

upon input from parties interested in the regulatory scope of that regulation. The purpose of this notice is to solicit public comment on OSHA's existing paperwork burden estimates from those interested parties and to seek public response to several questions related to the development of OSHA's estimation. Interested parties are requested to review OSHA's existing estimates, which are based upon information available during rulemaking, and to comment on their accuracy or appropriateness in today's workplace situation. OSHA bases its existing estimates upon information made available to the Agency during the initial rule making effort for 29 CFR 1910.120 (August 10, 1987; 52 FR 29620) and believes that this data may be outdated.

## II. Current Actions

This notice requests an extension of the current OMB approval of the paperwork requirements in 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response.

*Type of Review:* Extension of existing approval with one typographic correction. The current total burden hours should be 18,726,849 instead of 18,726,049. The eight in the hundreds spot was read previously as a zero.

*Agency:* Occupational Safety and Health Administration, U.S. Department of Labor.

*Title:* Hazardous Waste Operations and Emergency Response (29 CFR 1910.120).

*OMB Number:* 1218-0202 (Previously 1218-0138).

*Agency Number:* Docket No. ICR-95-2.

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit, Federal government, and State, Local or Tribal governments.

*Number of respondents:* 35,118.

*Estimated Time Per Respondent:* Varies.

*Total Estimated Cost:* \$374,536,981.00.

*Total Burden Hours:* 18,726,849.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request: they will also become a matter of public record.

Dated: November 20, 1995.

Thomas H. Seymour,

Acting Director, Director of Safety Standards Programs.

[FR Doc. 95-28861 Filed 11-24-95; 8:45 am]

BILLING CODE 4510-26-M

## Pension and Welfare Benefits Administration

[Application No. D-10031]

### Proposed Class Exemption To Permit Certain Authorized Transactions Between Plans and Parties in Interest

**AGENCY:** Pension and Welfare Benefits Administration (PWBA), Department of Labor.

**ACTION:** Notice of proposed class exemption.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (the Code). The proposed class exemption would apply to certain prospective transactions between employee benefit plans and parties in interest where such transactions are specifically authorized by the Department and are subject to terms, conditions and representations which are substantially similar to exemptions previously granted by the Department. If granted, the proposed exemption would affect plans, participants and beneficiaries of such plans and certain persons engaging in such transactions.

**DATES:** Written comments and requests for a public hearing must be received by the Department on or before January 11, 1996.

**ADDRESSES:** All written comments (at least three copies) and requests for a public hearing should be sent to: Office of Exemption Determinations, Pension and Welfare Benefits Administration, room N-5649, U. S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (Attn: D-10031). Comments received from interested persons will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, U. S. Department of Labor, room N-5638, 200 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Allison Padams, Mr. Ronald Willett, or Mr. Louis Campagna, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U. S. Department of Labor, telephone (202) 219-8971 (This is not a toll-free number.); or Mr. William Taylor, Plan Benefits Security Division, Office of Solicitor, U. S. Department of Labor (202) 219-4592. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of a proposed class exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of ERISA and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code (the Code), by reason of section 4975(c)(1) (A) through (E) of the Code.

The Department is proposing the class exemption on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B, (55 FR 32836, August 10, 1990).<sup>1</sup>

### Paperwork Reduction Act Analysis

The collection of information contained in this proposed class exemption has been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995. 44 U.S.C. 3507(d). For copies of the OMB submission, contact Mrs. Theresa O'Malley, U.S. Department of Labor, OASAM/DIRM, Room N-1301, 200 Constitution Ave. NW, Washington, D.C. 20210, 202-219-5095 or via internet to tomalley@dol.gov. Comments are solicited on the Department's need for this information, specifically to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Persons wishing to comment on the collection of information should direct their comments to the Office of Information and Regulatory Affairs, OMB, Room 10235, NEOB, Washington, D.C. 20503, Attn: Desk Officer for PWBA. Comments must be filed with the Office of Management and Budget within 60 days of this publication. A

<sup>1</sup> Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Department: Mrs. Theresa O'Malley, U.S. Department of Labor, OASAM/DIRM, Room N-1301, 200 Constitution Ave. NW, Washington, D.C. 20210. For further information, contact Gerald B. Lindrew at 202-219-4782.

