

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.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it was determined that this action is "significant" under Section 3(f)(4) of the Executive Order. Accordingly, this action has been reviewed by OMB.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, EBSA is soliciting comments concerning the information collection request (ICR) included in this Notice of Proposed Class Exemption For Release of Claims and Extensions of Credit in Connection with Litigation. Address requests for copies of the ICR to Joseph S. Piacentini, Office of Policy

and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW, Room N-5718, Washington, DC 20210. Telephone (202) 693-8410; Fax: (202) 219-5333. These are not toll-free numbers.

The Department has submitted a copy of the proposed revision of a currently approved information collection to OMB in accordance with 44 U.S.C. 3507(d) for review. The Department and OMB are particularly interested in comments that:

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;

Evaluate the accuracy of the agency's estimate of the burden of the collection 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., permitting electronic submission of responses. Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration.

Although comments may be submitted through April 14, 2003 OMB requests that comments be received within 30 days of publication of the Notice of Class Exemption For Release of Claims and Extensions of Credit in Connection with Litigation to ensure their consideration.

The proposed class exemption would cover certain transactions engaged in by a plan in connection with litigation. If adopted, the class exemption would make clear that, under specified conditions, plans may settle litigation by: (1) Releasing their claims against parties in interest in exchange for payment by or on behalf of a party in interest; and (2) entering into agreements with parties in interest for payments of agreed-upon amounts in settlement of claims in installments. Without this exemption, for reasons described in detail in the General Background section of this notice, questions may be raised regarding whether a fiduciary or party in interest

that agrees to a settlement on behalf of the plan has engaged in a prohibited transaction under sections 406(a)(1)(A), (B), or (D) of the Act, which state, in pertinent part, that a fiduciary shall not cause a plan to engage in a transaction that constitutes a direct or indirect:

Sale or 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; or

Transfer to, or use by or for the benefit of, a party in interest, or any assets of the plan.

The Department recognizes that in certain instances it may be advantageous to the plan that is or potentially may be a party to litigation for the plan fiduciary to settle the litigation and release its claims. Settling a cause of action may be of greater benefit to a plan than engaging in lengthy and possibly costly litigation, or pursuing claims that defendants are unlikely to be capable of satisfying, even where a settlement does not fully satisfy amounts at issue. However, questions have been raised with the Department as to whether such a settlement and release of claims, as well as certain arrangements that may be made for payment in satisfaction of a settlement, would result in a prohibited transaction between the plan and the party in interest. Accordingly, the Department is proposing this class exemption in order to facilitate the settlement of litigation with plans.

In order to grant an exemption pursuant to section 408(a) of the Act, the Department must, among other things, make a finding that the terms of the exemption are protective of the rights of participants and beneficiaries of a plan. To support making such a finding, the Department normally imposes certain conditions on fiduciaries and parties in interest that may make use of the exemption. The information collection provisions of the proposed exemption are among these conditions. The information collection provisions are found in sections IV (a), IV (e), and V (a). These requirements are summarized as follows:

Written Agreement. The proposed prospective exemption requires that the terms of the settlement be specifically described in a written agreement or consent decree. The Department believes that execution of a written agreement between parties to litigation is usual and customary business practice. Therefore, no additional burden for a written settlement agreement is expected to be associated with the exemption.