



DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Requests Submitted for Public Comment: Definition of “Plan Assets” -- Participant Contributions; Final Rules and Class Prohibited Transaction Exemption 2006-16 relating to Terminated Individual Account Plans; etc.

AGENCY: Employee Benefits Security Administration, Department of Labor

ACTION: Notice

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the ADDRESSES

section of this notice. ICRs also are available at [reginfo.gov](http://www.reginfo.gov)
(<http://www.reginfo.gov/public/do/PRAMain>).

DATES: Written comments must be submitted to the office shown in the Addresses section on or before [INSERT DATE THAT IS 60 DAYS FOLLOWING THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Washington, DC 20210, (202) 693-8410, FAX (202) 693-4745 (these are not toll-free numbers).

I. SUPPLEMENTARY INFORMATION:

This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transactions described below. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor

Title: Definition of "Plan Assets" -- Participant Contributions

Type of Review: Extension of a currently approved information collection

OMB Number: 1210-0100

Affected Public: Business or other for-profit; not-for-profit institutions; individuals

Respondents: 1

Responses: 251

Estimated Total Burden Hours: 1

Estimated Total Burden Cost (Operating and Maintenance): \$1,025

Description: The regulation concerning plan assets and participant contributions provides guidance for fiduciaries, participants, and beneficiaries of employee benefit plans regarding how participant contributions to pension plans must be handled when they are either paid to the employer by the participant or directly withheld by the employer from the employee's wages for transmission to the pension plan. In particular, the regulation sets standards for the timely delivery of such participant contributions, including an outside time limit for the employer's holding of participant contributions. In addition, for those employers who may have difficulty meeting the regulation's outside deadlines for transmitting participant contribution, the regulation (29 CFR 2510.3-102(d) provides the opportunity for the employer to obtain an extension of the time limit by providing participants and the Department with a notice that contains specified information. The ICR pertains to this notice requirement. The Department previously requested review of this information collection and obtained approval from the Office of Management and Budget (OMB) under OMB control number 1210-0100. That approval is scheduled to expire on July 31, 2012.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Final Rules and Class Prohibited Transaction Exemption 2006-16 relating to Terminated Individual Account Plans

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0127

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions

Respondents: 37,822

Responses: 100

Estimated Total Burden Hours: 7,433

Estimated Total Burden Cost (Operating and Maintenance): \$3,366,300

Description: The abandoned plan initiative includes the following actions, which impose the following information collections:

1. Qualified Termination Administrator (QTA) Regulation: The QTA regulation creates an orderly and efficient process by which a financial institution that holds the assets of a plan that is deemed to have been abandoned may undertake to terminate the plan and distribute its assets to participants and beneficiaries holding accounts under the plan, with protections and approval of the Department under the standards of the regulation. The regulation requires the QTA to provide certain notices to the Department, to participants and beneficiaries, and to the plan sponsor (or service providers to the plan, if necessary), and to keep certain records pertaining to the termination.

2. *Abandoned Plan Terminal Report Regulation:* The terminal report regulation provides an alternative, simplified method for a QTA to satisfy the annual report requirement otherwise applicable to a terminating plan by filing a special simplified terminal report with the Department after terminating an abandoned plan and distributing its accounts to participants and beneficiaries.

3. *Terminated Plan Distribution Regulation:* The terminated plan distribution regulation establishes a safe harbor method by which fiduciaries who are terminating individual account pension plans (whether abandoned or not) may select an investment vehicle to receive account balances distributed from the terminated plan when the participant has failed to provide investment instructions. The regulation requires the fiduciaries to provide advance notice to participants and beneficiaries of how such distributions will be invested, if no other investment instructions are provided.

