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

**This information collection request (ICR) seeks approval for a revision of an existing control number.**

# JUSTIFICATION

## Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The Secretary of Labor may grant and amend administrative exemptions from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and the Internal Revenue Code of 1986, as amended (the Code).[[1]](#footnote-3) Before granting an exemption, the Department must find that the exemption is administratively feasible for the Department, in the interests of affected employee benefit plans (Plans), their participants and beneficiaries, and individual retirement account and annuity owners (IRAs), and protective of the rights of participants and beneficiaries of such Plans and IRA owners.[[2]](#footnote-4)

Current PTE 2020-02 allows investment advice fiduciaries to Plans and IRAs (Retirement Investors) who receive compensation from providing such advice, including advice to roll over assets from a Plan to an IRA, and to engage in certain principal transactions, that would otherwise violate the prohibited transaction provisions of Title I and the Code.

The current PTE 2020-02 applies to both Financial Institutions (such as registered investment advisers, broker-dealers, banks, and insurance companies) and the Investment Professionals that work for them, when the Financial Institution and Investment Professional provide fiduciary investment advice under ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B). The exemption includes protective conditions designed to safeguard the interests of Plans, participants and beneficiaries of Plans, and IRA owners.

Investment Professionals receive compensation for advice services to Retirement Investors in the retail market through a variety of advice and compensation arrangements. Typical compensation arrangements include commissions paid by a Plan, participant or beneficiary, or IRA, or commissions, sales loads, 12b-1 fees, revenue sharing and other payments paid to an investment advice provider from the third parties that provide the underlying investment products. A fiduciary’s receipt of such payments generally violates the prohibited transaction provisions of ERISA section 406(a)(1)(A), (D), and 406(b), and Code section 4975(c)(1)(A), and (D), (E) and (F), because the amount of the fiduciary’s compensation is affected by the fiduciary's use of its authority in providing investment advice, unless such payments meet the requirements of an exemption.

The current exemption conditions emphasize conflict of interest mitigation and the provision of prudent and loyal investment advice to Retirement Investors. An important objective of the exemption is to require fiduciary investment advice providers to adhere to stringent standards that ensure their investment recommendations are made in the best interest of Plan and IRA investors. Accordingly, under the current framework of PTE 2020-02, Financial Institutions and Investment Professionals relying on the existing exemption must:

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

2024 Final Amendment

The final amendment builds on these existing conditions to provide more certainty for Retirement Investors receiving advice and Financial Institutions and Investment Professionals. The final amendment will:

1. expand the exemption’s scope to include recommendations of any investment product, regardless of whether the product is sold on a principal or agency basis;
2. expand the exemption’s scope to include recommendations from robo-advice providers
3. add non-bank Health Savings Account (HSA) trustees to the definition of Financial Institution with respect to HSAs;
4. revise the disclosure requirements to more closely track other regulators’ disclosure requirements with respect to the provision of investment advice;
5. narrow the scope of the rollover disclosure so that it only applies to rollovers from Title I Plans to IRAs or recommendations to a Plan participant or beneficiary as to the post-rollover investment of assets currently held in a Plan that is covered by Title I;
6. revise the exemption’s eligibility provisions so that firms and investment professionals only face disqualification for serious misconduct that has been determined in a court proceeding;
7. provide new streamlined exemption provisions for Financial Institutions that give fiduciary advice in connection with a Request for Proposal (RFP) to provide investment management services as an ERISA section 3(38) investment manager;
8. make minor revisions and clarify existing provisions of the exemption; and
9. expand the scope of the exemption to include robo-advice.

In addition, although the Department proposed to expand the recordkeeping requirement in the exemption, the Final Amendment maintains the recordkeeping provisions already in PTE 2020-02 without change.

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

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

To qualify for the exemption under the terms of the final amendment, investment advice fiduciaries are required to:

1. make disclosures to inform Retirement Investors of the advice provider's fiduciary status, services offered, and material conflicts of interest;
2. establish, maintain, and enforce written policies and procedures designed to ensure that the advice provider and their Investment Professionals comply with the exemption's Impartial Conduct Standards;
3. document the basis for their conclusion to recommend a rollover, show that the rollover is in the best interest of the Retirement Investor, and provide the documentation to the Retirement Investor;
4. conduct an annual retrospective review that is reasonably designed to prevent violations of the exemptions Impartial Conduct Standards and the Financial Institution’s own policies and procedures; and
5. maintain records so that parties relying on an exemption can demonstrate, and the Department can verify, compliance with the conditions of the exemption.

The Department notes that more parties may rely on amended PTE 2020-02, due to the Retirement Security Rule: Definition of an Investment Advice Fiduciary (the Rule), which amends the definition of “fiduciary investment advice.” In this regard, parties that may have not been fiduciaries under the predecessor five-part test may now become fiduciaries to the extent they provide investment advice under the Rule. In addition to the Rule and final amendment to PTE 2020-02, the Department is amending other class prohibited transaction exemptions to exclude the receipt of compensation as a result of the provision of investment advice. Parties that have been relying on those exemptions may need to now comply with amended PTE 2020-02 instead.

The final amendment to PTE 2020-02 includes new disclosure conditions that will require Financial Institutions to provide a written statement of the Care Obligation and Loyalty Obligation owed by the Investment Professional and Financial Institution to the Retirement Investor.

The final amendment also makes certain changes to the Financial Institution's required written description of its services under the exemption. As amended, the Financial Institution must disclose in writing all material facts relating to the scope and terms of the relationship with the Retirement Investor. This disclosure is based on the SEC’s Regulation Best Interest disclosures and ensures that Retirement Investors receive critical information that they need to make informed investment decisions.

## 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 final amendment are coming from investment advice fiduciaries. 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 who are in employment-based Plans receiving electronic disclosures will be similar to the percent of Plan participants receiving electronic disclosures under the Department’s 2002 and 2020 electronic disclosure safe harbors.[[3]](#footnote-5) Accordingly, the Department estimates that 96.1 percent of the disclosures sent to Retirement Investors will be sent electronically, and the remaining 3.9 percent will be sent by mail.[[4]](#footnote-6)

Further, the Department assumes that approximately 72 percent of IRA owners will receive disclosures electronically.[[5]](#footnote-7)

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

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

## 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. The Department has finalized the amendment to be more consistent with those required by the SEC, and the Department has provided model language for more general disclosures. Additionally, the recordkeeping requirements include records that are otherwise maintained in the normal course of business.

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

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

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

## 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.**

Because this exemption is granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the exclusion from the three-year guideline for record retention set forth in 5 CFR 1320.5 is applicable. Furthermore, as a result of statutory recordkeeping requirements in ERISA, the Code, and other federal laws, Financial Institutions that rely on this exemption, for the most part, have adopted six-year recordkeeping as standard business practice in order to satisfy those separate recordkeeping requirements.

