that many Independent Producers may not have the internal resources to prepare such disclosure, however they may already have a similar statement to satisfy other legal requirements. The Department expects that some may rely on intermediaries in the distribution channel to prepare the disclosures and some may seek external legal support. However, the Department expects that the costs associated with the preparation would be covered by the commission retained by the intermediary for its services or by the fee paid to external legal support. As such, the Department still attributes this cost back to the Independent Producer.

Accordingly, the Department assumes that all 4,000 Independent Producers in this analysis would need to prepare the disclosure. The Department assumes that, for each of

³⁶ The burden is estimated as: (4,000 Independent Producers x 0.5 hours) = 2,000 hours. A labor rate of approximately \$159.34 is used for a legal professional. The labor rate is applied in the following calculation: (4,000 Independent Producers x 0.5 hours) x \$159.34 = \$318,680.

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these entities, an attorney would spend one hour of legal staff time drafting the written description. This results in an hour burden of 4,000 hours with an equivalent cost of \$637,360 in the first year.³⁷

Table 6: Hour Burden and Equivalent Cost Associated with the Written Statement of the Independent Producer’s Material Conflicts of Interest				
	Year 1		Subsequent Years	
Activity	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Legal	4,000	\$637,360	0	\$0
Total	4,000	\$637,360	0	\$0

12.2.1.5. Before Recommending an Annuity, Engaging in a Rollover, or Making a Recommendation to a Plan Participant as to the Post-Rollover Investment of Assets Currently Held in a Plan, the Independent Producer Must Document Its Conclusions as to Whether a Rollover is in the Investor’s Best Interest

The proposed amendment would require an Independent Producer to provide a disclosure to investors that documents their consideration as to whether a recommended annuity or rollover is in the retirement investor’s best interest. Due to the nature of this disclosure, the Department assumes that the content of the disclosure would need to be prepared by the Independent Producer. The Department recognizes that some may rely on intermediaries in the distribution channel, and some may seek external legal support to assist with drafting the disclosures. However, the Department expects that most Independent Producers would prepare the disclosure themselves.

For the purposes of this analysis, the Department uses its estimate for the number of new IRA accounts held by insurance companies as a proxy for the number of retirement investors that have relationships with Independent Producers that would engage in transactions covered under the exemption. As such, the Department estimates that 52,449 retirement investors would receive documentation on whether the recommended annuity is in their best interest each year.³⁸

³⁷ The burden is estimated as: (4,000 Independent Producers x 1 hour) = 4,000 hours. A labor rate of approximately \$159.34 is used for a legal professional. The labor rate is applied in the following calculation: (4,000 hours x \$159.34) = \$637,360.

³⁸ In 2020, 7 percent of traditional IRAs were held by insurance companies. (See Investment Company Institute, *The Role of IRAs in US Households’ Saving for Retirement, 2020*, 27(1) *ICI Research Perspective* (2021). <https://www.ici.org/system/files/attachments/pdf/per27-01.pdf>.) This number has been adjusted downward to 3 percent to reflect the removal of transactions not covered by this exemption.). The number of IRAs affected is estimated as: (83,252,750 IRAs x 2.1% IRAs assumed to be new IRAs x 3% of IRAs held by insurance companies) = 52,449 IRAs.

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The Department assumes that, for each of these Retirement Investors, an Independent Producer would spend one hour of a financial manager’s time drafting the documentation. This results in an estimated hour burden of 52,449 hours with an equivalent cost of \$8.3 million annually.³⁹

Table 7: Hour Burden and Equivalent Cost Associated with the Rollover Documentation				
	Year 1		Subsequent Years	
Activity	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Insurance Sales Agent	52,449	\$8,336,244	52,449	\$8,336,244
Total	52,449	\$8,336,244	52,449	\$8,336,244

12.2.1.6. Mailing Cost for Disclosures Sent from Independent Producers to Retirement Investor

As discussed above, the Department assumes that 5.8 percent of disclosures would be mailed. Accordingly, of the estimated 52,449 affected retirement investors, 3,042 retirement investors are estimated to receive paper disclosures.⁴⁰ For paper copies, a clerical staff member is assumed to require five minutes to prepare and mail the required information to the retirement investor. This requirement results in an estimated hour burden of 254 hours with an equivalent cost of \$16,085.⁴¹

Table 8: Hour Burden and Equivalent Cost Associated with Preparing the Disclosures				
	Year 1		Subsequent Years	
Activity	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Clerical	254	\$16,085	254	\$16,085

³⁹ The burden is estimated as: (52,449 rollovers x 1 hour) = 52,449 hours. A labor rate of approximately \$158.94 is used for an Independent Producer. The labor rate is applied in the following calculation: (52,449 rollovers x 1 hour) x \$158.94 = \$8,336,244.