**Title:** Class Exemption To Permit Certain Authorized Transactions Between Plans and Parties in Interest

**Summary:** Certain parties in interest to ERISA covered pension and welfare benefit plans have the opportunity to seek approval on an accelerated basis of otherwise prohibited transactions by providing the Department and interested persons with information demonstrating that the proposed transaction is substantially similar to at least two individual exemptions previously granted by the Department, and in some cases show that the interests of the participants and beneficiaries are adequately represented and protected by an independent fiduciary.

**Needs and Uses:** ERISA requires that the Department make a finding that the proposed exemption meets the statutory requirements of section 408(a) before granting the exemption. The Department therefore finds it necessary to receive certain information from the applicants, and that participants and beneficiaries receive notice and an opportunity to comment on the proposed transaction.

**Respondents and proposed frequency of response:** The Department staff estimates that approximately 25 applicants will seek to take advantage of this class exemption in any given year. The respondents will be plans and parties in interest to plans.

**Estimated annual burden:** Based on past experience, the staff believes that none of the materials required to be submitted under this exemption will be prepared by the respondents; rather, the respondents are expected to contract with service providers such as attorneys, accountants, and third-party administrators to prepare the materials. Therefore, the Department asks that one hour be inserted as the estimated burden, in light of the current requirements that time spent by service providers not be included in the hourly burden estimate. The annual cost of using service providers for this collection of information is estimated to be \$19,537.50.

**Background**

The Department is proposing the class exemption contained in this notice as part of a continuing effort to facilitate

the administration of the rules for proposing and granting exemptions from the prohibited transactions provisions of ERISA. The rules set forth in section 406 of ERISA prohibit various transactions between employee benefit plans covered by title I of ERISA and certain related parties, unless a statutory or administrative exemption applies to the transaction. These related parties, such as plan fiduciaries, sponsoring employers, unions and service providers are defined as parties in interest in section 3(14) of ERISA, and, in the absence of an exemption, may not engage in transactions described in section 406 of ERISA with a plan.

Specifically, section 406(a)(1) prohibits a fiduciary of a plan from causing the plan to engage in a transaction that constitutes a direct or an indirect: sale, exchange or leasing of any property between the plan and a party in interest; lending of money or other extension of credit between the plan and a party in interest; furnishing of goods, services or facilities between the plan and a party in interest; transfer to, or use by or for the benefit of a party in interest of any assets of the plan or acquisition on behalf of the plan of any employer security or real property in violation of section 407(a) of ERISA. Section 406(a)(2) provides that no fiduciary who has authority or discretion to control or manage plan assets shall permit the plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 407(a) of ERISA. Section 406 (b)(1) and (b)(2) prohibits a fiduciary, with respect to a plan, from dealing with the assets of the plan in his own interest or for his own account; and acting in his individual capacity or in any other capacity in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interests of the participants or beneficiaries. In addition, such transactions that involve plans described in section 4975(e)(1) of the Code are generally subject to taxation under section 4975 of the Code.

In the past, the Department has frequently exercised its statutory authority under section 408(a) of ERISA to grant both individual and class exemptions from the restrictions imposed by section 406 of ERISA where it has been able to find that the statutory criteria have been met.<sup>2</sup> This process

<sup>2</sup>Section 408(a) of ERISA provides, in part, that the Department may not grant an exemption unless a finding is made that such exemption is administratively feasible, in the interests of the plan

has been helpful in providing exemptive relief for transactions which were prohibited, but were otherwise in the interests of the plans, participants and beneficiaries.

The Department has promulgated an exemption procedure<sup>3</sup> which provides, among other things, that an exemption will not be granted until a notice of pendency has been published in the Federal Register, and interested persons have been given an opportunity to comment on the proposed transaction. Following consideration of the entire record, the Department then makes its final determination whether to grant the exemption. If the Department contemplates not granting the requested exemption, the procedure also provides an applicant with the right to a conference.

Typically, the Department grants individual exemptions for specific transactions involving particular plans and parties in interest. Such exemptions are generally made at the request of the parties involved. In certain cases, however, the Department believes that an exemption applicable to a class of transactions would be appropriate in order to eliminate the need for individual exemptions.

