

**Prohibited Transaction Class Exemption 77-4
Certain Transactions Between Investment Companies and Employee Benefit Plans
OMB Number 1210-0049
Expiration Date: 02/29/2026**

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT OF 1995:
PROHIBITED TRANSACTION CLASS EXEMPTION 77-4 CERTAIN
TRANSACTIONS BETWEEN INVESTMENT COMPANIES AND EMPLOYEE
BENEFIT PLANS**

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.

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.

PTE 77-4, which was originally granted on April 8, 1977, exempts from the prohibited transaction restrictions the purchase and sale by an employee benefit plan of shares from a registered, open-end investment company (mutual fund) when the investment advisor for the mutual fund is also a fiduciary of the plan and is not an employer of employees covered by the plan.

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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There are three disclosure requirements incorporated within the class exemption. The first requirement is intended to put the plan on notice of possible fees associated with the redemption of open-end mutual fund shares. It requires disclosure of any redemption fees in the investment company prospectus in effect both at the time of purchase of such shares and at the time of such sale. The class exemption permits a plan to pay a redemption fee on the sale, by redemption, of open-end mutual fund shares only if the fee is paid to the open-end mutual company and the above noted disclosure is made.

The second requirement is that, at the time of the covered transaction, an independent fiduciary receive a copy of the current prospectus issued by the investment company and full and detailed written disclosure of the investment advisory fees and other fees charged to or paid by the plan and the investment company, including the nature and extent of any differential between the rates of such fees, the reasons why the fiduciary/investment adviser may consider such purchases to be appropriate for the plan, and whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations. In advisory opinion 2013-04A, the Department determined that, under the Securities and Exchange Commission's 2009 revised disclosure provisions for mutual funds,¹ delivery of a summary prospectus to an independent fiduciary satisfies the prospectus distribution requirement solely for purposes of section II(d) of PTE 77-4.

The third requirement is that the independent fiduciary be notified of any changes in the fees and approves in writing the continuation of the plan's purchases or sales and the continued holding of any investment company shares acquired by the plan prior to the fee change and still held by the plan.

Without the class exemption a plan could not purchase or sell shares of an open end mutual fund, when the investment advisor to the fund is also a fiduciary with respect to the plan. Such purchases and sales may serve the interest of both the plans and the industry, provided that procedures designed to protect the interests of participants and beneficiaries from potential abuse are built into the transactions. Therefore, the exemption requires disclosure of any redemption fees in the current prospectus and approval of the advisory fees by an independent fiduciary so that the fiduciary can make informed judgments with respect to the prudence of the transactions.

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

¹ See 74 FR § 4546 (Jan. 26, 2009).

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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 this PTE requires that disclosures be made through distribution methods that would preclude use of electronic technology. Fiduciaries and mutual funds are part of financially sophisticated organizations. Consequently, the Department has assumed that more routine interactions between parties will be carried out electronically. The Department assumes that 100% of the information collection activities will be completed 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.**

The Department of Labor and the Department of the Treasury collectively issued this class exemption in order to eliminate duplicative disclosure requirements.

Documents required by other agencies can be used to satisfy the requirement. Open-end mutual funds are required by SEC rules to incorporate in the prospectus a statement of any fees charged for the redemption of shares, and the provision of the summary prospectus fulfills one of the requirements.

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

The disclosure requirements included in the class exemption ensure that the transactions involving the open-end mutual fund allow existing business practices to continue. Because of the nature of the potential conflict of interest for individuals who manage these open-end mutual funds, the disclosure requirements make no distinction between small and large mutual fund companies. In addition, mutual fund companies are managed by very large fund complexes which are not small entities.

- 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 disclosure requirements of the class exemption are only required if open-end mutual funds sell their shares to or purchase their shares from plans when the investment advisor for the open-end mutual fund is also a fiduciary of the plan. The frequency is dependent

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on the occurrence of certain expressly identified events, not on a predetermined time period.

Pursuant to DOL Advisory Opinion 2013-04A, the Department is interpreting the term “prospectus” in PTE 77-4 to include a “summary prospectus” if certain conditions are met that are discussed in Item 2, above.

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.

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

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

The Department's notice, required by 5 CFR 1320.8(d), which provided the public with 60 days to comment on the information collection, was published in the Federal Register on July 11, 2025 (90 FR 30984). No comments were received on this ICR.

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. The class exemption requires that the information concerning the possible payment of redemption fees be included in the open-end mutual fund's prospectus and, therefore, available to the plan and interested parties.

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. Therefore, this is not applicable to the requirements of this class exemption.

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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 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.**

As described above, the class exemption has three basic disclosure requirements.. As discussed in Item 2 above, the Department has determined that the term prospectus in PTE 77-4 to include a “summary prospectus” if certain conditions are met. For purposes of this PRA analysis, the Department assumes that all mutual funds using the exemption will send the summary prospectus.

