

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995  
SUBMISSION: PROHIBITED TRANSACTION CLASS EXEMPTION 88-59,  
RESIDENTIAL MORTGAGE FINANCING ARRANGEMENTS**

**This ICR seeks approval for an extension of an existing control number.**

**A. JUSTIFICATION**

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

Section 408(a) of ERISA authorizes the Secretary of Labor “to grant a conditional or unconditional exemption of any fiduciary or class of fiduciaries or transactions, from all or part of the restrictions imposed by section 406 and 407(a).” In order to grant such exemptions under 408(a), however, the Department must determine that the exemption is administratively feasible, in the interest of the plan and its participants and beneficiaries, and protective of the rights of participants and beneficiaries.

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 Internal Revenue Code (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) 88-59, which amended and replaced PTE 82-87, permits employee benefit plans to engage in certain investments in residential mortgages involving parties in interest to the plan.

The exemption requires that commitment agreements and participation agreements must be in writing.

**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 exemption allows employee benefit plans to participate in several different types of

**Prohibited Transaction Class Exemption 88-59**  
**Residential Mortgage Financing Arrangements**  
**OMB Number 1210-0095**  
**Expiration Date: 10/31/2025**

residential mortgage financing transactions, provided certain conditions are met. Without this exemption, these transactions would be prohibited under section 406(a) of ERISA and under the prohibited transaction provisions of section 4975 of the Code. The five categories of transactions permitted under the exemption are: (1) the issuance of a commitment by one or more employee benefit plans to provide mortgage financing to purchasers of residential dwelling units, either by making or participating in loans directly to purchasers or by purchasing mortgage loans or participation interests in mortgage loans originated by a third party; (2) the receipt by the plan of a fee in exchange for issuing such commitment; (3) the actual making or purchase of a mortgage loan or participation interest therein pursuant to such commitment; (4) the direct making or purchase by one or more employee benefit plans of a mortgage loan or a participation interest therein other than where a commitment has been issued; and (5) the sale, exchange, or transfer of a mortgage loan or participation interest therein by an employee benefit plan prior to the maturity date of such instrument whether or not acquired pursuant to PTE 88-59, provided that the ownership interest sold, exchanged, or transferred represents the plan's entire interest in such investment.

Among other conditions, the exemption requires a plan to maintain for the duration of any loan made pursuant to this exemption all records necessary to determine whether conditions of the exemption have been met and to make such records available for examination on request by any trustee, investment manager, participant or beneficiary of the plan, or duly authorized agents of the Department or the IRS. This recordkeeping requirement enables interested persons, including trustees, investment managers, participants and beneficiaries of the plan, as well as agents of the Department and IRS, to monitor an exempted party's compliance during the entire period for which an action may be brought to seek redress of a breach of fiduciary duty with respect to the transaction. The primary purpose of the exemption's recordkeeping condition is to enable participants and other interested persons to exercise oversight over compliance with the conditions of the exemption.

- 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.**

29 CFR 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.

Use of electronic methods of compliance is neither required nor precluded by the terms of this exemption. Inasmuch as plans and financial entities that engage in mortgage financing are generally sophisticated entities, the Department assumes that this recordkeeping will be undertaken through electronic databases and systems, which reduce the burden of the information collection.

**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 this recordkeeping requirement overlaps with other federal or state requirements pertaining to mortgage lending, such as those that pertain to lenders participating in the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, or in the mortgage insurance program under the Federal Housing Act. However, duplicate recordkeeping would not typically result because an entity would be able to satisfy any duplicative requirements through a single system of recordkeeping.

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

Although this exemption is more likely to affect large plans with diverse investment programs, small plans may also occasionally make residential mortgage investments. The burden of the exemption is expected to be minimal for all plans because the required records are expected to be kept in the ordinary course of business by most plans.

**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 recordkeeping requirements are imposed only with respect to transactions voluntarily entered into by the transacting parties; the frequency of response is therefore dependent on the occurrence of a transaction, not a predetermined time-period. In the absence of the recordkeeping requirement, fiduciaries, participants and beneficiaries, and the Department, would not have access to sufficient information to verify compliance with the terms of the exemption.

**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 published a notice in the Federal Register, as required by 5 CFR 1320.8 (d), on January 6, 2025 (90 FR 671), soliciting comments on the request for an extension of approval of this information collection. No comments on this ICR were received.

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

There are no payments or gifts 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.

