

**Prohibited Transaction Class Exemption 91-55  
Transactions Between Individual Retirement Accounts  
And Authorized Purchasers of American Eagle Coins  
OMB Number 1210-0079  
July 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 the Employee Retirement Income Security Act of 1974 (“ERISA”) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the “Code”) authorize the Secretary of Labor and the Secretary of the Treasury to grant a conditional or unconditional exemption of any fiduciary, disqualified person or class of fiduciaries, or orders of disqualified persons or transactions, from all or part of the restrictions imposed by sections 406 and 407(a) of ERISA and from the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. Under section 102 of Reorganization Plan No. 4 of 1978 (Reorganization Plan No. 4), the Secretary of Labor was given the authority to grant such exemptions.

Prohibited Transaction Class Exemption 91-55 (PTE 91-55) was granted on September 27, 1991, and provides an exemption from certain of ERISA’s prohibited transaction provisions (and the taxes imposed by section 4975 of the Code) for purchases and sales by “certain individual retirement accounts,” as defined in Code section 408 (“IRAs”) of American Eagle bullion coins (“Coins”) in principal transactions from or to broker-dealers in Coins (i.e., banks and other approved persons referenced in Code sections 408(a)(2) and 408(h)) which are “authorized purchasers” of Coins in bulk quantities from the United States Mint (“Mint”) which are also “disqualified persons,” within the meaning of Code section 4975(e)(2) with respect to IRAs. Under the class exemption, relief is provided only for purchases and sales of Coins between such disqualified persons and IRAs with respect to which the IRA depositor either self-directs the IRA investments or delegates investment discretion over assets in the IRA to a third person who is independent of and unrelated to the disqualified person or other affiliate thereof.

The class exemption also describes the circumstances under which the interest-free extension of credit in connection with such sales and purchases is permitted. In the absence of an exemption, such purchases and sales and extensions of credit would be prohibited under ERISA.

**Prohibited Transaction Class Exemption 91-55  
Transactions Between Individual Retirement Accounts  
And Authorized Purchasers of American Eagle Coins  
OMB Number 1210-0079  
July 2010**

Section 406 of ERISA (and section 4975(c)(1) of the Code) prohibits various transactions between a plan and certain related parties. Those parties in interest described in section 3(14) of ERISA and disqualified persons described in section 4975(e)(2) of the Code, such as plan fiduciaries, sponsoring employers, unions, service providers and affiliates, may not engage in a transaction described in section 406 of ERISA and section 4975(c) of the Code with a plan without an exemption. Code section 4975(e)(1) states that an IRA described in section 408(a) of the Code is included within the definition of the term “plan” for purposes of Code section 4975. Specifically, these sections prohibit sales, leases, loans, or the provision of services between a party in interest and a plan, as well as a use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest or a disqualified person, unless a statutory or administrative exemption applies to the transaction.

The Department of Labor has authority under Reorganization Plan No. 4, pursuant to section 408 of ERISA and section 4975(c)(2) of the Code, to grant either individual or class exemptions. In order to grant a class exemption under section 408 and section 4975(c)(2), 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 participants and beneficiaries of such plan.

In order to ensure that the class exemption is not abused, that the rights of the participants and beneficiaries are protected, and that the exemption’s conditions are being complied with, the Department often requires minimal information collection pertaining to the affected transactions.

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 class exemption has three basic information collection requirements (ICRs) which are intended to protect the interests of the IRAs and the participants and beneficiaries for whose benefit the IRAs are maintained. The first requirement is for the qualified seller of the Coins, known as an “authorized purchaser,” to issue a written confirmation statement to accompany each covered transaction to the person who directs the

**Prohibited Transaction Class Exemption 91-55  
Transactions Between Individual Retirement Accounts  
And Authorized Purchasers of American Eagle Coins  
OMB Number 1210-0079  
July 2010**

transaction for the IRA. The confirmation statement must record the date, quantity, and price of the Coins bought or sold as well as the fact that a disqualified person acted as principal in the transaction.

