

**Prohibited Transaction Class Exemptions 76-1, 77-10, and 78-6**  
**Multiemployer Plan Transactions**  
**OMB Number 1210-0058**  
September  
2009

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSIONS

**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 the Employee Retirement Income Security Act of 1974 (ERISA) gives the Secretary of Labor the authority to "grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by sections 406 and 407(a)." In order to grant an exemption under section 408, the Department must determine 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 the participants and beneficiaries of such plan.

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 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.

Section 406 of ERISA prohibits certain types of transactions between plans and related parties (called parties in interest), such as plan fiduciaries, sponsoring employers, unions, service providers and affiliates. In particular, under section 406, a fiduciary of a plan may not cause the plan to engage in a transaction involving plan assets (e.g., a sale, lease, loan, transfer, or furnishing of goods or services) with a party in interest or use the plan's assets for the benefit of a party in interest.

The three prohibited transaction class exemptions (PTEs) included in this ICR, (1) PTE 76-1, (2) PTE 77-10, and (3) PTE 78-6, which are described below, exempt certain types of transactions commonly entered into by "multiemployer"<sup>1</sup> plans from certain of the prohibitions contained in sections 406(a) and 407(a) of ERISA. The Department determined that, in the absence of these

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<sup>1</sup> The term "multiemployer plan" is specifically defined under ERISA (see ERISA § 3(37)), to cover plans established and maintained pursuant to collective bargaining agreement(s) to which more than one employer is required to contribute. The three exemptions covered by this ICR, as promulgated in 1976, 1977, and 1978, employ a slightly different term, "multiple employer plan." However, for purposes of this ICR, there is no substantive difference between the two terms, and the ICR uses "multiemployer plan" to describe the entities to which the exemption apply because that term is in more common use. The exemptions adopted the term "multiple employer plan," apparently, because the statutory definition in § 3(37) at that time incorporated an additional requirement (that the plan satisfy any regulatory standards imposed by the Department) that has since been deleted through statutory amendment.

**Prohibited Transaction Class Exemptions 76-1, 77-10, and 78-6**  
**Multiemployer Plan Transactions**  
**OMB Number 1210-0058**  
September  
2009

exemptions, the affected plans would not be able to operate efficiently or to enter into routine types of transactions necessary for their operations. In order to ensure that the class exemptions for these necessary transactions meet the statutory standards, the Department included conditions that are information collections. The information collections consist of recordkeeping and third-party disclosures.<sup>2</sup>

The Department has combined the information collection requirements of these three PTEs into one ICR because the exemptions are closely related and impose similar or identical types of information collection requirements. The public will benefit by having the opportunity to comment collectively on the information collection provisions of the three related exemptions.

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.*

**PTE 76-1.** PTE 76-1 provides an exemption, under specified conditions, for three types of transactions involving multiemployer plans, as follows:

Part A. Multiemployer plans are required to collect contributions from contributing employers who are delinquent in making payments required by a collective bargaining agreement under which the plans are funded. Part A of PTE 76-1 permits a multiemployer plan to enter into an agreement or arrangement with a delinquent contributing employer to extend the time for making a contribution or to accept less than the full amount owed, provided that the agreement or arrangement is set forth in writing. Similarly, under Part A of PTE 76-1, a multiemployer plan may make a determination to classify an unpaid delinquent employer contribution as uncollectible, provided that determination is set forth in writing.

Part B. This part of PTE 76-1 permits multiemployer plans to make a construction loan to a contributing employer, provided that the employer and the plan have previously obtained a written commitment for permanent financing upon completion of construction from a person other than the plan. As a further condition under the exemption, the plan must create records concerning the loan and maintain those records for six years. The records must be adequate to enable an interested party to determine whether the conditions of the exemption have been met, and the plan must make the records unconditionally available, upon request, to the Department, the Internal Revenue Service (IRS), plan participants and beneficiaries, contributing employers, and any employee organization whose members are covered under the plan.

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<sup>2</sup> The information collections in PTE 77-10 and PTE 78-6 were previously separately accounted for and approved by OMB under OMB Control Nos. 1210-0081 and 1210-0080, respectively. Those control numbers were allowed to expire after OMB approved the consolidation of their information collections into Control No. 1210-0058.

**Prohibited Transaction Class Exemptions 76-1, 77-10, and 78-6**  
**Multiemployer Plan Transactions**  
**OMB Number 1210-0058**  
September  
2009

Part C. Part C of PTE 76-1 permits multiemployer plans to lease office space and provide administrative services or sell goods to a contributing employer, employee organization, employer association, or to another multiple employer plan that is a party in interest, provided that the plan creates, maintains, and makes available adequate records, as required in Part B.