**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 estimates that 529 employee benefit plans hold residential mortgage loans, which is based on the following assumptions:<sup>1</sup>

- Using 2022 Form 5500 filings, the Department estimates that approximately 0.22 percent of plans have non-participant loans.
- Based on the 1998 Form 5500 filings, the Department estimates that 30 percent of non-participant loans are residential mortgage loans, indicating that not all non-participant loans are residential mortgage loans.<sup>2</sup>
- To calculate the total number of plans holding residential mortgage loans, the Department multiplied the total number of pension plans (801,371<sup>3</sup>) by the percentage of plans with non-participant loans (0.22 percent). This estimate was then multiplied by the percent of non-participant loans that are assumed to be residential mortgage loans (30 percent).
- Although the number of loans held by each plan is not known, the Department assumes that each plan owns an average of five loans and has estimated that there will be a total of 2,645 residential mortgage loans held annually by plans.<sup>4</sup>

The class exemption's only information collection requirement obliges plans entering into transactions covered by the exemption to retain all records pertaining to such transactions for the duration of the loan. Because of the ERISA annual reporting requirements and the state and federal regulation of mortgage lenders, the Department has further assumed that the records required by this class exemption are the same records kept in the normal course of business by plans.

---

1 In 2022 (the most recent Form 5500 bulletin data available), there were 801,371 pension plans. Thus,  $801,371 \text{ plans} \times 0.22 \text{ percent} \times 30 \text{ percent} = 529 \text{ plans}$ .

2 1998 is the most recent year that non-participant loans were disaggregated into categories that included residential mortgages and commercial mortgages. Only large plans (>100 participants) that year filed information that was for this estimate. 388 of the large plans held residential mortgages and another 515 held commercial mortgages that year. The Department assumes that 25 percent of the commercial mortgages (129) were for multi-family residential loans (covered under this exemption). Thus, the estimated total number of plans that had loans subject to this exemption was 517. Overall, there were 1,713 plans that held non-participant loans. The conditions provided by this exemption were applicable to approximately 30 percent of these plans (517/1,713).

3 Employee Benefits Security Administration, *Private Pension Plan Bulletin: Abstract of 2022 Form 5500 Annual Reports*, (September 2024), <https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2022.pdf>

4  $529 \text{ plans} \times 5 \text{ loans per plan} = 2,645 \text{ loans}$ .

**Prohibited Transaction Class Exemption 88-59**  
**Residential Mortgage Financing Arrangements**  
**OMB Number 1210-0095**  
**Expiration Date: 10/31/2025**

Therefore, the estimated time spent to maintain records consistent with the exemption for each transaction would be minimal. For this recordkeeping requirement, the Department estimates that clerical staff will spend an additional five minutes per loan each year, at a wage of \$70.29 to maintain the records.<sup>5</sup> The Department also estimates that a lawyer will spend 30 minutes per loan each year preparing and reviewing the agreements, at a wage rate of \$181.06. Please see Table 1 for calculations and burden.

**Table 1. Estimated Annualized Respondent Cost and Hour Burden**

Activity	Number of Respondents	Number of Responses per Respondent	Total Responses	Average Burden (Hours)	Total Burden (Hours)	Hourly Wage Rate	Total Burden Cost
Clerical staff maintain recordkeeping	529	5	2,645	5/60	220	\$70.29	\$15,464
Lawyers prepare and review agreements	529	5	2,645	30/60	1,323	\$181.06	\$239,542
<b>Total</b>	<b>529</b>	<b>-</b>	<b>2,645</b>	<b>-</b>	<b>1,543</b>	<b>-</b>	<b>\$255,006</b>

- 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.**

<sup>5</sup> Internal DOL calculation based on 2025 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>.

- 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.

The cost burden resulting from the information collection derives solely from the material and postage costs associated with distributing loan information to plans. The postage cost is estimated at \$10.10 for each priority or overnight domestic mailing, and the material cost is \$0.05 per page. Assuming the loan information is approximately 10 pages, this results in a total mailing cost of \$10.60 per document.<sup>6</sup> Of the 2,645 loans, the Department assumes that holders of approximately 10 percent, or 265 loans, will receive loan information documents by mail. Please see Table 2 for calculations and burden.

**Table 2. Cost Burden of Mailing Loan Information to Plans**

Activity	Number of Loans	Percent of Loans that are Mailed	Mailing Cost	Total Cost
	(A)	(B)	(C)	(A x B x C)
Cost of mailing loan information to plans	2,645	10%	\$10.60	\$2,804

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.

<sup>6</sup> The cost is calculated in the following manner: \$10.10 + \$0.50 x 10 pages = \$10.60.



There are no costs to the Federal government associated with this information collection.

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

This information collection contains no program changes. The Department has updated the number of plans and residential mortgage loans. Compared to the previous information collection, the percentage of pension plans with non-participant loans has decreased from 1 percent to 0.22 percent. As a result, the number of responses has decreased by 8,800 responses, the hour burden has decreased by 6,087 hours, and the cost burden has decreased by \$8,012. Finally, the Department has updated the wage rates for clerical staff and legal professionals.

**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.**

Not applicable.

**18. Explain each exception to the certification statement.**

There are no exceptions to the certification statement.

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

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