§ 2570.34 Information to be included in every exemption application.

(a) All applications for exemptions must contain the following information:

(1) The name(s) of the applicant(s);

(2) A detailed description of the exemption transaction and the parties in interest for whom an exemption is requested, including a description of any larger integrated transaction of which the exemption transaction is a part;

(3) Whether the affected plan(s) and any parties in interest will be represented by the same person with regard to the exemption application;

(4) Reasons a plan would have for entering into the exemption transaction;

(5) The prohibited transaction provisions from which exemptive relief is requested and the reason why the transaction would violate each such provision;

(6) Whether the exemption transaction is customary for the industry or class involved;

(7) Whether the exemption transaction is or has been the subject of an investigation or enforcement action by the Department or by the Internal Revenue Service; and

(8) The hardship or economic loss, if any, which would result to the person or persons on behalf of whom the exemption is sought, to affected plans, and to their participants and beneficiaries from denial of the exemption.

(b) All applications for exemption must also contain the following:

(1) A statement explaining why the requested exemption would be—

(i) Administratively feasible;

(ii) In the interests of affected plans and their participants and beneficiaries; and

(iii) Protective of the rights of participants and beneficiaries of affected plans.

(2) With respect to the notification of interested persons required by §2570.43:

(i) A description of the interested persons to whom the applicant intends to provide notice;

(ii) The manner in which the applicant will provide such notice; and

(iii) An estimate of the time the applicant will need to furnish notice to all interested persons following publication of a notice of the proposed exemption in the Federal Register.

(3) If an advisory opinion has been requested with respect to any issue relating to the exemption transaction—

(i) A copy of the letter concluding the Department’s action on the advisory opinion request; or

(ii) If the Department has not yet concluded its action on the request:

(A) A copy of the request or the date on which it was submitted together with the Department’s correspondence control number as indicated in the acknowledgment letter; and

(B) An explanation of the effect of a favorable advisory opinion upon the exemption transaction.

(4) If the application is to be signed by anyone other than an individual party in interest seeking exemptive relief on his own behalf, a statement which—

(i) Identifies the individual who will be signing the application and his position with the applicant; and

(ii) Explains briefly the basis of his familiarity with the matters discussed in the application.

(5)(i) A declaration in the following form:

Under penalty of perjury, I declare that I am familiar with the matters discussed in this application and, to the best of my knowledge and belief, the representations made in this application are true and correct.

(ii) This declaration must be dated and signed by:

(A) The applicant himself in the case of an individual party in interest seeking exemptive relief on his own behalf;

(B) A corporate officer or partner where the applicant is a corporation or partnership;

(C) A designated officer or official where the applicant is an association, organization or other unincorporated enterprise;

(D) The plan fiduciary who has the authority, responsibility, and control with respect to the exemption transaction where the applicant is a plan.

(iii) Specialized statements from third-party experts, such as appraisals or analyses of market conditions, submitted to support an application for exemption must also be accompanied by a statement of consent from such
expert acknowledging that he or she
knows that his or her statement is
being submitted to the Department as
part of an application for exemption.
(iv) For those applications requiring
an independent fiduciary to represent
the plan in the exemption transaction,
each statement submitted by said in-
dependent fiduciary must contain a
signed and dated declaration under
penalty of perjury that, to the best of
said fiduciary’s knowledge and belief,
the representations made in such state-
ment are true and correct.

(c) An application for exemption may
also include a draft of the requested ex-
emption which defines the transaction
and parties in interest for which ex-
emptive relief is sought and the spe-
cific conditions under which the ex-
emption would apply.

§ 2570.35 Information to be included in
applications for individual exemp-
tions only.

(a) Except as provided in paragraph
(c) of this section, every application for
an individual exemption must include,
in addition to the information specified
in § 2570.34, the following information:
(1) The name, address, telephone
number, and type of plan or plans to
which the requested exemption applies;
(2) The Employer Identification
Number (EIN) and the plan number
(PN) used by such plan or plans in all
reporting and disclosure required by
the Department;
(3) Whether any plan or trust affected
by the requested exemption has ever
been found by the Department, the In-
ternal Revenue Service, the Justice Depart-
ment, the Pension Benefit Guaranty
Corporation, or the Federal Retirement
Thrift Investment Board involving
compliance with provisions of ERISA,
provisions of the Code relating to em-
ployee benefit plans, or provisions of
FERSA relating to the Federal Thrift
Savings Fund. If so, the applicant must
submit copies of all correspondence
with the Department, the Internal Rev-
enue Service, the Justice Department,
the Pension Benefit Guaranty Corpora-
tion, or the Federal Retirement Thrift
Investment Board regarding the sub-
stantive issues involved in the inves-
tigation, examination, litigation, or
controversy which relate to compli-
ance with the provisions of part 1 or 4
of subtitle B of title I of ERISA, sec-
tion 4975 of the Code, or section 8477 or
8478 of FERSA. For this purpose, the
term “examination” does not include
routine audits conducted by the De-
partment pursuant to section 8477(g) of
FERSA;
(8) Whether any plan affected by the
requested exemption has experienced a
reportable event under section 4043 of
ERISA;
(9) Whether a notice of intent to ter-
minate has been filed under section
4041 of ERISA respecting any plan af-
ected by the requested exemption;