

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995:
THE FINAL AMENDMENT TO
PROHIBITED TRANSACTION CLASS EXEMPTION 84-14**

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 Department of Labor (the Department) has the authority, pursuant to section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) and section 4975(c) (2) of the Internal Revenue Code of 1986 (the Code), to grant an exemption from all or part of the restrictions imposed, respectively, by ERISA section 406 and from the taxes imposed by Code sections 4975(a) and (b) by reason of Code section 4975(c)(1)(A) through (E).

Prohibited Transaction Exemption 84-14 (49 FR 9494, March 13, 1984, as corrected at 50 FR 41430, October 10, 1985) (the QPAM Exemption) was granted to permit various parties related to employee benefit plans to engage in transactions involving plan assets if, among other conditions, the assets are managed by a “qualified professional asset manager” (a QPAM).

In 2003, the Department published a proposed amendment to the QPAM Exemption based on feedback from financial institutions that indicated certain conditions were difficult to satisfy or needed clarification. In connection with the 2003 proposal which was ultimately granted in 2005 (70 FR 49305, August 23, 2005), it also appeared that many financial institutions were unaware that the class exemption did not provide relief for transactions by a QPAM in managing its own plans. The Department determined that such relief might be appropriate, and proposed an additional amendment in 2005, which would provide retroactive and transitional relief for a QPAM to manage the assets of its own plans.

On July 6, 2010, the Department adopted a final amendment to the QPAM Exemption (75 FR 38837, July 6, 2010) permitting a QPAM to manage an investment fund that contains the assets of its own plan or the plan of an affiliate of the QPAM. This relief is described in Part V of the QPAM Exemption.

The Department is now amending the QPAM Exemption in response to substantial changes in the financial services industry since 1984. These changes include industry consolidation caused by a variety of factors and an increasingly global reach for financial

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services institutions, both in their affiliations and in their investment strategies, including those for plan assets.

An amendment to the QPAM Exemption is needed to address ambiguity as to whether foreign convictions are included in the scope of the ineligibility provision under Section I(g). QPAMs today often have corporate or relationship ties to a broad range of entities, some of whom are located internationally. Additionally, some global financial service institutions are headquartered or have parent entities that reside in foreign jurisdictions. These entities may have significant control and influence over the operation and management of all entities within a large financial institution's organizational structure, including those operating as QPAMs for some plans. Additionally, the international ties of QPAMs come not just from their affiliations and parent entities, but also their investment strategies, including those involving plan assets.

The amendment also expands the circumstances that may lead to a QPAM's ineligibility under a new category of Prohibited Misconduct, which triggers ineligibility if a QPAM, its Affiliates, and owners of a five (5) percent or more interest in the QPAM enters into domestic non-prosecution or deferred prosecution agreements, or is found in a court's final judgment or court approved settlement to have Participated In conduct that intentionally violated the exemption's conditions or provided misleading information in connection with the exemption's conditions.

Through its administration of the individual exemption program, the Department also determined that certain aspects of the QPAM Exemption would benefit from a focus on mitigating potential costs and disruption to plans when a QPAM becomes ineligible for the exemptive relief as a result of ineligibility under Section I(g). The amendment would reduce the impact on plans by including a one-year transition period in order to avoid immediate and abrupt disruption to plans upon a QPAM's ineligibility. The transition period will help bridge the gap between the QPAM Exemption and the Department's administration of the individual exemption program in connection with Section I(g) ineligibility.

The Final Amendment also updates asset management and equity thresholds to current values in the definition of "QPAM" in Section VI(a). Some of the thresholds that establish the requisite independence upon which the QPAM Exemption is based have not been updated since 1984; the thresholds for registered investment advisers have not been updated since 2005. The amendment will standardize all the thresholds to current values using the Bureau of Labor Statistics Consumer Price index.

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

The discussion below summarizes the existing information requirements as well as the additional requirements from the Final Amendment. These information collections are

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designed to safeguard participants and beneficiaries in plans that are involved in transactions covered by the exemption.

Existing Information Requirements

Written Policies and Procedures for QPAM-sponsored Plans

The QPAM must adopt written policies and procedures designed to ensure compliance with the conditions of the exemption. Specifically, the policies and procedures must describe each of the following and the steps adopted by the QPAM to ensure compliance with these requirements:

- (1) The entity meets the definition of a QPAM;
- (2) The QPAM has discretionary authority or control with respect to the Plan assets involved in the transaction;
- (3) For transactions described in Part I, the transaction is not entered into with any person excluded from relief; and
- (4) For transactions described in Part III, the amount of space covered by a lease does not exceed the limitations and no commission or other fee is paid by the investment fund.

With respect to a QPAM-sponsored plan, since there is no independent person present who would be responsible for monitoring the actions of the QPAM with respect to its own plan, the Department included specific policy and procedures and audit requirements as conditions of Part V of the exemption. These information collections are designed to safeguard plans involved in transactions covered by the exemption and the participants and beneficiaries of such plans.

Audit Requirements for QPAM-sponsored Plans

An exemption audit is required to be conducted by an independent auditor, who has appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions, and so represents in writing. The exemption audit and report are required to consist of the following:

- (1) A review of the written policies and procedures adopted by the QPAM for consistency with each of the objective requirements of the exemption.
- (2) A test of a representative sample of the plan's transactions in order to make findings regarding whether the QPAM is in compliance with the written policies and procedures adopted by the QPAM and the objective requirements of the exemption.
- (3) A determination as to whether the QPAM has satisfied the definition of a QPAM under the exemption.
- (4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings.

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Following completion of the exemption audit, the auditor is required to issue a written report presenting its specific findings regarding the level of compliance with the policies and procedures adopted by the QPAM. The exemption audit and the written report are required to be completed within six months following the end of the year to which the audit relates. The audit could be used to verify compliance with the exemption if a field investigation of the QPAM were conducted.

Property Manager Written Guidelines

The existing information requirements for the QPAM Exemption contains requirements for written guidelines, when, in certain instances, a property manager acts on behalf of a QPAM, and for a written management agreement acknowledging that an institution is a fiduciary with respect to each plan that has retained the QPAM. Part V of the exemption requires that the QPAM develop written policies and procedures designed to ensure compliance with the conditions of the exemption and have an independent auditor conduct an annual exemption audit and issue an audit report to the plan.

Additional Information Collections Under the 2023 Final Amendment

Reporting Reliance on the QPAM Exemption

Section I(k) of the Final Amendment will require QPAMs to report their reliance on the QPAM Exemption by email to the Department. The email must include the legal name of the entity and any name the QPAM may be operating under. The notice requirement provides the Department with knowledge of the investment managers that are relying on the exemption and will serve as an important reminder to investment managers relying on the QPAM Exemption that the “QPAM” title and status are tied to an administrative prohibited transaction exemption that requires compliance with the exemption’s conditions.