4. *Abandoned Plan Class Exemption:* The exemption permits a QTA that terminates an abandoned plan under the QTA regulation to receive payment for its services from the abandoned plan and to distribute the account balance of a participant who has failed to provide investment direction into an individual retirement account (IRA) maintained by the QTA or an affiliate. Without the exemption, financial institutions could be unable to receive payment for services rendered out of plan assets without violating ERISA's prohibited transaction provisions and would therefore be highly unlikely to undertake the termination of abandoned plans. The exemption includes the condition that the QTA keep records of the distributions for a period of six years and make such records available on

request to interested persons (including the Department and participants and beneficiaries). If a QTA wishes to be paid out of plan assets for services provided prior to becoming a QTA, the exemption requires that the QTA enter into a written agreement with a plan fiduciary or the plan sponsor prior to receiving payment and that a copy of the agreement be provided to the Department.

5. PTE 2004-16 (Automatic Rollover Exemption): Also included in this ICR are the notice and recordkeeping requirements contained in PTE 2004-16, which permits a pension plan fiduciary that is a financial institution and is also the employer maintaining an individual account pension plan for its employees to establish, on behalf of its separated employees, an IRA at a financial institution that is either the employer or an affiliate, which IRA would receive mandatory distributions that the fiduciary “rolls over” from the plan when an employee terminates employment.

Because all of these regulations and exemptions relate to terminating or abandoned plans and/or to distribution and rollover of distributed benefits for which no participant investment election has been made, the Department has combined the paperwork burden for all of these actions into one ICR. In the Department’s view, this combination allows the public to have a better understanding of the aggregate burden imposed on the public for these related regulatory actions. OMB approved the ICR under OMB control number 1210-0127, which is scheduled to expire on July 31, 2012.

Agency: Employee Benefits Security Administration, Department of Labor

Title: ERISA Summary Annual Report

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0040

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions

Respondents: 716,000

Responses: 156,047,000

Estimated Total Burden Hours: 2,142,100

Estimated Total Burden Cost (Operating and Maintenance): \$46,551,000

Description: Section 104(b)(3) of ERISA and the regulation published at 29 CFR 2520.104b-10 require, with certain exceptions, that administrators of employee benefit plans furnish annually to each participant and certain beneficiaries a summary annual report (SAR) meeting the requirements of the statute and regulation. The regulation prescribes the content and format of the SAR and the timing of its delivery. The SAR provides current information about the plan and assists those who receive it in understanding the plan's current financial operation and condition. It also explains participants' and beneficiaries' rights to receive further information on these issues.

EBSA previously submitted the information collection provisions in the regulation at 29 CFR 2520.104b-10 to the Office of Management and Budget (OMB) for review in an information collection request (ICR). OMB approved the ICR under OMB Control No. 1210-0040. The ICR approval is scheduled to expire on August 31, 2012.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Prohibited Transaction Exemption 2002-12, Cross-Trades of Securities by Index and Model-Driven Funds

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0115

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions

Respondents: 60

Responses: 840

Estimated Total Burden Hours: 855

Estimated Total Burden Cost (Operating and Maintenance): \$509

Description: PTE 2002-12 exempts certain transactions that would be prohibited under the Employee Retirement Income Security Act of 1974 (the Act or ERISA) and the Federal Employees' Retirement System Act (FERSA), and provides relief from certain sanctions of the Internal Revenue Code of 1986 (the Code). The exemption permits cross-trades of securities among Index and Model-Driven Funds (Funds) managed by managers (Managers), and among such Funds and certain large accounts (Large Accounts) that engage such Managers to carry out a specific portfolio restructuring program or to otherwise act as a "trading adviser" for such a program. By removing existing barriers to these types of transactions, the exemption increases the incidences of cross-trading, thereby lowering the transaction costs to plans in a number of ways from what they would be otherwise.