**PTE 77-10.** Granted on July 1, 1977, PTE 77-10 complements Part C of PTE 76-1, which, as explained above, provides an exemption from the prohibitions of subsections 406(a) and 407(a) for the leasing of office space or the provision of administrative services or goods. PTE 77-10 expands the relief provided under PTE 77-10 for such leases and purchase/sales to include transactions that would separately be prohibited under subsection 406(b), which prohibits plan fiduciaries from acting on behalf of a party whose interests are adverse to those of the plan or its participants or beneficiaries. PTE 77-10 also requires the plan to create, maintain, and make available adequate records concerning any transaction for which relief is sought, as required in PTE 76-1, Part B.

**PTE 78-6.** PTE 78-6 applies only to multiemployer welfare plans that provide apprenticeship or training programs. It permits such plans to purchase personal property, and to lease real property or personal property, from a contributing employer, or a wholly-owned subsidiary of such an employer, for the purpose of providing apprenticeship or other training programs, provided that adequate records concerning the purchases or leases are created and kept, as required in the other PTEs.

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. It is assumed in this analysis that the multiemployer plans relying on these exemptions will use electronic means to establish and maintain the required records and to make them available upon request.

**Prohibited Transaction Class Exemptions 76-1, 77-10, and 78-6**  
**Multiemployer Plan Transactions**  
**OMB Number 1210-0058**  
September  
2009

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.*

For Parts A and B of PTE 76-1, the required written agreements describe unique circumstances concerning a particular contribution requirement or construction loan, for which no other information is available absent this requirement.

With respect to Parts A, B, and C of PTE 76-1 and the similar recordkeeping requirements of PTEs 77-10 and 78-6, the required recordkeeping is part of the usual and customary business practices of multiemployer plans and contributing employers, and plans will be able to use records they already maintain for other purposes to satisfy these information collections. The exemptions therefore impose no duplication of recordkeeping.

5. *If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.*

Because reliance on the exemption is voluntary on the part of a multiemployer plan, and because such plans are not generally small entities, the collection does not disparately affect 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 requirements for agreements in written form and for recordkeeping apply only if plans decide to engage in transactions in reliance on the exemption. The frequency of the information collections is therefore dependent on the occurrence of a transaction and not on a predetermined time period.

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*

**Prohibited Transaction Class Exemptions 76-1, 77-10, and 78-6**  
**Multiemployer Plan Transactions**  
**OMB Number 1210-0058**  
September  
2009

- *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.*

The exemptions require recordkeeping for a period longer than three years. However, the six-year period specified in the exemptions is consistent with ERISA's general recordkeeping requirements for records of employee benefit plans, and, as a result of those requirements, the respondents affected by this exemption (multiemployer plans) have adopted six-year recordkeeping as standard business practice with regard to employee benefit plans.

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's notice soliciting public comment on the proposed extension of the information collection was published in the Federal Register on July 6, 2009 (74 FR 31978). It provided the public with 60 days to submit comments, and no comments were received.

**Prohibited Transaction Class Exemptions 76-1, 77-10, and 78-6**  
**Multiemployer Plan Transactions**  
**OMB Number 1210-0058**  
September  
2009

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

No payment 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 assurances of confidentiality are included in these exemptions. PTE 76-1 Part C, PTE 77-10 and PTE 78-6 require that certain records be made available on request to interested parties described in the exemptions.

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.*

None.

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 of OMB Form 83-I.*
- *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*

**Prohibited Transaction Class Exemptions 76-1, 77-10, and 78-6**  
**Multiemployer Plan Transactions**  
**OMB Number 1210-0058**  
September  
2009

*included in Item 13.*

**PTE 76-1**

Part A. Plans are required to describe in writing any arrangement or agreement between a multiemployer plan and an employer that extends the time for collecting an employer's contribution to the plan. Because multiemployer plans generally establish written procedures to govern their processes for collecting delinquent contributions and make extension agreements for delinquent contributions in writing as a matter of usual and customary business practice, the Department believes that there is no additional paperwork burden as a result of the requirements of Part A.

Part B. This part requires a plan to obtain a written commitment for permanent financing prior to making a construction loan to a participating employer. It is our understanding that obtaining such a written commitment is normal business practice in the construction industry. Therefore, we do not estimate any additional paperwork burden arising from the written commitment requirement in Part B.

Part B also requires plans to maintain records of construction loans to participating employers for a period of six year. We believe that the records necessary to satisfy this requirement consist of information that a plan would keep in the normal course of business, such as the amount of a construction loan and the rate of interest. Because the recordkeeping requirement extends for a six-year period, however, we estimate that it adds a paperwork burden of 15 minutes a year per plan to review records for continued compliance with the requirement.

