



## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### **Proposed Extension of Information Collection Requests Submitted for Public Comment: Disclosures by Insurers to General Account Policyholders; ERISA Technical Release 91-1; Registration for EFAST-2 Credentials; ERISA Procedure 76-1; Prohibited Transaction Exemptions 94-71 and 2003-39; Notice of Blackout Period Under ERISA; Voluntary Fiduciary Correction Program and Class Exemption**

**AGENCY:** Employee Benefits Security Administration, Department of Labor

**ACTION:** Notice

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**SUMMARY:** The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the ADDRESSES section of this notice. ICRs also are available at [reginfo.gov](http://www.reginfo.gov) (<http://www.reginfo.gov/public/do/PRAMain>).

**DATES:** Written comments must be submitted to the office shown in the Addresses section on or before [INSERT DATE THAT IS 60 DAYS FOLLOWING THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Washington, DC 20210, (202) 693-8410, FAX (202) 693-4745 (these are not toll-free numbers).

**I. SUPPLEMENTARY INFORMATION:**

This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transactions described below. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

**Agency:** Employee Benefits Security Administration, Department of Labor

**Title:** Disclosures by Insurers to General Account Policyholders.

**Type of Review:** Extension without change of a currently approved collection of information

**OMB Number:** 1210-0114

**Affected Public:** Business or other for-profit; Not-for-profit institutions

**Respondents:** 50,000

**Responses:** 96,223

**Estimated Total Burden Hours:** 408,948

**Estimated Total Burden Cost (Operating and Maintenance):** \$32,235

**Description:** Section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104-188) (SBJPA) amended added a new section 401(c) to the Employee Income Security Act of 1974 (ERISA). This new section, inter alia, required the Department to promulgate a regulation providing guidance, applicable only to insurance policies issued on or before December 31, 1998, to or for the benefit of employee benefit plans, to clarify the extent to which assets held in an insurer's general account under such contracts are "plan assets" within the meaning of the Employee Retirement Income Security Act (ERISA), because the policies are not "guaranteed benefit policies" within the meaning of section 401(b) of ERISA. SBJPA further directed the Department to set standards for how insurers should manage the specified insurance policies (called Transition Policies). Pursuant to the authority and direction given under SBJPA, the Department promulgated a regulation, issued in final form on January 5, 2000 (65 FR 714), and codified at 29 CFR 2550.401c-1. This regulation has not been amended subsequently. The ICR is scheduled to expire on March 31, 2012.

**Agency:** Employee Benefits Security Administration, Department of Labor

**Title:** ERISA Technical Release 91-1

**Type of Review:** Extension without change of a currently approved collection of information

**OMB Number:** 1210-0084

**Affected Public:** Business or other for-profit; Not-for-profit institutions

**Respondents:** 15

**Responses:** 107,040

**Estimated Total Burden Hours:** 1,827

**Estimated Total Burden Cost (Operating and Maintenance):** \$25,286

**Description:** The subject information collection requirements arise from ERISA section 101(e), which establishes notice requirements that must be satisfied before an employer may transfer excess assets from a defined benefit pension plan to a retiree health benefit account, as permitted under the conditions set forth in section 420 of the Internal Revenue Code of 1986.

The notice requirements of section 101(e) are two-fold. First, subsection (e)(1) requires plan administrators to provide advance written notification of such transfers to participants and beneficiaries. Second, subsection (e)(2)(A) requires employers to provide advance written notification of such transfers to the Secretaries of Labor and the Treasury, the plan administrator, and each employee organization representing participants in the plan. Both notices must be given at least 60 days before the transfer date. The two subsections prescribe the information to be included in each type of notice and further give the Secretary of Labor the authority to prescribe how notice to participants and beneficiaries must be given and any additional reporting requirements deemed necessary.

Although the Department of Labor has not issued regulations under section 101(e), on May 8, 1991, the Department published ERISA Technical Release 91-1, to provide guidance on how to satisfy the notice requirements prescribed by this section.

The Technical Release made two changes in the statutory requirements for the second type of notice. First, it required the notice to include a filing date and the intended asset transfer date. Second, it simplified the statutory filing requirements by providing that filing with the Department of Labor would be deemed sufficient notice to both the Department and the Department of the Treasury as required under the statute. The ICR is scheduled to expire on March 31, 2012.

