



DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Requests Submitted for Public Comment

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA), 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, Room N-5718, Washington, DC

20210, ebsa.opr@dol.gov, (202) 693-8410, FAX (202) 693-4745 (these are not toll-free numbers).

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 transaction exemptions 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: Prohibited Transaction Exemption (PTE) 81-8 for Investment of Plan Assets in Certain Types of Short-Term Investments

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0061

Affected Public: Businesses or other for-profits, Not-for-profit institutions

Respondents: 65,000

Responses: 325,000

Estimated Total Burden Hours: 81,000

Estimated Total Burden Cost (Operating and Maintenance): \$99,000

Description: PTE 81-8 permits the investment of plan assets that involve the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf of an employee benefit plan in certain types of short-term investments. These include investments in

banker's acceptances, commercial paper, repurchase agreements, certificates of deposit, and bank securities. Absent the exemption, certain aspects of these transactions might be prohibited by section 406 and 407(a) of the Employee Retirement Income Security Act (ERISA).

In order to ensure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that the conditions of the exemption have been satisfied, the Department has included in the exemption two basic disclosure requirements. Both affect only the portion of the exemption dealing with repurchase agreements. The first requirement calls for the repurchase agreements between the seller and the plan to be in writing. The second requirement obliges the seller of such repurchase agreements to agree to provide financial statements to the plan at the time of the sale and as future statements are issued. The seller must also represent, either in the repurchase agreement or prior to the negotiation of each repurchase agreement transaction, that there has been no material adverse change in the seller's financial condition since the date that the most recent financial statement was furnished which has not been disclosed to the plan fiduciary with whom the written agreement is made. Without the recording and disclosure requirements included in this ICR, participants and beneficiaries of a plan would not be protected in their investments, the Department would be unable to monitor a plan's activities for compliance, and plans would be at a disadvantage in assessing the value of certain short-term investment activities. The ICR was approved by OMB under OMB Control Number 1210-0061 and is scheduled to expire on August 31, 2017.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Suspension of Pension Benefits Regulation Pursuant to 29 CFR 2530.203-3

Type of Review: Extension of a currently approved information collection

OMB Number: 1210-0048

Affected Public: Businesses or other for-profits

Respondents: 39,500

Responses: 171,000

Estimated Total Burden Hours: 133,000

Estimated Total Burden Cost (Operating and Maintenance): \$63,000

Description: Section 203(a)(3)(B) of ERISA governs the circumstances under which pension plans may suspend pension benefit payments to retirees that return to work or to participants that continue to work beyond normal retirement age. Furthermore, section 203(a)(3)(B) of ERISA authorizes the Secretary to prescribe regulations necessary to carry out the provisions of this section.

In this regard, the Department issued a regulation which describes the circumstances and conditions under which plans may suspend the pension benefits of retirees that return to work, or of participants that continue to work beyond normal retirement age (29 CFR 2530.203-3). In order for a plan to suspend benefits pursuant to the regulation, it must notify affected retirees or participants (by first class mail or personal delivery) during the first calendar month or payroll period in which the plan withholds payment, that benefits are suspended. This notice must include the specific reasons for such suspension, a general description of the plan provisions authorizing the suspension, a copy of the relevant plan provisions, and a statement indicating where the

applicable regulations may be found (i.e., 29 CFR 2530.203-3). In addition, the suspension notification must inform the retiree or participant of the plan's procedure for affording a review of the suspension of benefits. The ICR was approved by OMB under OMB Control Number 1210-0048 and is scheduled to expire on September 30, 2017.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Delinquent Filer Voluntary Compliance Program

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0089

Affected Public: Businesses or other for-profits

Respondents: 12,204

Responses: 12,204

Estimated Total Burden Hours: 610

Estimated Total Burden Cost (Operating and Maintenance): \$742,000

Description: The Secretary of Labor has the authority, under section 502(c)(2) of ERISA, to assess civil penalties of up to \$1,000 a day against plan administrators who fail or refuse to file complete and timely annual reports (Form 5500 Series Annual Return/Reports) as required under section 101(b)(4) of ERISA-related regulations. Pursuant to 29 CFR 2560.502c-2 and 2570.60 et seq., EBSA has maintained a program for the assessment of civil penalties for noncompliance with the annual reporting requirements. Under this program, plan administrators filing annual reports after the date on which the report was required to be filed may be assessed \$50 per day for each day an

annual report is filed after the date on which the annual report(s) was required to be filed, without regard to any extensions for filing.