## 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 the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)) and 5 CFR 1320.8(d), the Department solicited comments concerning the information collection requirements included in the proposed amendments. The corresponding Departmental notice was published in the Federal Register on November 3, 2023 (88 FR 75979, pages 75979-76003). The Department received written comments in response (<https://www.federalregister.gov/documents/2023/11/03/2023-23780/proposed-amendment-to-prohibited-transaction-exemption-2020-02>).

The Department received comments that addressed the burden estimates used in the analysis of the proposed rulemaking. The Department reviewed these public comments in developing the paperwork burden analysis and subsequently revised the burden estimates for the final amendment to the PTE. The comments pertinent to the Department’s information collection efforts are discussed below.

First, the Department received several comments on the Department’s labor cost estimate, particularly the cost for legal support, remarking that it was too low. The Department assumes that tasks involving legal professionals will be completed by a combination of legal professionals, likely consisting of attorneys, legal support staff, and other professionals and in-house and out-sourced individuals. The labor cost associated with these tasks is estimated to be $165.71, which is the Department’s estimated labor cost for an in-house attorney. The Department understands that this estimate may seem comparatively low to some commenters relative to their experience, especially when hiring an outside ERISA legal expert. However, the Department has chosen this cost estimate, because it is an average, blended in-house attorney rate.

Second, the Department estimates that 96.1 percent of disclosures sent to Retirement Investors will be sent electronically, and the remaining 3.9 percent will be sent by mail.[[6]](#footnote-8) One commenter suggested that this assumption overstates the use of electronic disclosures for IRA owners and that 60 percent would be more appropriate. The Department is not able to substantiate that suggestion but understands that IRA owners preferences associated with electronic delivery of documents could be different than Plan participants. In response, the Department reevaluated its estimate. In the Final Rule the Department assumes that approximately 72 percent of IRA owners will receive disclosures electronically.[[7]](#footnote-9)

Third, the Department recognizes that the rulemaking may change the number of Financial Institutions who choose to rely on PTE 2020-02. Consistent with its initial analysis in 2020, the Department originally assumed that all entities eligible to rely on the existing PTE were electing to do so. However, at least one commenter indicated that some entities eligible to use PTE 2020-02 had determined that their business practices did not trigger fiduciary status or modified their business practices to avoid relying upon it. The definitional changes in this rulemaking may now require these entities to rely on PTE 2020-02. These entities will incur the full compliance costs of PTE 2020-02. In response to this concern, this analysis assumes that 30 percent of currently eligible entities will begin to rely on PTE 2020-02 in response to the rulemaking.

Lastly, the Department proposed requiring a written statement informing the investor of their right to obtain a written description of the Financial Institution’s written policies and procedures and information regarding costs, fees, and compensation. The Department received several comments regarding its estimate of the number of annual requests per firm, and the cost burdens associated with the provision of disclosures. After reviewing the comments and existing disclosures associated with the rulemaking, the Department has removed this requirement.

## 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.

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

There is no assurance of confidentiality provided to respondents.

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

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

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

* + **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of difference in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
	+ **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
	+ **Provide estimates of annualized cost to respondents for the hour burdens for collection of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.**

The Department expects that 18,632 entities will be affected by the final amendment to the PTE. The number of entities by type and size are summarized in the table below.

The Department recognizes that the final amendment may change the number of Financial Institutions who chose to rely on PTE 2020-02. In contrast with its initial analysis of the exemption in 2020, the Department no longer assumes that all entities eligible to rely on the exemption currently do so. The estimates now reflect an assumption that 30 percent of previously eligible entities (broker-dealers, registered investment advisers, and insurance companies) will be newly reliant on PTE 2020-02 as a result of this final amendment.

| **Table 1: Affected Entities by Type and Size** |
| --- |
|  | Small | Large | Total |
| Broker-Dealer | 431  | 1,489  | 1,920 |
|  Retail | 302  | 1,018  | 1,319 |
|  Non-Retail | 129  | 471  | 600 |
| Registered Investment Adviser | 2,989  | 13,409  | 16,398  |
|  SEC | 228  | 7,806  | 8,035  |
|  Retail | 85  | 4,859  | 4,944  |
|  Non-Retail | 144  | 2,947  | 3,091 |
|  State | 2,760  | 5,603  | 8,363 |
|  Retail | 2,192  | 4,450  | 6,642  |
|  Non-Retail | 568  | 1,153  | 1,721 |
| Insurer | 71  | 13  | 84  |
| Robo-Adviser | 10  | 190  | 200 |
| Non-Bank Trustee | 30 | 1 | 31 |
| Total | 3,531  | 15,101  | 18,632 |
| Note: Values displayed are rounded to whole numbers; therefore, parts may not sum. |

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

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

In the analysis discussed below, a combination of personnel would perform the tasks associated with the ICRs at an hourly wage rate of $65.99 for clerical personnel, $138.37 for a computer programmer, $165.71 for a legal professional, and $228.00 for a financial adviser.[[8]](#footnote-10)

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. Therefore, for purposes of this analysis, the Department assumes that the percentage of Retirement Investors receiving disclosures electronically will be similar to the percentage of Plan participants receiving disclosures electronically under the Department’s 2020 electronic disclosure rules.[[9]](#footnote-11) Accordingly, the Department estimates that 96.1 percent of the disclosures sent to Retirement Investors will be sent electronically, and the remaining 3.9 percent will be sent by mail.[[10]](#footnote-12) Further, the Department assumes that approximately 72 percent of IRA owners will receive disclosures electronically.[[11]](#footnote-13)

Disclosures for Investors (Production and Distribution)

*Drafting and Modifying Pre-Transaction Disclosures*

Section II(b) currently requires Financial Institutions to provide certain disclosures to Retirement Investors before engaging in a transaction pursuant to the exemption. These disclosures include:

1. a written acknowledgment that the Financial Institution and its Investment Professionals are fiduciaries;
2. a written description of the services to be provided and any material conflicts of interest of the Investment Professional and Financial Institution; and
3. disclosure of the Financial Institution and its Investment Professional’s conclusions as to whether a rollover is in the Retirement Investor’s best interest, before engaging in a rollover from a Title I plan to an IRA or offering recommendations on post-rollover investments.

The following estimates reflect the ongoing paperwork burdens of the affected entities. Broker-dealers, registered investment advisers, and insurance companies that relied on the existing exemption were required to prepare these disclosures under the existing PTE 2020-02. The estimates below reflect the paperwork burden these entities will incur to modify such disclosures. This analysis does not include the transition costs already incurred for the existing PTE 2020-02 exemption.

*Written Acknowledgment of Fiduciary Status*

As stated earlier, Department assumes that 30 percent of entities previously eligible to rely on PTE 2020-02 did not do so, by avoiding the covered activities. Therefore, 30 percent of broker-dealers, RIAs and insurers are assumed to incur the full cost while the remaining 70 percent will need to modify existing disclosures.