⁴⁰ This is estimated as: (52,449 retirement investors x 5.8%) = 3,042 paper disclosures.

⁴¹ This is estimated as: [(3,042 paper disclosures x 5 minutes) ÷ 60 minutes] = 254 hours. A labor rate of \$63.45 is used for a clerical worker. The labor rate is applied in the following calculation: [(3,042 paper disclosures x 5 minutes) ÷ 60 minutes] x \$63.45 = \$16,085.

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Total	254	\$16,085	254	\$16,085
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Additionally, Independent Producers would be required to send the documentation to the insurance company. The Department expects that such documentation would be sent electronically and result in a de minimis burden.

12.2.2. Policies and Procedures

12.2.2.1. Insurance Companies Must Establish, Maintains, and Enforces Written Policies and Procedures for the Review of Each Recommendation Before an Annuity is Issued to a Retirement Investor, and the Financial Institution Reviews its Policies and Procedures at Least Annually

As discussed above, the Department estimates that 215 financial institutions would need to meet this requirement, of which 177 are estimated to be small and 38 are estimated to be large.⁴² The Department assumes that, for each large insurance company, an in-house attorney would spend ten hours of legal staff time drafting the written description, and for each small insurance company, an in-house attorney would spend five hours of legal staff time. This results in hour burden of 1,265 hours with an equivalent cost of \$201,565 in the first year.⁴³

In the following years, the Department assumes for each insurance company, an in-house attorney would spend two hours of legal staff time reviewing the policies and procedures. This results in hour burden of 430 hours with an equivalent cost of \$68,516 in subsequent years.⁴⁴

The proposed amendments would also require financial institutions to provide their complete policies and procedures to the Department upon request. As discussed above for PTE 2020-02, the Department estimates that it would request 165 policies and procedures in the first year and 50 in subsequent years. Assuming that the number of requests for the entities covered under PTE 2020-02 is equivalent to the number of requests for the

42 The number of large insurance companies using an independent distribution channel is estimated as: (70 large insurance companies x 54%) = 38 insurance companies. The number of small insurance companies using an independent distribution channel is estimated as: (215 insurance companies – 38 large insurance companies) = 177 small insurance companies.

43 This is estimated as: [(177 small insurance companies x 5 hours) + (38 large insurance companies x 10 hours)] = 1,265 hours. A labor rate of \$159.34 is used for a legal professional. The labor rate is applied in the following calculation: [(177 small insurance companies x 5 hours) + (38 large insurance companies x 10 hours)] x \$159.34 = \$201,565.

44 This is estimated as: (215 insurance companies x 2 hours) = 430 hours. A labor rate of \$159.34 is used for a legal professional. The labor rate is applied in the following calculation: (215 insurance companies x 2 hours) x \$159.34 = \$68,516.

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entities covered under PTE 84-24, the Department assumes that it will request two policies and procedures from insurers in the first year and one request in subsequent years, on average.⁴⁵ This results in an estimated cost of approximately \$32 in the first year⁴⁶ and \$16 in subsequent years.⁴⁷

Insurers would also be required to review each of the Independent Producer’s recommendations before an annuity is issued to a retirement investor to ensure compliance with the Impartial Conduct Standards and other conditions of this exemption. This requirement is consistent with the language in NAIC’s 2010 Model Regulation 275, Suitability in Annuity Transactions,⁴⁸ and the 2020 revisions to Model Regulation 275, which expanded the suitability standard to a best interest standard.⁴⁹ Most states have adopted some form of the Model Regulation 275.⁵⁰ As such, the Department expects that reviewing recommendations before an annuity is issued is common industry practice. Accordingly, the Department expects that financial institutions would incur a de minimis burden to comply with the proposed amendments, when already complying with Model Regulation 275.

