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## 29 C.F.R. § 2570.34

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### Information to be included in every exemption application.

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

(1) The name(s), address(es), phone number(s), and email address(es) of the applicant(s);

(2) A detailed description of the exemption transaction, including the identification of all the parties in interest involved, a description of any larger integrated transaction of which the exemption transaction is a part, and a chronology of the events leading up to the exemption transaction;

(3) The identity, address, phone number, and email address of any representatives for the affected plan(s) and parties in interest and what individuals or entities they represent;

(4) A description of:

(i) The reason(s) for engaging in the exemption transaction;

(ii) Any material benefit that may be received by a party in interest (or its affiliates) as a result of the exemption transaction (including the avoidance of any materially adverse outcome by a party in interest (or its affiliates) as a result of engaging in the exemption transaction); and

(iii) The costs and benefits of the exemption transaction to the affected plan(s), participants, and beneficiaries, including quantification of those costs and benefits to the extent possible;

(5) A description of the alternatives to the exemption transaction that did not involve a prohibited transaction that were considered or evaluated by the applicant before submitting its exemption application and the reason(s) why those alternatives were not pursued;

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

(7) A description of each conflict of interest or potential instance of self-dealing that would be permitted if the exemption is granted;

(8) Whether the exemption transaction is or has been the subject of an investigation or enforcement action by the Department, the Internal Revenue Service, or any other regulatory authority; and

(9) 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.

(10) With respect to the exemption transaction's definition of affiliate, if applicable, either a statement that the definition of affiliate set forth in § 2570.31(a) is applicable or a statement setting forth why a different affiliate

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definition should be applied.

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

(1) A statement explaining why the requested exemption would meet the requirements of ERISA section 408(a) by being—

- (i) Administratively feasible for the Department;
- (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) A statement that either:

- (i)
  - (A) The exemption transaction will be in the best interest of the plan and its participants and beneficiaries;
  - (B) That all compensation received, directly or indirectly, by a party in interest (and its affiliates) involved in the exemption transaction does not exceed reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2); and
  - (C) That all statements to the Department, the plan, or, if applicable, the qualified independent fiduciary or qualified independent appraiser about the exemption transaction and other relevant matters are not materially misleading at the time the statements are made; or
- (ii) Explains why the exemption standards in paragraphs (b)(2)(i)(A) through (C) of this section are not applicable to the exemption transaction.
- (iii) For purposes of this paragraph (b)(2), an exemption transaction is in the best interest of a plan if the plan fiduciary causing the plan to enter into the exemption transaction determines, with the care, skill, prudence, and diligence under the circumstances then prevailing, that a prudent person acting in a like capacity and familiar with such matters would, in the conduct of an enterprise of a like character and with like aims, enter into the exemption transaction based on the circumstances and needs of the plan. Such fiduciary shall not place the financial or other interests of itself, a party in interest, or any affiliate ahead of the interests of the plan or subordinate the plan's interests to itself, or any other party or affiliate.

(3) 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.

(4) If any party to the exemption transaction has requested either an advisory opinion from the Department or any similar opinion or guidance from another Federal, state, or regulatory body with respect to any issue relating to the exemption transaction—

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