

**Prohibited Transaction Exemption 75-1
(Security Transactions with Broker-Dealers, Reporting Dealers and Banks)
OMB Control Number 1210-0092
OMB Expiration Date: 08/31/2025**

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995:
PROHIBITED TRANSACTION EXEMPTION 75-1 (SECURITY TRANSACTIONS
WITH BROKER-DEALERS, REPORTING DEALERS AND BANKS)**

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

A. JUSTIFICATION

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

Employee Retirement Income Security Act of 1974 (ERISA) section 406(a) and Internal Revenue Code (Code) section 4975(c)(1)(A)-(D) prohibit specified transactions between plans and “parties in interest,” as defined in ERISA section 3(14) or “disqualified persons” as defined in Code section 4975(e)(2). Fiduciaries and other service providers are parties in interest and disqualified persons under ERISA and the Code. As a result, they are prohibited from engaging in the sale or exchange of property or services, loans, leases, or extensions of credit, with plans and individual retirement accounts (IRAs). ERISA section 406(b) and Code section 4975(c)(1)(E)-(F) further prohibits certain acts by plan fiduciaries that result in benefit to the fiduciary or a party adverse to the plan.

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

If a broker-dealer advances funds to settle a trade entered into by a plan or IRA or purchases a security for delivery on behalf of a plan or IRA, the result can potentially be viewed as a loan of money or other extension of credit to the plan or IRA. Further, in the event a broker-dealer steps into a plan’s or IRA’s shoes in any particular transaction, it

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

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may charge interest or other fees to the plan or IRA. These transactions potentially violate ERISA section 406(a)(1)(B) and Code section 4975(c)(1)(B) and (D).

Prohibited Transaction Exemption (PTE) 75-1 was granted on October 24, 1975. It consists of five parts covering, among other things, securities transactions between plans and broker-dealers, reporting dealers and banks as well as other parties. PTE 75-1 Part I covers the effecting of securities transactions and related services by persons that are not fiduciaries. Part II(1) allows the purchase or sale of a security between plans and IRAs and: (1) a broker-dealer registered under the Securities Exchange Act of 1934; (2) a reporting dealer who makes primary markets in securities of the U.S. Government or of any agency thereof and reports daily to the Federal Reserve Bank of New York its positions with respect to Government securities and borrowings thereon; or (3) a bank supervised by the United States or a State. Part II(2) provides an exemption for certain fiduciaries to act as principals (as opposed to agents for third parties) in selling mutual fund shares to plans and IRAs and to receive commissions for doing so. Part III allows a plan to purchase certain securities from underwriting syndicates of which a plan fiduciary is a member. Part IV allows a plan to purchase from or sell securities to a market maker that is a fiduciary. Part V allows a broker-dealer to extend credit to a plan in connection with the purchase or sale of securities. Each of the five parts of the exemption contains its own conditions and limitations.

In order to ensure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that parties comply with the exemption's conditions, the Department requires limited information collection pertaining to the affected transactions. The information collection requirements that are conditions to reliance on the class exemption consist only of a recordkeeping requirement in Parts II, III, IV, and V of the exemption. Specifically, the plan must maintain or cause to be maintained for a period of six years from the date of the transaction records necessary to enable the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization any of whose members are covered by plan participating in covered transactions to determine whether the conditions of the exemption have been met and to make such records available unconditionally for examination during normal business hours to their duly authorized employees.

2023 Proposed Amendments

The Department is proposing to revoke parts of PTE 75-1, which was granted shortly after ERISA's passage to provide certainty to the securities industry over the nature and

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extent to which ordinary and customary transactions between broker-dealers and plans or IRAs would be subject to ERISA's prohibited transaction rules.

PTE 75-1, Part I, Paragraphs (b) and (c) provide exemptive relief for certain non-fiduciary services provided by broker-dealers in securities transactions. Code section 4975(d)(2), ERISA section 408(b)(2) and regulations thereunder, have clarified the scope of relief for service providers to plans and IRAs.² The Department believes that the relief provided in Parts I(b) and I(c) of PTE 75-1 duplicates the relief available under the statutory exemptions. Therefore, the Department is proposing to revoke paragraphs (b) and (c) of Part I.