Table 9: Hour Burden and Equivalent Cost Associated with Policies and Procedures				
	Year 1		Subsequent Years	
Activity	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Legal	1,265	\$201,565	430	\$68,516
Clerical	1	\$32	1	\$16
Total	1,266	\$201,597	430	\$68,532

45 The number of requests in the first year is estimated as 215 insurance companies x (165 requests in PTE 2020-02 / 19,290 financial institutions in PTE 2020-02) = 2 requests. The number of requests in subsequent years is estimated as: 215 insurance companies x (50 requests in PTE 2020-02 / 19,290 financial institutions in PTE 2020-02) = 1 request.

46 The burden is estimated as: [(2 x 15 minutes) ÷ 60 minutes] = 0.5 hours. A labor rate of \$63.45 is used for a clerical worker. The labor rate is applied in the following calculation: [(2 x 15 minutes) ÷ 60 minutes] x \$63.45 = \$31.73.

47 The burden is estimated as: [(1 x 15 minutes) ÷ 60 minutes] = 0.25 hours. A labor rate of \$63.45 is used for a clerical worker. The labor rate is applied in the following calculation: [(1 x 15 minutes) ÷ 60 minutes] x \$63.45 = \$15.86.

48 NAIC Model Suitability Regulations, § 6(F)(1)(d) (2010), <https://naic.soutrnglobal.net/Portal/Public/en-GB/RecordView/Index/25201>.

49 NAIC Model Suitability Regulations, § 6(C)(1)(d) (2020), <https://content.naic.org/sites/default/files/inline-files/MDL-275.pdf>.

50 As of October of 2021, only three states had not adopted some form of Model Regulation 275. (See A.D. Banker & Company, *Annuity Best Interest State Map and FAQs*, (October 2021), <https://blog.adbanker.com/annuity-best-interest-state-map-and-faqs>).

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12.2.3. Retrospective Review

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 prevent violations of and achieve compliance with (1) the Impartial Conduct Standards, (2) the terms of this exemption, and (3) the policies and procedures governing compliance with the exemption. The review would be required to evaluate the effectiveness of the supervision system, any noncompliance discovered in connection with the review, and corrective actions taken or recommended, if any. Financial institutions would also be required to provide the Independent Producer with the underlying methodology and results of the retrospective review.

12.2.3.1. The Insurance Company Must Conduct a Retrospective Review, at Least Annually, for Each Independent Producer that Sells the Insurance Company’s Annuity Contracts

The Department estimates that 215 financial institutions would need to meet this requirement. For this requirement the information collection is documenting the findings of the retrospective review. The Department lacks data on, for a given insurance company, how many Independent Producers, on average, sell their annuities. For the purposes of this analysis, the Department assumes that, on average, each Independent Producer sells the products of three financial institutions. From each of these financial institutions, they may sell multiple products. As such, the Department assumes that each year, insurance companies would need to prepare a total of 12,000 retrospective reviews,⁵¹ or on average, each insurance company would need to prepare approximately 56 retrospective reviews.⁵² The Department assumes that, for each Independent Producer selling an insurance company’s products, an in-house attorney at the insurance company would spend one hour of legal staff time, on average, drafting the retrospective review. This results in an estimated hour burden of 12,000 hours with an equivalent cost of \$1.9 million.⁵³

Table 10: Hour Burden and Equivalent Cost Associated with the Retrospective Review				
Activity	Year 1		Subsequent Years	
	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost

51 This is estimated as: (4,000 Independent Producers x 3 insurance companies covered) = 12,000 retrospective reviews.

52 This is estimated as: (12,000 / 215) = 55.81 retrospective reviews, on average

53 This is estimated as: (12,000 retrospective reviews x 1 hour) = 12,000 hours. A labor rate of \$159.34 is used for a legal professional. The labor rate is applied in the following calculation: (12,000 retrospective reviews x 1 hour) x \$159.34 = \$1,912,080.