In order for the Department to grant an exemption for a transaction or class of transactions that would otherwise be prohibited under ERISA, the statute requires the Department to make a finding that the exemption is administratively feasible, in the interest of the plan and its participants and beneficiaries, and protective of the rights of the participants and beneficiaries. To ensure that Managers have complied with the requirements of the exemption, the Department has included in the exemption certain recordkeeping and disclosure obligations that are designed to safeguard plan assets by periodically providing information to plan fiduciaries, who generally must be independent about the cross-trading program. Initially, where plans are not invested in Funds, Managers must furnish information to plan fiduciaries about the cross-trading program, provide a statement that the Manager will have a potentially conflicting division of loyalties, and obtain written authorization from a plan fiduciary for a plan to participate in a cross-trading program. For plans that are currently invested in Funds, the Manager must provide annual notices to update the plan fiduciary and provide the plan with an opportunity to withdraw from the program. For Large Accounts, prior to the cross-trade, the Manager must provide information about the cross-trading program and obtain written authorization from the fiduciary of a Large Account to engage in cross-trading in connection with a portfolio restructuring program. Following completion of the Large Account's restructuring, information must be provided by the Manager about all cross-trades executed in connection with a portfolio-restructuring program. Finally, the exemption requires that Managers maintain for a period of 6 years from the date of each cross-trade the records necessary to enable plan fiduciaries and certain other persons

specified in the exemption (e.g., Department representatives or contributing employers), to determine whether the conditions of the exemption have been met.

EBSA previously submitted the information collection provisions of PTE 2002-12 to the Office of Management and Budget (OMB) for review in connection with promulgation of the prohibited transaction exemption. OMB approved the information collection request (ICR) under OMB Control No. 1210-0115. The ICR approval is currently scheduled to expire on August 31, 2012.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Prohibited Transaction Class Exemption 91-38; Exemption for Certain Transactions Involving Bank Collective Investment Funds

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0082

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions

Respondents: 3,600

Responses: 3,600

Estimated Total Burden Hours: 600

Estimated Total Burden Cost (Operating and Maintenance): \$0

Description: PTE 91-38 provides an exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA) for certain transactions between a bank collective investment fund and persons who are parties in

interest with respect to an employee benefit plan. Without the exemption, sections 406 and 407(a) of ERISA and section 4975(c)(1) of the Internal Revenue Code may prohibit transactions between the collective investment fund (CIF) and a party in interest to one or more of the employee benefit plans participating in the collective investment fund.

Under PTE 91-38, a collective investment fund generally may engage in transactions with parties in interest to a plan that invests in the fund as long as the plan's total investment in the fund does not exceed a specified percentage of the total assets of the fund. The PTE also contains more limited or differently defined relief for funds holding more than the specified percentage, for multiemployer plans, and for transactions involving employer securities and employer real property. In order to ensure that the rights of participants and beneficiaries are protected, and that bank collective investment funds can demonstrate compliance with the terms of the exemption, the Department requires a bank to maintain records regarding the exempted transactions and make them available for inspection to specified interested persons (including the Department and the Internal Revenue Service) on request for a period of six years.

EBSA previously submitted the information collection provisions of PTE 91-38 to the Office of Management and Budget (OMB) for review in an ICR that was approved under the OMB Control No. 1210-0083. The current approval is scheduled to expire on August 31, 2012.

Agency: Employee Benefits Security Administration, Department of Labor

Title: PTE 90-1 – Pooled Separate Accounts

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0083

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions

Respondents: 60

Responses: 60

Estimated Total Burden Hours: 100

Estimated Total Burden Cost (Operating and Maintenance): \$0

Description: PTE 90-1 provides an exemption from certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA) relating to transactions involving insurance company pooled separate accounts in which employee benefit plans participate. Without the exemption, sections 406 and 407(a) of ERISA and section 4975(c)(1) of the Internal Revenue Code might prohibit a party in interest to a plan from furnishing goods or services to an insurance company pooled separate account in which the plan has an interest, or prohibit engaging in other transactions. Under the exemption, persons who are parties in interest to a plan that invests in a pooled separate account, such as a service provider, may engage in otherwise prohibited transactions with the separate account if the plan's participation in the separate account does not exceed specified limits and other conditions are met. These other conditions include a requirement that the party in interest not be the insurance company, or an affiliate thereof, that holds the plan assets in its pooled separate account or other separate account. The terms of the transaction to which the exemption is applied must be at least as favorable to the pooled separate account as those that would be obtained in a separate arms-length transaction with an unrelated

party, and the insurance company must maintain records of any transaction to which the exemption applies for a period of six years. This ICR covers this recordkeeping requirement.