The Department expects that the fiduciary acknowledgment disclosure required under the existing form of PTE 2020-02 likely satisfy this requirement for most Financial Institutions covered under the existing exemption. For the purposes of this analysis, the Department assumes that of the 70 percent of the broker-dealers, registered investment advisers, and insurance companies assumed to be currently reliant on the existing exemption, 10 percent will need to update their disclosures and that it will take a legal professional at a Financial Institution, on average, 10 minutes to do so. Updating the acknowledgement of fiduciary status is estimated to result in an hour burden of 215 hours with an equivalent cost of $35,575.[[12]](#footnote-14)

Newly reliant fiduciaries (including robo-advisers) will need to draft the acknowledgement. The Department estimates that it will take a legal professional at these entities, on average, 30 minutes to draft the acknowledgement,resulting in an hour burden of 2,876 hours and a cost burden of $476,531 to draft the acknowledgment.[[13]](#footnote-15)

As a result, updating and drafting the acknowledgement is estimated to result in a total estimated hour burden of 3,090 hours with an equivalent cost of $512,106.[[14]](#footnote-16)

| **Table 2: Hour Burden and Equivalent Cost Associated with the Fiduciary Acknowledgement** |
| --- |
|  | **Year 1** | **Subsequent Years** |
| **Activity** | **Burden Hours** | **Equivalent Burden Cost** | **Burden Hours** | **Equivalent Burden Cost** |
| Create(Legal) | 2,876 | $476,531 | 0 | $0 |
| Update(Legal) | 215 | $35,575 | 0 | $0 |
| **Total** | **3,090** | **$512,106** | **0** | **$0** |

*Written Statement of the Care Obligation and Loyalty Obligation*

As amended, PTE 2020-02 requires Financial Institutions to provide investors with a written statement of the Care Obligation and Loyalty Obligation disclosure. As presented in more detail in the preamble to the final amendment, this disclosure defines the Care Obligation and Loyalty Obligation as related to the Retirement Investor’s relationship with the Investment Professional and Financial Institution.

Under the Advisers Act, Regulation Best Interest, and Form CRS, most registered investment advisers and broker-dealers with retail investor clients already provide disclosures that the Department expects will satisfy these requirements.[[15]](#footnote-17)

The Department expects that the written statement of Care Obligation and Loyalty Obligation will not take a significant amount of time to prepare and will be uniform across clients. The Department assumes that a legal professional employed by a broker-dealer or registered investment adviser, on average, will take 30 minutes to modify existing disclosures and that it will take insurers, robo-advisers, and non-bank trustees, on average, one hour to prepare the statement. This results in an hour burden of 9,474 hours with an equivalent cost of $1,569,868.[[16]](#footnote-18)

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| **Table 3: Hour Burden and Equivalent Cost Associated with the Statement of the Care and Loyalty Obligation** |
|  | **Year 1** | **Subsequent Years** |
| **Activity** | **Burden Hours** | **Equivalent Burden Cost** | **Burden Hours** | **Equivalent Burden Cost** |
| Legal | 9,474  | $1,569,868 | 0 | $0 |
| **Total** | **9,474**  | **$1,569,868** | **0** | **$0** |

*Relationship and Conflict of Interest Disclosure*

The rulemaking also revises the existing requirement for a written description of the services provided to require a statement on whether the Retirement Investor will pay for such services, directly or indirectly, including through third-party payments. This new disclosure is consistent with the disclosure requirements under Regulation Best Interest. Accordingly, the Department expects that retail broker-dealers will not incur a cost to satisfy this requirement.

For all other Financial Institutions which relied on the existing exemption (i.e. 70 percent of non-retail broker-dealers, registered investment advisers, and insurance companies), the Department assumes it will take a legal professional 30 minutes to update existing disclosures to include this information. Robo-advisers, and newly reliant non-retail broker-dealers, registered investment advisers, and insurance companies will need to draft the Relationship and Conflict of Interest disclosure, which the Department estimates will take a legal professional at a large institution five hours and a legal professional at a small institution one hour, on average, to prepare..[[17]](#footnote-19) This results in an estimated hour burden of 28,738 hours with an equivalent cost of $4,762,239.[[18]](#footnote-20)

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| --- |
| **Table 4: Hour Burden and Equivalent Cost Associated with the Relationship and Conflict of Interest Disclosure** |
|  | **Year 1** | **Subsequent Years** |
| **Activity** | **Burden Hours** | **Equivalent Burden Cost** | **Burden Hours** | **Equivalent Burden Cost** |
| Legal | 28,738  | $4,762,239 | 0 | $0 |
| **Total** | **28,738**  | **$4,762,239** | **0** | **$0** |

*Provision of Relationship and Conflict of Interest Disclosures*

Similar to the 2020 analysis, the Department assumes most required disclosures will be electronically delivered to Plan fiduciaries. As discussed above, the Department estimates that 96.1 percent of the disclosures sent to Retirement Investors will be sent electronically and that approximately 72 percent of IRA owners will receive disclosures electronically.

The Department estimates that approximately 44.6 million Retirement Investors and 67.8 million IRA owners will receive disclosures annually, of which, 20.9 million (1.7 million Retirement Investors and 19.1 million IRA owners) will receive paper disclosures.[[19]](#footnote-21) The Department estimates that preparing and sending each disclosure would take a clerical worker, on average, five minutes, resulting in an hour burden of 1,737,781 hours with an equivalent cost of $114,676,201.[[20]](#footnote-22)

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| **Table 5: Hour Burden and Equivalent Cost Associated Preparing and Sending Disclosures** |
|  | **Year 1** | **Subsequent Years** |
| **Activity** | **Burden Hours** | **Equivalent Burden Cost** | **Burden Hours** | **Equivalent Burden Cost** |
| Clerical | 1,737,781   | $114,676,201   | 1,737,781   | $114,676,201   |
| **Total** | **1,737,781**  | **$114,676,201**  | **1,737,781**  | **$114,676,201**  |

*Documentation and Disclosure of Rollovers*

The Department proposed requiring disclosures for all rollovers, including those from Plans to IRAs, from IRAs to other IRAs and from Plans to Plans. In the final amendment, the rollover disclosure will only be required for rollovers from a Plan that is covered by Title I, or recommendation to a Plan participant or beneficiary as to the post-rollover investment of assets currently held in a Plan that is covered by Title I. According to Cerulli Associates, in 2022, almost 4.5 million defined contribution (DC) Plan accounts with $779 billion in assets were rolled over to an IRA. Additionally, 0.7 million DC Plan accounts with $66 billion in assets were rolled over to other employer-sponsored Plans.[[21]](#footnote-23)

In the final amendment, only rollovers from a Plan that is covered by Title I or recommendations to a Plan participant or beneficiary as to the post-rollover investment of assets currently held in a Plan that is covered by Title I will be affected by the amendments to PTE 2020-02. The Department does not have compelling data on the percentage of rollovers that are from a Title I Plan. In 2022, 49 percent of DC Plan-to-IRA rollovers, accounting for 63 percent of DC Plan rollover assets,were intermediated by an adviser.[[22]](#footnote-24) For purposes of this analysis, the Department assumes that advisers intermediating rollovers are providing fiduciary investment advice, which means the estimate is an upper bound. As a best practice, the SEC already encourages firms to record the basis for significant investment decisions, such as rollovers, although doing so is not required under Regulation Best Interest or the Advisers Act. In addition, some firms may voluntarily document significant investment decisions to demonstrate compliance with applicable law, even if not required. A report commissioned by SIFMA found that slightly more than half (52 percent) of asset management firms implementing Regulation Best Interest require their financial service professionals to document rollover recommendations.[[23]](#footnote-25)

