Prohibited Transaction Class Exemption 97-41
Collective Investment Fund Conversion Transactions
OMB Number 1210-0104
February 2019

The Department of Labor, Employee Benefits Security Administration requests an extension without change for the information collections currently approved under OMB Control Number 1210-0104.

A. SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995 SUBMISSIONS

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 Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (the Code) provide that the Secretary of Labor and the Secretary of Treasury, respectively, may grant exemptions from certain prohibited transaction provisions under ERISA and the Code. Section 408(a) of ERISA authorizes the Secretary of Labor to grant administrative exemptions from the restrictions of section 406 of ERISA, while section 4975(c)(2) of the Code authorizes the Secretary of Treasury or his delegate to grant exemptions from the prohibitions of section 4975(c)(1).

Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, effective on December 31, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975 of the Code, with certain enumerated exceptions, to the Secretary of Labor. As a result, the Secretary of Labor now possesses authority under section 4975(c)(2) of the Code as well as under 408(a) of ERISA to issue individual and class exemptions from the prohibited transaction rules of ERISA and the Code.

Prohibited Transaction Class Exemption (PTE) 97-41, which was finalized in 1997 in response to an application submitted on behalf of Federated Investors, permits an employee benefit plan to purchase shares of a registered open-end investment company (mutual fund) in exchange for plan assets transferred from a collective investment fund (CIF) maintained by a bank or plan adviser, even though the bank or plan advisor is the investment advisor for the mutual fund and also serves as a fiduciary for the plan, provided that the purchase and transfer is in connection with a complete withdrawal of the plan’s investment in the CIF and certain other conditions are met.

Among other conditions, the exemption requires the bank or plan advisor to provide an independent fiduciary of the plan with advance written notice of the proposed transfer and full written disclosure of information concerning the mutual fund, including the current prospectus; disclosure of the investment advisory and other fees the plan will be charged or pay to the bank or any unrelated third party, including the nature and extent of any differential between the rates of the fees; the reasons why the bank or plan advisor considers the in-kind transfers appropriate for the plan; and a statement of whether there are any limitations applicable to the bank with respect to which plan assets may be invested in the mutual fund and, if so, the nature of such limitations; and the identity of securities that will have to be valued for the transfer. The independent fiduciary must give prior written approval of the transfer (and written approval of any electronic transmission of subsequent confirmations from the bank or plan advisor); and the bank or advisor must send written (or electronic, if approved) confirmation of the transfer. Subsequent to a transfer, the bank or plan advisor must provide the plan with updated prospectuses at least annually for mutual funds in which the plan remains invested; the bank or plan advisory must also provide, upon the independent fiduciary's request, a report or statement of all fees paid by the mutual fund to the bank or plan advisor, which may be in the form of the most recent financial report.

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 information collection request is a set of third-party disclosures. Respondents are not required to submit information to the Department. Availability of the exemption is conditioned on the bank's or plan advisor's delivery of advance notice to the independent fiduciary of a plan concerning the withdrawal of the plan's assets from a CIF, and written (or electronic) confirmation to the same fiduciary after the completion of each transaction involving the transfer of assets. These notice and confirmation requirements are necessary, as required under section 408(a) of ERISA, to ensure that respondents rely on the exemption only in the circumstances protective of plan participants and beneficiaries.

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

The exemption expressly permits banks and plan advisors to provide the required confirmation disclosures by electronic means to plans, upon prior written approval by the plan's independent fiduciary. See paragraphs II(f) and (g) of the exemption.

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

The notice and confirmation requirements for transfers of plan assets from a CIF to a fund are specific to each transaction between a bank or plan adviser and the independent fiduciary of a plan. There is no duplication and no similar information is elsewhere available.

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

   The banks and investment advisers required to comply with the terms of the exemption are typically not small businesses. It is therefore not anticipated that this exemption will have a significant impact on small businesses.

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

   The notice and disclosure requirements apply only when plans, banks, and investment advisers intend to engage in transactions other prohibited under ERISA in reliance on the class exemption. The frequency of the information collection therefore is dependent on the occurrence of a transaction and not on a predetermined time period. The notice and confirmation requirements incorporated in the class exemption are intended to protect the interests of plan participants and beneficiaries. Failure to collect this information would increase risks of loss to participants and beneficiaries in affected plans and make oversight and enforcement more difficult for the Department.

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

- *requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

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

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

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

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

The Department's notice soliciting public comment and providing 60 days for that purpose as required by 5 CFR 1320.8 (d) was published in the Federal Register on October 23, 2018 (83 FR 53500). No comments were received.

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

No payments or gifts are provided to respondents.

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

No assurance of confidentiality has been provided.

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be*

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

None.

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

- *Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.*
- *If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13.*
- *Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.*

The Department has assumed, for purposes of this analysis, that all respondents are large financial institutions that will generally handle the information collections through the use of in-house staff, with the exception of purchase of outside legal counsel services to review notices (accounted for in item 13, below). Based on data from the Bureau of Labor Statistics, the following wage rates have been used as a basis for the burden analysis: for in-house legal staff, a rate of $133.29 per hour; for in-house financial staff, a rate of $157.90 per hour; and for clerical support staff, a rate of $52.09 per hour.[1]

The Department estimates that 50 banks or plan advisors (respondents) per year will make transfers of plan assets from CIFs to mutual funds in reliance on the class exemption. The number of responses annually, estimated at 105, includes 50 advance notices of transfers, 50 annual prospectuses to plans continuing their investments in mutual funds following a transfer, and 5 responses to plan fiduciaries' requests for current financial reports. The information collection burden imposed by the exemption is estimated as follows.