The Department previously submitted this information collection to the Office of Management and Budget (OMB) in an ICR that was approved under the OMB Control Number 1210-0083. The current approval is scheduled to expire on August 31, 2012.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Foreign Exchange Transactions; PTE 94-20

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0085

Affected Public: Individuals or households; Business or other for-profit; Not-for profit institutions

Respondents: 279

Responses: 1,395

Estimated Total Burden Hours: 230

Estimated Total Burden Cost (Operating and Maintenance): \$0

Description: PTE 94-20 permits the purchase and sale of foreign currencies between an employee benefit plan and a bank, broker-dealer, or an affiliate thereof, that is a trustee, custodian, fiduciary, or other party in interest with respect to the plan. The exemption is available provided that the transaction is directed (within the meaning of section IV (e) of the exemption) by a plan fiduciary that is independent of the bank, broker-dealer, or

affiliate and all other conditions of the exemption are satisfied. Without this exemption, certain aspects of these transactions might be prohibited by section 406(a) of ERISA. To protect the interests of participants and beneficiaries of the employee benefit plan, the exemption requires that the party wishing to take advantage of the exemption (1) develop written policies and procedures applicable to trading in foreign currencies on behalf of an employee benefit plan; (2) provide a written confirmation with respect to each transaction in foreign currency to the independent plan fiduciary, disclosing specified information; and (3) maintain records pertaining to the transaction for a period of six years. This ICR relates to the foregoing disclosure and recordkeeping requirements.

EBSA previously submitted the information collection provisions of PTE 94-20 to the Office of Management and Budget (OMB) for review in connection with promulgation of the prohibited transaction exemption. OMB approved the information collection request (ICR) under OMB Control No. 1210-0085. The ICR approval is currently scheduled to expire on August 31, 2012.

Agency: Employee Benefits Security Administration, Department of Labor

Title: PTE 97-41, Collective Investment Funds Conversion Transactions

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0104

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions

Respondents: 50

Responses: 105

Estimated Total Burden Hours: 1,756

Estimated Total Burden Cost (Operating and Maintenance): \$310,000

Description: Prohibited Transaction Exemption (PTE) 97-41 provides an exemption from the prohibited transaction provisions of the Employment Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986. The exemption permits employee benefit plans to purchase shares of one or more open-end investment companies (funds) registered under the Investment Advisers Act of 1940 by transferring in-kind, to the investment company, assets of the plan that are part of a collective investment fund (CIF) maintained by a bank or plan advisor that is both a fiduciary of the plan and an investment advisor to the investment company offering the fund.

The exemption requires that an independent fiduciary receive advance written notice of any covered transaction, as well as specific written information concerning the mutual funds to be purchased. The independent fiduciary must also provide written advance approval of conversion transactions and receive written confirmation of each transaction, as well as additional on-going disclosures as defined in PTE 97-41. These disclosures are the basis for this ICR.

EBSA previously submitted the information collection provisions of PTE 97-41 to the Office of Management and Budget (OMB) for review in connection with promulgation of the prohibited transaction exemption. OMB approved the information

collection request (ICR) under OMB Control No. 1210-0104. The ICR approval is currently scheduled to expire on August 31, 2012.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Prohibited Transaction Exemption 2004-07, Transactions with Trust REIT Shares

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0124

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions

Respondents: 38

Responses: 79,800

Estimated Total Burden Hours: 3,990

Estimated Total Burden Cost (Operating and Maintenance): \$201,894

Description: PTE 2004-07 exempts from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code), the acquisition, holding, sale, and contribution in kind of publicly traded shares of beneficial interest in a real estate investment trust that is structured under State law as a business trust (Trust REIT), on behalf of and to individual account plans sponsored by the REIT or its affiliates, provided that certain conditions are met.

The exemption allows individual account plans (Plans) established by Trust REITS to offer a beneficial interest in the Trust REIT in the form of Qualifying REIT

Shares, as defined in the exemption, to participants in Plans sponsored by the REIT or its employer affiliates, to require that employer contributions be used to purchase such shares, and to permit “contributions in kind” of such shares to these Plans by employers.

