

**Prohibited Transaction Class Exemption 92-6:
Sale of Individual Life Insurance or Annuity Contracts By a Plan
OMB Number 1210-0063
(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 92-6 (PTE 92-6) was granted on February 12, 1992 and became effective on October 22, 1986. PTE 92-6 amends and replaces Prohibited Transaction Class Exemption 77-8 (PTE 77-8), and exempts from the prohibited transaction restrictions the sale of individual life insurance or annuity contracts held by an employee benefit plan to: (1) plan participants insured under such contracts; (2) relatives of such participants who are the beneficiaries under the contract, (3) employers, any of whose employees are covered by the plan; (4) other employee benefit plans that have a party in interest relationship; (5) owner-employees (as defined in section 401(c)(3) of the Code), (6) shareholder-employees (as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the enactment of the Subchapter S Revision Act of 1982), or (7) trusts established by plan participants insured under such contracts or relatives of such participants who are the beneficiaries under the contract, for the cash surrender value of the contracts, provided certain conditions set forth in the class exemption are met.

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

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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 Department has included in the class exemption a basic disclosure requirement. Pension plans are required to inform the insured participant of a proposed sale of a life insurance or annuity policy to the employer, a relative, another plan, an owner-employee, or a shareholder-employee. If the participant elects not to purchase the contract, the relative, the employer, another plan, the owner-employees, or the shareholder-employees may purchase the contract from the plan upon the receipt by the plan of written consent of the participant. The disclosure requirement of the class exemption does not apply if the contract is sold to the plan participant. The disclosure requirement incorporated within this class exemption is intended to protect the rights of plan participants and beneficiaries by putting them on notice of the plan's intention to sell insurance or annuity contracts under which they are insured, and by giving them the right of first refusal to purchase such contracts. Without this disclosure requirement, the Department, which may only grant an exemption if it can find that participants and beneficiaries are protected, would be unable to effectively enforce the terms of the class exemption and ensure user compliance.

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.

The Government Paperwork Elimination Act (GPEA) requires agencies to allow

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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.*

The disclosure requirement is a one-time requirement prior to the sale of an insurance contract. Duplication is not an issue for such transactions.

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.*

Many pension and profit sharing plans, particularly those of small employers, are funded in part by the purchase of individual life insurance or annuity contracts on the lives of the plan's participants. However, there are various situations under which the plan chooses not to continue the contracts in effect until a participant's retirement. Historically, many plans, in these situations, have permitted the insured participant (relative, employer, another plan, owner-employees or shareholder-employees) to purchase the contract instead of the plan's surrendering it to the insurance issuer. This class exemption allows plans to continue this practice without imposing any significant additional paperwork on the plans.

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 requirement of the class exemption is mandatory only if plans wish to utilize this class exemption. Further, the requirements only apply to certain narrow circumstances, i.e., sales of insurance contracts to individuals other than the participant. Thus, the frequency of disclosure is dependent on the occurrence of such transactions, 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;*

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- *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 consistent with the above.

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

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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 published June 23, 2010 (75 FR 35842), as required by 5 CFR 1320.8(d), soliciting comments on the information collection and providing the public 60 days to comment on the submission. No comments were received.

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.*

None. 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.*

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- *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.*

Statistics gathered from the 2007 annual Form 5500 reports indicate that 26% of all pension plans, approximately 184,000 pension plans, provide either all or some benefits through an insurance carrier. Because most of these plans have group insurance contracts which are not affected by the class exemption, the Department estimates that no more than 50% of these plans (92,000) have some form of individual life or annuity contracts. Because most plans will not discontinue the individual policies, it is assumed that the class exemption will be used primarily by plans changing from individual to group policies. Plans in this category tend to be relatively small plans which have grown enough to make group contracts possible. The Department estimates that the plans changing from individual to group policies will overwhelmingly be small plans (<100 participants). Approximately 25% of small plans have all or some of their benefits invested with an insurance carrier. The Department assumes that approximately 5% of the small plans with individual life or annuity policies will change from individual to group contracts in any given year. There are approximately 626,000 plans with fewer than 100 participants. If no more than 50% have life or annuity contracts (313,000) and 25% of these plans fund benefits through an insurance carrier, then approximately 78,250 plans could potentially switch from individual to group level policies. With an estimated 5% of these plans changing the funding arrangement, the Department estimates that 3,913 plans will offer to sell the individual contracts to plan participants, an employer, relatives, or another plan for the cash surrender value of the contract, provided the conditions of the exemption are met. If there are, on average, 50 plan participants in these plans, then there are approximately 195,600 contracts that would be eligible for purchase by interested parties.