Recordkeeping

The Final Amendment will require QPAMs to maintain records sufficient to determine whether the conditions of the exemption have been met for a given transaction. QPAMs also will be required to make those records available to the persons identified in Subsection VI(u)(2) for six years. The Department included this provision to make the QPAM Exemption consistent with other exemptions that generally impose a recordkeeping requirement on parties relying on an exemption and to ensure they will be able to demonstrate, and that the Department will be able to verify, compliance with the exemption conditions.

Notice to Plans

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Within 30 days after the Ineligibility Date, the QPAM must provide notice to the Department and each of its client Plans. This notice states that the QPAM will not restrict the client's ability to terminate or withdraw from its arrangement with the QPAM. Thus, the QPAM would not be permitted to impose any fees, penalties, or charges on client Plans in connection with the process of terminating or withdrawing from a QPAM-managed Investment Fund except for reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors.

Notice to the Department of Prohibited Misconduct and Foreign Non-Prosecution Agreements (NPAs) or Deferred Prosecution Agreements (DPAs)

The Department is including a requirement in this Final Amendment that if a QPAM, an Affiliate, or owner of a five percent or more interest in a QPAM Participates In Prohibited Misconduct or enters into a foreign equivalent of an NPA or DPA, the QPAM is required to provide notice to the Department within 30 days of the Ineligibility Date. The notice must include a description of the Prohibited Misconduct and the name of and contact information for the QPAM. Although the foreign equivalent of NPAs or DPAs is not an ineligibility trigger, the Final Amendment to Section I(g)(2) requires the QPAM to notify the Department when the QPAM, any Affiliate thereof, or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM executes a domestic or foreign equivalent NPA or DPA. This notice will give the Department the ability to take appropriate additional action in specific cases and will provide the Department with broader information about these practices as the QPAM exemption continues to be relied upon by parties in the future.

Requesting an Individual Exemption

A Conviction or Participation In Prohibited Misconduct could lead a QPAM to request an individual exemption. The burden for filing an application requesting an individual exemption is included in the ICR for the Exemption Procedure Regulation, which has been approved under OMB Control Number 1210-0060. Instead of amending that ICR, the estimated burden for applications from QPAMs becoming ineligible due to a Conviction or Participation In Prohibited Misconduct is included here.¹

For applications that reach the stage of publication of a proposed individual exemption in the *Federal Register*, a notice must be prepared and distributed to interested parties.

Additional Requirements for QPAMs Requesting an Individual Exemption

New Section I(j) indicates that a QPAM that is ineligible or anticipates that it will become ineligible due to an actual or possible Criminal Conviction or for Participating In

¹ In three years when control number 1210-0060 is extended, the increase in requests for individual exemptions will be captured in the historical data used for the renewal and the burden going forward will be captured there.

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Prohibited Misconduct may apply for an individual exemption from the Department to continue to rely on the relief provided in this exemption for a longer period than the one-year Transition Period. In such an event, an applicant should review the Department's most recently granted individual exemptions involving Section I(g) ineligibility. If an applicant requests the Department to exclude any term or condition from its exemption that is included in a recently granted individual exemption, the applicant must include a detailed statement with its exemption application explaining the reason(s) why the variation is necessary and in the interest and protective of affected Plans and their participants and beneficiaries.

Together, the Department believes these updates are necessary to ensure the QPAM Exemption remains in the interest of and protective of the rights of plans and their participants and beneficiaries.

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

QPAMs are required to report their reliance on the QPAM Exemption to the Department and to notify the Department of Prohibited Misconduct and Foreign NPAs or DPAs through email.

Notices to client Plans in connection with Section I(g) ineligibility may also be carried out electronically or in any manner the QPAM deems appropriate to ensure its clients receive the notice. The Department does not have sufficient data to estimate how often QPAMs will elect to send such notices electronically or by mail. For the purposes of this analysis, the Department estimates that 80 percent of these notices will be delivered by first-class mail.

- 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 A.2 above.**

The Department has attempted to avoid duplication of information collection requirements. The required policies and procedures and exemption audit are unique to the circumstances of the particular transactions covered by the exemption and do not replicate any other requirements by state or federal regulations. The exemption permits respondents to satisfy the requirements for written guidelines between the QPAM and property manager with documents that are already in existence due to ordinary and customary business practices, provided such documents contain the required disclosures.

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

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The exemption's minimum asset and equity thresholds are intended to ensure that the fiduciaries managing Plan assets are established institutions that are large enough not to be unduly influenced in their discretionary decision-making process by Parties in Interest.

To qualify as a QPAM, financial institutions must meet equity capital, net worth, and/or asset under management requirements. The Final Amendment will update these thresholds based on the price inflation since 1984, incrementally phasing in the thresholds from the Proposed Amendment over the period between 2024 and 2030. The Department lacks sufficient data to identify how many of the estimated asset managers providing services to Plans would be considered small entities. The Department believes that most are large entities, but some small entities may be affected.

The updates to the asset management and equity thresholds could cause some smaller QPAMs, near the threshold, to be ineligible to use the exemption. By spreading out the proposed increases occurring with this Final Amendment incrementally from 2024 through 2030, the impact of a sudden increase in the threshold will be greatly reduced. This longer implementation period will provide ample opportunity for QPAMs to prepare and be on notice that the thresholds are increasing in this manner and on an annual basis thereafter.

Additionally, small asset managers or start-ups can apply for individual exemptive relief to use the QPAM Exemption if they are detrimentally impacted by the Final Amendment's increase to the equity and asset thresholds, and the Department will consider those requests on a case-by-case basis.

The Final Amendment seeks to update the QPAM Exemption to account for changes in the financial services industry. These updates are necessary to protect Plans, their participants and beneficiaries, regardless of the size the QPAM they rely upon. As such, the Department's ability to craft specific alternatives for smaller QPAMs is limited.

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.

Without the current information collection, compliance with the exemption would be difficult to monitor and adequately safeguard plan assets as required under ERISA section 408(a) and Code section 4975(c)(2). The policies and procedures and accompanying audit of QPAM-sponsored plans is necessary to address the lack of independence of the QPAM with respect to its own plan. Independence of the QPAM from the plan is otherwise required under the exemption.

The requirements of this Final Amendment are only mandatory if financial institutions that are fiduciaries wish to utilize the QPAM Exemption by acting as a QPAM.

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Moreover, a notice requirement is only necessary when a QPAM has violated the eligibility provision.

Subsection I(i)(1) ensures an ineligible QPAM provides notice to its client Plans:

- (1) A statement that it failed to satisfy subsection I(g)(1);
- (2) A statement that it agrees to (a) indemnify the Plan for actual losses related to ineligibility, (b) not to restrict the ability of a client Plan to terminate or withdraw from its arrangement with the QPAM, (c) not to impose any fees, penalties, or charges on client Plans in connection with the process of terminating or withdrawing from an Investment Fund managed by the QPAM, and (d) not employ or knowingly engage any individual that participated in the conduct that is the subject of a Criminal Conviction or Prohibited Misconduct; and
- (3) an objective description of the facts and circumstances upon which the Criminal Conviction or Prohibited Misconduct is based.

This notice informs Plans of the failure and informs them of their protections. This requirement ensures that other plan fiduciaries have the information they need to prudently monitor the QPAM.

