

**Prohibited Transaction Class Exemption 85-68**  
**(Permitting Employee Benefit Plans to Invest in Customer Notes of Employers)**  
**OMB Control Number: 1210-0094**  
**OMB Expiration Date: 08/31/2026**

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995:  
PROHIBITED TRANSACTION CLASS EXEMPTION 85-68**

**This information collection request (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.**

Prohibited Transaction Exemption (PTE) 85-68, which replaced PTE 79-9, allows a plan to acquire and hold customer notes that are guaranteed by the sponsoring employer, and allows the employer to repurchase those notes. These transactions are otherwise prohibited by the Employee Retirement Income Security Act of 1974 (ERISA) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code).

Section 408(a) of ERISA requires that prior to granting an exemption, the Department must find that the exemption is (1) administratively feasible, (2) in the interest of plans and of their participants and beneficiaries, and (3) is protective of the rights of participants and beneficiaries of the plans.

In making this determination with respect to PTE 85-68, the Department determined that collections of certain information are necessary to protect plans and their participants and beneficiaries. In this regard, PTE 85-68 (1) requires an independent fiduciary to approve each transaction on behalf of the plan, including acknowledging its fiduciary status in writing; (2) compels the employer to provide a written guarantee of repayment to the plan in the event a note is more than 60 days in arrears; and (3) includes a general recordkeeping requirement.

**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 requirements in PTE 85-68 are intended to protect the rights of plan participants and beneficiaries by putting them on notice of the plan's intention to acquire from the sponsoring employer notes accepted by the sponsoring employer in its primary business activity. The information collection requirement allows the Department to continue to make its required findings with respect to PTE 85-68.

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- 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.**

Under 29 C.F.R. § 2520.104b-1(b) of ERISA, “where certain material, including reports, statements, and documents, is required under Part I of the Act and this part to be furnished either by direct operation of law or an individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries.” Section 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b). Section 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

The 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. Nothing in this PTE requires that disclosures be made through distribution methods that would preclude use of electronic technology.

- 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 written acknowledgment by the independent fiduciary and the written guarantee by the employer to the plan are one-time requirements with respect to each transaction. As such, duplication is not an issue for these transactions.

The Department avoids duplication in the recordkeeping requirement because the records required to be made available are believed to be already required under ERISA Section 107, such as those normally maintained for purposes of completing the annual report required by ERISA (Form 5500 Series, OMB Control Number 1210-0110), and the exemption only adds that the records be made unconditionally available to the parties indicated in the exemption.

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

Small businesses may rely on this class exemption, although the records required to be maintained by the exemption are drawn narrowly while also ensuring that the Department can continue to make its required findings with respect to PTE 85-68. Further, as noted above, the general recordkeeping requirements include information that the employer is already required to maintain under ERISA Section 107 such as for purposes of completing the annual report required by ERISA (Form 5500 Series).

**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 collections are only mandatory if plans rely upon the class exemption. If the information collection is not conducted, the Department may not be able to make its required findings under ERISA 408(a) with respect to a plan's acquisition and holding of customer notes that are guaranteed by the sponsoring employer, and the employer repurchasing those notes. Absent this exemption, plans and participants would lose the protective benefit of those assets.

**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**

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- **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.**

The class exemption only applies to specified transactions. The frequency of information collection is dependent on the occurrence of such transactions, not on a predetermined time period.

ERISA Section 107 requires plans to maintain certain records for a period of six years. The Department determined that the transactions covered by the exemption are likely to be subject to this 6-year record retention requirement.

- 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 Federal Register notice on February 18, 2026 (91 FR 7528), as required by 5 CFR 1320.8(d), soliciting comments on the information collection and providing the public 60 days to comment on the submission. One comment was received from the public in response to the notice.

The commenter questions whether the collection remains necessary and whether the exemption itself warrants reassessment because the previous information collection reported a single respondent and a single response annually. The Department notes that the burden estimate has been updated to three responses annually. While the number of estimated responses is small, the Department continues to believe that the exemption

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should be available for plans that wish to engage in otherwise prohibited transactions and that this information collection is necessary to meet the statutory requirements of ERISA section 408(a), described in response to Question 1.

**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.**

There is no promise of confidentiality of the information.

**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 pertaining to sexual behavior and attitudes, religious beliefs, or other matters that are commonly considered private.

**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**

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**information collection activities should not be included here. Instead, this cost should be included in Item 14.**

The Department does not know how often these information collections occur but believes it is minimal and infrequent. To account for the slight, but unlikely, additional burden, the Department has estimated an annual burden of one hour for the fiduciary acknowledgement, one hour for the employer’s written guarantee, and one hour for the preparation and maintenance of records. Clerical staff preparing these information collections is estimated to have an hourly labor rate of \$72.82.<sup>1</sup> Please see Table 1 for calculations and burden.

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

<b>Activities</b>	<b>Number of Respondents</b>	<b>Number of Responses per Respondent</b>	<b>Total Responses</b>	<b>Average Burden (Hours)</b>	<b>Total Burden (Hours)</b>	<b>Wage Rates</b>	<b>Equivalent Cost</b>
Independent fiduciary acknowledgment	1	1	1	1	1	\$72.82	\$73
Employer’s written guarantee	1	1	1	1	1	\$72.82	\$73
Clerical staff prepares and maintains records	1	1	1	1	1	\$72.82	\$73
<b>Total</b>	<b>3</b>	<b>-</b>	<b>3</b>	<b>-</b>	<b>3</b>	<b>-</b>	<b>\$219</b>

- 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.**

<sup>1</sup> Internal DOL calculation based on 2026 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-eb-sa-opr-ria-and-pra-burden-calculations-june-2019.pdf>.

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**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.**

We estimate that the cost to respondents is de minimis. Fiduciary acknowledgments and employers' guarantees are not required to be distributed. All recordkeeping would be done as standard business practice or for purposes of maintaining records under ERISA Section 107 such as those related to filing the Form 5500.

- 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 disclosure to the Federal government, except upon request and, consequently, no expected cost to the government as a result of this class exemption.

- 15. Explain the reasons for any program changes or adjustments.**

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To account for the slight, but unlikely, additional burden, the Department has estimated an additional annual burden of one hour for the fiduciary acknowledgement and one hour for the employer's written guarantee. Therefore, the number of responses has increased by two responses and the hour burden has increased by two 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.**

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

- 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.

- 18. "Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."**

Not applicable; no exceptions to the certification statement.

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

This information collection does not employ statistical methods.