The second ICR has two parts. The first part requires that, prior to engaging in a covered transaction with the IRA, an authorized purchaser discloses to a person directing a covered transaction who inquires about purchasing Coins all material information about such transactions. Authorized purchasers would make this disclosure only once for every interested potential purchaser directing IRA investments. The information must cover the pricing of Coins, fees, minimum quantities, and an explanation of the role of the authorized purchaser. In addition, the authorized purchasers must provide supplemental information on any material changes, whenever these occur, to all customers who ever purchased Coins for IRAs.

Under the third ICR, the disqualified person must maintain (or cause to be maintained) for a period of at least six years from the date of the settlement of a covered transaction such records as are necessary to allow accredited persons, as defined in the exemption, to determine whether the conditions of the transaction have been met.

Because the value of Coins can fluctuate frequently, the Department believes that the maintenance of contemporaneous records by the purchaser is essential to enable those persons directing the investments of the IRAs, as well as the Department and the IRS, to monitor compliance with the conditions of the class exemption. The third recordkeeping requirement also facilitates the Department's ability to make findings under section 408 of ERISA and section 4975(c) of the Code. The confirmation and disclosure requirements enable participants and beneficiaries investing in IRAs better to monitor their investments in Coins.

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

**Prohibited Transaction Class Exemption 91-55  
Transactions Between Individual Retirement Accounts  
And Authorized Purchasers of American Eagle Coins  
OMB Number 1210-0079  
July 2010**

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.

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.*

In general, the information collection for the class exemption does not require duplicative information. Because the recordkeeping, confirmation, and disclosure requirements pertain to specific transactions within the scope of the class exemption, no similar information already exists.

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.*

The Mint has established stringent criteria which must be met in order to be eligible to purchase Coins directly from the Mint in bulk quantities. A total of 12 banks and firms, 9 of which have operations in the United States, are currently authorized purchasers of American Eagle bullion coins. Of these firms, the Department estimates that 3 are also “disqualified persons” with respect to IRAs. The stringency of the criteria (e.g., bulk purchasing, setting minimum requirements with respect to an authorized purchaser’s net worth, liquidity, and annual volume of transactions) effectively ensures that no small entities will qualify as authorized purchasers. Therefore, no small businesses will be among those using the class exemption.

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*

**Prohibited Transaction Class Exemption 91-55**  
**Transactions Between Individual Retirement Accounts**  
**And Authorized Purchasers of American Eagle Coins**  
**OMB Number 1210-0079**  
**July 2010**

*reducing burden.*

The recordkeeping and disclosure requirements of the class exemption are mandatory only for persons who engage in transactions that are subject to the class exemption and who wish to utilize this exemption. Thus, the frequency of disclosure depends on the occurrence of such transactions.

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.*

A written confirmation statement must accompany each covered transaction with the

**Prohibited Transaction Class Exemption 91-55  
Transactions Between Individual Retirement Accounts  
And Authorized Purchasers of American Eagle Coins  
OMB Number 1210-0079  
July 2010**

person who directs the investments for an IRA. The confirmation statements must disclose the date, quantity, and price of the Coins bought or sold as well as the fact that a disqualified person acted as principal in the transaction. The confirmation must be issued within ten business days after execution of the transaction. This requirement appears for the most part to be current practice in the industry.

The six-year recordkeeping requirement mandated by the class exemption is consistent with requirements in section 107 of ERISA, the general recordkeeping requirements for tax information under the Code, and the provisions of ERISA section 413 concerning the limitation period on actions for redress of breaches of fiduciary duty (i.e., generally six years after an action which constitutes a breach).

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.*

Attached is a copy of the Department's notice for the Federal Register, as required by 5 CFR 1320.8(d), soliciting comments on the information collection. This notice was published in the Federal Register, June 23, 2010 (75 FR 35841), providing the public 60 days to comment on the submission.

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

**Prohibited Transaction Class Exemption 91-55  
Transactions Between Individual Retirement Accounts  
And Authorized Purchasers of American Eagle Coins  
OMB Number 1210-0079  
July 2010**

Not Applicable.