The new recordkeeping provision is necessary to ensure that all parties who rely upon the relief in the exemption can verify that the exemption's conditions are being satisfied. Eliminating this information collection is inconsistent with the fiduciary duties under ERISA and could leave Plans exposed to situations in which they do not know if they have prohibited transaction relief under ERISA and the Code for important plan transactions.

The recordkeeping requirement also requires that if the QPAM refuses to disclose information to a person on the basis that the information is exempt from disclosure, the QPAM must provide a written notice advising the requestor of the reasons for the refusal and that the Department may request such information by the close of the thirtieth (30th) day following the request. This requirement ensures that parties otherwise entitled to records are promptly informed when a refusal occurs while still providing the Department an opportunity to seek out such records before the need for the information becomes stale.

Under the Final Amendment, a QPAM that is ineligible or anticipates that it will become ineligible due to an actual or possible conviction may apply for an individual exemption from the Department to continue to rely on the relief provided in this exemption for a longer period than the one-year transition period. To reduce the burden in the application process, the Department requires that an applicant should review the Department's most recently granted individual exemptions involving Section I(g) ineligibility and include in its application a description of any term(s) or condition(s) it believes should be excluded in its exemption and a detailed explanation of the reason(s) such term(s) or condition(s) should be excluded. If this collection is not conducted, the process for requesting an

individual exemption for ineligible QPAMs will be less efficient, resulting in a longer application process.

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.**

The 6-year retention requirement conforms to the statute of limitations under ERISA section 413 for fiduciary breaches and the recordkeeping requirements in ERISA section 107. As a fiduciary, the QPAM is subject to sections 107 and 413.

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

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

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if

the collection-of-information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Department published the required 60-day notice soliciting comments on the IC in the preamble to the Notice of Proposed Rulemaking published in the Federal Register on July 27, 2022 (87 FR 45204). Additionally, the Department published its Initial Regulatory flexibility Analysis separately on September 16, 2022 (87 FR 56912). In total, the Department received 188 written comments during the open comment period from a variety of parties. Responses to all comments are discussed in the preamble of the Final Amendment. The comments can be found at <https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA07>.

The Department received several comments that specifically addressed the paperwork burden analysis of the IC contained in the Proposed Amendment. The Department took into account such public comments in developing the revised paperwork burden analysis for the Final Amendment discussed below.

Several comments on the Proposed Amendment stated that the Department underestimated the number of QPAMs in the economic analysis for the Proposed Amendment, with one commenter remarking that the actual number of QPAMs was likely 10 to 20 times larger than the Department's original estimate of 616 QPAMs.² Another commenter estimated that more than 90 percent of investment managers investing Plan assets rely on the QPAM Exemption. They recommended an alternative estimation methodology that involved multiplying the number of investment managers reported on the Form 5500 Schedule C by 90 percent.³ This results in an estimate of 3,876 QPAMs.⁴ After considering these comments, the Department has revised its estimates.

Additionally, several comments expressed concern that the proposal would decrease the number of entities acting as QPAMs due to the costs and risks associated with the proposed requirements to add penalty-free withdrawal and indemnification provisions for QPAMs that become ineligible due to a Section I(g) triggering event. In response, the Department moved these conditions into the one-year transition provision of the Final Amendment so that only QPAMs that experience an ineligibility trigger will be required to agree to these conditions with their client Plans.

² Comment submitted by SIFMA on 11 October 2022. (See <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA07/00009.pdf>).

³ Comment submitted by the Seward and Kissel. (See <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA07/00025.pdf>).

⁴ In the 2020 Form 5500, the Department identified 4,307 unique investment managers providing services under service code 28 (investment management) to Plans. This is estimated as: $4,307 \times 90\% = 3,876$. As discussed later in this section, small Plans do not file the Form 5500 Schedule C, so relying solely on the Form 5500 Schedule C will likely underestimate the number of QPAMs.

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A few commenters stated that the Department underestimated the number of Plans that have hired a QPAM. Commenters remarked that investment managers may manage assets for hundreds to thousands of Plans, while one commenter stated that the largest investment managers manage assets for between 2,000 and 4,000 client Plans.⁵ Another commenter estimated that the average number of contracts per QPAM is 14,180 with a median of 14,500 based on the number of QPAMs that are members of its association.⁶ In response to these comments, the Department conducted further analysis on QPAM-Plan relationships and revised its estimates.

The Department received several comments that the Department underestimated the cost associated with the recordkeeping requirement in the economic analysis for the Proposed Amendment. Several commenters expressed concern that the requirements in the Proposed Amendment were vague or confusing. In response to these comments, the Department has provided additional guidance on recordkeeping in the preamble of the Final Amendment to alleviate potential confusion. The additional guidance clarifies that recordkeeping should be based on a “facts and circumstances” test. After further consideration, the Department maintains that these requirements are consistent with common business practices for entities relying on the QPAM Exemption.

In the proposal, the Department included a requirement for all QPAMs to amend their Written Management Agreements (WMAs) with client Plans to include:

- (1) A provision providing that in the event the QPAM, its Affiliates, and five percent or more owners engage in conduct resulting in a Criminal Conviction or for Participating in Prohibited Misconduct, the QPAM would not restrict its client Plan's ability to terminate or withdraw from its arrangement with the QPAM;
- (2) A provision requiring the QPAM to indemnify, hold harmless, and promptly restore actual losses to each client Plan for any damages directly resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such QPAM to remain eligible for relief under the QPAM Exemption as a result of conduct that leads to a Criminal Conviction or for Participating in Prohibited Misconduct; and
- (3) A provision requiring the QPAM to agree not to employ or knowingly engage any individual that participated in the conduct that is the subject of a Criminal Conviction or for Participating in Prohibited Misconduct.

In its estimate, the Department assumed that amendments to WMAs would be uniform across client Plans, and accordingly, the Department estimated that the associated costs would be relatively small. However, several commenters disagreed with this assumption, stating that the necessary amendments would differ by the type of relationship and investment strategy. Some commenters noted that such amendments would require QPAMs to open contract negotiations with each QPAM client Plan, potentially leading to

⁵ Comment submitted by SIFMA on 11 October 2022. (See <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA07/00009.pdf>).

⁶ Comment submitted by the American Bankers Association on 6 January 2023. (See <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA07-2/00142.pdf>).

a time-consuming process. Other commenters indicated that some QPAMs would incur costs associated with consulting outside counsel on these provisions and contract negotiations. Further, several of the commenters stated that amending necessary contracts would not be possible within the 60-day effective period proposed.

Based on the feedback from commenters, the Department removed the requirement to amend WMAs. Instead, the Final Amendment requires QPAMs to notify and agree to these provisions with Plans in the Notice to Plans required within 30 days of the Ineligibility Date. The Department determined the approach in the Final Amendment provides similar protection to Plans while significantly reducing the cost burden.