In this regard, the Department granted Prohibited Transaction Exemption (PTE) 79-15 to permit parties in interest to engage in transactions or activities that are specifically authorized or required, prior to the occurrence of such transactions or activities, by a court order of the United States District Court, provided that the transaction is specifically described in such order or settlement, and the Secretary of Labor or the Internal Revenue Service is a party to the litigation.<sup>4</sup> PTE 79-15 was granted in recognition of the fact that under these circumstances the court has the benefit of the views of the Department and the Internal Revenue Service as to the propriety of rendering a judgment which approves a settlement contemplating transactions which might be prohibited under ERISA and the Code.

The Department recently granted PTE 94-71 to permit parties to engage in prospective transactions or activities which are specifically authorized by a non-judicial settlement resulting from an investigation of a plan by the Department.<sup>5</sup> The exemption recognizes

and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of such plan.

<sup>3</sup>See 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

<sup>4</sup>44 FR 26979 (May 8, 1979).

<sup>5</sup>59 FR 51216 (October 7, 1994).

that in authorizing a transaction that would otherwise be prohibited as part of a settlement, the Department will give appropriate consideration to whether such transaction is in the interests of plan participants and beneficiaries.

Based on its experience in considering exemption applications for over twenty years, the Department has observed that many of the applications present routine transactions involving terms, conditions and circumstances which are substantially similar to those described in previously granted individual exemptions. In fact, many exemption applicants have made it a practice to consult previously granted exemption files in the preparation of their submissions. Such applicants often submit applications containing nearly identical transactions, terms and conditions to those previously granted. Since the enactment of ERISA, the Department has exempted a large number of recurring transactions, including loans, leases and sales of real property. As a result, standard terms and conditions have developed over time which assure that the transaction is protective of the plan's interests.

The Department believes that further action would be appropriate in order to expedite consideration of those routine transactions which are similar to those that have been previously considered by the Department in prior exemption proceedings, without sacrificing the interests of the plan participants and beneficiaries. Accordingly, the exemption proposed in this notice would be available to the party proposing to engage in a prohibited transaction, if the party can demonstrate to the Department that such transaction and the material terms, conditions and representations therein are substantially similar to at least two individual exemptions previously granted by the Department.

#### Discussion of the Proposed Exemption *Proposed Conditions*

The proposal contains conditions, as discussed below, which the Department views as necessary to support a finding that the proposed exemption meets the statutory standards of section 408(a) of ERISA.

Under section I of the proposed exemption, relief is provided for transactions, as discussed below, from certain of the restrictions described in section 406(a) of ERISA. In this regard, section I(a) requires that the transaction be substantially similar to transactions described in at least two individual exemptions that were granted by the Department, and which provided relief

from the same restrictions as requested by the party, within the 60 month period ending on the date a written submission is filed. "Substantially similar" is defined in section IV(a) as alike in all material respects as determined by the Department in its sole discretion.

Section I(b) of the proposed exemption requires that there be little, if any, risk of abuse or loss to the plan as a result of the transaction. Section I(c) further provides that prior to the execution of a transaction, the authorizing requirements of section III must be satisfied (as discussed below). The Department notes that, in light of the broad scope of relief provided under the proposal, the class exemption is only available with respect to prospective transactions.

Under section II of the proposal, additional relief is provided from certain of the restrictions described in sections 406(b)(1) and 406(b)(2) of ERISA provided that: (a) the transaction is substantially similar (as defined in section IV(a)) to transactions described in at least two individual exemptions that were granted by the Department, and which provided relief from the same restrictions as requested by the party, within the 60 month period ending on the date of filing of the written submission; (b) there is little, if any, risk of abuse or loss to the plan as a result of the transaction; and (c) prior to its execution, the transaction has met the requirements described in section III (as discussed below).

In considering the availability of this proposed class exemption, the party who is to engage in the transaction should carefully determine whether the contemplated transaction contains terms and conditions which closely parallel the transaction delineated in the prior exemptions granted by the Department and the material facts and representations supporting such exemptions. Further, the party seeking to take advantage of the proposed class exemption should determine whether the relief provided from section 406 by the prior exemptions granted by the Department is identical to the relief necessary for the contemplated transaction.