Based on data from the 2006 Form 5500 annual reports,<sup>3</sup> the latest year for which reports are available, we have determined that a total of 180 multiemployer pension and welfare plans have reported "other loans" that we assume are construction loans to participating employers. We therefore estimate an annual burden of 45 hours for recordkeeping related to construction loans under Part B.

Part C. This part permits a multiemployer plan to secure office space and administrative services for its own use from, and to furnish office space or administrative services or goods, such as office furniture and supplies to, a contributing employer or other organizations that would be considered parties in interest with respect to the plan. Based on data from the Form 5500 reports, we estimate that 5,250 plans might fit the description of plans entitled to use the exemption. Because this exemption includes a broad range of exempted transactions, the Department assumes that 3/4 of all eligible plans, or 3,940 plans, will rely on Part C in engaging

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<sup>3</sup> We assume that plans with outstanding construction loans would report such amounts on the Form 5500 under the "other loans" category on the statement of assets.

**Prohibited Transaction Class Exemptions 76-1, 77-10, and 78-6**  
**Multiemployer Plan Transactions**  
**OMB Number 1210-0058**  
September  
2009

in a transaction each year. Because records of a sale or lease of goods and services are generally kept in the normal course of business, we estimate that the recordkeeping requirement of Part C will add an additional 15 minutes of burden per plan per year, producing an annual hour burden of 980 hours for recordkeeping under Part C.

In sum, we estimate the annual hour burden produced by PTE 76-1 at 1,025 hours (45 hours plus 980 hours). Assuming that clerical staff performs all of the recordkeeping tasks required under this exemption, at an hourly rate of \$26,<sup>4</sup> The Department estimates that the equivalent cost of the annual hour burden for recordkeeping under Parts B and C would be \$26,800.

**PTE 77-10.** This exemption is related to PTE 76-1, Part C, and, as such, would only be relied on for transactions that also require reliance on that exemption. Because the recordkeeping requirements for both regulations are generally the same, we believe that the hour burden estimate for this class exemption has already been accounted for in the burden estimate for PTE 76-1, Part C.

**PTE 78-6.** Under this exemption an apprenticeship plan is required to maintain all records related to leasing real property or purchasing personal property for a period of six years. The Department estimates that there are approximately 110 apprenticeship plans in existence.

The Department believes that most records relating to the subject transactions would normally be kept as part of standard business practice. However, because each apprenticeship plan may have multiple leases or purchase orders with the plan sponsor each year, we recognize the potential for some additional recordkeeping burden to comply with the terms of exemption. We have therefore estimated that each apprenticeship plan will require 15 minutes per year to perform additional recordkeeping tasks as a result of this exemption, with the total estimated annual hour burden for this exemption therefore at 27 hours. The equivalent annualized cost to respondents for this hour burden would be about \$700.

In total, we estimate an annual hour burden of 1,052 hours for this ICR (1,025 + 27), with an equivalent annualized cost of \$27,500 (\$26,800 + \$700).

13. *Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information.*

The recordkeeping activities required by these exemptions are basic tasks for which we assume the multiemployer plan has in-house capability; therefore no services are purchased and no

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<sup>4</sup> EBSA estimates based on the National Occupational Employment Survey (May 2007, Bureau of Labor Statistics) and the Employment Cost Index June 2008, Bureau of Labor Statistics)



**Prohibited Transaction Class Exemptions 76-1, 77-10, and 78-6**  
**Multiemployer Plan Transactions**  
**OMB Number 1210-0058**  
September  
2009

additional direct costs are incurred.

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 reporting to the federal government and, consequently, no cost to the government.

15. *Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.*

There have been no program changes to the exemptions since the last submission. One adjustment made to the burden analysis arises from new data on the number of multiemployer plans eligible to rely on the exemptions, taken from the 2006 Form 5500 filings, which has resulted in downward revisions to the number of responses and the annual hour burden. In total, EBSA estimates an hour burden of 1,052 hours for the PTEs 76-1, 77-10, and 78-06, compared to 1,142 hours recorded in the current OMB inventory.

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.

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 OMB expiration date will be published in the Federal Register following OMB approval.

18. *Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.*

Not applicable. There are no exceptions to the certification statement.

**Prohibited Transaction Class Exemptions 76-1, 77-10, and 78-6  
Multiemployer Plan Transactions  
OMB Number 1210-0058  
September  
2009**

**B. Collections of Information Employing Statistical Methods**

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