PTE 75-1, Part II(2), contains a special exemption for mutual fund purchases (the mutual fund exemption) between fiduciaries and plans or IRAs subject to minimal safeguards for retirement investors. The conditions of the exemption require a fiduciary to customarily purchase and sell securities for its own account in the ordinary course of its business, the transaction to occur on terms at least as favorable to the plan as an arm's length transaction with an unrelated party, and records to be maintained. The Department is proposing to revoke PTE 75-1, Part II(2), because it has determined that Part II(2) is not protective of retirement investors and has been broadly interpreted beyond what was intended.³ The transactions that have been covered by PTE 75-1 Part II(2) are largely now covered by newer, more protective exemptions, and fiduciaries providing investment advice on the purchase or sale of a mutual fund security can rely on PTE 2020-02. Moreover, fiduciaries providing investment management on the purchase or sale of mutual fund security can receive non-commission compensation under PTE 77-4.

The Department is also proposing to amend PTE 75-1 Parts III & IV, which currently provides relief for investment advice fiduciaries, by removing fiduciary investment advice from the covered transactions. Investment advice providers would instead have to rely on the amended PTE 2020-02 for exemptive relief covering investment advice transactions.

The amendment to PTE 75-1, Part V will allow broker-dealers that are investment advice fiduciaries to receive compensation when they extend credit to plans and IRAs to avoid failed securities transactions entered into by the plan or IRA. ERISA and the Code generally prohibit fiduciaries from lending money or otherwise extending credit to plans and IRAs, and from receiving compensation in return. Therefore, in the absence of an exemption, these transactions would be prohibited under ERISA and the Code.

² See 29 CFR 2550.408b-2; 42 FR 32390 (June 24, 1977); Reasonable Contract or Arrangement under Section 408(b)(2)—Fee Disclosure, Final Rule, 77 FR 5632 (Feb. 3, 2012).

³ 81 FR 21181, 21199 (Apr. 8, 2016).

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The amendment to PTE 75-1, Part V requires the plan or IRA to receive written disclosure of certain terms prior to the extension of credit. The disclosure must include the rate of interest or other fees that will be charged on such extension of credit, and the method of determining the balance upon which interest will be charged. The plan or IRA must additionally be provided with prior written disclosure of any changes to these terms.

The required disclosures are intended to be consistent with the requirements of Securities and Exchange Act Rule 10b-16, which governs broker-dealers' disclosure of credit terms in margin transactions. The Department understands that many broker-dealers currently provide such disclosures to all customers, regardless of whether the customer is presently opening a margin account. To the extent such disclosure is provided, the disclosure terms of the exemption would be satisfied.

The amendment to PTE 75-1, Part II(1) and the amendment to PTE 75-1, Part V will revise the recordkeeping provisions to require the financial institutions engaging in the exempted transactions (rather than the plans) to maintain or cause to be maintained for six years the records necessary for the Department, Internal Revenue Service, plan fiduciary, contributing employer or employee organization whose members are covered by the plan, participants and beneficiaries and IRA owners to determine whether the conditions of the exemption have been met. As amended, parties relying on the exemptions do not have to disclose trade secrets or other confidential information to members of the public (*i.e.*, plan fiduciaries, contributing employers or employee organizations whose members are covered by the plan, participants and beneficiaries and IRA owners), but that in the event a party refuses to disclose information on this basis, it must provide a written notice to the requester advising of the reasons for the refusal and advising that the Department may request such information.

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 recordkeeping would be used by (1) the Department, (2) the Internal Revenue Service, (3) plan participants and beneficiaries and IRA owners, (4) any employer of plan participants and beneficiaries, and (5) any employee organization any of whose members are covered by such plan to determine whether the conditions of this exemption have been met.

The class exemption allows broker-dealers, reporting dealers and banks and others to engage in securities and other transactions with employee benefit plans. These

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transactions would otherwise be prohibited under ERISA's prohibited transaction provisions. The recordkeeping requirement is intended to be protective of rights of plan participants and beneficiaries and IRA owners by ensuring they and the Department can confirm that the conditions of the exemption has been satisfied.

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

2023 Proposed Amendments

The amendment to PTE 75-1, Part V requires the plan or IRA to receive written disclosure of certain terms prior to the extension of credit. The disclosure must include the rate of interest or other fees that will be charged on such extension of credit, and the method of determining the balance upon which interest will be charged. The plan or IRA must additionally be provided with prior written disclosure of any changes to these terms.

