

collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

NAREIT has requested this class exemption in order to provide Plans established by Trust REITS with the option of offering a beneficial interest in the Trust REIT in the form of Qualifying REIT Shares (as defined in III(j)) to participants in plans sponsored by the REIT or its Employer Affiliates. Further, NAREIT has requested retroactive relief from sections 406(a), 406(b)(1), and (b)(2) and 407(a) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, for certain transactions relating to the prior acquisition, holding, or sale of shares of beneficial interest in Trust REITS. The Department has proposed prospective relief for transactions occurring on or after the date of publication of the grant of the final exemption in the **Federal Register** and limited retroactive relief for transactions that occurred within six years of the publication of the final exemption in the **Federal Register**. Only Section II(b), Prospective Conditions, constitutes a collection of information under PRA 95.

Under section 408(a) of ERISA, prior to granting an exemption, the Secretary must make a finding that the exemption is: (1) Administratively feasible, (2) in the interests of the plan and its participants and beneficiaries, and (3) protective of the rights of participants and beneficiaries of such plan. In order for the Department and others to determine that the conditions of this exemption have been met, the Department proposes to require the disclosure of certain information by administrators of Plans that acquire,

hold, or sell Trust REIT shares to participants.

In its application, NAREIT has indicated that among all REITS, 228 are publicly traded, with 52 of these structured as business trusts under state law (Trust REITS). NAREIT has also indicated that of the 52 publicly traded Trust REITS, approximately 80%, or 42, offer individual account pension plans with individual investment direction of participant contributions, and that nearly all of the 42 Plans provide for some form of employer match. Finally, NAREIT has indicated that approximately 14 plans would be considered small, in that they have fewer than 100 participants (such that there are 28 large plans). NAREIT believes that nearly all of the 42 plans will make use of the exemption when it is granted.

The Department has estimated that about 5,300 participants may be affected by the proposed exemption. While the Department does not know the number of participants in plans that may include the option to purchase Trust REIT shares, it bases its estimate on information provided by NAREIT indicating that, of the 42 Trust REITS that sponsor 401(k) plans, 28 are large and 14 are small. Estimating that the 14 small plans have 80 employees each (1,120 employees), and that the remaining larger plans have 150 employees (4,200 employees), approximately 5,300 employees may be offered the option to purchase Trust REIT Shares or may have Trust REIT shares contributed to their individual accounts under the proposed exemption. The Department welcomes comments and relevant data on the estimated number of employees that might take advantage of the proposed exemption.

The information collection provisions of the proposed exemption are found in Sections II(b)(4) (pertaining to the prospectus and reports), II(b)(5) (records and statements regarding confidentiality), II(b)(10) (specific information about REIT share transactions), II(b)(11) (recordkeeping), and III(e)(5) (independent fiduciary acknowledgement). These requirements are summarized below for purposes of the submission for approval under PRA 95. The actual terms of the proposed exemption should be consulted for purposes of relief from ERISA prohibitions otherwise applicable to the purchase of Trust REIT shares.

**Prospectus and Periodic Reports.** In order to obtain prospective relief from statutory prohibitions, a Trust REIT traded on a national securities exchange or market system, or an agent or affiliate

thereof, must furnish the person directing an investment (i.e., the participant or independent fiduciary) the most recent prospectus and quarterly and annual reports concerning the Trust REIT both prior to, or immediately after, the initial investment and regularly thereafter as updated prospectuses and quarterly and annual reports are published.

NAREIT has indicated that issuers of REIT Trust shares currently provide prospectuses and annual reports to investors; therefore, this condition can be satisfied by usual business practices. However, under the proposed exemption, quarterly reports that are filed with the SEC under Rule 15d-13 of the Securities Exchange Act of 1934 must also be distributed to investors in Trust REIT Shares. Because the quarterly report is required for SEC registrants, no preparation burden arises from this requirement. The Department believes that quarterly reports will be distributed to employees in the same manner that prospectuses and annual reports are distributed, either electronically, provided that the requirements for electronic distribution under ERISA are satisfied, or through regular mail. The cost of regular mail at \$.40 per mailing would be about \$6,400 for the distribution of three quarterly reports. The fourth quarter report is assumed to be incorporated in the annual report. Electronic distribution would represent an annual cost savings of \$6,400.

**Disclosures.** The Trust REIT or Employer Affiliate is required to disclose specific information about the operation of the Trust REIT. Under Section II(b)(5), the Plan must provide participants, when they become eligible to participate in the Plan, with a statement describing the procedures established for maintaining confidentiality with regard to the purchase, sale, holding, and share voting rights of Trust REIT Shares, as well as information identifying the fiduciary responsible for monitoring compliance with the confidentiality procedures.

In addition, under Section II(b)(10), the Trust REIT or the Employer Affiliate must furnish to the person that is directing the investment, prior to an initial investment transaction, information about fees or transaction costs, the role of the Trust REIT, if any, as a principal in the transaction, the name of the exchange or market system on which the Qualifying REIT Shares are traded, and the fact that copies of the proposed and final exemption are available upon request. While the Department believes that all of the