1 For more information on how the Department estimates labor costs see: https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-july-2017.pdf

Initial Notice.

Initially, a bank or plan advisor must give the plan's independent fiduciary advance written notice, together with disclosure of specified information concerning the mutual fund(s) in which the plan assets will be invested. The Department has estimated that creating the initial notice will require 13 hours of in-house legal staff time, 13 hours of in-house financial staff time, and 9 hours of in-house clerical staff time. Based on these assumptions, the annual hour burden for the initial notice is estimated at 1,750 hours, consisting of 650 hours of in-house legal services time (50 respondents x 13 hours per respondent); 650 hours of financial analyst services time (50 respondents x 13 hours per respondent) and 450 hours of clerical time (50 respondents x 9 hours per respondent).

The equivalent cost of this hour burden would be $212,714 (including $86,639, 650 hours at $133.29 an hour, for legal staff time; $102,635, 650 hours at $157.90 and hour, for financial staff time; and $23,441, 450 hours at $52.09 an hour, for clerical staff time).

Annual Disclosure Requirements.

The exemption requires additional ongoing disclosure and recordkeeping. On an annual basis, the bank or advisor must provide the independent plan fiduciary with a new prospectus for each mutual fund in which the plan invests. The Department recognizes, however, that prospectuses are routinely provided to plans and other investors pursuant to usual and customary business practice, as well as under the separate requirements of state and federal law. The Department therefore assumes no additional burden for this disclosure.

The exemption also requires that banks or plan advisors respond to a fiduciary's request for a current financial statement disclosing fees paid by the mutual fund to the bank or advisor. Although banks routinely prepare and provide such statements, the Department recognizes that this requirement will impose some additional burden. While the Department has no data regarding the incidence of requests, the Department assumes that up to 10 percent of affected plans' fiduciaries may make such a request. The Department assumes therefore that 5 requests may be filed during any one year (10 percent x 50 transfers per year). The Department further assumes that each request will require 5 minutes of financial staff time and 10 minutes of clerical staff time to satisfy. Thus, the Department assumes that the annual hour burden associated with this portion of the exemption is approximately 25 minutes of financial staff time (5 minutes x 5 requests) and 50 minutes of clerical time (10 minutes x 5 requests) for a total of 1.25 hours.

The equivalent cost of the annual hour burden for the annual disclosures is therefore estimated at $109 (including $66 for financial staff time and $43 for clerical staff time).

Notification by Electronic Means.

The exemption expressly permits disclosure by electronic means (fax, e-mail, etc.), provided that the independent fiduciary gives advance consent to receiving electronic mail. Given the financially sophisticated nature of the parties to the transactions (large pension plans and large financial institutions, both with large investments in electronic technology), the Department assumes that nearly all plans will agree to electronic notification. The Department assumes that the approval forms for consenting to electronic mail will be included in the initial information disclosure package to independent fiduciaries. Thus, the only additional burden arising from this requirement is the estimated 5 minutes each that financial staff from a fund will require to review each plan fiduciary's advance consent for completeness and signature and that clerical staff will require to record and file the consent. The resulting ten minutes per approval results in an annual hour burden of 4 hours of financial staff time (5 minutes x 50 respondents) and 4 hours of clerical staff time (5 minutes x 50 respondents), for a total of 8.3 hours.

The equivalent cost for this hour burden is estimated at $875 (including $658 for financial staff time and $217 for clerical staff time).

Summary

In total, the Department estimates that the aggregate annual hour burden imposed by this exemption is approximately 1,760 hours (1750 hours + 1.25 hours + 8 hours) and the equivalent total cost of this hour burden is $213,698 ($212,714 + $109 + $875).

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).*

As noted in item 12, above, the Department has assumed that respondents will each require 25 hours of purchased legal services per year to review required notices and disclosures for compliance with legal requirements. The Department has estimated the cost of such services by reference to the US Department of Justice Laffey matrix billing cost for an attorney with 4-7 years of experience, which is $455 per billable hour.[2] The cost of purchased legal services is thus estimated at $568,750 annually (50 respondents x 25 hours per respondent x $4556/hour).

Additional costs arising from this information collection relate to delivery of initial and annual disclosures and responses to requested current financial reports. The Department assumes that the advance notice package will be distributed in paper via courier or private delivery services. The mailing costs for the advance notice package are therefore

2 See Laffey Matrix at http://www.laffeymatrix.com/see.html

estimated at $5.20 per package[3] or $260 total (50 respondents x $5.20).

For subsequent annual disclosures, the Department assumes that all correspondence between the bank and independent fiduciaries will be electronic and therefore entail no additional costs.

Finally, the Department assumes that banks or plan advisors will respond to fiduciaries' requests for financial information by overnight or registered mail, which will entail a cost of $4.45 per request.[4] As noted above, the department estimates that 5 requests will be handled on an annual basis, resulting in a cost of $22 ($4.45 x 5).

In sum, the Department estimates the aggregate annual cost burden of this exemption to be: $508,282 ($508,000 + $260 + $22).

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

There is no reporting to the federal government and, consequently, no cost to the government.

15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14.

The changes to this ICR were due to increases in labor rates, legal costs, and material and postage costs.

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

The results of the collection of information will not be published.

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

3 $3.45 for postage and $1.75 for 35 sheets of paper at $0.05 per sheet for printing and material costs.
4 $3.45 for postage and $1.00 for 20 sheets of paper at $0.05 per sheet for printing and material costs.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission."

Not applicable; no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

Not applicable.