The Department estimates that documenting each rollover recommendation will require 30 minutes for investment professionals whose firms currently do not require rollover documentations and five minutes for investment professionals whose firms already require them to do so. The Department estimates that this will result in an hour burden of 622,676 hours with an equivalent cost of approximately $142.0 million.[[24]](#footnote-26)

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| **Table 6: 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** |
| Financial Adviser | 622,676 | $141,970,058 | 622,676 | $141,970,058 |
| **Total** | **622,676** | **$141,970,058** | **622,676** | **$141,970,058** |

Annual Report of Retrospective Review

The final amendment requires Financial Institutions to conduct a retrospective review at least annually. The review must be reasonably designed to detect and prevent violations of, and achieve compliance with (1) the conditions of this exemption, (2) the Impartial Conduct Standards, and (3) the policies and procedures governing compliance with the exemption. The retrospective review must include a discussion of any self-corrections of violations, and the report will need to be certified by a Senior Executive.

Many of the entities affected by PTE 2020-02 likely already have retrospective review requirements. Broker-dealers are subject to retrospective review requirements under FINRA Rule 3110,[[25]](#footnote-27) FINRA Rule 3120,[[26]](#footnote-28) and FINRA Rule 3130;[[27]](#footnote-29) SEC-registered investment advisers are already subject to retrospective review requirements under SEC Rule 206(4)-7; and insurance companies in many states are already subject to state insurance law based on the NAIC's Model Regulation.[[28]](#footnote-30)  Accordingly, in this analysis, the Department assumes that these entities will incur minimal costs to meet this requirement.

In 2018, the Investment Adviser Association estimated that 92 percent of SEC-registered investment advisers voluntarily provide an annual compliance program review report to senior management.[[29]](#footnote-31) The Department assumes that state-registered investment advisers exhibit similar retrospective review patterns as SEC-registered investment advisers. Accordingly, the Department estimates that eight percent, or 1,312 investment advisers advising retirement Plans will incur costs associated with producing a retrospective review report.

The Department assumes that only 0.8 percent of registered investment advisers and ten percent of all other Financial Institutions will incur the total costs of producing the retrospective review report. This is estimated to take a legal professional five hours for small firms and 10 hours for large firms. This results in an annual hour burden of 3,156 hours and an equivalent cost burden of $522,907.[[30]](#footnote-32)

Financial Institutions that already produce retrospective review reports voluntarily or in accordance with other regulators’ rules likely will spend additional time to fully comply with this exemption condition such as revising their current retrospective review reports. This is estimated to take a financial professional one hour for small firms and two hours for large firms. This results in an annual hour burden of 33,103 hours and an equivalent cost burden of $5,485,436. [[31]](#footnote-33)

In addition to conducting the audit and producing a report, Financial Institutions also will need to review the report and certify the exemption. This is estimated to take the certifying officer two hours for small firms and four hours for large firms. This results in an hour burden of 67,467and an equivalent cost burden of $13,375,426.[[32]](#footnote-34)

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| **Table 7: Hour Burden and Equivalent Cost Associated with the Retrospective Review** |
|  | **Year 1** | **Subsequent Years** |
| **Activity** | **Burden Hours** | **Equivalent Burden Cost** | **Burden Hours** | **Equivalent Burden Cost** |
| Legal | 36,258 | $6,008,343 | 36,258 | $6,008,343 |
| Senior Executive Staff | 67,467 | $13,375,426  | 67,467 | $13,375,426  |
| **Total** | **103,726** | **$19,383,769** | **103,726** | **$19,383,769** |

Requirements for Written Policies and Procedures

Under the original PTE 2020-02 exemption, Financial Institutions were already required to maintain policies and procedures. Robo-advisers and newly reliant Financial Institutions, who are not covered under the existing exemption may need to develop policies and procedures. The Department estimates that initially establishing, maintaining, and enforcing written policies and procedures prudently designed to ensure compliance with the Impartial Conduct Standards will take a legal professional 20 hours for small entities and 40 hours for large entities.[[33]](#footnote-35) Retail broker-dealers and all registered investment advisors should have policies and procedures in place to satisfy other regulators that can be amended to comply with this rulemaking. The Department estimates it will take 10 hours for small firms and 20 hours for large firms to amend their policies and procedures. The Department estimates the requirement to result in an hour burden of 111,864 hours with an equivalent cost of $18,536,977 in the first year.[[34]](#footnote-36)

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| **Table 8: Hour Burden and Equivalent Cost Associated with Developing Policies and Procedures** |
|  | **Year 1** | **Subsequent Years** |
| **Activity** | **Burden Hours** | **Equivalent Burden Cost** | **Burden Hours** | **Equivalent Burden Cost** |
| Clerical | 111,864  | $18,536,977  | 0  | $0  |
| **Total** | **111,864**  | **$18,536,977**  | **0**  | **$0**  |

The final amendment requires Financial Institutions to review their policies and procedures at least annually and to update them as needed to ensure they remain prudently designed, effective, and current. This includes a requirement to update and modify policies and procedures, as appropriate, after considering the findings in the retrospective review report. For entities currently covered by PTE 2020-02, the Department estimates that it will take a legal professional an additional 5 hours for all entities covered under the existing and amended exemption. The Department expects that in the first year, only entities already reliant on PTE 2020-02 will satisfy this requirement but all entities will be required to satisfy it in subsequent years. The Department estimates this will result an estimated first year hour burden of 65,559 with an equivalent cost of $10,863,864. In subsequent years, this will result in an annual hour burden of 93,161 hours with an equivalent cost of $15,437,780 in subsequent years.[[35]](#footnote-37)

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| **Table 9: Hour Burden and Equivalent Cost Associated with Reviewing and Updating Policies and Procedures** |
|  | **Year 1** | **Subsequent Years** |
| **Activity** | **Burden Hours** | **Equivalent Burden Cost** | **Burden Hours** | **Equivalent Burden Cost** |
| Legal   | 65,559 | $10,863,864  | 93,161 | $15,437,780 |
| **Total**  | **65,559** | **$10,863,864**  | **93,161** | **$15,437,780**  |

The final amendment requires Financial Institutions to provide their complete policies and procedures to the Department upon request. Based on the number of cases in the past and current open cases that would merit such a request, the Department estimates that the Department will request 165 policies and procedures in the first year and 50 policies and procedures in subsequent years. The Department estimates that it will take a clerical worker 15 minutes to prepare and send their complete policies and procedures to the Department resulting in an hourly burden of approximately 41 hours in the first year. Assuming an hourly wage rate for clerical personnel of $65.99, the estimated cost burden in the first year is $2,722.[[36]](#footnote-38) In subsequent years, the Department estimates that the requirement will result in an hour burden of approximately 13 hours with an equivalent cost of $825.[[37]](#footnote-39) The Department assumes Financial Institutions will send the documents electronically and thus will not incur costs for postage or materials.

