

**Prohibited Transaction Exemption 80-83**  
**(Using Proceeds Sale of Securities to Reduce Indebtedness of Party in Interest)**  
**OMB Number 1210-0064**

March 2010

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 ERISA authorizes the Secretary of Labor the “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 Secretary must determine that the exemption is administratively feasible, in the interest of the plan and its participants and beneficiaries, and protects the rights of participants and beneficiaries. To insure the exemption is not abused, that the rights of participants and beneficiaries are protected, and that compliance with exemption’s conditions is taking place, the Department often requires minimal information collection pertaining to the exempted transactions.

This class exemption, which was granted on November 4, 1980, allows employee benefit plans to purchase securities which may aid the issuer of the securities to reduce or retire indebtedness to a party in interest. It is relied upon mainly by banks that purchase, on behalf of employee benefit plans, securities issued by a corporation indebted to the bank that is a party in interest to the plan. A plan fiduciary may not engage in certain transactions with parties in interest as defined in section 3(14) of ERISA, including plan fiduciaries, sponsoring employers, employee organizations, service providers and affiliates, unless an exemption applies to the transaction. This exemption applies to such a transaction and also provides relief from the prohibited transaction provisions of Section 4975 of the Internal Revenue Code (Code).

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.*

This class exemption allows employee benefit plans to purchase securities that may aid the issuer of the securities to reduce or retire indebtedness to a party in interest. Without the relief provided by the class exemption, a standard type of financial/business transaction between financial service providers and employee benefit plans would be barred under ERISA’s prohibited transaction provisions.

In order to take advantage of the relief provided by this class exemption, employee

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benefit plans must comply with all of the applicable conditions of the exemption, including the requirement to keep records regarding transactions covered by the exemption that are sufficient to establish that the conditions of the exemption have been met. The records must be maintained for a period of at least six years from a covered transaction and must be made reasonably available for inspection upon request by specified interested persons, including plan fiduciaries, participant and beneficiaries, sponsoring employers, and representatives of the Department and the Internal Revenue Service, participants and beneficiaries, and contributing employers.

EBSA has the authority to request such records from time to time in the course of enforcement investigations; however, the primary purpose of the recordkeeping condition of the exemption is to ensure access to pertinent records by participants, fiduciaries and sponsoring employers and thereby enable oversight of compliance with section 408(a)(3) of ERISA, which requires that the Department ensure the protection of participant rights in granting exemptive relief.

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.*

Use of electronic methods of compliance is neither required nor precluded by the terms of this exemption. This information collection constitutes recordkeeping and third-party disclosure. There is no requirement to provide information to the Federal government. The Department has assumed that the information collection requirements under this exemption will be performed by large, sophisticated financial entities that act on behalf of employee benefit plans in connection with the purchase of securities and that generally will establish and maintain recordkeeping systems, and comply with disclosure requests, by electronic means. The Department's estimates therefore take account of the use of electronic recordkeeping in establishing the burden of this information collection.

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.*

It is likely that some duplication of recordkeeping requirements exist with some state and federal laws banking and securities laws. However, no actual duplicate recordkeeping would be required because a respondent's individual transaction records would satisfy the requirements of both the exemption and of other applicable laws.

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5. *If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-1), describe any methods used to minimize burden.*

This exemption is relied upon primarily by large banks and large plans, which are the types of entities most likely to engage in the covered transactions. However, even if small plans or fiduciaries engage in these transactions, the burden is expected to be minimal because the required recordkeeping is largely a usual and customary business practice already required for annual financial reporting.

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 recordkeeping requirements apply only with respect to transactions voluntarily undertaken by plans in reliance on the class exemption. The frequency of occurrence is dependent on transactions, not on a predetermined time period. In the absence of the recordkeeping requirement, fiduciaries, participants and beneficiaries, and the Department, would be unlikely to have sufficient information to verify compliance with the terms of the exemption.

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*

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*information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

None.

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 5 CFR 1320.8 (d), soliciting comments on the request for an extension of the approval of this information collection on December 31, 2009 (74 FR 69366), providing the public with 60 days to comment on the submission. No comments were received from the public in response to the notice.

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

Not applicable.

10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

No promise of confidentiality of information is made, except that the exemption specifically limits access to trade secrets and privileged or confidential commercial or financial information.

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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.*

Not applicable.

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 included in Item 14.*

The Department estimates that 25 respondents (fiduciary-banks with public offering services) will annually rely on the exemption. The exemption's only information collection requirement is to retain records pertaining to covered transactions for six years and make them available for inspection upon request. Because of the similarity between ERISA annual reporting requirements and state and federal securities and banking regulations, we have assumed that the records required by this class exemption are the same records routinely kept in the normal course of business by plans and their fiduciaries. Thus, the administrative and legal burdens are believed to be relatively small. Legal professionals on staff are expected to familiarize themselves with the details of this rule in order to ensure compliance with the exemption. This time burden along with the time required to assemble necessary documents is estimated to be 30

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minutes per attorney leading to an aggregate legal professional burden of 12.5 hours. Given the prevalent use of computerized databases for recordkeeping and similarity of other recordkeeping requirements, the clerical burdens are estimated at five minutes per year per respondent, for a clerical annual hour burden of approximately 2 hours. The total hour burden for legal professionals and clerical staff is estimated at 14.5 hours.

The equivalent annualized cost to respondents of the annual hour burden for the collection of information is estimated to be \$1,542 determined as follows: 2 hours times \$26.14/hour plus attorney costs of 12.5 hours times 119.03/hour.<sup>1</sup>

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 or 14).*

The Department has assumed that required records are maintained by the plan fiduciaries. As such, the burden is estimated as hours rather than as cost.

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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.*

None.

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

The new estimates account for changes in the wage rates, overhead costs and other employee costs. Additionally, the new estimates factor in the role that legal professionals play in complying with the rule.

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<sup>1</sup>EBSA estimates of labor rates include wages, other benefits, and overhead based on the National Occupational Employment Survey (May 2008, Bureau of Labor Statistics) and the Employment Cost Index June 2009, Bureau of Labor Statistics). This estimate is for 2010.

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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.*

The results of the collection of information will not be published.

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 certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.*

Not applicable; no exceptions to the certification statement.

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

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