9. Explain any decision to provide any payments or gifts 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.

A QPAM may refuse to disclose information in connection with the recordkeeping provision if it is otherwise exempt from disclosure, such as privileged trade secrets or information identifying private information of individuals other than the requestor. This is consistent with federal privacy laws and a fiduciary's duties under ERISA.

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.

This information collection does not ask questions of a sensitive nature as described in the question.

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.**

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- **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.**

To estimate the number of QPAMs, the Department identified the number of unique entities that provided investment management services in the 2020 Form 5500 Schedule C dataset.⁷ This analysis yielded 5,702 unique investment managers. Small Plans are not required to file a Schedule C; therefore, in order to account for asset managers used by small Plans, the Department looked at the Form 5500 Schedule C that were voluntarily filed by small Plans. Among the 1,267 small Plans that filed a Schedule C, the Department found 10 unique asset managers that were not used by large Plans. Applying this ratio to the universe of small Plans, the Department estimates that 5,153 additional unique QPAMs may be used by small Plans.⁸ Therefore the Department estimates that 10,855 unique QPAMs could be affected by the Final Amendment.⁹

The Department assumes that different types of personnel will be responsible for satisfying the requirements in the Final Amendment. To account for the labor costs associated with different types of personnel, the Department estimates the hourly labor costs for each type of personnel. In the analysis below the Department applies the hourly labor costs of \$63.45 for clerical personnel, \$159.34 for internal legal professionals, \$190.63 for financial managers, and \$535.85 for outside legal professionals.¹⁰

QPAM-Sponsored Plans – Policies and Procedures – Section V(b)

The existing information collection requirements of the QPAM Exemption require in-house QPAMs to develop written policies and procedures designed to ensure compliance with the conditions of the exemption. Existing in-house QPAMs will have already prepared their policies and procedures in accordance with the QPAM Exemption.

⁷ The Department included service providers that were listed under service codes 28 (investment management), 51 (investment management fees paid directly by the plan), or 52 (investment management fees paid indirectly by the plan).

⁸ If the ratio of 10 unique providers for 1,267 small Plans is held constant for the whole universe of small plans, then that would indicate a further $(10/1,267) \times 652,934 = 5,153$ additional unique QPAMs used exclusively by small Plans.

⁹ The number of unique QPAMs is calculated as: 5,702 QPAMs found on the 2020 Form 5500 Schedule C + 5,153 QPAMs estimated as servicing exclusively small Plans = 10,855 QPAMs.

¹⁰ Labor costs for clerical personnel, accountants or auditors, internal legal professionals, and financial managers are based off internal Department of Labor calculations 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-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf>.

Labor costs for outside legal professionals is calculated as a composite weighted average based on the Laffey Matrix for Wage Rates for the time period 6/01/2022-5/31/2023, see <http://www.laffeymatrix.com/see.html>. The labor cost is estimated as: $(40\% \times \$413) + (35\% \times \$508) + (15\% \times \$733) + (10\% \times \$829) = \$535.85$.

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However, some in-house QPAMs may also update their policies and procedures in a given year.

The latest Form 5500 estimates from the year 2020 indicate that there are approximately 50 in-house QPAMs.¹¹ The Department estimates that the burden associated with preparing policies and procedures will affect ten percent of all in-house QPAMs, including all new in-house QPAMs and some existing in-house QPAMs. Therefore, the Department estimates that about five QPAMs will need to update their policies and procedures each year.¹² The Department estimates that the burden associated with new QPAMs meeting the policies and procedures requirements of the QPAM Exemption will be five hours with an equivalent cost of \$797.¹³

QPAM-Sponsored Plans – Independent Audit – Section V(c)

Additionally, the exemption requires in-house QPAMs to engage an independent auditor to conduct an annual exemption audit and issue an audit report to the Plan. The Department estimates that each of the 50 in-house QPAMs will use in-house legal professionals, financial managers, and clerical time to provide documents and respond to questions from the auditor.

Each exemption audit is assumed to require about 5 hours of a legal professional's time, 13 hours of a financial manager's time, and six hours of clerical time for each of the 50 QPAMs to provide needed materials for the audit. This results in a burden estimate of 1,200 hours with an equivalent cost of \$182,780.¹⁴

Property Manager Written Guidelines – Section I(c)

The exemption also contains a requirement for written guidelines when, in certain instances, a property manager acts on behalf of a QPAM. In this case, the QPAM is required to establish and administer the guidelines. Because agreements between an institution and a property manager are customary, the Department estimates that this requirement will impose no additional burden on QPAMs.

Reporting Reliance on the QPAM Exemption – Subsection I(g)(1)

¹¹ The Department estimated the number of in-house QPAMs by examining Schedule C of the 2020 Form 5500. Small Plans are not required to file the Schedule C. This estimate could underestimate the number of in-house QPAMs with small Plans, but the Department believes that in-house QPAMs with small Plans would be rare. In order for this to occur, an investment manager would have to simultaneously be large enough to qualify as a QPAM and small enough to qualify as a small plan for the Form 5500-SF.

¹² This is estimated as: 50 in-house QPAMs x 10% = 5.

¹³ The burden is estimated as follows: (5 QPAMs x 1 hour) = 5 hours. A labor rate of \$159.34 is used for legal counsel and applied in the following calculation: (5 QPAMs x 1 hour x \$159.34) = \$797.

¹⁴ The burden is estimated as follows: (50 x 5 hours) + (50 x 13 hours) + (50 x 6 hours) = 1,200 hours. A labor rate of \$159.34 is used for legal counsel, a labor rate of \$190.63 is used for a financial professional, and a labor rate of \$63.45 is used for a clerical worker. These labor rates are applied in the following calculation: (50 x 5 hours x \$159.34) + (50 x 13 hours x \$190.63) + (50 x 6 hours x \$63.45) = \$182,780.

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QPAMs will have to report their reliance on the QPAM Exemption via email to QPAM@dol.gov. This notification would occur only once for most QPAMs. The information required under subsection I (g)(1) is limited to the legal name of the entity relying upon the exemption and any name the QPAM may be operating under. The Department expects it will take 15 minutes, on average, for each QPAM to both prepare and send this electronic notification. This burden is estimated to amount to 2,713.8 hours with an equivalent cost of \$172,187 in the first year.¹⁵ In subsequent years, new QPAMs or QPAMs that change their name will be required to send the notification. The Department does not have data on how many QPAMs will be required to send this notification in subsequent years. For the purposes of this analysis, the Department assumes that one percent of QPAMs, or 109 QPAMs, will either be new or have a name change.¹⁶ Accordingly, this is estimated to amount to 27.3 hours, with an equivalent cost of \$1,729.¹⁷

If a QPAM fails to report its reliance on the exemption within 90 days, the QPAM must send a notice to the Department within an additional 90 days, indicating its reliance on the exemption or name change, as well as an explanation for the failure to provide notice. The Department does not have information on what percent of QPAMs is likely to fail to report reliance. For the purposes of this analysis, the Department estimates that two percent of QPAMs required to report will fail to report reliance each year, or 217 QPAMs in the first year and two QPAMs in subsequent years.¹⁸ The Department estimates that preparing the notice will require a legal professional 30 minutes. The burden is estimated to be 108.5 hours with an equivalent cost of approximately \$17,288 in the first year¹⁹ and one hour with an equivalent cost of approximately \$159 in subsequent years.²⁰ The cost for a clerical professional to draft and send an email notifying the Department of its reliance or name change is included in the cost estimate of sending notice of reliance above.