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 transactions be made available to 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.*

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*

**Prohibited Transaction Class Exemption 91-55  
Transactions Between Individual Retirement Accounts  
And Authorized Purchasers of American Eagle Coins  
OMB Number 1210-0079  
July 2010**

The Department estimates that approximately 349 hours of legal and professional time is expended in satisfying the requirements for this class exemption by the authorized purchaser, with equivalent costs of \$9,676. The derivation of this estimate is described below.

Under the criteria established by the United States (the Mint), currently a total of 12 firms or banks are “authorized purchasers” of American Eagle bullion coins, of which nine are permitted to sell the coins within the U.S.<sup>1</sup> Out of the nine domestic authorized purchasers, only three are estimated to be “disqualified persons” as defined under Section 4975(e)(2) of the code with respect to IRAs. Year 2007-2009 data published by the Mint indicate that authorized purchasers bought, on average, 20.6 million gold, silver and platinum coins.<sup>2</sup>

Because data on Coin purchases for IRAs are limited, the Department made assumptions about the total sales of coins by the Mint to authorized IRA purchasers. The Department estimated that the three estimated authorized purchasers who are also engaged with IRAs acquired a pro rata share of total Mint coin sales. Further assuming that the average transaction consists of twenty five coins and that 5 percent of coin purchases from authorized purchasers are specifically for IRA accounts, the number of IRA coin transactions equals 10,286 (5,142,758 Coins / 25 per transaction x 1/20 of purchaser total coin sales to IRAs).<sup>3</sup>

PTE 91-55 creates three ICRs:<sup>4</sup>

1) Written Confirmation Statement

The class exemption requires that a separate written confirmation statement be issued with respect to each covered transaction to the person who directs the transaction for the IRA. The Department assumes that the confirmation statement is similar to the typical receipt that authorized purchasers provide to all their customers, with one possible difference. For transactions involving IRAs, authorized purchasers must note in the confirmation statement that “the disqualified person [i.e. the authorized purchaser] acted

---

1 Materials provided by U.S. Mint Office of Public Affairs

2 [http://www.usmint.gov/mint\\_programs/american\\_eagles/index.cfm?action=sales&year=2009](http://www.usmint.gov/mint_programs/american_eagles/index.cfm?action=sales&year=2009). These numbers experienced a spike in 2008 and 2009. 2003-2007 figures were relatively steady, with sales approximately 10 million coins per year.

3 The five percent number was a number quoted from Prudential.

4 Whether this cost should be an hour burden or cost burden (assigned to question 12 or question 13) could be debated. The authorized purchaser with whom the Department spoke (Prudential) said that they contract out the disclosure requirements to a third party specializing in administering these accounts (Sterling Trust).

**Prohibited Transaction Class Exemption 91-55  
Transactions Between Individual Retirement Accounts  
And Authorized Purchasers of American Eagle Coins  
OMB Number 1210-0079  
July 2010**

as the principal in the transaction.” Assuming that this condition demands more than merely the official name of the authorized purchaser, then it is satisfied through a single sentence that could be made part of the standard receipt sent to IRA investors. Therefore, the Department assumes that the amount of time authorized purchasers would need to prepare this form is *de minimus*.

2) Disclosure Notice

The second ICR involves a disclosure statement from the authorized purchaser to each potential buyer who directs the transactions for an IRA. The Department assumes that developing or updating this disclosure statement will take each authorized purchaser’s contracted firm two hours, leading to a total of 6 hours of out-of-house legal preparation. Legal costs are therefore \$714 (2 x 3 x \$119.03 per hour legal).<sup>5</sup> As an approximation, the Department assumes that the number of disclosures that are sent out equals the average number of transactions between 2007 and 2009.<sup>6</sup> Disclosure distribution time is estimated at one minute per disclosure, which equates to a total time of 171 hours (1/60 hour x 10,286 transactions) and an equivalent cost of \$4,481 (about 171 hours x \$26.14 per clerical hour).<sup>7</sup>

The total hour burden for the disclosure notice equals 177 hours (3 x 2 hours + 171 hours), with equivalent costs of \$5,195 (2 hours x 3 x \$119.03 per hour professional hourly rate + 171 distribution hours x \$26.14 clerical rate).

