

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995:
STATUTORY EXEMPTION FOR CROSS-TRADING OF SECURITIES**

This ICR seeks approval for an extension without change of an existing control number.

A. JUSTIFICATION

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

The Statutory Exemption for Cross-Trading of Securities regulation (29 CFR 2550.408b-19) implements the content requirements for the written cross-trading policies and procedures required under section 408(b)(19)(H) of ERISA, as added by section 611(g) of the Pension Protection Act of 2006, Pub. L. 109-280 (the PPA). Section 611(g)(1) of the PPA created a statutory exemption, added to section 408(b) of ERISA as subsection 408(b)(19), that exempts from the prohibitions of sections 406(a)(1)(A) and 406(b)(2) of ERISA those cross-trading transactions involving the purchase and sale of a security between an account holding assets of a pension plan and any other account managed by the same investment manager, provided that certain conditions are satisfied.¹

On October 7, 2008, the Department issued final regulations regarding cross-trading policies and procedures (73 F.R. 58450). The regulation provides that the policies and procedures for cross-trading under the statutory exemption must:

- be written in a manner calculated to be understood by the plan fiduciary authorizing cross-trading.
- be sufficiently detailed to facilitate a periodic review of all cross-trades by a compliance officer designated by the investment manager and a determination by the compliance officer that the cross-trades comply with the investment manager's written cross-trading policies and procedures.
- include, at a minimum: (1) a statement of general policy which describes the criteria that will be applied by the investment manager in determining that execution of a securities transaction as a cross-trade will be beneficial to both parties to the transaction; (2) a description of how the investment manager will determine the price at which the securities are cross-traded, in a manner that is consistent with 17 C.F.R. 270.17a-7(b) and SEC interpretations thereunder,

¹ Section 611(g)(3) of the PPA further directed the Secretary of Labor to issue regulations, within 180 days after enactment, regarding the content of the policies and procedures to be adopted by an investment manager to satisfy the conditions of the statutory exemption.

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including the identity of sources used to establish the price; (3) a description of how the investment manager's policies and procedures will mitigate any potentially conflicting division of loyalties and responsibilities to the parties involved in any cross-trade transaction; (4) a requirement that the investment manager allocate cross-trades among accounts participating in the cross-trading program in an objective and equitable manner and a description of the policies and procedures that will be used; (5) the identity of the compliance officer responsible for reviewing the investment manager's compliance with 408(b)(19) of ERISA and its written cross-trading policies and procedures and the compliance officer's qualifications for this position; (6) the steps to be performed by the compliance officer during its periodic review of the investment manager's purchases and sales of securities to ensure compliance with the written cross-trading policies and procedures; and (7) a description of the procedures by which the compliance officer will determine whether the requirements of section 408(b)(19) of ERISA are met.

The statutory exemption requires, as a condition to exemptive relief, that an investment manager's policies and procedures regarding cross-trading be provided in advance to the fiduciary of any plan that is considering agreeing to allow its assets to be managed under the investment manager's cross-trading program. The investment manager is also required, under the statutory exemption, to designate a compliance officer responsible for periodically reviewing the investment manager's cross-trading program to ensure compliance with the investment manager's cross-trading written policies and procedures. The statutory exemption requires the compliance officer to issue an annual report to each plan fiduciary describing the steps performed during the course of the review, the level of compliance, and any specific instances of noncompliance.

The information collection provisions of this regulation are intended to carry out the Congressional directive to specify the contents of the policies and procedures required under the statutory exemption. The Department believes the collections are necessary to safeguard plan assets by requiring that investment managers relying on the statutory exemption effect cross-trades in accordance with policies and procedures that are fair and equitable to all accounts participating in the cross-trading program. The information collection provisions of the regulation, along with other requirements of the statutory exemption, are also intended to ensure that plan fiduciaries have adequate information to make an informed decision regarding the plan's initial and continued participation in the investment manager's cross-trading program.

- 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.**

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The information collection requirements of the regulation are third-party disclosures to plan fiduciaries involving the development and initial disclosure of written policies and procedures pertaining to an investment manager's cross-trading program under the statutory exemption for cross-trading. The exemption does not require any reporting or filing with the Federal government. The information will be used by the plan fiduciary to assess the initial and continued appropriateness of investing plan assets subject to a cross-trading program. The information will enable the plan fiduciary to fulfill its fiduciary duties under the plan and to protect plan assets on behalf 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.**

Nothing in the regulation requires that disclosures be made through distribution methods that would preclude use of electronic technology. Accordingly, the collection of this information may be satisfied electronically by any investment manager that maintains the documents electronically if the party to which the disclosures must be made is able to receive the documents electronically. Discussions with industry experts indicate that the parties that engage in cross-trading programs are large, financially sophisticated entities. A study by the Securities Industry Association indicates that virtually all large, sophisticated financial institutions "have invested in complex information technology (IT) systems."² Consequently, the Department has assumed that more routine interactions between parties will be carried out electronically. For purposes of this burden estimate, however, the Department has assumed that the written policies and procedures initially furnished to plan fiduciaries will be provided in writing to provide desired formality of compliance.