In addition, section II (d) and (e) require that, prior to execution of such transaction, an independent fiduciary has reviewed the proposed transaction and determined that the transaction would be in the interests and protective of the plan and its participants and beneficiaries, and later represents the interests of the plan in the execution of the transaction. Under section II(f) of the proposal, for those transactions that are

continuing in nature, such as leases and loans, the independent fiduciary must: (1) represent the interests of the plan for the duration of the transaction; (2) monitor the transaction on behalf of the plan; (3) enforce compliance with all conditions and obligations imposed on any party dealing with the plan with respect to the transaction; and (4) ensure that the transaction remains in the interests of the plan.<sup>6</sup>

The Department notes that the independent fiduciary should be knowledgeable and experienced with respect to the type of transaction. The Department encourages parties to consider, when retaining an independent fiduciary, any unique qualifications of the independent fiduciaries utilized in the substantially similar transactions.

Section III of the proposal contains the authorization requirements for a transaction. In view of the broad scope of relief provided under the proposal, the Department believes that it must participate in the proceeding in order to determine in its sole discretion whether prior to its execution a proposed transaction is substantially similar to previously exempted transactions and presents little if any risk of abuse or loss to the plan. Section III(a)(1) requires that the party who will be engaging in such transaction file a written submission with the Department containing a specific statement that the party intends to demonstrate compliance with the conditions of the class exemption. The written submission must clearly indicate to the Department that it is made pursuant to the class exemption rather than under the Department's procedures for considering individual exemptions.<sup>7</sup>

Section III(a)(2) requires that the submission include all information that is otherwise required to be submitted with an individual exemption application. This condition will permit such submission to be considered under the Department's exemption procedures in the event that Department is unable to conclude from the written submissions that the conditions of the class exemption would be met. Further, this condition will assure a full and comprehensive file upon which the Department can base its conclusions

<sup>6</sup> The Department expects that the written submission referred to section III will include specific information regarding the methods proposed by the independent fiduciary for: monitoring the transaction; enforcing compliance with all the conditions and obligations imposed on the parties dealing with the plan; and ensuring that the transaction remains in the interests and protective of the participants and beneficiaries of the plan.

<sup>7</sup> See 29 CFR part 2570, subpart B.

concerning the availability of this class exemption.

Under section III(a)(3), the party who will be engaging in the transaction must demonstrate that the proposed transaction presents little or no opportunity for abuse or risk of loss by the plan given the terms and conditions of the transaction. Section III(a)(4) requires that the party compare the proposed transaction to those previously exempted transactions identified by the party as substantially similar. In this regard, any comparison must include a description of any material differences between the proposed transaction and the identified exemptions. The Department notes that it is the party's burden to provide the Department with the citations to the identified exemptions.

Section III(a)(5) requires that a complete and accurate draft of the notice which will be distributed to interested persons be submitted to the Department. The purpose of the notice requirement is to afford interested persons with the opportunity to provide the Department with relevant information to assist the Department in its consideration of the proposed transaction. "Notice" is defined in section IV(b) as a written notification to interested persons which includes an objective description of the transaction, the approximate date on which the transaction will occur, a statement that the proposed transaction has met the requirements for tentative authorization under this class exemption, a statement apprising interested persons of their right to comment, and the Federal Register citations for the prior exemptions identified by the party as substantially similar to the contemplated transaction. The Department cautions that a notice that does not objectively and accurately characterize the transaction and its material terms and conditions will fail to comply with section IV(b) of the proposal. The notice must also contain a statement directing interested persons to submit comments to the Department for consideration.

With respect to a transaction described in section II of this exemption, section III(b) provides that the written submission must also contain the following additional information: (1) the identity of the independent fiduciary; (2) a description of such fiduciary's independence from the parties in interest involved in the subject transaction; (3) a statement by the independent fiduciary containing an explanation as to why the subject transaction is in the interests and protective of the participants and

beneficiaries of the plan; (4) an agreement by the independent fiduciary to represent the interests of the plan; and (5) a description of the procedure for replacement of the independent fiduciary, if necessary, during the term of the transaction.

The written submissions will be closely reviewed by the Department to ensure that the conditions of this class exemption are met. In this regard, the Department notes that the burden is on the party who is to engage in the transaction to demonstrate compliance with the conditions of the class exemption. If a party fails to do so, the Department will notify the party that the transaction is not eligible for authorization under the terms of the class exemption, and the written submission will be considered pursuant to the Department's exemption procedure for individual exemptions.