3) Record Keeping Requirement

In order to be in compliance for each transaction in the exemption, an authorized purchaser who is a disqualified person must maintain records for a period of at least six years from the date of the settlement of every transaction covered under this class exemption. The recordkeeping hour burden is estimated at one minute per transaction, which equates to a total time of 171 hours (1/60 hour x 10,286 transactions), with equivalent costs of \$4,481 (about 5,529 recordkeeping hours x \$26.14 per hour clerical wage rate).

Thus, in total the equivalent costs in satisfying the requirements of this exemption are \$9,676 (\$714 for the legal work, \$4,481 for the clerical work in preparing the disclosure

---

<sup>5</sup> EBSA total labor cost estimates are based on the National Occupational Employment Survey (May 2005, Bureau of Labor Statistics) and the Employment Cost Index (Sept. 2006, Bureau of Labor Statistics) and projected to 2007.

<sup>6</sup> From discussions with one of the major Authorized Purchasers (Prudential), the Department learned that at least for one company disclosure work is actually contracted out.

<sup>7</sup> Some numbers do not add up due to rounding.

**Prohibited Transaction Class Exemption 91-55  
Transactions Between Individual Retirement Accounts  
And Authorized Purchasers of American Eagle Coins  
OMB Number 1210-0079  
July 2010**

notices and \$4,481 for the clerical work in satisfying the record keeping requirement.

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 assumes that only the disclosure notice produces an annual cost burden. The authorized purchasers need to send disclosure statements to a total of 10,286 interested parties. The Department estimates that 38 percent of these disclosures will be distributed electronically. This leaves an estimated 6,377 disclosures to distribute through the mail. Each disclosure statement is estimated to consist of one page. The total cost burden for these postage and paper costs is \$3,125 (10,286 disclosures x .62 x (\$.44 postage + \$0.05 per disclosure paper 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 reporting to the Federal government and, consequently, no cost to the government as a result of this class exemption.

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

The Department has revised the methodology and assumptions it previously used to estimate burden hours and costs for this submission and therefore has revised the estimates. The Department believes that its new methodology, which is described in the answers to questions 12 and 13 above, presents a more accurate picture of the estimated paperwork burden resulting from this regulation's information collection provisions.

First, the Department has adjusted the annual reporting and recordkeeping hour burden in

**Prohibited Transaction Class Exemption 91-55  
Transactions Between Individual Retirement Accounts  
And Authorized Purchasers of American Eagle Coins  
OMB Number 1210-0079  
July 2010**

Item 12 to reflect recent data on the number of authorized purchasers engaging in covered transactions with IRAs and the number of platinum, gold, and silver Coins purchased or sold. The estimated burden of this regulation has been reduced substantially for two reasons: (i) the Department believes that each transaction involved more coins on average than was previously estimated and, (ii) the fraction of American Eagle transactions involving IRAs was found to be lower than previously estimated. The Department believes that the number of coins held by plan holders would have to be quite large, given that custodial costs can be expensive for brokers/plan holders and that over 90% of American Eagle coin sales are silver.<sup>8</sup> Thus, the Department believes that each transaction between a purchaser and buyer involves, on average, more coins (25) than was previously estimated (2). The Department spoke with an authorized purchasing company, and based on that conversation revised downwards the estimated share of American Eagle sales that were for IRA plans from 25 percent to 5 percent.

The Department has updated wage and salary numbers to reflect updated EBSA estimates. In addition prices for postage have been updated for 2010.

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 collection of information will display a currently valid OMB control number.

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.

---

<sup>8</sup> See Sterling Trust website for a sense of the custodial costs involved in investing in these coins.  
<http://www.sterling-trust.com/plans-and-services/precious-metals.html>.

**Prohibited Transaction Class Exemption 91-55  
Transactions Between Individual Retirement Accounts  
And Authorized Purchasers of American Eagle Coins  
OMB Number 1210-0079  
July 2010**

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

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