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| **Table 10: Hour Burden and Equivalent Cost Associated with Providing Policies and Procedures to the Department** |
|  | **Year 1** | **Subsequent Years** |
| **Activity** | **Burden Hours** | **Equivalent Burden Cost** | **Burden Hours** | **Equivalent Burden Cost** |
| Clerical | 41  | $2,722  | 13  | $825  |
| **Total** | **41**  | **$2,722**  | **13**  | **$825**  |

Overall Summary

The table below presents the hour burden and equivalent cost of hour burden for each element of the amended requirements discussed in this section. Each requirement is labeled according to whether the corresponding cost applies to the first year, subsequent years, or both (i.e., an annual requirement). As some costs are borne by Financial Institutions in the first year only, and others apply to subsequent years on a recurring basis, the annualized figures represent average costs for the first three years. In total, the Department estimates an aggregate hour burden of 2,599,221 hours and an equivalent cost burden of $298,405,022 for the 18,632 Financial Institutions affected by the amended requirements of PTE 2020-02.

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| **Table 11: Estimated Annualized Respondent Hour Burden and Equivalent Cost of Hour Burden for Existing and Amended Requirements** |
| **Activity** | **Number of Respondents** | **Responses per Respondent** | **Total Responses** | **Average Burden (Hours)** | **Total Burden (Hours)** | **Hourly Wage Rate** | **Equivalent Cost of Hour Burden\*** |
|  |
|  |
| *Current Compliance* |  |
| Comply with current requirements of PTE 2020-02 (first year) | 12,822 | 8,765.0547 | 112,387,109 | 0.0159 | 1,784,419 | - | $123,922,150  |  |
| Comply with current requirements of PTE 2020-02 (subsequent years) | 12,822 | 8,765.0547 | 112,387,109 | 0.0159 | 1,784,419 | - | $123,922,150  |  |
| *Disclosures for Investors, Production and Distribution*  |  |
| Prepare written acknowledgment of fiduciary status (first year) | 5,751 | 1.0 | 5,751 | 0.5000 | 2,876 | $165.71 | $476,531 |  |
| Update written acknowledgment of fiduciary status (first year) | 1,288 | 1.0 | 1,288 | 0.1667 | 215 | $165.71 | $35,575  |  |
| Prepare written statement of Care and Loyalty Obligations (first year) | 18,632 | 1.0 | 18,632 | 0.5084 | 9,474 | $165.71 | $1,569,868 |  |
| Prepare Relationship and Conflict of Interest disclosure (first year) | 17,313 | 1.0 | 17,313 | 1.6599 | 28,738 | $165.71 | $4,762,239  |  |
| Provide disclosures to Retirement Investors (annual) | 18,632 | 1119.2067 | 20,853,378 | 0.0833 | 1,737,781 | $65.99 | $114,676,201  |  |
| Prepare documentation of Plan-to-IRA rollover recommendations (annual) | 18,632 | 117.9500 | 2,197,679 | 0.2833 | 622,676 | $228.00 | $141,970,058  |  |
| *Annual Report of Retrospective Review* |  |
| Develop report (annual) | 355 | 1.0 | 355 | 8.8984 | 3,156 | $165.71 | $522,907 |  |
| Revise existing report to comply with PTE 2020-02 (annual) | 18,278 | 1.0 | 18,278 | 1.8111 | 33,103 | $165.71 | $5,485,436  |  |
| Review and certify report (annual) | 18,632 | 1.0 | 18,632 | 3.6210 | 67,467 | $198.25 | $13,375,426 |  |
| *Written Policies and Procedures* |  |
| Develop policies and procedures to comply with the Impartial Conduct Standards (first year) | 5,751 | 1.0 | 5,751 | 19.4499 | 111,864 | $165.71 | $18,536,977  |  |
| Update per retrospective review (first year) | 13,112 | 1.0 | 13,112 | 5.0000 | 65,559 | $165.71 | $10,863,864  |  |
| Update per retrospective review (subsequent years) | 18,632 | 1.0 | 18,632 | 5.0000 | 93,161 | $165.71 | $15,437,780 |  |
| Provide to Department upon request (first year) | 165 | 1.0 | 165 | 0.2500 | 41 | $65.99 | $2,722  |  |
| Provide to Department upon request (subsequent years) | 50 | 1.0 | 50 | 0.2500 | 13 | $65.99 | $825  |  |
| **Total (Three-Year Average)\*\*** | **18,632** | **6,151.1066** | **114,609,171** |  | **2,599,221** |  | **$298,405,022** |  |
| Table Notes: (\*) When the equivalent cost of hour burden was calculated, the intermediate stages of the calculation were not rounded. The values may not equal the sum of the parts due to rounding.(\*\*) Totals represent the three-year average burden. Some activities represent costs incurred only in the first year. |  |
|  |

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

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

Material Costs for Distribution of Disclosures for Investors

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 from a retirement Plan will be similar to the percent of Plan participants receiving disclosures electronically under the Department’s 2020 electronic disclosure rules.[[38]](#footnote-40) Accordingly, the Department estimates that 96.1 percent of the disclosures sent to Retirement Investors will be sent electronically, and the remaining 3.9 percent will be sent by mail.[[39]](#footnote-41) Additionally, the Department assumes 71.8 percent of IRA owners to receive disclosures electronically and the remaining 28.2 percent of disclosures sent by mail.[[40]](#footnote-42) Additionally, the Department assumes that business to business communication occurs 100 percent electronically. The Department assumes any documents sent by mail will be sent by first class mail, incurring a postage cost of $0.68 for each piece of mail.[[41]](#footnote-43) Finally, the Department assumes that documents sent by mail will incur a material cost of $0.05 for each page.

*Provision of Relationship and Conflict of Interest Disclosures*

Similar to the 2020 analysis, the Department assumes most required disclosures will be electronically delivered to Plan fiduciaries. As discussed above, the Department estimates that 96.1 percent of the disclosures sent to Retirement Investors will be sent electronically and that approximately 72 percent of IRA owners will receive disclosures electronically.