The exemption conditions relief on compliance with a number of information collection requirements. These information collections are to be provided or made available to plan participants and fiduciaries in order to inform them about investments in Qualifying REIT Shares and the conditions of the exemption permitting share transactions. Records sufficient to allow them to determine whether the exemption conditions are met must also be maintained, and made available to them upon request, for a period of six years. These records must also be made available on request to employers and employee organizations with employees and members covered by a Plan of the Trust REIT or one of its employer affiliates, and to authorized employees and representatives of the Department and the Internal Revenue Service. EBSA submitted an ICR for the information collections in PTE 2004-07 to the Office of Management and Budget (OMB) for review and clearance in connection with proposal of the class exemption, which was published in the Federal Register on June 3, 2003 (68 FR 33185). OMB approved the ICR under OMB control number 1210-0124. The ICR approval is currently scheduled to expire on August 31, 2012.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Notice of Research Exception Under The Genetic Information Nondiscrimination Act

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0136

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions

Respondents: 3

Responses: 3

Estimated Total Burden Hours: 1

Estimated Total Burden Cost (Operating and Maintenance): \$10

Description: The Genetic Information Nondiscrimination Act of 2008 (GINA), Public Law 110-233, was enacted on May 21, 2008. Title I of GINA amended the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act (PHS Act), the Internal Revenue Code of 1986 (Code), and the Social Security Act (SSA) to prohibit discrimination in health coverage based on genetic information. Sections 101 through 103 of Title I of GINA prevent employment-based group health plans and health insurance issuers in the group and individual markets from discriminating based on genetic information, and from collecting such information. The interim final regulations, which are codified at 29 CFR 2590.702A, only interpret Sections 101 through 103 of Title I of GINA.

While GINA does not mandate any specific benefits for health care services related to genetic tests, diseases, conditions, or genetic services, GINA establishes rules that generally prohibit a group health plan and a health insurance issuer in the group market from :

- increasing the group premium or contribution amounts based on genetic information;
- requesting or requiring an individual or family member to undergo a genetic test; and
- requesting, requiring or purchasing genetic information prior to or in connection with enrollment, or at any time for underwriting purposes.

GINA and the interim final regulations (29 CFR 2590.702A(c)(5)) provide a research exception to the limitations on requesting or requiring genetic testing that allow a group health plan or group health insurance issuer to request, but not require, a participant or beneficiary to undergo a genetic test if all of the following conditions of the research exception are satisfied:

- The request must be made pursuant to research that complies with 45 CFR Part 46 (or equivalent Federal regulations) and any applicable State or local law or regulations for the protection of human subjects in research. To comply with the informed consent requirements of 45 CFR 46.116(a)(8), a participant must receive a disclosure that participation in the research is voluntary, refusal to participate cannot involve any penalty or loss of benefits to which the participant is otherwise entitled, and the participant may discontinue participation at any time without penalty or loss of benefits to which the participant is entitled (the Participant Disclosure). The interim final regulations provide that when the Participant

Disclosure is received by participants seeking their informed consent, no additional disclosures are required for purposes of the GINA research exception.

- The plan or issuer must make the request in writing and must clearly indicate to each participant or beneficiary (or in the case of a minor child, to the legal guardian of such beneficiary) to whom the request is made that compliance with the request is voluntary and noncompliance will have no effect on eligibility for benefits or premium or contribution amounts.
- None of the genetic information collected or acquired as a result of the research may be used for underwriting purposes.
- The plan or issuer must complete a copy of the “*Notice of Research Exception under the Genetic Information Nondiscrimination Act*” (the Notice) and provide it to the address specified in its instructions. The Notice and instructions are available on the Department of Labor’s website (<http://www.dol.gov/ebsa>).

The Participant Disclosure and the Notice are the information collection requests (ICRs) contained in the interim final rules. The Department previously requested review of this information collection and obtained approval from the Office of Management and Budget (OMB) under OMB control number 1210-0136. The ICR is scheduled to expire on August 31, 2012.

II. Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICRs for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: March 30, 2012

Joseph S. Piacentini

Director, Office of Policy and Research

Employee Benefits Security Administration

[Billing Code: 4510-29-P]

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