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Legal	12,000	\$1,912,080	12,000	\$1,912,080
Total	12,000	\$1,912,080	12,000	\$1,912,080

12.2.3.2. Certification by the Senior Executive Officer of the Insurance Company

The Department assumes it would take a Senior Executive Officer 15 minutes to certify the report. This results in an annual hour burden of 3,000 hours with an equivalent cost of \$384,330.⁵⁴

Table 11: Hour Burden and Equivalent Cost Associated with the Certification by the Senior Executive Officer				
	Year 1		Subsequent Years	
Activity	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Senior Executive Officer	3,000	\$384,330	3,000	\$384,330
Total	3,000	\$384,330	3,000	\$384,330

12.2.3.3. The Insurance Company Provides to the Independent Producer the Methodology and Results of the Retrospective Review Company

The Department assumes that the insurance company would provide the methodology and results electronically. The Department estimates that it would take clerical staff five minutes to prepare and send each of the estimated 12,000 retrospective reviews. This results in an annual hour burden of 1,000 hours with an equivalent cost of \$63,450.⁵⁵ The Department expects that the results would be provided electronically, thus the Department does not expect there to be any material costs with providing Independent Producers with the retrospective review.

Table 12: Hour Burden and Equivalent Cost Associated with the Provision

⁵⁴ This is estimated as: [(12,000 retrospective reviews x 15 minutes) ÷ 60 minutes] = 3,000 hours. A labor rate of \$128.11 is used for a Senior Executive Officer. The labor rate is applied in the following calculation: [(12,000 retrospective reviews x 15 minutes) ÷ 60 minutes] x \$128.11 = \$384,330.

⁵⁵ This is estimated as: [(12,000 retrospective reviews x 5 minutes) ÷ 60 minutes] = 1,000 hours. A labor rate of \$63.45 is used for a clerical worker. The labor rate is applied in the following calculation: [(12,000 retrospective reviews x 5 minutes) ÷ 60 minutes] x \$63.45 = \$63,450.

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of the Results of the Retrospective Review				
	Year 1		Subsequent Years	
Activity	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Clerical	1,000	\$63,450	1,000	\$63,450
Total	1,000	\$63,450	1,000	\$63,450

12.2.4. Recordkeeping Requirement

The proposed amendment would change the current recordkeeping requirements to incorporate a new provision that is similar to the recordkeeping provision in PTE 2020-02. This requirement would replace the more limited existing recordkeeping requirement in current version of PTE 84-24, which requires sufficient records to demonstrate that the conditions of the exemption have been met. The Department does not have data on how many pension consultants, insurance companies, and investment company principal underwriters would continue to rely on PTE 84-24 as amended without also complying with the amended PTE 2020-02. In this analysis, the Department assumes that all of the pension consultants and investment company principal underwriters continuing to rely on the amended PTE 84-24 would also rely on the amended PTE 2020-02. Thus, to avoid double counting the compliance cost, this analysis does not include the cost associated with the proposed recordkeeping requirement for these entities.

For this analysis, the Department considers the cost for insurance companies and Independent Producers complying with the proposed recordkeeping requirements. The Department estimates that the additional time needed to maintain records for the financial institutions to be consistent with the exemption would take an Independent Producer two hours, resulting in an hour burden of 8,430 hours and an equivalent cost of \$1.3 million.⁵⁶

Table 13: Hour Burden and Equivalent Cost Associated with the Recordkeeping Requirement				
	Year 1		Subsequent Years	
Activity	Burden Hours	Equivalent Burden Cost	Burden Hours	Equivalent Burden Cost
Legal	8,430	\$1,340,036	8,430	\$1,340,036
Total	8,430	\$1,340,036	8,430	\$1,340,036

⁵⁶ This is estimated as: (4,000 Independent Producers + 215 insurance companies) x 2 hours = 8,430 hours. A labor rate of \$158.94 is used for an Independent Producer and a rate of \$159.34 for an insurance company legal professional. The labor rate is applied in the following calculation: [(4,000 Independent Producers x 2 hours x \$158.94) + (215 insurance companies x 2 hours x \$159.34)] = \$1,340,036.

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12.2.5. Summary

In summary, the total hour burden in the first year associated with this information collection is 128,467 hours and an equivalent cost of \$20,204,445. The total hour burden in subsequent years is 121,356 hours and an equivalent cost of \$19,071,257. The three-year average hour burden is 123,726 hours and an equivalent cost of \$19,448,986.