- 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 Department has attempted to avoid duplication of information collection requirements. The required policies and procedures are unique to the circumstances of a particular cross-trading program and do not replicate any other requirements by state or federal regulations. The regulation permits respondents to satisfy the information

²Rob Mills, *Regional Firms: Increasingly Retail-Oriented, But Holding Their Own*, SIA Research Reports, Vol. VI, No. 6, (June 29, 2005) at 12.

collections by adding the required disclosures to documents that are already in existence due to ordinary and customary business practices.

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

This collection of information is unlikely to adversely affect small businesses or small entities. As noted by the SIA study referenced in the answer to Item 3, above, the investment managers affected by this information collection are generally very large, highly sophisticated financial institutions, not small entities. However, even small businesses which engage in investment management have highly automated and sophisticated electronic systems and so the burden is likely to be the same for both small and large businesses. In addition, investment managers that choose to engage in cross-trading under the statutory exemption should uniformly be required to satisfy the regulation and conditions of the statutory exemption regardless of whether the investment manager is considered a large or small entity in order to adequately protect participants and beneficiaries.

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 information collection requirements in this regulation and frequency of the information collection requirements are required by the PPA. The requirements are only mandatory if investment managers voluntarily decide to rely on the statutory exemption and plans voluntarily elect to participate in cross-trading programs. Without the policies and procedures, plans may not be treated fairly and equitably under a cross-trading program and compliance with the statutory exemption may not be monitored to adequately safeguard plan assets. In addition, without the information collection requirements, plan fiduciaries may not receive sufficient information about an investment manager's cross-trading program needed to fulfill their fiduciary responsibilities, and consequently participants' and beneficiaries' investments in a plan may not be adequately protected.

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 87 FR 43897, on July 11, 2025 (90 FR 30984), soliciting public comments on the Department's request

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for an extension of the approval of this information collection and providing the public with 60 days to comment on the submission.

One comment was received. It states, “The information collection request regarding the statutory exemption for cross-trading of securities (OMB Number 1210-0130) should be discontinued. The collection itself indicates that the information is not provided to the federal government; therefore, it is not necessary for the proper performance of the agency. In addition, the request appears to underestimate the time and cost to comply. For example, the request estimates that each response only takes about an hour.”

Information collections cover more than just the government receiving information. The information collection provisions of this regulation are intended to carry out the Congressional directive to specify the contents of the policies and procedures required under the statutory exemption. The Department believes the collections are necessary to safeguard plan assets by requiring that investment managers relying on the statutory exemption effect cross-trades in accordance with policies and procedures that are fair and equitable to all accounts participating in the cross-trading program. The information collection provisions of the regulation, along with other requirements of the statutory exemption, are also intended to ensure that plan fiduciaries have adequate information to make an informed decision regarding the plan’s initial and continued participation in the investment manager’s cross-trading program.

The commentor disagrees with the cost estimates, but they did not provide any additional information that would help the Department to determine a more accurate estimate. The Department reconsidered its estimate of the hour burden, but decided to retain the estimate of the hour burden.

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 is 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.

This information collection does not ask 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. General, 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.**
- **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's estimates of respondents and responses are derived primarily from the Form 5500 Series filings for the 2022 plan year, which is the most recent data available to the Department. In addition, the Department has made certain specific basic assumptions in order to establish a reasonable estimate of the paperwork burden of this information collection.

First, the Department assumes that investment managers, which are large, sophisticated financial institutions, will use existing in-house resources to prepare the information and disclosures, rather than hire outside service providers to do this work.

Second, given the nature of the information collection requirements, the Department assumes a combination of professional financial or investment personnel and clerical personnel will perform the information collections. The Department assumes an hourly wage rate of \$181.06 for a legal professional and an hourly wage rate of \$70.29 for a clerical personnel.³

³ Internal DOL calculation based on 2025 labor cost data. For a description of the Department's methodology for

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The Department estimates that approximately 2,105 investment managers manage the assets of about 2,431 plans eligible to participate in cross-trading programs in each year.⁴ Because investment managers may manage all or part of a plan's assets, plans may participate in more than one investment manager's cross-trading program. Plan fiduciaries may therefore receive initial disclosure of the policies and procedures of cross-trading programs from more than one investment manager. However, now that this regulation has been in effect for more than a decade, the large majority of plans have already promulgated their initial disclosures. Thus, the only cost the regulation currently imposes is for the investment managers who recently adopted or updated cross-trading policies.

Investment managers are assumed to use existing in-house resources, and existing policies and procedures established for existing cross-trading programs under securities laws, to develop the written policies and procedures required under the regulation. For purposes of burden analysis, the Department has assumed that 90 percent or 1,895 investment managers have cross-trading operations.⁵ Among these investment managers, the number of investment managers that either change or newly adopt cross-trading policies and procedures in a year equals 14 percent or 265 investment managers.⁶ The Department has estimated that each investment manager will serve approximately 9 plans.⁷ The Department assumes that each investment manager will require 10 hours of a legal professional's time to develop written policies and procedures. Please see Table 1 for calculation and burden.