The Department estimates that approximately 44.6 million Retirement Investors and 67.8 million IRA owners will receive disclosures annually, of which, 20.9 million (1.7 million Retirement Investors and 19.1 million IRA owners) will receive paper disclosures.[[42]](#footnote-44)

The Department assumes that the disclosures will require four pages in total, resulting in a material and postage cost of $18,350,973.[[43]](#footnote-45)

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| **Table 12: Material and Postage Cost Associated with Sending Disclosures** |
|  | **Year 1** | **Subsequent Years** |
| **Activity** | **Pages** | **Cost** | **Pages** | **Cost** |
| Material Cost | 4 | $18,350,973 | 4 | $18,350,973 |
| **Total** | **4** | **$18,350,973** | **4** | **$18,350,973** |

*Provision of Rollover Disclosures*

The proposed amendment would have required disclosures for all rollovers, including those from Plans to IRAs, from IRAs to other IRAs and from Plans to Plans. In the final amendment, the rollover disclosure will only be required for Plan to IRA rollovers. According to Cerulli Associates, in 2022, almost 4.5 million defined contribution (DC) Plan accounts with $779 billion in assets were rolled over to an IRA.[[44]](#footnote-46)

As a best practice, the SEC already encourages firms to record the basis for significant investment decisions, such as rollovers, although doing so is not required under Regulation Best Interest. In addition, some firms may voluntarily document significant investment decisions to demonstrate compliance with applicable law, even if not required. SIFMA commissioned Deloitte to conduct a survey of its member firms to learn how they expected to implement Regulation Best Interest. The survey was conducted by December 31, 2019, prior to Regulation Best Interest’s effective date of June 30, 2020. Just over half (52 percent) of the firms surveyed indicated they will require their financial advisers to provide the rationale documentation for rollover recommendations.[[45]](#footnote-47) Accordingly, the Department estimates that financial advisers whose firms currently do not require rollover documentations represent 48 percent of rollover recommendations. Further, Cerulli Associates found that in 2022 financial advisors intermediated 49 percent of defined contribution rollovers.[[46]](#footnote-48) Combining this information the Department estimates that approximately 2.2 million rollovers will be intermediated by a financial professional each year resulting in roughly 85,700 disclosures being mailed.[[47]](#footnote-49) These rollover disclosures are expected to be 2 pages in length and accompany other documentation associated with the transactions at no additional postage cost. The materials cost is estimated as $0.05 per page, totaling $8,571 annually.[[48]](#footnote-50)

| **Table 13: Material and Postage Cost Associated with the Rollover Disclosure** |
| --- |
|  | **Year 1** | **Subsequent Years** |
| **Activity** | **Pages** | **Cost** | **Pages** | **Cost** |
| Material Cost | 2 | $8,571  | 2 | $8,571  |
| **Total** | **2** | **$**8,571 | **2** | **$**8,571 |

Overall Summary

In total, the Department estimates that in order to satisfy existing and added requirements in the amendment, 18,632 Financial Institutions will mail approximately 20.9 million disclosures and notices annually. These disclosures and notices will result in an annual cost burden of $18,359,543.

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

There are no ongoing costs to the Federal government.

## Explain any reasons for any program changes or adjustments.

The Department is amending PTE 2020-02 by building on existing conditions of PTE 2020-02 to provide more certainty for Retirement Investors receiving investment advice and for Financial Institutions and Investment Professionals to comply with the exemption’s conditions. In this regard, the Department is finalizing disclosures to ensure that Retirement Investors have sufficient information to make informed decisions about the costs of their investment advice transactions and about the significance and severity of the investment advice fiduciary conflicts of interest that permeate such advice transactions.

In addition, the Department has revised the number of broker-dealers, the number of investment advisers, the number of insurers, the number of robo-advisers, the number of insurance agents and brokers, the number of Plan to Plan rollovers, the number of Plan to IRA rollovers, and the number of IRA to IRA rollovers. The Department has also revised its estimate of the wage and postage costs due to increased labor costs and inflation. As a result, the number of responses has increased by 112,853,212 responses, the hour burden has increased by 2,197,970 hours, and the cost burden as increased by $18,267,480.

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

This is not a collection of information for statistical use and there are no plans to publish the results of this collection.

## 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.

## Explain each exception to the certification statement.

There are no exceptions to the certification statement.