**Agency:** Employee Benefits Security Administration, Department of Labor.

**Title:** Registration for EFAST-2 Credentials

**Type of Review:** Revision of a currently approved collection of information.

**OMB Number:** 1210-0117.

**Affected Public:** Individuals or households; Business or other for-profit; Not-for-profit institutions.

**Respondents:** 400,000.

**Frequency of Responses:** On occasion.

**Responses:** 400,000.

**Estimated Total Burden Hours:** 133,333

**Estimated Total Burden Cost (Operating and Maintenance):** \$0

**Description:** ERISA Section 104 requires administrators of pension and welfare benefit plans (collectively, employee benefit plans), and employers sponsoring certain

fringe benefit plans and other plans of deferred compensation, to file returns/reports annually with the Secretary of Labor (the Secretary) concerning the financial condition and operation of the plans. Reporting requirements are satisfied by filing the Form 5500 in accordance with its instructions and the related regulations. Beginning with plan year filings for 1999, Form 5500 filings were processed under the ERISA Filing Acceptance System (EFAST), which was designed to simplify and expedite the receipt and processing of the Form 5500 by relying on computer scannable forms and electronic filing technologies. The Office of Management and Budget (OMB) approved this information collection under OMB Control Number 1210-0117.

Beginning with plan year filings for 2009, Form 5500 filings are processed under a new system, the ERISA Filing Acceptance System 2 (EFAST-2), which is designed to simplify and expedite the receipt and processing of the Form 5500 by relying on Internet-based forms and electronic filing technologies. In order to file electronically, employee benefit plan filing authors, schedule authors, filing signers, Form 5500 transmitters, and entities developing software to complete and/or transmit the Form 5500 are required to register for EFAST-2 credentials through the EFAST2 website.

Requested information includes: applicant type (filing author, filing signer, schedule author, transmitter, or software developer); mailing address; fax number (optional); e-mail address; company name, contact person; and daytime telephone number. Registrants must also provide an answer to a challenge question (“What is your date of birth?” or “Where is your place of birth?”), which enables users to retrieve forgotten credentials. In addition, registrants must accept a Privacy Agreement; PIN Agreement; and, under penalty of perjury, a Signature Agreement.

On October 23, 2011, OMB approved a revision to OMB Control Number 1210-0117 to reflect the EFAST-2 credential process under the emergency procedures for review and clearance in accordance with the Paperwork Reduction Act of 1995 (P.L. 104-13, 44 U.S.C. Chapter 35) and 5 C.F.R. 1320.13. OMB's approval of the revision currently is scheduled to expire on April 30, 2012.

**Agency:** Employee Benefits Security Administration, Department of Labor

**Title:** ERISA Procedure 76-1; Advisory Opinion Procedure

**Type of Review:** Extension without change of a currently approved collection of information

**OMB Number:** 1210-0066

**Affected Public:** Business or other for-profit; Not-for-profit institutions

**Respondents:** 63

**Responses:** 63

**Estimated Total Burden Hours:** 652

**Estimated Total Burden Cost (Operating and Maintenance):** \$1,425,229

**Description:** Under ERISA, the Department has responsibility to administer the reporting, disclosure, fiduciary and other standards for pension and welfare benefit plans. In 1976, the Department issued ERISA Procedure 76-1, Procedure for ERISA Advisory Opinions (ERISA Procedure), in order to establish a public process for requesting guidance from EBSA on the application of ERISA to particular circumstances. The ERISA Procedure sets forth specific administrative procedures for requesting either an advisory opinion or an information letter and describes the

types of questions that may be submitted. As part of the ERISA Procedure, requesters are instructed to provide information to EBSA concerning the circumstances governing their request. EBSA relies on the information provided by the requester to analyze the issue presented and provide guidance. The ERISA Procedure has been in use since 1976, and the Department has issued hundreds of advisory opinions and information letters under its rules. The ICR is scheduled to expire on June 30, 2012.