Recordkeeping – Section VI(u)

The amendment adds a new recordkeeping provision that will apply to all 10,855 QPAMs. Due to the fiduciary status of QPAMs and the existing regulatory environment in which they exist, the Department assumes that QPAMs already maintain many of the required records as part of their regular business practices. In addition, the recordkeeping requirements correspond to the six-year period in ERISA sections 107 and 413. The

¹⁵ The hour burden is estimated as: 10,855 QPAMs x 15 minutes = 2,713.8 hours. The labor cost of \$63.45 is applied for a clerical worker. The equivalent cost is estimated as: 10,855 QPAMs x 15 minutes x \$63.45 = \$172,187.

¹⁶ The number of QPAMs is estimated as: 10,855 QPAMs x 1% = 108.6, rounded to 109.

¹⁷ The hour burden is estimated as: 109 QPAMs x 15 minutes = 27.3 hours. The labor cost of \$63.45 is applied for a clerical worker. The equivalent cost is estimated as: 109 QPAMs x 15 minutes x \$63.45 = \$1,729.

¹⁸ The number of QPAMs in the first year is estimated as: 10,855 x 2% = 217.1, rounded to 217. The number of QPAMs in subsequent years is estimated as: 109 QPAMs x 2% = 2.2, rounded to 2.

¹⁹ The hour burden is estimated as: 217 QPAMs x 0.5 hour = 108.5 hours. The labor cost of \$159.34 is applied for an internal legal professional. The equivalent cost is estimated as: 108.5 hours x \$159.34 = \$17,288, rounded to \$17,000.

²⁰ The hour burden is estimated as: 2 QPAMs x 0.5 hour = 1 hour. The labor cost of \$159.34 is applied for an internal legal professional. The equivalent cost is estimated as: 1 hour x \$159.34 = \$159.34, rounded to \$159.

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Department expects that the recordkeeping requirement would impose, on average, a burden of one hour per QPAM. Therefore, the Department estimates that the overall hour burden of this recordkeeping requirement for all 10,855 QPAMs will be 10,855 hours with an equivalent cost of \$688,750.²¹

If a QPAM refuses to disclose information to any of the parties listed in Section VI(u) on the basis that such information is exempt from disclosure, the QPAM must provide a written notice advising the requestor of the reason for the refusal and that the Department may request such information. The Department does not have data on how often such a refusal is likely to occur. For the purposes of this illustration, the Department estimates that two percent of QPAMs, or 217 QPAMs, will refuse to disclose requested information annually. The Department estimates that drafting a written notice advising the requestor of the reason for the refusal and that the Department may request such information will require an internal legal professional to spend one hour, resulting in a burden of 217 hours with an equivalent cost of approximately \$34,577.²²

Notice to Plans – Subsection I(ij)(1)

Within 30 days after the Ineligibility Date, the QPAM must provide notice to the Department and each of its client Plans.

The number of QPAMs affected in any given year is a function of the number of convictions covered by Section I(g) and the number of entities within a corporate family operating as QPAMs. As shown by past experience, this number is likely to fluctuate between years. Based on the Department's experience, the Department estimates that, on average, eight QPAMs each year will lose eligibility due to a Criminal Conviction.²³ The Department's expansion of the ineligibility provision to include Prohibited Misconduct under Subsection I(g)(1)(B) and Section VI(s) will likely increase the number of QPAMs that become ineligible under Section I(g). For the purposes of this analysis, the Department assumes four additional QPAMs will become ineligible. Accordingly, in total, the Department estimates that 12 QPAMs, on average, will become ineligible due to a Criminal Conviction or Prohibited Misconduct annually.

In its analysis of the 2020 Form 5500, the Department estimates that there are 547,546 client Plans with QPAM relationships, resulting in an average of 50 client Plans per QPAM.²⁴ The Department estimates that a legal professional at each ineligible QPAM

²¹ The hour burden is estimated as: 10,855 QPAMs x 1 hour = 10,855 hours. The labor cost of \$63.45 is applied for clerical personnel. The equivalent cost is estimated as: 10,855 QPAMs x 1 hour x \$63.45 = \$688,750.

²² The number of QPAMs is estimated as 10,855 x 2% = 217 QPAMs. The hour burden is estimated as: 217 QPAMs x 1 hour = 217 hours. The labor cost of \$159.34 is applied for a legal professional. The equivalent cost is estimated as: 217 QPAMs x 1 hour x \$159.34 = \$34,577.

²³ The Department did not include in this estimate any of the possible QPAMs that have remote relationships with a convicted entity that are identified in the individual exemptions as "Related QPAMs." The Department has never received comments, questions, requests for guidance, or separate individual exemption applications from any entities that would fall into that definition, and therefore, assumes such entities are not operating as QPAMs.

²⁴ In the 2020 Form 5500, the Department found 64,216 QPAM relationships amongst a total of 87,559 Plans that filed the Form 5500 Schedule C. To estimate the number of total Plans with QPAM relationships, the Department

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will spend one hour preparing the notice and two minutes for clerical personnel will spend two minutes preparing each notice to be sent to a Plan by mail, resulting in an hour burden of 22 hours with an equivalent cost of \$1,971.²⁵

Notice to the Department of Prohibited Misconduct and Foreign NPAs or DPAs

If a QPAM, an Affiliate, or owner of a five (5) percent or more interest in a QPAM Participates In Prohibited Misconduct or enters into a foreign equivalent of an NPA or DPA, the QPAM is required to provide notice to the Department. The Department does not have data on how frequently these entities enter into such agreements or Participate in Prohibited Misconduct but assumes it will be infrequent. For the purposes of this analysis, the Department assumes that four instances of Prohibited Misconduct or agreements each year will require such a notice. The Department estimates that this will result in a cost of approximately \$340.²⁶

Requesting an Individual Exemption – Section I(j)

A Conviction or Participating In Prohibited Misconduct, could lead a QPAM to request an individual exemption. The burden for filing an application requesting an individual exemption is included in the ICR for the Exemption Procedure Regulation, which has been approved under OMB Control Number 1210-0060. Instead of amending that ICR, the estimated burden for applications from QPAMs becoming ineligible due to a Conviction or for Participating In Prohibited Misconduct is included here.²⁷

The Department estimates that there will, on average, be one application each year related to Convictions or Prohibited Misconduct, affecting four QPAMs. The Department estimates that gathering and preparing the information for the application will take, on average, 20 hours of in-house legal professional labor and 20 hours of clerical personnel labor at each QPAM. The Department assumes that the application will be prepared by an outside legal professional specializing in such matters. The Department estimates that it will require 15 hours, on average, of outside legal professional labor to prepare the

applies this ratio to the entire Plan universe. This assumption implies that small plans have the same number of relationships with QPAMs as the larger plans that file Schedule C. The number of total Plans with QPAM relationships is estimated as: $(64,216/87,559) \times 746,610 = 547,566$ Plan client relationships. This equates to an average of 50 clients per QPAM, calculated as: $(547,566 \text{ Plan client relationships}) / (10,855 \text{ unique QPAMs}) = 50.44$ Plan clients per QPAM, rounded to 50.