Table 17: Estimated Annualized Respondent Hour Burden and Equivalent Cost of Hour Burden							
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 84-24	3,006	3.56	10,710	2.22	23,793	-	\$3,771,700
Prepare a written statement that Independent Producer is fiduciary	415	1	415	10/60	69	\$159.34	\$11,021
Prepare a written statement of the Best Interest Standard of Care owed by the Independent Producer to the retirement investor (first year)	415	1	415	30/60	208	\$159.34	\$33,063
Prepare a written description of the services provided by the Independent Producer, and the products the Independent Producer is licensed and authorized to sell (first year)	4,000	1	4,000	30/60	2,000	\$159.34	\$318,680
A written statement of the Independent Producer's material conflicts of interest, and the amount of the insurance	4,000	1	4,000	1	4,000	\$159.34	\$637,360

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commission that will be paid to the Independent Producer in connection with the purchase by a retirement investor of the recommended annuity.							
Independent Producer considers and documents its conclusions as to whether a rollover is in the retirement investor's best interest and provide that documentation to the retirement investor and financial institution	52,449	1	52,449	1	52,449	\$158.94	\$8,336,244
Provision of disclosures to retirement investors (first year)	3,042	1	3,042	5/60	254	\$63.45	\$16,085
Financial Institution conducts a retrospective review	215	55.81	12,000	1	12,000	\$159.34	\$1,912,080
Financial Institution annually provides a written report to a senior executive officer which details the review	215	55.81	12,000	15/60	3,000	\$128.11	\$384,330
Financial Institution provides to the Independent Producer the methodology and results of the retrospective review	215	55.81	12,000	5/60	1000	\$63.45	\$63,450
Financial Institution establishes, maintains, and enforces written policies and procedures	215	1	215	5.88	1,265	\$159.34	\$201,565
Financial Institution must review its	215	1	215	2	430	\$159.34	\$68,516

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policies and procedures							
Financial Institutions must provide their complete policies and procedures to the Department within 10 business days of request (first year)	2	1	2	15/60	0.5	\$63.45	\$32
Financial Institutions must provide their complete policies and procedures to the Department within 10 business days of request (subsequent years)	1	1	1	15/60	0.25	\$63.45	\$16
Insurance agent or broker, pension consultant or investment company principal underwriter, and Independent Producer or financial institution maintain the records	4,215	1	4,215	2	8,430	\$159.34	\$1,340,036
Insurance agent or broker, pension consultant or investment company principal underwriter, and Independent Producer or financial institution distribute records on request	5,246	8	40,000	0.5	20,000	\$159.34	\$3,178,800
Total (Three-Year Average) ***	7,221	16.53	119,376		123,726		\$19,448,986

Note:

*The total number of respondents is calculated in the following manner: 3,006 (existing requirements of PTE 84-24) + 4,215 (Amendments to PTE 84-24) = 7,221.

** 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.

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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 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 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 receiving disclosures electronically would be similar to the percent receiving electronically under the Department's 2002 electronic disclosure safe harbor.⁵⁷ Accordingly, the Department estimates that 94.2 percent of the disclosures sent to Retirement Investors would be sent electronically.⁵⁸ For the required information not sent electronically, the Department estimates that a cost of 5 cents per page for paper and printing costs and \$0.66 cents of postage cost per mailing will be incurred.⁵⁹

The annual cost burden is calculated as follows:

13.1. Cost Burden Associated with Satisfying Conditions for Transactions Described in Section III(a)-(f)

13.1.1. Written Authorization from the Independent Plan Fiduciary

Based on the estimates discussed above, the Department estimates that authorizing fiduciaries for 1,722 plans and authorizing fiduciaries for 52,449 IRA holders would be required to send an advance written authorization to the 2,996 financial institutions for IRAs⁶⁰ for exemptive relief for the transactions described in Section III(a)-(f).

The Department assumes 5.8 percent of authorizations for IRAs would be distributed by mail and that the authorization will include two pages. Accordingly, the Department estimates an annual cost burden of approximately \$2,312.⁶¹

⁵⁷ 67 FR 17263.

⁵⁸ 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%).

⁵⁹ United States Post Service, *First-Class Mail*, (2023), <https://www.usps.com/ship/first-class-mail.htm>.

⁶⁰ This includes 2,986 insurance agents and brokers, pension consultants, and insurance companies and 10 investment company underwriters servicing IRAs.

⁶¹ The material cost is estimated as: (52,449 IRA authorizations x 5.8 percent paper) x [\$0.66 + (\$0.05 x 2)] = \$2,312.

