

**DEPARTMENT OF LABOR****Proposed Information Collection Request (ICR) for the Family Medical Leave Act (FMLA) Employee and Employer Surveys; Comment Request**

**AGENCY:** Wage and Hour Division, Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department or DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that required 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. The Department is soliciting comments concerning its proposal to collect information on employees' and employers' experience with family and medical leave under the Family Medical Leave Act. A copy of the proposed ICR can be obtained by contacting the office listed below in the addressee section of this notice.

**DATES:** Written comments must be received by the office listed in the addressee section below on or before May 31, 2011.

**ADDRESSES:** You may submit comments identified by [RIN or some other identifier] by either one of the following methods: E-mail

WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier: Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and [RIN or some other identifier] identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via e-mail or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will be summarized and/

or included in the request for OMB approval of the information collection request.

**FOR FURTHER INFORMATION CONTACT:**

Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-0406 (this is not a toll free number). Copies of this notice may be obtained in alternative formats (Large print, Braille, Audio Tape, or Disc), upon request by calling (202) 693-0023 (this is not a toll-free number). TTY/TTD callers may dial toll-free (877) 889-5627 to obtain information or to request materials in alternative formats.

**SUPPLEMENTARY INFORMATION:**

I. *Background:* Given changes in economic conditions and the Family and Medical Leave Act (FMLA) regulations since the 2000 employee and employer surveys, the Wage and Hour Division (WHD) of the U.S. Department of Labor needs to collect new information on the use and need of FMLA leave in order to update DOL's understanding of leave-taking behavior and to close current data gaps remaining from the previous surveys. To better understand both employees' and employers' experience with FMLA, two new surveys will be conducted to collect information about the need for and the experience with family and medical leave from employees' and employers' perspectives. This study will help the Department by providing information on current workplace policies and practices related to family and medical leave. An in-depth analysis of private sector FMLA policies allows WHD to determine how those policies affect the work-life balance of workers and the productivity and work flow of employers. The study enables DOL to shape future regulatory options, craft interpretive guidance (such as plain-language fact sheets), develop compliance programs (employer outreach and investigation policies), and establish regulatory priorities based on sound, current data rather than on outdated data or anecdotal information. Finally, the study provides a data set by which DOL can evaluate the effect on employer compliance of a range of FMLA activities—regulatory, educational, investigative, and legal—on employer compliance.

Two previous FMLA surveys have been conducted. The first FMLA study, in which workers and employers were surveyed to learn about family and medical leave policies and their effect on workers and their employers, was

conducted in 1995 by the bipartisan Commission on Family and Medical Leave. The final report on this survey, titled "A Workable Balance: Report to Congress on Family and Medical Leave Policies," is available online at <http://www.dol.gov/whd/fmla/1995Report/family.htm>. The second study was conducted in 2000 by Westat at the request of the Department. The Westat study updated the 1995 data by administering employee and employer surveys similar to the 1995 surveys. The second study entitled "Balancing the Needs of Families and Employers: Family and Medical Leave Surveys, 2000 Update" is available on the Department's website at <http://www.dol.gov/whd/fmla/toc.htm>. An additional source of information came from the Department's Request for Information (RFI) issued on December 1, 2006. The RFI asked the public to comment on their experiences with, and observations of, the Department's administration of the law and the effectiveness of the regulations. The qualitative data obtained provided a detailed anecdotal picture of the workings of the FMLA.

The period for conducting this study is expected to last no later than January 14, 2012.

II. *Desired Focus of Comments:*

Currently, the Department of Labor is soliciting comments concerning the above data collection for the FMLA Employee and Employer Surveys. Comments are requested which:

- \* 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 proposed 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 information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. *Current Actions:* At this time, the Department is requesting clearance for an employer and employee survey focusing on the Family Medical Leave Act of 1993.

*Type of review:* New information collection request.

*OMB Number:* None.

*Affected Public:* Private sector, public sector, individuals, and households.

For the FMLA Employee survey:

*Frequency:* Once.

*Total Responses:* 3,000 respondents.

*Average Time per Response:* 26 minutes.

*Estimated Total Burden Hours:* 1,292 hours.

*Total Burden Cost:* \$0.

For the FMLA Employer Survey:

*Frequency:* Once.

*Total Responses:* 1800 firms.

*Average Time per Response:* 36 minutes.