# **COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

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

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. [↑](#footnote-ref-3)
2. ERISA section 408(a) and Code section 4975(c)(2). . [↑](#footnote-ref-4)
3. 67 FR 17263 (Apr. 9, 2002); 85 FR 31884 (May 27, 2020). [↑](#footnote-ref-5)
4. The Department estimates 96.1 percent of Retirement Investors receive disclosures electronically. This is the sum of the estimated share of Retirement Investors receiving electronic disclosures under the 2002 electronic disclosure safe harbor (58.3 percent) and the estimated share of Retirement Investors receiving electronic disclosures under the 2020 electronic disclosure safe harbor (37.8 percent). [↑](#footnote-ref-6)
5. The Department used information from a Greenwald & Associates survey which reported that 84 percent of retirement Plan participants find electronic delivery acceptable, and data from the National Telecommunications and Information Administration Internet Use Survey which indicated that 86 percent of adults 65 and over use e-mail on a regular basis, which is used as a proxy for internet fluency and usage. Therefore, the assumption is calculated as: (84% find electronic delivery acceptable) x (86% are internet fluent) = 72% are internet fluent and find electronic delivery acceptable. [↑](#footnote-ref-7)
6. For the purposes of this analysis, the Department assumes that the percent of Retirement Investors who are in employer-sponsored Plans receiving electronic disclosures will be similar to the percent of Plan participants receiving electronic disclosures under the Department’s 2002 and 2020 electronic disclosure safe harbors (67 FR 17263 (Apr. 9, 2002) and 85 FR 31884 (May 27, 2020), respectively). The Department estimates 96.1 percent of Retirement Investors receive disclosures electronically. This is the sum of the estimated share of Retirement Investors receiving electronic disclosures under the 2002 safe harbor (58.3 percent) and the corresponding estimated share under the 2020 safe harbor (37.8 percent). [↑](#footnote-ref-8)
7. The Department used information from a Greenwald & Associates survey which reported that 84 percent of retirement Plan participants find electronic delivery acceptable, and data from the National Telecommunications and Information Administration Internet Use Survey which indicated that 86 percent of adults 65 and over use e-mail on a regular basis, which is used as a proxy for internet fluency and usage. Therefore, the assumption is calculated as: (84% find electronic delivery acceptable) x (86% are internet fluent) = 72% are internet fluent and find electronic delivery acceptable. [↑](#footnote-ref-9)
8. Internal DOL calculation based on 2024 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>. [↑](#footnote-ref-10)
9. 67 FR 17263. [↑](#footnote-ref-11)
10. The Department estimates approximately 96.1% 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 (58.3%) and the estimated share of Retirement Investors receiving electronic disclosures under the 2020 electronic disclosure safe harbor (37.8%). [↑](#footnote-ref-12)
11. The Department used information from a Greenwald & Associates survey which reported that 84 percent of retirement Plan participants find electronic delivery acceptable, and data from the National Telecommunications and Information Administration Internet Use Survey which indicated that 86 percent of adults 65 and over use e-mail on a regular basis, which is used as a proxy for internet fluency and usage. Therefore, the assumption is calculated as: (84% find electronic delivery acceptable) x (86% are internet fluent) = 72% are internet fluent and find electronic delivery acceptable. [↑](#footnote-ref-13)
12. The burden associated with financial entities needing to update their written acknowledgement is estimated as: [(1,920 broker-dealers x 10%) + (8,035 SEC-registered investment advisers x 10%) + (8,363 state-registered investment advisers x 10%) + (183 insurers x 10%)] x 70% previous reliance x (10 minutes ÷ 60 minutes) ≈ 215 hours. The equivalent cost is estimated as: 215 hours x $165.71 ≈ $35,575. [↑](#footnote-ref-14)
13. The burden associated with financial entities needing to draft their written acknowledgement is estimated as: {(200 robo-advisers + 31 non-bank trustees) + [(1,920 broker dealers + 16,398 registered investment advisers + 84 insurers) x 30% newly reliant] x (30 minutes ÷ 60 minutes)} ≈ 2,876 hours. The burden is estimated as: 2,876 x $165.71 ≈ $476,531. [↑](#footnote-ref-15)
14. The burden is estimated as: $476,531 to create an acknowledgement + $35,575 to update an existing acknowledgement = $512,106. [↑](#footnote-ref-16)
15. Form CRS Relationship Summary; Amendments to Form ADV, 84 FR 33492 (July 12, 2019). [↑](#footnote-ref-17)
16. The burden is estimated as: [(1,920 broker-dealers + 16,398 registered investment advisers) x (30 minutes ÷ 60 minutes hours)] + [(84 insurers + 200 robo-advisers + 31 non-bank trustees) x 1 hour] ≈ 9,474 hours. A labor rate of $165.71 is used for a legal professional. The labor rate is applied in the following calculation: 9,474 burden hours x $165.71 ≈ $1,569,868. Due to rounding values may not sum. [↑](#footnote-ref-18)
17. The Department estimates that 10 robo-advisers, and 31 non-bank trustees are considered small entities. [↑](#footnote-ref-19)
18. The number of Financial Institutions needing to update their written description of services to comply with the Relationship and Conflict of Interest disclosure is estimated as: 84 insurers + ((16,398 registered investment advisers + 600 non-retail broker-dealers) x (100%-30%)) ≈ 11,983 Financial Institutions updating existing disclosures. The number of Financial Institutions needing to draft their Relationship and Conflict of Interest disclosure is estimated as: (200 robo-advisers + 31 non-bank trustees) + ((600 non-retail broker-dealers + 16,398 registered investment advisers) x 30%) ≈ 5,330 Financial Institutions drafting new disclosures. Of these entities, there are 976 small entities and 4,354 large entities. The hours burden is calculated as: ((11,983 entities updating x 30 minutes) + ((976 small entities drafting x 1 hour) + (4,354 large entities drafting x 5 hours)) ≈ 28,738 burden hours. The labor rate is applied as: 28,738 burden hours x $165.71 ≈ $4,762,239. Due to rounding values may not sum. [↑](#footnote-ref-20)
19. This is estimated as (44,593,228 x 3.9%) + (67,781,000 x 28.2%) = 20,853,378 paper disclosures. Due to rounding values may not sum. [↑](#footnote-ref-21)
20. This burden is estimated as: [(20,853,378 disclosures x (5 minutes ÷ 60 minutes hours)] ≈ 1,737,781 hours. The labor cost is estimated as: [(20,853,378 disclosures x (5 minutes ÷ 60 minutes hours)] x $65.99 ≈ $114,676,201. Due to rounding values may not sum. [↑](#footnote-ref-22)
21. According to Cerulli, in 2022, there were 4,485,059 DC Plan-to-IRA rollovers and 707,104 DC Plan-to-DC Plan rollovers. (*See* Cerulli Associates, *U.S. Retirement End-Investor 2023: Personalizing the 401(k) Investor Experience*, Exhibit 6.02. The Cerulli Report.) These account estimates may include health savings accounts, Archer medical savings accounts, or Coverdell education savings accounts. [↑](#footnote-ref-23)
22. According to Cerulli, 49 percent of rollovers were mediated by an adviser, while 37 percent were self-directed. The remaining 14 percent were Plan-to-Plan rollovers. (*See* Cerulli Associates, *U.S. Retirement-End Investor 2023: Personalizing the 401(k) Investor Experience Fostering Comprehensive Relationships*, Exhibit 6.04. The Cerulli Report.) [↑](#footnote-ref-24)
23. Deloitte, *R*egulation Best Interest: How Wealth Management Firms are Implementing the Rule Package, (March 6, 2020). [↑](#footnote-ref-25)
24. The burden is estimated as: [4,485,059 rollovers x 48% x 49% x (30 minutes ÷ 60 minutes hours)] + [4,485,059 rollovers x 52% x 49% x (5 minutes ÷ 60 minutes hours)] ≈ 622,676 hours. A labor rate of $228.00 is used for a personal financial adviser. The labor rate is applied in the following calculation: 622,676 burden hours x $228.00 ≈ $141,970,058. Due to rounding values may not sum. [↑](#footnote-ref-26)
25. Rule 3110. Supervision, FINRA Manual, <https://www.finra.org/rules-guidance/rulebooks/finra-rules/3110>. [↑](#footnote-ref-27)
26. Rule 3120. Supervisory Control System, FINRA Manual, <https://www.finra.org/rules-guidance/rulebooks/finra-rules/3120>. [↑](#footnote-ref-28)