**Agency:** Employee Benefits Security Administration, Department of Labor

**Title:** Settlement Agreements Between a Plan and a Party-in-Interest (PTEs 94-71 and 2003-39)

**Type of Review:** Extension without change of a currently approved collection of information

**OMB Number:** 1210-0091

**Affected Public:** Business or other for-profit; Not-for-profit institutions

**Respondents:** 4

**Responses:** 1080

**Estimated Total Burden Hours:** 28

**Estimated Total Burden Cost (Operating and Maintenance):** \$315

**Description:** Section 408(a) of ERISA and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) give the Secretary of Labor the authority to grant an exemption to a class or order of fiduciaries, disqualified persons, or transactions from all or part of the restrictions imposed by sections 406 and 407(a) of ERISA and

from the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. This information collection request (ICR) relates to two prohibited transaction class exemptions (PTEs) that the Department of Labor (the Department) has granted, both of which involve settlement agreements. These two exemptions are described below:

*PTE 94-71.* Granted on September 30, 1994, PTE 94-71 exempts from certain restrictions of ERISA and certain taxes imposed by the Code, a transaction or activity that is authorized, prior to the execution of the transaction or activity, by a settlement agreement resulting from an investigation of an employee benefit plan conducted by the Department.

*PTE 2003-39.* Granted on December 31, 2005, PTE 03-39 exempts from certain restrictions of ERISA and certain taxes imposed by the Code, transactions arising out of the settlement of litigation that involve the release of claims against parties in interest in exchange for payment by or on behalf of the party in interest, provided that certain conditions are met.

Because both exemptions involve settlement agreements, the Department has combined their information collection provisions into one ICR and has obtained OMB approval for their paperwork burden. The Department believes that the public and the federal government are both best served by allowing the public to review and comment on similar exemption provisions in combination. The ICR is scheduled to expire on June 30, 2012.

**Agency:** Employee Benefits Security Administration, Department of Labor

**Title:** Notice of Blackout Period Under ERISA

**Type of Review:** Extension without change of a currently approved collection of information

**OMB Number:** 1210-0122

**Affected Public:** Business or other for-profit; Not-for-profit institutions

**Respondents:** 45,200

**Responses:** 3,465,447

**Estimated Total Burden Hours:** 183,342

**Estimated Total Burden Cost (Operating and Maintenance):** \$1,628,760

**Description:** The Sarbanes-Oxley Act (SOA), enacted on July 30, 2002, added ERISA section 101(i), which requires individual account pension plans to furnish a written notice to participants and beneficiaries in advance of any “blackout period” during which their existing rights to direct or diversify their investments under the plan, or obtain a loan or distribution from the plan will be temporarily suspended. Under 306(b)(2) of SOA, the Secretary of Labor was directed to issue interim final rules necessary to implement the SOA amendments. The Department’s regulation for this purpose is codified at 29 CFR 2520.101-3. The ICR is scheduled to expire on June 30, 2012.

**Agency:** Employee Benefits Security Administration, Department of Labor

**Title:** Voluntary Fiduciary Correction Program

**Type of Review:** Extension without change of a currently approved collection of information

**OMB Number:** 1210-0118

**Affected Public:** Business or other for-profit; Not-for-profit institutions

**Respondents:** 1,525

**Responses:** 76,242

**Estimated Total Burden Hours:** 6,863

**Estimated Total Burden Cost (Operating and Maintenance):** \$273,403

**Description:** This information collection arises from two related actions: the Voluntary Fiduciary Correction Program (the VFC Program or the Program) and Prohibited Transaction Class Exemption (PTE) 2002-51 (the Exemption). The Department adopted the Program and the Exemption in order to encourage members of the public to voluntarily correct transactions that violate (or are suspected of violating) the fiduciary or prohibited transaction provisions of the ERISA. Both the Program and the Exemption incorporate information collection requirements in order to protect participants and beneficiaries and enable the Department to oversee the appropriate use of the Program and the Exemption. The ICR is scheduled to expire on June 30, 2012.

## **II. Focus of Comments**

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are 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 collections 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., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICRs for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: November 30, 2011

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Joseph S. Piacentini  
Director, Office of Policy and Research  
Employee Benefits Security Administration

[Billing Code: 4510-29-P]

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