*Estimated Total Burden Hours:* 2164 hours.

*Total Burden Cost:* \$0.

Note that, due to rounding, the numbers for the totals may differ from the sum of the component numbers.

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

Signed at Washington, DC, this 23rd day of March 2011.

**Mary Ziegler,**

*Director, Division of Regulations, Legislation, and Interpretation.*

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Application Number D-11221]

**ZRIN 1210-ZA09**

### Amendment to Prohibited Transaction Exemption (PTE) 96-23 for Plan Asset Transactions Determined by In-House Asset Managers

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Adoption of amendment to PTE 96-23.

**SUMMARY:** This document amends PTE 96-23, a class exemption that permits various transactions involving employee benefit plans whose assets are managed by in-house asset managers (INHAMS), provided the conditions of the exemption are met. The amendment affects participants and beneficiaries of employee benefit plans, the sponsoring employers of such plans, INHAMS, and other persons engaging in the described transactions.

**DATES:** The amendment is effective April 1, 2011, unless specified otherwise.

#### FOR FURTHER INFORMATION CONTACT:

Chris Motta, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Room N-5700, 200 Constitution Avenue NW., Washington DC 20210, (202) 693-8540 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On June 14, 2010, a notice was published in the **Federal Register** (75 FR 33642) of the pendency before the Department of Labor (the Department) of a proposed amendment to PTE 96-23 (61 FR 15975, April 10, 1996). PTE 96-23 provides an exemption from certain restrictions of sections 406 and 407(a) of ERISA, and from certain taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. The Department proposed the amendment 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, 32847, August 10, 1990).<sup>1</sup>

#### Description of the Proposed Amendment

In the Notice published on June 14, 2010, the Department proposed to amend PTE 96-23 in several respects, including: Expanding the definition of INHAM to include a subsidiary that is 80% or more owned by the employer or parent company; broadening the scope of Part I(e) of the class exemption to permit transactions with a "co-joint venturer" if the joint venture relationship is the entity's sole relationship to the employer (or if the co-joint venturer is both a joint venturer and a service provider); and extending relief to certain existing leases with an employer or an affiliate resulting from the plan's acquisition of the underlying office or commercial space. In the Notice, the Department further proposed to: Increase the 5% ownership threshold for related persons (the "related" to test) to 10%, and increase the amount of assets that must be managed by an INHAM, from \$50 million to \$85 million.

<sup>1</sup> Section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. at 214 (2000 ed.), 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.

For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

In the Notice, the Department also offered several clarifications. The Department explained that PTE 96-23: provides relief for an INHAM to act on behalf of its own plan; does not allow an INHAM to direct a QPAM to negotiate specific terms of a deal that has already been generally agreed upon by the INHAM or an employer; and may be available for a continuing transaction (e.g., a loan or lease), notwithstanding a failure to satisfy one or more of the conditions of the exemption after the transaction is entered into. The Notice also amends the exemption in accordance with the Department's views and expectations regarding the class exemption's audit and written report requirements. For a more complete discussion of the changes made to the original exemption, see the notice of pendency.

The notice of pendency gave interested persons sixty days (the comment period) to comment on the proposed amendment. While the Department did not receive any formal comments within the comment period, the Department was informally contacted and informed that some INHAMS may benefit to the extent the changes proposed for Part I(e) are made retroactive to the original effective date of PTE 96-23 (i.e., April 10, 1996). The Department, after having concluded that the amendment to Part I(e) is sufficiently protective of plans on a prospective basis, believes that such conclusion is similarly applicable to a decision in favor of amending Part I(e) on a retroactive basis.

Accordingly, the Department has determined to make the amendment to Part I(e) retroactive to April 10, 1996. As noted above, the proposed amendment sets forth the Department's views and expectations regarding the exemption audit and written report. Among other things, section I(h) of the class exemption now requires that the exemption audit and written report must be completed within six months following the end of the year to which the audit relates. To remove any uncertainty regarding the completion date of the first exemption audit and written report performed after the adoption of this amendment, the Department has determined to make the amended section I(h) effective as of December 31, 2011. Accordingly, for an INHAM that operates on a calendar year basis, the exemption audit and written report attributable to the INHAM's 2011 calendar year must be completed by June 30, 2012. Where an INHAM operates on a fiscal year basis, and such fiscal year begins after January 1, 2011 (e.g. April 1, 2011), the exemption audit