27. Rule 3130. Annual Certification of Compliance and Supervisory Processes, FINRA Manual, <https://www.finra.org/rules-guidance/rulebooks/finra-rules/3130>. [↑](#footnote-ref-29)
28. NAIC Model Regulation, Section 6.C.(2)(i) (The same requirement is found in the NAIC Suitability in Annuity Transactions Model Regulation (2010), Section 6.F.(1)(f).) [↑](#footnote-ref-30)
29. 2018 Investment Management Compliance Testing Survey, Investment Adviser Association (Jun. 14, 2018), <https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/publications/2018-Investment-Management_Compliance-Testing-Survey-Results-Webcast_pptx.pdf>. [↑](#footnote-ref-31)
30. The burden is estimated as: [(431 small broker-dealers + (2,989 small registered-investment advisers x 8%) + 71 small insurers + 10 small robo-advisers + 30 small non-bank trustees) x 10% x 5 hours] + [(1,489 large broker-dealers + (13,409 large registered-investment advisers x 8%) + 13 large insurers + 190 large robo-advisers+ 1 large non-bank trustee) x 10% x 10 hours] ≈ 3,156 hours. The equivalent cost is estimated as: 3,156 hours x $165.71 ≈ $522,907. [↑](#footnote-ref-32)
31. The burden is estimated as: [(431 small broker-dealers + (2,989 small registered-investment advisers x 8%) + 71 small insurers + 10 small robo-advisers+ 30 small non-bank trustees) x 90% x 1 hours] + [(1,489 large broker-dealers + (13,409 large registered-investment advisers x 8%) + 13 large insurers + 190 large robo-advisers+ 1 large non-bank trustee)) x 90% x 2 hours] ≈ 33,103 hours. The equivalent cost is estimated as: 33,103 hours x $165.71 ≈ $5,485,436. [↑](#footnote-ref-33)
32. The burden is estimated as: [(431 small broker-dealers + (2,989 small registered-investment advisers x 8%) + 71 small insurers + 10 small robo-advisers + 30 small non-bank trustees) x 2 hours] + [(1,488 large broker-dealers + (13,409 large registered-investment advisers x 8%) + 13 large insurers + 190 large robo-advisers + 1 large non-bank trustee)) x 4 hours] ≈ 67,467 hours. The equivalent cost is estimated as: 67,467 hours x $198.25 ≈ $13,375,426. [↑](#footnote-ref-34)
33. The Department estimates that 3,531 entities, consisting of 302 Retail broker-dealers, 129 Non-Retail broker-dealers, 85 SEC-registered Retail registered investment advisers, 144 SEC-registered Non-Retail registered investment advisers, 2,192 state registered Retail registered investment advisers, 568 state registered Non-Retail registered investment advisers, 71 insurers and insurance agents, 10 robo-advisers, and 30 non-bank trustees are considered small entities. [↑](#footnote-ref-35)
34. The burden is estimated as follows: [(302 small retail broker-dealers + 85 small SEC-registered retail registered investment advisers + 144 small SEC-registered non-retail registered investment advisers + 2,192 small state registered retail registered investment advisers + 568 small state registered non-retail registered investment advisers) x 30% newly reliant on the PTE x 10 hours] + {[(1,018 large retail broker-dealers + 129 small non-retail broker-dealers + 4,859 large SEC-registered retail registered investment advisers + 2,947 large SEC-registered non-retail registered investment advisers + 4,450 large state registered retail registered investment advisers + 1,153 large state registered non-retail registered investment advisers + 71 insurers) x 30% newly reliant on the PTE] + (10 small robo-advisers + 30 small non-bank trustees) × 20 hours} + {[(471 large non-retail broker-dealers + 13 large insurers) x 30% newly reliant on the PTE] + 190 large robo-advisers + 1 large non-bank trustee) × 40 hours]} ≈ 111,864 hours. The labor rate is applied in the following calculation: 11,864 burden hours x $165.71 ≈ $18,536,977. Note, the total values may not equal the sum of the parts due to rounding. [↑](#footnote-ref-36)
35. The burden is estimated as follows: The first-year cost of updating policies and procedures for Plans that currently have policies & procedures: [(302 small Retail broker-dealers + 85 small SEC-registered Retail registered investment advisers + 144 small SEC-registered non-retail registered investment advisers + 2,192 small state registered retail registered investment advisers + 568 small state registered non-retail registered investment advisers) x 30% newly reliant on the PTE x 10 hours] + {[(1,018 large Retail broker-dealers + 129 small Non-Retail broker-dealers + 4,859 large SEC-registered Retail registered investment advisers + 2,947 large SEC-registered Non-Retail registered investment advisers + 4,450 large state registered Retail registered investment advisers + 1,153 large state registered non-retail registered investment advisers + 71 insurers) x 30% newly reliant on the PTE] + 10 small robo-adviser) × 5 hours} + {[(471 large Non-Retail broker-dealers + 13 large insurers) x 70% already reliant on the PTE] + + 190 large robo-advisers) = 13,112 entities x 5 hours ≈ 65,559 hours. The labor rate is applied in the following calculation: 65,559 hours x $165.71 ≈ $10,863,864. In subsequent years the cost of updating is calculated as: (All 18,632 affected entities x 5 hours) ≈ 93,161 burden hours. The labor rate is applied in the following calculation: 93,161 burden hours x $165.71 ≈ $15,437,780. Note, the total values may not equal the sum of the parts due to rounding. [↑](#footnote-ref-37)
36. The burden is estimated as follows: (165 x (15 minutes ÷ 60 minutes hours)) ≈ 41 hours. A labor rate of $65.99 is used for a clerical worker. The labor rate is applied in the following calculation: (165 x (15 minutes ÷ 60 minutes hours)) x $65.99 ≈ $2,722. Note, the total values may not equal the sum of the parts due to rounding. [↑](#footnote-ref-38)
37. The burden is estimated as follows: (50 x (15 minutes ÷ 60 minutes hours)) ≈ 13 hours. A labor rate of $65.99 is used for a clerical worker. The labor rate is applied in the following calculation: (50 x (15 minutes ÷ 60 minutes hours)) x $65.99 ≈ $825. Note, the total values may not equal the sum of the parts due to rounding. [↑](#footnote-ref-39)
38. 67 FR 17263. [↑](#footnote-ref-40)
39. The Department estimates approximately 96.1% 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 (58.3%) and the estimated share of Retirement Investors receiving electronic disclosures under the 2020 electronic disclosure safe harbor (37.8%). [↑](#footnote-ref-41)
40. The Department used information from a Greenwald & Associates survey which reported that 84 percent of retirement Plan participants find electronic delivery acceptable, and data from the National Telecommunications and Information Administration Internet Use Survey which indicated that 86 percent of adults 65 and over use e-mail on a regular basis, which is used as a proxy for internet fluency and usage. Therefore, the assumption is calculated as: (84% find electronic delivery acceptable) x (86% are internet fluent) ≈ 72% are internet fluent and find electronic delivery acceptable. [↑](#footnote-ref-42)
41. U.S. Post Office, *First-Class Mail*, (2024), <https://www.usps.com/ship/first-class-mail.htm>. [↑](#footnote-ref-43)
42. This is estimated as (44,593,228 x 3.9%) + (67,781,000 x 28.2%) ≈ 20,853,378 paper disclosures. Due to rounding values may not sum. [↑](#footnote-ref-44)
43. The material and postage cost is estimated as: (20,853,378 disclosures x 4 pages x $0.05) + (20,853,378 disclosures x $0.68 postage) ≈ $18,350,973. Due to rounding values may not sum. [↑](#footnote-ref-45)
44. According to Cerulli, in 2022, there were 4,485,059 DC Plan-to-IRA rollovers and 707,104 DC Plan-to-DC Plan rollovers. (*See* Cerulli Associates, *U.S. Retirement End-Investor 2023: Personalizing the 401(k) Investor Experience*, Exhibit 6.02. The Cerulli Report.) These account estimates may include health savings accounts, Archer medical savings accounts, or Coverdell education savings accounts. [↑](#footnote-ref-46)
45. Deloitte, Regulation Best Interest: How Wealth Management Firms are Implementing the Rule Package, Deloitte, (Mar. 6, 2020). [↑](#footnote-ref-47)
46. *See* Cerulli Associates, *U.S. Retirement End-Investor 2023: Personalizing the 401(k) Investor Experience*, Exhibit 6.04. The Cerulli Report. [↑](#footnote-ref-48)
47. This estimate is calculated as: 4,485,059 rollovers x 49% involving advice x 3.9% mailed ≈ 85,709. [↑](#footnote-ref-49)
48. The material and postage cost is estimated as: (4,485,059 rollovers x 49% involving advice x 3.9% disclosures mailed x $0.05 per page x 2 pages ≈ $8,571. Note, the total values may not equal the sum of the parts due to rounding. [↑](#footnote-ref-50)