The proposal requires, under section III(c), that the transaction meet the requirements for tentative authorization. "Tentative authorization" is defined under section IV(c) as occurring at the expiration of the forty-five day period following acknowledgement by the Department of the receipt of the written submission with respect to the proposed transaction, unless the Department has notified the party who is to engage in the transaction during this period that the transaction is not eligible for authorization under the terms of this class exemption.

Section III(d) provides that, following tentative authorization, the party who is to engage in the transaction provides written notice (as defined in section IV(b)) to interested persons. The proposed exemption does not specify the manner in which written notice must be provided to interested persons. However, section III(d) requires that notice be given in a manner that is reasonably calculated to result in the receipt of such notice by interested persons. It is the responsibility of the party who is to engage in the transaction to promptly distribute notice after tentative authorization is obtained, because the 25 day comment period, as defined under section IV(e), will not commence until the notification to all interested persons is complete. It is also the responsibility of the party to inform the Department of the date upon which notification was completed. The notice must inform interested persons of the date of expiration of the comment period. Because the date of completion of the notification is within the control of the party who is to engage in the transaction, the expiration date of the comment period is thus dependent upon completion of notification. The

Department expects the party who provides written notice to take this into account in determining the expiration date of the comment period.

In addition, section III(d) requires that the party who is to engage in the transaction resolve all substantive adverse comments submitted to the Department to the satisfaction of the Department. The term "substantive adverse comments," as defined in section IV(f), means those comments submitted by interested persons to the Department within the prescribed comment period which raise significant factual, legal or policy issues regarding the transaction as determined by the Department. The Department wishes to emphasize that the party who is to engage in the transaction must fully resolve those issues received during the comment period to the satisfaction of the Department.

"Final authorization" is defined in section IV(d) as the end of the 5 day period immediately following the expiration of the comment period unless the Department notifies the party within that period that the transaction is not eligible for authorization, or the expiration of a period of time extending beyond the 5 day period as mutually agreed to by the Department and the party in order to resolve any substantive adverse comments submitted to the Department. The 5 day period between the expiration of the comment period and final authorization is intended to allow consideration by the Department of comments received within the 25 day comment period. If mutual agreement between the Department and the party who is to engage in the transaction is not reached regarding the period of time in which such comments must be resolved, the party will be notified that the transaction fails to comply with the conditions of the class exemption, and the written submission will be considered by the Department in accordance the Department's exemption procedures at 29 CFR 2570, subpart B.

In this regard, the Department will not consider a proposed transaction to satisfy the conditions of this proposed class exemption unless the material facts and representations contained in the written submission and in any materials and documents submitted in support of the written submission are true and complete. Accordingly, applicants are cautioned against engaging in transactions shortly after final authorization, since the Department may continue to receive comments for several days following expiration of the comment period. Such comments may potentially challenge the truth and/or completeness of the

original written submission and cause the Department to reexamine its previous determination that the proposed transaction had met the conditions of the proposal.<sup>8</sup>

The Department notes that the proposed exemption should not be construed as a substitute for compliance with the statutory requirements of ERISA and the Code. Individuals desiring to engage in any transaction which is prohibited under section 406 of ERISA, and which is not the subject of an existing statutory or administrative exemption (including as a result of failure to satisfy the terms of this class exemption) must seek exemptive relief in accordance with the Department's exemption procedure at 29 CFR 2570, subpart B. Lastly, the proposed exemption provides no relief for transactions entered into prior to final authorization as described in section IV(d).

The application of the exemption proposed in this notice may be illustrated by the following examples:

Example (1): An exemption application is submitted to the Department by applicant X, the sponsor of plan Y, for a lease of office space by plan Y to X. The transaction proposed is similar in all material respects to four other exemptions granted by the Department within the last five years. Applicant X, however, does not make a specific declaration that the application is submitted with the intention of demonstrating compliance with the class exemption, and there is no information which otherwise complies with sections I, II and III of the proposed class exemption. The application will be considered by the Department pursuant to individual exemption procedures unless the applicant amends its original written submission and provides the required information. At that point, the Department will acknowledge receipt of the written submission requesting expedited authorization under the class exemption proposal.