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Table 18: Material and Postage Cost Associated with the Written Authorization				
Activity	Year 1		Subsequent Years	
	Pages	Cost	Pages	Cost
Material and Postage Cost	2	\$2,312	2	\$2,312
Total	2	\$2,312	2	\$2,312

13.1.2. Provision of Disclosure Materials

Based on the estimates discussed above, the Department estimates that approximately 3,006 financial institutions⁶² would continue to utilize the exemption for exemptive relief for the transactions described in Section III(a)-(f) for each plan and IRA. In total, the Department estimates that 2,996 entities would prepare disclosures for plans and 2,996 entities would prepare disclosures for IRAs. The Department assumes that an in-house attorney will spend one hour of legal staff time drafting the disclosure for plans and one hour of legal staff time drafting the disclosure for IRAs. This results in an hour burden of 5,992 hours with an equivalent cost of \$954,765.⁶³

The Department assumes that this information will include seven pages with 94.2 percent of disclosures distributed electronically through traditional electronic methods at no additional burden, and the remaining 5.8 percent of disclosures will be mailed. Accordingly, the Department estimates an annual cost burden of approximately \$2,313.⁶⁴

Table 19: Material and Postage Cost Associated with the Disclosure				
	Year 1		Subsequent Years	
	Pages	Equivalent Burden Cost	Pages	Equivalent Burden Cost
Material and Postage Cost	7	\$2,313	7	\$2,313
Total	7	\$2,313	7	\$2,313

13.2. Cost Burden Associated with Satisfying Conditions for Transactions Described in

62 This includes 2,986 insurance agents and brokers, pension consultants, and insurance companies and 20 investment company underwriters servicing plans and IRAs.

63 The burden is estimated as: [2,996 financial institutions x (1 hour for plans + 1 hour for IRAs)] = 5,992 hours. A labor rate of approximately \$159.34 is used for a legal professional. The labor rate is applied in the following calculation: [2,996 financial institutions x (1 hour for plans + 1 hour for IRAs)] x \$159.34 per hour = \$954,765.

64 The material cost is estimated as: [(52,449 IRA authorizations + 10 investment company principal underwriters for IRAs) x 5.8 percent paper] x [\$0.66 + (\$0.05 x 7)] = \$2,313.

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Section III(g)

13.2.1. Mailing Cost for Disclosures Sent from Independent Producers to Retirement Investors

As discussed above, the Department assumes that 5.8 percent of disclosures would be mailed. Accordingly, of the estimated 52,449 affected retirement investors, 3,042 retirement investors are estimated to receive paper disclosures.⁶⁵ The Department assumes that this information would include seven pages, resulting in an annual cost burden for material and paper costs of \$3,072.⁶⁶

Activity	Year 1		Subsequent Years	
	Pages	Equivalent Burden Cost	Pages	Equivalent Burden Cost
Cost	7	\$3,072	7	\$3,072
Total	7	\$3,072	7	\$3,072

13.3. Summary

In summary, the total annual cost burden associated with this information collection is \$8,457.

- 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.**

The Department is proposing an amendment to PTE 84-24 that would exclude investment advice fiduciaries from the existing relief. The proposed amendment would also provide exemptive relief to fiduciaries who are Independent Insurance Producers that recommend

⁶⁵ This is estimated as: (52,449 retirement investors x 5.8%) = 3,042 paper disclosures.

⁶⁶ This is estimated as: 3,042 rollovers resulting in a paper disclosure x [\$0.66 postage + (\$0.05 per page x 7 pages)] = \$3,072.

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annuities from an unaffiliated Financial Institution to retirement investors if certain protective conditions are met. The Department expects that excluding investment advice fiduciaries would affect the number of affected entities under the current provisions. Additionally, the conditions proposed for independent insurance producers to qualify for relief would add additional information collections for these entities.

The analysis uses updated labor cost estimates. Costs of postage have been updated. Additionally, the number of plans have been updated to reflect updated Form 5500 data, and the number of IRAs have been updated to reflect new data from Cerulli and the Employee Benefit Research Institute. The estimated number of new plans has also been updated to reflect Form 5500 data. The estimated number of insurance agents has been updated to reflect the most current data. As a result, the number of responses has decreased by 138,665 responses, the hour burden has increased by 78,449 hours, and the cost burden has decreased by \$3,286.

- 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.

- 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 identified in Item 19.**

There are no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

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