²⁵ The hour burden is estimated as: $(12 \text{ QPAMs} \times 0.5 \text{ hours of professional legal time}) + (12 \text{ QPAMs} \times 50 \text{ Plans} \times 80\% \text{ of notices being mailed} \times 2/60 \text{ hours of clerical personnel time}) = 22 \text{ hours}$. The labor cost of \$159.34 is applied for a legal professional, and the labor cost of \$63.45 is applied for clerical personnel. The equivalent cost is estimated as: $(12 \text{ QPAMs} \times 0.5 \text{ hours of professional legal time} \times \$159.34) + (12 \text{ QPAMs} \times 50 \text{ Plans} \times 80\% \text{ of notices being mailed} \times 2/60 \text{ hours of clerical personnel time} \times \$63.45) = \$1,971$.

²⁶ If preparing and sending each notice were to require an in-house legal professional 30 minutes and a clerical staff 5 minutes. The hour burden is estimated as: $4 \text{ notices} \times (30 \text{ minutes} + 5 \text{ minutes}) = 2 \text{ hour and } 20 \text{ minutes}$. The labor cost of \$159.34 is applied for an in-house legal professional, and a labor cost of \$63.45 is applied for clerical staff. The equivalent cost is estimated as: $4 \text{ notices} \times [(30 \text{ minutes} \times \$159.34) + (5 \text{ minutes} \times \$63.45)] = \$340$. The Department assumes such notices will be sent electronically and will not create material or postage costs.

²⁷ In three years when control number 1210-0060 is extended, the increase in requests for individual exemptions will be captured in the historical data used for the renewal and the burden going forward will be captured there.

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application. For the four QPAMs losing eligibility due to Prohibited Misconduct, this will result in an hour burden of 175 hours with an equivalent cost of \$25,861.²⁸

For applications that reach the stage of publication of a proposed individual exemption in the *Federal Register*, a notice must be prepared and distributed to interested parties. Similarly, if the exemption is ultimately granted, each of these four QPAMs will be required to send an objective description of the facts and circumstances upon which the misconduct is based to each client Plan. The Department estimates that approximately 200 notices will be distributed annually, corresponding to an average of 50 client Plans for each of the four QPAMs estimated to be affected by the application. The Department estimates that it will take 10 minutes for clerical personnel to distribute the notices and objective descriptions, resulting in an hour burden of 33 hours with an equivalent cost of approximately \$2,116.²⁹

Additional Requirement for QPAMs Requesting an Individual Exemption

New Section I(j) indicates that a QPAM that is ineligible or anticipates that it will become ineligible due to an actual or possible Criminal Conviction or for Participating In Prohibited Misconduct may apply for an individual exemption from the Department to continue to rely on the relief provided in this exemption for a longer period than the one-year winding-down period. In such an event, an applicant should review the Department's most recently granted individual exemptions involving Section I(g) ineligibility. If an applicant requests the Department to exclude any term or condition from its exemption that is included in a recently granted individual exemption, the applicant must include a detailed statement with its exemption application explaining the reason(s) why the variation is necessary and in the interest and protective of affected Plans and their participants and beneficiaries. For the three applications covering the 12 ineligible QPAMs, the burden is estimated to be 9 hours with an equivalent cost of \$4,823.³⁰

Such applicants also should provide detailed information in their applications quantifying the specific cost or harms in dollar amounts, if any, Plans would suffer if a QPAM could not rely on the exemption after the Transition Period, including the specific dollar amounts of investment losses resulting from foregone investment opportunities and any evidence supporting the proposition that investment opportunities would only be available to Plans on less advantageous terms. All three applications will need to include

²⁸ The hour burden is estimated as: [4 QPAMs x (20 hours from an in-house legal professional + 20 hours for clerical personnel)] + (1 application x 15 hours from an external legal professional) = 175 hours. The labor cost of \$159.34 is applied for an in-house legal professional, a labor cost of \$63.45 is applied for clerical personnel, and a labor cost of \$535.85 is applied for an outside legal professional. The equivalent cost is estimated as: (4 QPAMs x 20 hours x \$159.34) + (4 QPAMs x 20 hours x \$63.45) + (1 application x 15 hours x \$535.85) = \$25,861.

²⁹ The hour burden is estimated as: 4 QPAMs x 50 Plans per QPAM x (10/60) hours = 33 hours. A labor cost of \$63.45 is applied for clerical personnel. The equivalent cost is estimated as: 4 QPAMs x 50 Plans per QPAM x (10/60) hours x \$63.45 = \$2,116, rounded to \$2,100.

³⁰ The hour burden is estimated as: (3 applications x 3 hours) = 9 hours. A labor cost of \$535.85 is applied for an outside legal professional. The equivalent cost is estimated as: (3 application x 3 hours x \$535.85 outside legal professional labor) = \$4,823.

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this information if they submit an exemption application. The Department estimates that it will require four hours of a financial professional’s time to prepare such information. Therefore, for the three applications covering the estimated 12 QPAMs losing eligibility annually, the cost associated with the additional requirement results in an hour burden of 12 hours with an equivalent cost of \$2,288.³¹

Summary

In summary, the Department estimates that the total hour burden imposed by the existing exemption and Proposed Amendment is approximately 15,353 hours in the first year and 12,559 hours in subsequent years. The total equivalent annual cost of this hour burden is \$1,133,778 in the first year and \$946,191 in subsequent years. The three-year average hour burden is 13,490 hours with an equivalent cost of \$1,008,720.

Table 1 - Estimated Annualized Respondent Hour Burden and Equivalent Cost of Hour Burden							
Activity	No. of Respondents	No. of Responses per Respondent	Total Responses	Average Burden (Hours)	Total Burden (Hours)	Hourly Wage Rate	Equivalent Cost of Hour Burden
First Year Hour Burden and Equivalent Cost							
<i>Policies and Procedures (In-House QPAMs)</i>							
Legal Professional	5	1	5	1	5	\$159.34	\$797
<i>Annual Audit (In-House QPAMs)</i>							
Legal Professional	50	1	50	5	250	\$159.34	\$39,835
Financial Professional	50	1	50	13	650	\$190.63	\$123,910
Clerical Worker	50	1	50	6	300	\$63.45	\$19,035
<i>Notice to Plans</i>							
Legal Professional	12	1	12	30/60	6	\$159.34	\$956
Clerical Worker	12	40	480	2/60	16	\$63.45	\$1,015
<i>Recordkeeping</i>							
Clerical Worker	10,855	1	10,855	1	10,855	\$63.45	\$688,750
<i>Refusal to Disclose Requested Information</i>							
Legal Professional	217	1	217	1	217	\$159.34	\$34,577
<i>Reporting Reliance on the QPAM Exemption</i>							
Clerical Worker	10,855	1	10,855	15/60	2,714	\$63.45	\$172,187
<i>Notice of Failure to Provide Notice</i>							
Legal Professional	217	1	217	30/60	109	\$159.34	\$17,288
<i>Notice to the Department of Prohibited Misconduct and Foreign NPA or DPA</i>							
Legal Professional	4	1	4	30/60	1	\$159.34	\$319

³¹ The hour burden is estimated as: 3 applications x 4 hours = 12 hours. At an hourly rate of \$190.63 is applied for financial professional. The equivalent cost is estimated as: (3 applications x 4 hours x \$190.63 financial professional rate) = \$2,288.