Open-end mutual funds are required by the SEC to provide a current summary prospectus (every prospectus must be updated at least every 16 months) to present and prospective shareholders, and they must update their prospectus after their annual audit and whenever substantial changes occur. Open-end mutual funds are required by SEC rules to incorporate in the prospectus a statement of any fees charged for the redemption of shares. Since the funds are required by the SEC to prepare a prospectus, this requirement of the class exemption adds no paperwork burden.

There is some paperwork burden associated with the provision of information regarding the investment advisory fees. The investment advisor normally accomplishes this disclosure by preparing a one or two page written document; the advisor then reproduces and mails this document to each independent fiduciary. The Department estimates that it would take an average of 30 minutes annually per mutual fund complex to prepare or update the disclosure since each investment advisor can prepare one fee schedule for all of the plans it provides investment management services to and then reproduce and send

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a copy to the independent fiduciary of each plan. The independent fiduciary also must receive a copy of the already prepared prospectus. Since this can be mailed with the fee information, it imposes no separate burden. The notification of changes in fee rates would not add paperwork burden because it would be a standard business practice.

According to the Investment Company Institute (ICI), 785 complexes managed and distributed mutual funds in 2025.² The Department assumes that all of these complexes also offer investment management services to pension plans. A 2013 Deloitte/ICI survey finds that 37 percent of 401(k) plans have a mutual fund company as their service provider.³ Based upon ICI analyses and Form 5500 data that examines the percentage of plans that are invested in registered investment companies, the Department estimates that 24.7 percent of defined benefit plans have mutual fund companies as money managers.⁴ Applying these percentages to the universe of pension plans that filed a Form 5500 in 2022 yields a total of approximately 290,771 plans (279,299 defined contribution and 11,472 defined benefit plans) with service provider relationships with mutual fund companies.⁵

The Department assumes that every mutual fund complex will make use of the class exemption for all their client plans. Each plan would have one independent fiduciary, required under the class exemption to receive the disclosure material. The Department also estimates that ten percent of plans will then request a full prospectus. The Department estimates that it will take no more than 5 minutes (1/12 of an hour) to distribute the materials to each plan.

Mutual fund complexes, rather than the plans they provide services to, would bear the burden and are expected to perform the services in-house. The mutual fund complexes are estimated to incur costs of \$198.94 per hour for financial professional staff time to prepare the disclosure material.⁶ Please see table below for calculations and burden totals.

² 2025 *Investment Company Fact Book*, Investment Company Institute, (2025), <https://www.ici.org/system/files/2025-05/2025-factbook.pdf>.

³ Deloitte, *Defined Contribution/401(k) Fee Study*, Investment Company Institute, (August 2014).

⁴ Based on Form 5500 Data 2000-2010, defined benefit plans are approximately 33 percent less likely than defined contribution plans to be invested in a registered investment company. Also see Sarah Holden, *The Economics of Providing 401(k) Plans: Services, Fees, and Expenses*, Investment Company Institute, (September 2010).

⁵ Employee Benefits Security Administration, *Abstract of 2022 Form 5500 Annual Reports*, Table A1 of the Private Pension Plan Bulletin, (September 2024), <https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2022.pdf>.

⁶ 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-ebbsa-opr-ria-and-pra-burden-calculations-june-2019.pdf>

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Estimated Annual Respondent Hour Burden and Hour Equivalent Cost

Activity	Number of Respondents	Number of Responses per Respondent	Total Responses	Average Burden (Hours)	Total Burden (Hours)	Wage Rates	Equivalent Cost
Financial Professionals preparing and updating the disclosures for the summary prospectuses	785	1	785	30/60	393	\$198.94	\$78,084
Clerical professionals distributing the summary prospectus	785	370	290,771	5/60	24,231	\$70.29	\$1,703,191
Clerical professionals distributing the full prospectus	785	37	29,077	5/60	2,423	\$70.29	\$170,319
Total⁷	785	-	319,848	-	27,046	-	\$1,951,594

Note: In ROCIS, the burden listed in the first two rows are accounted in the “Summary Prospectus to Everyone Affected” information collection. The burden listed in the last row is accounted for in the “Full Prospectus on Demand” information collection.

- 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,**

⁷ The sum of these burdens may be slightly different to the values in this row because of rounding differences.

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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 information under this class exemption must be provided by mutual fund complexes to their client pension plans. The Department assumes that the disclosure material will be prepared by in-house staff of the mutual fund complexes; therefore, the only cost burden will be for materials and postage. The Department estimates that 100 percent of the disclosures will be distributed electronically at no additional cost. The Department estimates that ten percent of plans will request a full prospectus and that 100 percent will be sent electronically at no additional cost.

- 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 cost to the Federal government. This class exemption does not result in any information being filed with or reported to the Federal government.

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

There are no program changes for this submission. The Department has updated the wage rates, the number of pension plans, and the number of mutual fund complexes. As a result, the number of responses has increased by 22,296 responses. Furthermore, the hour burden has increased by 1,838 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.

Not applicable.

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

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

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