Example (2): In 1994, two exemptions were granted for loans by pension plans to Corporation A and Corporation B, respectively, the sponsoring employers. The loan to Corporation A was for \$50,000. The loan to Corporation B was for \$75,000. Among the conditions and material representations contained in both exemptions were the following: the loans would be approved and monitored by an independent fiduciary; the term of the loans could extend no more than five years; regular installment payments of principal and interest had to be made

during the term; the collateral consisting of real property had to be maintained at all times at a loan-to-value ratio of at least 150 percent; and no more than 25 percent of the assets of the plan would be involved in loans to the sponsoring employer. In 1996, X Corporation makes a written submission pursuant to the class exemption with respect to a proposed loan from its plan. The proposed transaction, including the terms and conditions of the loan and the creditworthiness of the borrower, is substantially similar to the exemptions granted to Corporation A and Corporation B, except that the loan is for \$400,000 and the term is seven years. X Corporation cites the previously granted exemptions in its submission and demonstrates that the 25 percent limitation on the amount of assets involved in loans to the employer would be met. These differences in dollar amounts and loan term would not cause the transaction to fail the "substantially similar" test under section I(a) and X's proposed transaction may be eligible for relief under the class exemption.

If, however, in addition to these differences (i.e., dollar amounts and loan term), the loan transaction proposed by X Corporation also included different repayment provisions requiring monthly payments of interest only during the loan term and a balloon payment of principal at the end of the term, the relief afforded by the class exemption would not be available because the terms of the proposed loan are not alike in all material respects within the meaning of section I(a) to the previous loan exemptions granted by the Department and cited by the applicant.

Example (3): In 1994, Investment Adviser X is granted a conditional exemption which permits plans for which it provides investment management services to purchase units of a limited partnership for which X is the general partner. In 1996, the assets of X are sold to Y. Y subsequently makes a written submission pursuant to the class exemption for the same transactions which were the subject of the exemption granted to X. In addition to the exemption granted to X, Y cites in its submission one other similar exemption granted by the Department within the last five years. The relief afforded by the exemption would be available because the terms and conditions of the transaction are substantially similar to previous exemptions granted by the Department.

Example (4): Firm C makes a written submission pursuant to the class exemption for the sale of property by its

plan to C. Forty-five days elapse from the acknowledgment of the receipt of the submission by the Department without notification from the Department as to the availability of the class exemption for the proposed transaction. Pursuant to the exemption, C proceeds to distribute notice to interested persons. On the 24th day following completion of notice, the Department receives a comment from an interested person raising significant factual concerns regarding the sale. At this point, the Department and C can mutually agree, pursuant to section IV(d) of the exemption, to a date beyond the expiration of the 25 day comment period, at which time the comment must be resolved to the Department's satisfaction in order for the transaction to be authorized under the terms of the exemption. If the Department and C cannot agree to an extended date, the transaction will not receive final authorization and the exemption will not be available for such transaction.

#### Notice to Interested Persons

Because many participants, plans, fiduciaries and parties in interests with respect to plans could conceivably be considered interested persons, the only practical form of notice of the proposed exemption is publication in the Federal Register.

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code to which the exemption does not expressly apply and the general fiduciary responsibility provisions of section 404 of ERISA. Section 404 requires, in part, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA. This exemption does not affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of ERISA and section 4975(c)(1)(F) of the Code.

(3) Before this exemption may be granted under section 408(a) of ERISA

<sup>8</sup> See 29 CFR 2570.49 (55 FR 32886, August 10, 1990).

and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of plans and of participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans.

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) If granted, the proposed exemption will be applicable to a transaction only if the conditions specified in the class exemption are satisfied.

#### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a public hearing on the proposed exemption to the address above and within the time period set forth above. Comments received will be made part of the record and will be available for public inspection at the above address.

#### Proposed Exemption

The Department has under consideration the granting of the following class exemption, under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990).

*Section I—General Exemption.* Effective (date of grant of this class exemption), a restriction described in section 406(a) of ERISA, and the taxes imposed by sections 4975 (a) and (b) of the Code, by reason of a parallel provision described in sections 4975(c)(1) (A) through (D) of the Code, shall not apply to a transaction between a plan and a party in interest with respect to such plan, provided the following conditions are met:

(a) The transaction is substantially similar (as defined in section IV(a)) to transactions described in at least two individual exemptions that were granted by the Department, and provided relief from the same restriction, within the 60 month period ending on the date of filing of the written submission referred to in section III(a);

(b) There is little, if any, risk of abuse or loss to the plan as result of the transaction; and

(c) Prior to its execution, the transaction has met the requirements described in section III.

