

§ 2570.36

§ 2570.36 Where to file an application.

The Department's prohibited transaction exemption program is administered by the Employee Benefits Security Administration (EBSA). Any exemption application governed by these procedures should be mailed or otherwise delivered to: Exemption Application, EBSA, Office of Exemption Determinations, Division of Exemptions, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

§ 2570.37 Duty to amend and supplement exemption applications.

(a) During the pendency of his exemption application, an applicant must promptly notify the Division of Exemptions in writing if he discovers that any material fact or representation contained in his application or in any documents or testimony provided in support of the application is inaccurate, if any such fact or representation changes during this period, or if, during the pendency of the application, anything occurs that may affect the continuing accuracy of any such fact or representation.

(b) If, at any time during the pendency of his exemption application, an applicant or any other party in interest who would participate in the exemption transaction becomes the subject of an investigation or enforcement action by the Department, the Internal Revenue Service, the Justice Department, the Pension Benefit Guaranty Corporation, or the Federal Retirement Thrift Investment Board involving compliance with provisions of ERISA, provisions of the Code relating to employee benefit plans, or provisions of FERSA relating to the Federal Thrift Savings Fund, the applicant must promptly notify the Division of Exemptions.

(c) The Department may require an applicant to provide documentation it considers necessary to verify any statements contained in the application or in supporting materials or documents.

§ 2570.38 Tentative denial letters.

(a) If, after reviewing an exemption file, the Department concludes that it will not grant the exemption, it will notify the applicant in writing of its tentative denial of the exemption application.

29 CFR Ch. XXV (7-1-04 Edition)

At the same time, the Department will provide a short statement of the reasons for its tentative denial.

(b) An applicant will have 20 days from the date of a tentative denial letter to request a conference under § 2570.40 of these procedures and/or to notify the Department of its intent to submit additional information in writing under § 2570.39 of these procedures. If the Department does not receive a request for a conference or a notification of intent to submit additional information within that time, it will issue a final denial letter pursuant to § 2570.41.

(c) The Department need not issue a tentative denial letter to an applicant before issuing a final denial letter where the Department has conducted a hearing on the exemption pursuant to either § 2570.46 or § 2570.47 of these procedures.

§ 2570.39 Opportunities to submit additional information.

(a) An applicant may notify the Department of its intent to submit additional information supporting an exemption application either by telephone or by letter sent to the address furnished in the applicant's tentative denial letter. At the same time, the applicant should indicate generally the type of information that he will submit.

(b) An applicant will have 30 days from the date of the notification discussed in paragraph (a) of this section to submit in writing all of the additional information he intends to provide in support of his application. All such information must be accompanied by a declaration under penalty of perjury attesting to the truth and correctness of the information provided, which is dated and signed by a person qualified under § 2570.34(b)(5) of these procedures to sign such a declaration.

(c) If, for reasons beyond his control, an applicant is unable to submit in writing all the additional information he intends to provide in support of his application within the 30-day period described in paragraph (b) of this section, he may request an extension of time to furnish the information. Such requests must be made before the expiration of

the 30-day period and will be granted only in unusual circumstances and for limited periods of time.

(d) If an applicant is unable to submit all of the additional information he intends to provide in support of his exemption application within the 30-day period specified in paragraph (b) of this section, or within any additional period of time granted to him pursuant to paragraph (c) of this section, the applicant may withdraw the exemption application before expiration of the applicable time period and reinstate it later pursuant to § 2570.44 of these procedures.

(e) The Department will issue, without further notice, a final denial letter denying the requested exemption pursuant to § 2570.41 of these procedures where—

(1) The Department has not received the additional information that the applicant indicated he would submit within the 30-day period described in paragraph (b) of this section, or within any additional period of time granted pursuant to paragraph (c) of this section;

(2) The applicant did not request a conference pursuant to § 2570.38(b) of these procedures; and

(3) The applicant has not withdrawn his application as permitted by paragraph (d) of this section.

§ 2570.40 Conferences.

(a) Any conference between the Department and an applicant pertaining to a requested exemption will be held in Washington, DC, except that a telephone conference will be held at the applicant's request.

(b) An applicant is entitled to only one conference with respect to any exemption application. An applicant will not be entitled to a conference, however, where the Department has held a hearing on the exemption under either § 2570.46 or § 2570.47 of these procedures.

(c) Insofar as possible, conferences will be scheduled as joint conferences with all applicants present where:

(1) More than one applicant has requested an exemption with respect to the same or similar types of transactions;

(2) The Department is considering the applications together as a request for a class exemption;

(3) The Department contemplates not granting the exemption; and

(4) More than one applicant has requested a conference.

(d) The Department will attempt to schedule a conference under this section for a mutually convenient time during the 45-day period following the later of—

(1) The date the Department receives the applicant's request for a conference, or

(2) The date the Department notifies the applicant, after reviewing additional information submitted pursuant to § 2570.39, that it is still not prepared to propose the requested exemption.

If the applicant is unable to attend a conference at any of the times proposed by the Department during this 45-day period or if the applicant fails to appear for a scheduled conference, he will be deemed to have waived his right to a conference unless circumstances beyond his control prevent him from scheduling a conference or attending a scheduled conference within this period.

(e) Within 20 days after the date of any conference held under this section, the applicant may submit to the Department a written record of any additional data, arguments, or precedents discussed at the conference but not previously or adequately presented in writing.

§ 2570.41 Final denial letters.

(a) The Department will issue a final denial letter denying a requested exemption where:

(1) The conditions for issuing a final denial letter specified in § 2570.38(b) or § 2570.39(e) of these procedures are satisfied;

(2) After issuing a tentative denial letter under § 2570.38 of this part and considering the entire record in the case, including all written information submitted pursuant to § 2570.39 and § 2570.40(e) of these procedures, the Department decides not to propose an exemption or to withdraw an exemption already proposed; or

(3) After proposing an exemption and conducting a hearing on the exemption