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Clerical Worker	4	1	4	5/60	0	\$63.45	\$21
Requesting an Individual Exemption							
<i>Preparation</i>							
Legal Professional	4	1	4	20	80	\$159.34	\$12,747
Clerical Worker	4	1	4	20	80	\$63.45	\$5,076
Outside Legal Professional	1	1	1	15	15	\$535.85	\$8,038
<i>Notice Distribution</i>							
Clerical Worker	4	50	200	5/60	17	\$63.45	\$1,058
<i>Objective Description Distribution</i>							
Clerical Worker	4	50	200	5/60	17	\$63.45	\$1,058
<i>Additional Requirement Preparation</i>							
Outside Legal Professional	3	1	3	3	9	\$535.85	\$4,823
Financial Professional	3	1	3	4	12	\$190.63	\$2,288
Total for First Year	10,855	2.13	23,093		15,353		\$1,133,778
Subsequent Year Hour Burden and Equivalent Cost							
Activity	No. of Respondents	No. of Responses per Respondent	Total Responses	Average Burden (Hours)	Total Burden (Hours)	Hourly Wage Rate	Equivalent Cost of Hour Burden
<i>Policies and Procedures (In-House QPAMs)</i>							
Legal Professional	5	1	5	1	5	\$159.34	\$797
<i>Annual Audit (In-House QPAMs)</i>							
Legal Professional	50	1	50	5	250	\$159.34	\$39,835
Financial Professional	50	1	50	13	650	\$190.63	\$123,910
Clerical Worker	50	1	50	6	300	\$63.45	\$19,035
<i>Notice to Plans</i>							
Legal Professional	12	1	12	30/60	6	\$159.34	\$956
Clerical Worker	12	40	480	2/60	16	\$63.45	\$1,015
<i>Recordkeeping</i>							
Clerical Worker	10,855	1	10,855	1	10,855	\$63.45	\$688,750
<i>Refusal to Disclose Requested Information</i>							
Legal Professional	217	1	217	1	217	\$159.34	\$34,577
<i>Reporting Reliance on the QPAM Exemption</i>							
Clerical Worker	109	1	109	15/60	27	\$63.45	\$1,729
<i>Notice of Failure to Provide Notice</i>							
Legal Professional	2	1	2	30/60	1	\$159.34	\$159
<i>Notice to the Department of Prohibited Misconduct and Foreign NPAs or DPAs</i>							

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Legal Professional	4	1	4	30/60	1	\$159.34	\$319
Clerical Worker	4	1	4	5/60	0	\$63.45	\$21
Requesting an Individual Exemption							
<i>Preparation</i>							
Legal Professional	4	1	4	20	80	\$159.34	\$12,747
Clerical Worker	4	1	4	20	80	\$63.45	\$5,076
Outside Legal Professional	1	1	1	15	15	\$535.85	\$8,038
<i>Notice Distribution</i>							
Clerical Worker	4	50	200	5/60	17	\$63.45	\$1,058
<i>Objective Description Distribution</i>							
Clerical Worker	4	50	200	5/60	17	\$63.45	\$1,058
<i>Additional Requirement Preparation</i>							
Outside Legal Professional	3	1	3	3	9	\$535.85	\$4,823
Financial Professional	3	1	3	4	12	\$190.63	\$2,288
Total (Three Year Average)	10,855	1.45	15,786		13,490		\$1,008,720

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.**

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- **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.**

To estimate the number of QPAMs, the Department identified the number of unique entities that provided investment management services in the 2020 Form 5500 Schedule C dataset.³² This analysis yielded 5,702 unique investment managers. Small Plans are not required to file a Schedule C; therefore, in order to account for asset managers used by small Plans, the Department looked at the Form 5500 Schedule C that were voluntarily filed by small Plans. Among the 1,267 small Plans that filed a Schedule C, the Department found 10 unique asset managers that were not used by large Plans. Applying this ratio to the universe of small Plans, the Department estimates that 5,153 additional unique QPAMs may be used by small Plans.³³ Therefore the Department estimates that 10,855 unique QPAMs could be affected by the Final Amendment.³⁴

The Final Amendment requires QPAMs to distribute various notices to client Plans after an ineligibility trigger, as described below. The Department does not have sufficient data to estimate how many QPAMs will elect to send such notices electronically or by mail. For the purposes of this analysis, the Department estimates that 80 percent of these notices will be delivered by first-class mail at a first-class mail postage rate of \$0.68.³⁵

Notice to Plans – Subsection I(i)(1)

Within 30 days of the Ineligibility Date, the QPAM must provide notice to the Department and each of its client Plans. The number of QPAMs affected in any given year is a function of the number of convictions covered by Section I(g) and the number of entities within a corporate family operating as QPAMs. As shown by past experience, this number is likely to fluctuate between years. Based on the Department’s experience, the Department estimates that, on average, eight QPAMs each year will lose eligibility due to a Criminal Conviction.³⁶ The Department’s expansion of the ineligibility provision to include Prohibited Misconduct under Subsection I(g)(1)(B) and Section VI(s) will

³² The Department included service providers that were listed under service codes 28 (investment management), 51 (investment management fees paid directly by the plan), or 52 (investment management fees paid indirectly by the plan).

³³ If the ratio of 10 unique providers for 1,267 small Plans is held constant for the whole universe of small plans, then that would indicate a further $(10/1,267) \times 652,934 = 5,153$ additional unique QPAMs used exclusively by small Plans.

³⁴ The number of unique QPAMs is calculated as: 5,702 QPAMs found on the 2020 Form 5500 Schedule C + 5,153 QPAMs estimated as servicing exclusively small Plans = 10,855 QPAMs.

³⁵ USPS. “Mailing & Shipping Prices.” (2023). <https://www.usps.com/business/prices.htm>.

³⁶ The Department did not include in this estimate any of the possible QPAMs that have remote relationships with a convicted entity that are identified in the individual exemptions as “Related QPAMs.” The Department has never received comments, questions, requests for guidance, or separate individual exemption applications from any entities that would fall into that definition, and therefore, assumes such entities are not operating as QPAMs.

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likely increase the number of QPAMs that become ineligible under Section I(g). For the purposes of this analysis, the Department assumes four additional QPAMs will become ineligible. Accordingly, in total, the Department estimates that 12 QPAMs, on average, will become ineligible due to a Criminal Conviction or Prohibited Misconduct annually.