*Section II—Specific Exemption.* Effective (date of grant of this class exemption), a restriction described in sections 406(b)(1) and 406(b)(2) of ERISA, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(E) of the Code, shall not apply to a transaction between a plan and a party in interest with respect to such plan provided the following conditions are met:

(a) The transaction is substantially similar (as defined in section IV(a)) to transactions described in at least two individual exemptions that were granted by the Department, and provided relief from the same restriction, within the 60 month period ending on the date of filing of the written submission referred to in section III(a);

(b) There is little if any risk of abuse or loss to the plan as a result of the transaction;

(c) Prior to its execution, the transaction has met the requirements described in section III;

(d) An independent fiduciary has reviewed the proposed transaction and determined that the transaction would be in the interests and protective of the plan and its participants and beneficiaries;

(e) The independent fiduciary represents the interests of the plan in the execution of the transaction; and

(f) If the transaction is continuing in nature, the independent fiduciary—

(i) represents the interests of the plan for the duration of the transaction and monitors the transaction on behalf of the plan;

(ii) enforces compliance with all conditions and obligations imposed on any party dealing with the plan with respect to the transaction; and

(iii) ensures that the transaction remains in the interests of the plan.

*Section III—Authorization Requirements.* The requirements for this section are met if:

(a) A written submission is filed with the Department with respect to the transaction which contains the following information:

(1) a separate written declaration by the party who is to engage in the transaction that the written submission is made with the intention of demonstrating compliance with the conditions of this class exemption;

(2) all information required to be submitted with an individual exemption application in accordance with the

procedures set forth in 29 CFR 2570 subpart B;

(3) a specific statement demonstrating that the proposed transaction poses little, if any, risk of abuse or loss to the plan;

(4) a comparison of the proposed transaction to at least two substantially similar transactions which were the subject of individual exemptions granted by the Department within a sixty month period ending on the date of the filing of the written submission and an explanation as to why any differences should not be considered material for purposes of this exemption; and

(5) a complete and accurate draft of the notice (as defined in section IV(b)) prepared for distribution to interested persons and a description of the proposed method of distribution for such notice.

(b) With respect to transactions described in section II of this exemption, the written submission referred to in section (a) above contains the following additional information:

(1) the identity of the independent fiduciary;

(2) a description of such fiduciary's independence from the parties in interest involved in the subject transaction;

(3) a statement by the independent fiduciary containing an explanation as to why the subject transaction is in the interests and protective of the participants and beneficiaries of the plan(s) involved;

(4) an agreement by the independent fiduciary to represent the interests of the plan(s) involved in the transaction; and

(5) a description of the procedures for replacement of the independent fiduciary, if necessary, during the term of the transaction.

(c) The transaction meets the requirements for tentative authorization (as defined in section IV(c)) from the Department.

(d) Following tentative authorization, the party who is to engage in the transaction provides written notice (as defined in section IV(b)) to interested persons in a manner that is reasonably calculated to result in the receipt of such notice by interested persons, informs interested persons of the date of the expiration of the comment period, and resolves all substantive adverse comments (as defined in section IV(f)) to the satisfaction of the Department.

(e) The transaction meets the requirements for final authorization (as defined in section IV(d)).

*Part IV: Definitions*

(a) The term "substantially similar" means alike in all material respects as determined by the Department, in its sole discretion.

(b) The term "notice" means written notification to interested persons which includes—

(1) an objective description of the transaction, including all material terms and conditions,

(2) the approximate date on which the transaction will occur,

(3) a statement that the proposed transaction has met the requirements for tentative authorization under this exemption,

(4) a statement apprising interested persons of their right to comment to the Department on the proposed transaction, and

(5) the Federal Register citations for the prior exemptions identified by the party as substantially similar to the contemplated transaction.

(c) For purposes of this exemption, "tentative authorization" occurs upon the expiration of the forty-five (45) day period following an acknowledgement by the Department of receipt of the written submission with respect to the transaction under this exemption unless the Department has notified the party who is to engage in the transaction during that period that the transaction is not eligible for authorization under the terms of this exemption.