Each investment manager must provide the cross-trading policies and procedures as a disclosure to each plan. The Department assumes that the disclosure will be provided in writing to provide a desired formality of compliance. The Department further assumes that each investment manager will prepare one disclosure package that will be distributed to each plan fiduciary considering investment. The Department estimates that there will

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>.

⁴ The number of eligible cross-trade plans and the number of investment managers are estimated using the 2022 Form 5500 Data. Under the statutory exemption, "each plan participating in a cross-trading transaction must have assets of at least \$100,000,000, except that if the assets of a plan are invested in a master trust containing the assets of plans maintained by employers in the same controlled group (as defined in section 407(d)(7)), the master trust has assets of at least \$100,000,000."

⁵ The number of investment managers engage in cross-trading is estimated as: 90 percent x 2,105 investment managers = 1,895.

⁶ The number of investment managers that either change or newly adopt cross-trading policies and procedures in each year is estimated as: 14 percent x 1,895 investment managers engaged in cross-trade = 265.

⁷ The number of plans per investment manager is estimated as: 2,431 eligible cross-trade plans/ 265 investment managers engaging in Cross-Trade = 9.17 plans (rounded to 9 plans per investment manager).

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be a total of 2,385 disclosures.⁸ The Department assumes that three minutes of clerical time per plan disclosure will be needed to gather the required information, collate and package the information for distribution, and ensure that the information is distributed. Please see Table 1 for calculation and burden.

Table 1. Burden to Prepare and Send Disclosures

Activity	Number of Respondents	Number of Responses per Respondent	Number of Hours		Total Burden	Hourly Wage Rate	Dollar Equivalent of Hour Burden
			(A)	(B)			
Legal professionals develop new written policies and procedures	265	10	2,650	6	\$181.0	\$479,809	
Clerical staff gather information, collates, and packages the information for distribution	2,385	0.05	119	\$70.29	\$8,382		
Total	2,650	-	2,769	-	\$488,191		

Table 2. 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	Equivalent Cost
Legal professionals develop new written policies and procedures	265	1	265	10	2,650	\$181.06	\$479,809

⁸ The total number of disclosures is estimated as: 265 investment manager x 9 disclosure per investment manager = 2,385 disclosures.

Clerical personnel gather information, collates and packages the information for distribution	265	9	2,385	3/60	119	\$70.29	\$8,382
Total	265	-	2,385		2,769	-	\$488,191

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 and 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.

The Department believes that initial disclosure of the investment manager's written policies and procedures to plan fiduciaries eligible to participate in the investment manager's cross-trading program will be prepared in paper form and distributed by mail delivery service, courier or some other means of distribution that will create a record of delivery.

As discussed in Question 12, 265 investment managers will participate in cross-trading, with each investment manager overseeing 9 plans. This will lead to the distribution of 2,385 disclosures. The Department expects each disclosure to consist of approximately 50 pages,⁹ with paper and printing costs estimated at \$0.05 per page. Additionally, the expense for certified mail services is \$5.30, and it will use oversized envelopes stamps to fit all 50 pages into one envelope, that costs \$1.27 per mail.¹⁰ Please see Table 3 for calculations and burden totals.

Table 3. Estimation of Materials and Mailing Cost Burden

Activity	Number				Cost Burden (A x (B + C +D))
	of Notices Sent by Mail	Paper and Printing Costs	Certified Mail Fee Per Mail	Postage Charge Per Mail	
	(A)	(B)	(C)	(D)	
Mailing of disclosures	2,385	\$2.50	\$5.30	\$1.27	\$21,632
Total	2,385	-	-	-	\$21,632

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

⁹ The average page length of the disclosure is estimated using three examples of investment manager's written policies and procedures is estimated as: (33 pages + 79 pages + 40 pages) /3 = 50.6 pages (rounded to approximately 50 pages).

(1) 33 pages length: <https://static.fmgsuite.com/media/documents/45dc4761-38ad-4ab8-8183-a5606e497575.pdf>;
(2) 79 pages length: <https://www.tavagency.com/assets/tavco-ria-procedures-manual-1-24-19.pdf>; and

(3) 40 pages length: <https://diaswealth.com/wp-content/uploads/2021/10/Policies-and-Procedures-Manual-2021.pdf>.
¹⁰ United States Postal Service, *Price List*, (2025), <https://www.usps.com/business/prices.htm>.

collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

There are no annualized costs to the Federal government for this information collection because it does not require any reporting or filing with the Federal government.

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

The Department's estimate has changed due to the updated Form 5500 data. The Department has also updated the wage rates and mailing costs. As a result, the number responses decreased by 54 responses, and the hourly burden decreased by 63 hours, but the cost burden increased by \$5,778.

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.

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

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

Not applicable.

18. Explain each exception to the topics of the certification statement identified in “Certification for Paperwork Reduction Act Submissions.”

There are no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

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