In its analysis of the 2020 Form 5500, the Department estimates that there are 547,546 client Plans with QPAM relationships, resulting in an average of 50 client Plans per QPAM.³⁷ The Department assumes that notices sent by mail will require two pages of paper each, resulting in a material and postage cost of approximately \$375.³⁸

The Department believes the cost of sending this notice to the Department will be negligible because the QPAM will have already prepared and sent the notice to client Plans, and the notice to the Department is required to be submitted electronically.

Requesting an Individual Exemption – Section I(j)

A Conviction or Participating in Prohibited Misconduct could lead a QPAM to request an individual exemption. The burden for filing an application requesting an individual exemption is included in the ICR for the Exemption Procedure Regulation, which has been approved under OMB Control Number 1210-0060. Instead of amending that ICR, the estimated burden for applications from QPAMs receiving an Ineligibility Notice due to Prohibited Misconduct is included here.³⁹ The Department estimates that there will, on average, be one application each year related to Prohibited Misconduct, affecting four QPAMs.

For applications that reach the stage of publication of a proposed individual exemption in the *Federal Register*, a notice must be prepared and distributed to interested parties. Similarly, if the exemption is ultimately granted, each of these four QPAMs will be required to send an objective description of the facts and circumstances upon which the misconduct is based to each client Plan. The Department estimates that approximately 200 notices will be distributed annually, corresponding to an average of 50 client Plans for each of the four QPAMs estimated to be affected by the application. The Department estimates material and mailing costs for all of these notices totals approximately \$378.⁴⁰

³⁷ In the 2020 Form 5500, the Department found 64,216 QPAM relationships amongst a total of 87,559 Plans that filed the Form 5500 Schedule C. To estimate the number of total Plans with QPAM relationships, the Department applies this ratio to the entire Plan universe. This assumption implies that small plans have the same number of relationships with QPAMs as the larger plans that file Schedule C. The number of total Plans with QPAM relationships is estimated as: $(64,216/87,559) \times 746,610 = 547,566$ Plan client relationships. This equates to an average of 50 clients per QPAM, calculated as: $(547,566 \text{ Plan client relationships}) / (10,855 \text{ unique QPAMs}) = 50.44$ Plan clients per QPAM, rounded to 50.

³⁸ The material and postage cost are estimated as: $(12 \text{ QPAMs} \times 50 \text{ Plans} \times 80\% \text{ of notices being mailed}) \times [(2 \text{ pages} \times \$0.05 \text{ per page}) + \$0.68] = \$375$.

³⁹ In three years when control number 1210-0060 is extended, the increase in requests for individual exemptions will be captured in the historical data used for the renewal and the burden going forward will be captured there.

⁴⁰ The Department further assumes that notices and the descriptions of facts and circumstances will be delivered separately, comprising 15 and 5 pages, respectively. With a printing cost of \$0.05 per page and a mailing cost of \$0.68 per notice, the Department estimates the mailing cost as $4 \text{ QPAMs} \times 50 \text{ Plans per QPAM} \times 80\% \text{ of notices}$

QPAM-Sponsored Plans – Independent Audit – Section V(c)

Additionally, the exemption requires in-house QPAMs to engage an independent auditor to conduct an annual exemption audit and issue an audit report to the Plan. The Department estimates that each of the 50 in-house QPAMs will use in-house legal professionals, financial managers, and clerical time to provide documents and respond to questions from the auditor. The Department assumes QPAMs use either a law firm or a consulting firm to conduct the exemption audits, and the Department assumes that the average cost of an exemption audit is \$25,000.⁴¹ This results in a total estimated cost of \$1,250,000.⁴²

Summary

In summary, the annual total cost burden imposed by the existing exemption and Proposed Amendment is estimated to be approximately \$1,250,753.⁴³

- 14. Provide estimates of the 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), 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 into a single table.**

The ERISA exemption procedure results in certain costs to the government. Section 2570.42 of the procedure requires that before an exemption can be granted the Secretary shall publish a notice of a Proposed Amendment in the Federal Register. The Department estimates that, on average, these notices will cover two pages in the Federal Register; therefore, the cost to publish the notice at \$453 per page (2 pages per application) for 2 applications is \$1,812.

After the notice period ends, the Department must then also publish a granted exemption if it determines it is appropriate to do so after reviewing comments. The Department estimates that, on average, these notices will also cover two pages in the Federal Register; therefore, the cost to publish the notice at \$453 per page (2 pages per application) for 2 applications is \$1,812.

mailed x $\{[(15 \times \$0.05) + \$0.68] + [(5 \times \$0.05) + \$0.68]\} = \$378$.

⁴¹ The Department has received information from industry representatives that the cost of a similar annual audit required by PTE 96-23 (the INHAM Exemption) may range from approximately \$10,000 to \$25,000, depending on asset size and how many years the INHAM has used the auditing firm. Because of the type of audit required for an in-house QPAM, the Department has assumed that the average cost of an exemption audit required by the QPAM Exemption would be \$25,000.

⁴² Assuming that the average cost of an exemption audit would be \$25,000: 50 in-house QPAMs x \$25,000 = \$1,250,000.

⁴³ This accounts for the cost of (\$1,250,000 associated with hiring a firm to conduct the independent audit + \$375 for the notices to plans + \$378 to request individual exemption) = \$1,250,753.

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Additional costs include the filing, handling, and storing of the applications and supporting documentation. EBSA has assigned approximately 7.6 staff hours to this function at a cost of roughly \$539.⁴⁴ (This includes space, supplies, and other overhead costs in addition to salary and fringe benefits.)

Based on the above, the total annual cost to the Federal government for publishing and processing the paperwork required under the application exemption procedure is estimated at \$4,163.

15. Explain the reasons for any program changes or adjustments.

The Department is updating the estimation methodology to identify a QPAM. Because of this new methodology, the current estimated total number of respondents is considerably higher in comparison to the estimations presented in the proposal. The Department is also using more recent Form 5500 data (2020).

Additionally, other things being equal, the Final Amendment removes some of the adds requirements proposed in the Proposed Amendment. The Department is also revising its estimate of the wage costs due to increased labor costs and inflation. The overall effect is a decrease in the total burden. As a result, the total number of responses has increased by 4,676 responses, the hour burden has decreased by 250,620 hours, and the cost burden has decreased by \$108,749,247.

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

There are no plans to publish the results of this collection of information.

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

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

18. Explain each exception to the certification statement.

There are no exceptions to the certification statement.

⁴⁴This cost also includes the costs of filing and storage of documents processed under PTE 96-62 for the accelerated approval of prohibited transactions exemptions. This is based on the salary of a GS 6 step 5 in the Washington, DC area for 2022. Wages and salary as a percent of total compensation of 69.1 percent can be found in table 1 here <https://www.bls.gov/news.release/pdf/eccec.pdf> and EBSA requests a flat \$82,543 annually per FTE in its budget requests based on actual spending, which converts to an hourly rate of \$39.68 for overhead costs.

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B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS.

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