- 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 Government Paperwork Elimination Act (GPEA) requires agencies to allow customers the option to submit information or transact with the government electronically, when practicable. Where feasible, and subject to resource availability and resolution of legal issues, EBSA has implemented the electronic acceptance of information submitted by customers to the federal government.

As further discussed in items 12 and 13 below, the Department has taken into account that some of the disclosures and written authorizations will be delivered electronically.

- 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.**

It is likely that duplication of recordkeeping requirements exist with some state and federal banking and securities laws. However, no duplicate recordkeeping is required because entities are able to satisfy the requirements of both the exemption and of the

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other applicable laws through one recordkeeping arrangement.

2023 Proposed Amendments

The Department believes that the additional disclosure requirement in PTE 75-1, Part V is consistent with the disclosure requirement mandated by the Securities and Exchange Commission (SEC) in 17 CFR 240.10b-16(1) for margin transactions. Therefore, the same disclosure can be used to fulfill both requirements.

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

Large institutional financial service providers are most likely to engage in the covered transactions. However, even if small entities are involved in these transactions, the burden is believed to be minimal because most entities maintain the subject records a part of their ordinary and customary business practices or for other reasons, including other state and Federal securities regulatory requirements.

2023 Proposed Amendments

As mentioned in Item 4 above, the Department believes that (i) the recordkeeping requirement is consistent with other applicable laws as well as ordinary and customary business practices, and (ii) the disclosure requirement is consistent with the disclosure requirement mandated by the Securities and Exchange Commission (SEC) in 17 CFR 240.10b-16(1) for margin transactions. Therefore, the same recordkeeping arrangement and disclosure arrangement can be used to fulfill both requirements, and the impact on small entities would be minimal.

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

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

If the disclosure and recordkeeping requirements were not included in PTE 75-1, the Department could not ensure that the exemption is protective of the rights of participants and beneficiaries as required under ERISA section 408(a) and Code section 4975(c)(2).

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

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

Under the recordkeeping provisions of the amended exemption, fiduciaries are not required to disclose records that are privileged trade secrets or privileged commercial or financial information to plan fiduciaries, participants or beneficiaries, IRA owners, or their representatives. However, if the fiduciary refuses to disclose information on the basis that the information is exempt from disclosure, the fiduciary must, by the close of the thirtieth (30th) day following the request, provide a written notice advising the requestor of the reasons for the refusal and that the Department may request such information.

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

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

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

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

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

No payments or gifts were provided to respondents.

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

There is no assurance of confidentiality provided to respondents.

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

There are no questions of a sensitive nature.

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

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of difference in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **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.**

Broker-dealers registered under the Security Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), reporting dealers, and banks are eligible to rely on the exemption. According to the SEC, approximately 3,508 broker-dealers were SEC-registered as of December 2021.⁴ Not all broker-dealers perform services for employee benefit plans. In 2021, 54 percent of registered investment advisers provided employer-sponsored retirement benefits consulting. Assuming the percentage of broker-dealers provide advice to retirement plans is the same as the percent of investment advisers providing services to plans, the Department assumes 54 percent, or 1,894 broker-dealers, would be affected by PTE 1975-1.

According to the Federal Deposit Insurance Corporation, there are 4,096 commercial banks as of March 31, 2023.⁵ If one-half of these banks (about 2,048) and 54 percent of broker-dealers (about 1,894 broker-dealers) relied on this exemption, there would be approximately 3,942 respondents.⁶

The class exemption requires the financial institutions engaging in the exempted

⁴ Estimates based on SEC's FOCUS filings and SEC's Form ADV filings.

⁵ Federal Insurance Deposit Corporation, *Quarterly Banking Profile, Statistics at a Glance- as of March 31, 2023*, <https://www.fdic.gov/analysis/quarterly-banking-profile/statistics-at-a-glance/2023mar/industry.pdf>.

⁶ Reporting dealers covered by the exemption are not accounted for separately because they are banks and security brokerages that trade in U.S. Government Securities; thus, reporting dealers are already accounted for in the number of broker-dealer firms and banks. The New York Federal Reserve Bank reported 21 primary dealers on March 21, 2013. (http://www.newyorkfed.org/markets/pridealers_current.html).