(d) For purposes of this exemption "final authorization" occurs upon the expiration of:

(1) the five (5) day period immediately following the comment

period (as defined in section IV(e)), unless the Department notifies the party that the transaction is not eligible for authorization under the terms of this exemption, and

(2) if necessary in order to resolve any substantive adverse comments received by the Department from interested persons within the comment period, a period of time extending beyond the five day period immediately following the comment period as mutually agreed between the Department and the party.

(e) The term "comment period" means the twenty-five (25) day period following the completion of distribution of the notice to interested persons by the party who is to engage in the transaction.

(f) The term "substantive adverse comments" means those comments submitted by interested persons to the Department within the prescribed comment period which raise significant factual, legal or policy issues regarding the transaction as determined by the Department in its sole discretion.

Signed at Washington, D.C., this 21st day of November 1995.

Alan D. Lebowitz,

*Deputy Assistant Secretary of Program Operations, Pension and Welfare Benefits Administration, Department of Labor.*

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**BILLING CODE 4510-29-P**

**LEGAL SERVICES CORPORATION**

**Grant Awards to Applicants for Funds To Provide Civil Legal Services to Eligible Low-Income Clients Beginning As Early As January 1, 1996, or As Soon Thereafter As Feasible, Consistent With Pending Congressional Appropriations**

**AGENCY:** Legal Services Corporation.

**ACTION:** Announcement of Grant Awards.

**SUMMARY:** The Legal Services Corporation (LSC/Corporation) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible low-income clients beginning as early as January 1, 1996, or as soon thereafter as feasible consistent with pending Congressional appropriations.

**DATES:** All comments and recommendations must be received on or before the close of business on December 27, 1995.

**ADDRESSES:** Office of Program Services, Legal Services Corporation, 750 First Street, N.E., 11th Floor, Washington, D.C. 20002-4250.

**FOR FURTHER INFORMATION CONTACT:** Patricia M. Hanrahan, Office of Program Services, 202/336-8846.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Corporation's announcement of funding availability on September 21, 1995 (60 FR 48951), the LSC will award funds to one or more of the following organizations to provide civil legal services in the indicated service areas.

Name of organization	Service areas identified in LSC RFP (Oct. 1995)
LGL SVCS OF NORTH-CENTRAL ALABAMA .....	AL-2.
LGL. SVCS. OF METRO BIRMINGHAM, INC .....	AL-3.
LSC OF ALABAMA .....	AL-1, MAL.
ALASKA LEGAL SERVICES CORPORATION .....	AK-1, NAK-1.
COCONINO LEGAL AID .....	AZ-2.
DNA-PEOPLE'S LEGAL SERVICES, INC .....	AZ-4.
PINAL & GILA COUNTIES LAS .....	AZ-1, NAZ-1.
PAPAGO LEGAL SERVICES, INC .....	NAZ-3.
SOUTHERN ARIZONA LEGAL AID, INC .....	AZ-4, NAZ-4.
COMMUNITY LEGAL SERVICES .....	AZ-3, NAZ-2, MAZ.
OZARK LEGAL SERVICES .....	AR-2.
L.S. OF NORTHEAST ARKANSAS, INC .....	AR-3.
WESTERN ARKANSAS LEGAL SERVICES .....	AR-4.
EAST ARKANSAS LEGAL SERVICES .....	AR-5.
CENTER FOR ARKANSAS LEGAL SERVICES .....	AR-1, AR-6, MAR.
CENTRAL CALIFORNIA LEGAL SERVICES .....	CA-3.
GREATER BAKERSFIELD LEGAL ASST INC .....	CA-2.
LEGAL AID FOUNDATION OF LONG BEACH .....	CA-4.
LA FOUNDATION OF LOS ANGELES .....	CA-5.
LEGAL AID SOCIETY OF ALAMEDA COUNTY .....	CA-7.
CHANNEL COUNTIES LEGAL SERVIC ASSOC .....	CA-8.
SAN FERNANDO VALLEY NEIGHBORHOOD LS .....	CA-9.
LEGAL SERVICES PROGRAM .....	CA-10.
LAS OF SAN MATEO COUNTY .....	CA-11.
CONTRA COSTA LS FOUNDATION .....	CA-12.