In addition to plans converting to group contracts, plans may sell individual contracts of terminating participants. Of the approximately remaining 88,000 pension plans that did not switch from group to individual policies, the Department estimates that approximately 20 percent of plans (approximately 17,600 plans) will offer to sell the policies to the participant, participant's relative, owner employee, the employer, another plan or a

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shareholder employee. The plan need not meet any of the disclosure requirements of this class exemption unless the plan intends to offer the policy to a relative, the employer, another plan, an owner-employee, or a shareholder employee. The Department estimates that there are approximately ten terminating participants each year per plan or a total of approximately 176,000 eligible participants.

The Department assumes that 90 percent of offered eligible insurance and annuity contracts in relation to this exemption are purchased by an interested party, resulting in plans selling 334,660 individual contracts to participants' relatives, another plan, an owner-employee, or a shareholder-employee annually. It is further assumed that the disclosure is prepared by the plan itself, instead of using a service provider, and consists of a standardized form. The Department estimates that a legal professional will require 10 minutes at \$119.03 per hour to prepare the disclosure form for each affected plan and an additional 2 minutes of clerical time at \$26.14 per hour will be required for mailing the disclosure form to each insured participant.¹ Thus, the total number of plans involved will be approximately 21,533 generating a legal equivalent hour and cost burden of 3,590 hours and \$427,000.² There are an estimated 334,660 transactions of these individual policies that require disclosure. This leads to estimates of the clerical equivalent hour and cost burdens to be 11,155 hours and \$291,600.³ Therefore, the total hour burden for this class exemption is estimated to be 14,744 hours at an estimated total labor cost of \$718,776.

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 estimates the total annual burden to plan administrators for distribution of disclosure forms to be \$101,670. This figure is based on \$.49 for materials and mailing costs for each of the forms (\$.44 postage cost and \$.05 for the one page mailing). The Department estimates that 38 percent of disclosures will be done

1 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).

2 There are an estimated 3,913 plans that switch from individual level to group level and 17,620 plans that offer to sell individual policies to terminating participants. If the average legal time drafting a disclosure is 10 minutes then, the estimated legal professional time expended is 3590 hours. At \$119.03 cost per hour, this translates into an equivalent cost burden of approximately \$427,000.

3 There are an estimated 195,600 participants working for small employers who switch from individual level policies to group level policies each year and 176,000 other eligible participants terminating their plans each year. Of these, an estimated 90 percent of them purchase the individual life insurance policy. Thus, approximately 334,500 eligible parties purchase these policies. Two minutes of clerical time per disclosure implies an hour burden of 11,155 hours and a cost burden of \$291,600.

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electronically leaving 207,500 one sheet mailings to be done, costing plans an estimated \$101,670.

14. *Provide estimates of annualized costs 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 disclosure 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 number of respondents reported has been updated to reflect information reported by plan sponsors on the 2007 Form 5500. This estimate only includes pension plans, rather than pension and welfare plans from previous estimates because the Department believes that such contracts are much more prevalent in funding pension plans. The Department has changed its analysis involving plans that might change from providing individual to group level insurance policies to include only small plans. The estimates for the number of terminating participants have been changed to reflect Department estimates that over 5% of participants terminate their plan each year. Finally, the disclosure amounts have been updated to reflect that if there is an interested party that purchases the policy, a disclosure will be prepared; largely because of this, the equivalent cost burden is approximately \$620,000 larger than the 2007 estimate.

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.

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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. Collections of Information Employing Statistical Methods

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