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transactions (rather than the plans) to be maintained all records pertaining to such transactions for six years and provide access to the records upon request to the specified parties. The Department has assumed that financial service providers that transact with the employee benefit plans will maintain these records on behalf of their client plans. Because of the sophisticated nature of financial service providers and the strict regulation of the securities industry by State and federal government, and by self-regulatory organizations, the Department has assumed that the records required by this class exemption are the same records kept in the normal course of business.

The Department has estimated that the additional time needed to maintain records for the financial institutions to be consistent with the exemption will be four hours per entity annually at a wage rate of \$190.63 per hour.⁷ The Department estimates it would take 15,768 hours at an equivalent cost of \$3,005,854 to maintain the records and make the records available for inspection.⁸

2023 Proposed Amendments

In connection with the proposal, the Department is amending PTE 75-1, Part I, II, and Part V to adjust the recordkeeping requirement. Additionally, the Department proposes to amend PTE 75-1, Part V, to include a new disclosure requirement. The Department believes that it is a usual and customary business practice to maintain records required to demonstrate compliance with disclosure distribution regulations mandated by the Securities and Exchange Commission (SEC). The Department believes that this new disclosure requirement is consistent with the disclosure requirement mandated by the SEC in 17 CFR 240.10b-16(1) for margin transactions. The Department believes that this new disclosure requirement is consistent with the disclosure requirement mandated by the Securities and Exchange Commission in 17 CFR 240.10b-16(1) for margin transactions. Therefore, the Department concludes that these requirements produce no additional burden to the public.

⁷ Internal Department calculation based on 2023 labor cost data. For a description of the Department's methodology for calculating wage rates, see <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf>.

⁸ The burden is estimated as follows: 3,983 financial institutions x 4 hours = 15,932 hours. A labor rate of \$190.63 is used for a manager. The labor rate is applied in the following calculation: 3,983 x 4 hours x \$190.63 = \$3,037,117.

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Estimated Annualized Respondent Hour Burden and Equivalent Cost of Hour Burden

| Activity | Number of Respondents | Number of Responses per Respondent | Total Responses | Average Burden (Hours) | Total Burden (Hours) | Hourly Wage Rate | Equivalent Cost of Hour Burden |
|---------------|-----------------------|------------------------------------|-----------------|------------------------|----------------------|------------------|--------------------------------|
| Recordkeeping | 3,942 | 1 | 3,942 | 4 | 15,768 | \$190.63 | \$3,005,854 |
| Total | 3,942 | 1 | 3,942 | | 15,768 | | \$3,005,854 |

13. Provide an estimate of the total annual cost burden to respondents or record keepers 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 2 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

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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.

It is assumed that required records are maintained by the relevant affected parties, the broker-dealers and banks. Thus, there are no additional tasks performed outside of the brokerage firms/banks.

2023 Proposed Amendments

In connection with the proposal, the Department proposes to amend PTE 75-1, Parts I, II, and V, to require the broker dealer or bank (rather than the plan) to comply with the recordkeeping requirement. Additionally, an amendment is being proposed to PTE 75-1, Part V, to require a new disclosure requirement. The Department believes that it is a usual and customary business practice for broker dealers to maintain the records required by the proposed amendment. The Department believes that this new disclosure requirement is consistent with the disclosure requirement mandated by the Securities and Exchange Commission in 17 CFR 240.10b-16(1) for margin transactions; therefore, no additional burden has been added.

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

There are no ongoing costs to the Federal government.

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

In connection with the proposal, the Department proposes to amend PTE 75-1, Parts I, II and V, to adjust the recordkeeping requirement. An amendment is being proposed to PTE 75-1, Part V, to require a new disclosure requirement. Additionally, the Department has updated the number of commercial banks and broker-dealers, as well as the wage costs due to increased labor costs and inflation. Furthermore, the Department has revised the additional time needed to maintain records for the financial institutions to be consistent with the exemption. In the previous information collection, the average hour burden was estimated to be 10 minutes per entity annually. In the current information

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collection, the average hour burden is estimated to be four hours per entity annually. As a result, the number of responses has decreased by 1,702 responses and the hour burden increased by 14,827 hours.

- 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 collection of information will display a currently valid OMB control number.

- 18. Explain each exception to the certification statement identified in Item 19.**

There are no exceptions to the certification statement.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

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