Plan administrators who fail to file an annual report may be assessed a penalty of \$300 per day, up to \$30,000 per year, until a complete annual report is filed. Penalties are applicable to each annual report required to be filed under Title I of ERISA. The Department may, in its discretion, waive all or part of a civil penalty assessed under section 502(c)(2) of ERISA upon a showing by the administrator that there was reasonable cause for the failure to file a complete and timely annual report.

The Department has determined that the possible assessment of these civil penalties may deter certain delinquent filers from voluntarily complying with the annual reporting requirements under Title I of ERISA. In an effort to encourage annual reporting compliance, therefore, the Department implemented the Delinquent Filer Voluntary Compliance (DFVC) Program (the Program) on April 27, 1995 (60 FR 20873). Under the Program, administrators otherwise subject to the assessment of higher civil penalties are permitted to pay reduced civil penalties for voluntarily complying with the annual reporting requirements under Title I of ERISA.

This ICR covers the requirement for administrators to provide data necessary to identify the plan along with the penalty payment. This data is the means by which each penalty payment is associated with the appropriate plan. With respect to most pension plans and welfare plans, the requirement is satisfied by sending a photocopy of the delinquent Form 5500 annual report that has been filed, along with the penalty payment.

Under current regulations, apprenticeship and training plans may be exempted from the reporting and disclosure requirements of Part 1 of Title I, and certain pension

plans maintained for highly compensated employees, commonly called “top hat” plans, may comply with these reporting and disclosure requirements by using an alternate method by filing a one-time identifying statement with the Department. The DFVC Program provides that apprenticeship and training plans and top hat plans may, in lieu of filing any past due annual reports and paying otherwise applicable civil penalties, complete and file specific portions of a Form 5500, file the identifying statements that were required to be filed, and pay a one-time penalty. The ICR was approved by OMB under OMB Control Number 1210-0089 and is scheduled to expire on September 30, 2017.

Agency: Employee Benefits Security Administration, Department of Labor

Title: PTE 98-54 – Relating to Certain Employee Benefit Plan Foreign Exchange Transactions Executed Pursuant to Standing Instructions

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0111

Affected Public: Businesses or other for-profits

Respondents: 35

Responses: 420,000

Estimated Total Burden Hours: 4,200

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

Description: PTE 98-54 permits certain foreign exchange transactions between employee benefit plans and certain banks, broker-dealers, and domestic affiliates thereof, which are parties in interest with respect to such plans, pursuant to standing instructions.

In the absence of an exemption, foreign exchange transactions pursuant to standing instructions would be prohibited under circumstances where the bank or broker-dealer is a party in interest or disqualified person with respect to the plan under ERISA or the Internal Revenue Code (Code).

The class exemption has five basic information collection requirements. The first requires the bank or broker-dealer to maintain written policies and procedures for handling foreign exchange transactions for plans for which it is a party in interest that ensure that the party acting for the bank or broker-dealer knows it is dealing with a plan. The second requires that the transactions are performed in accordance with a written authorization executed in advance by an independent fiduciary of the plan. The third requires that the bank or broker-dealer to provide the authorizing fiduciary with a copy of its written policies and procedures for foreign exchange transactions involving income item conversions and de minimis purchase and sale transactions prior to the execution of a transaction. The fourth requires the bank or broker-dealer to furnish the authorizing fiduciary with a written confirmation statement with respect to each covered transaction within five days after execution. The fifth requires that the bank or broker-dealer to maintain records necessary for plan fiduciaries, participants, the Department, and the Internal Revenue Service, to determine whether the conditions of the exemption are being met for a period of six years from the date of execution of a transaction.

By requiring that records pertaining to the exempted transaction be maintained for six years, this ICR ensures that the exemption is not abused, the rights of the participants and beneficiaries are protected, and that compliance with the exemption's conditions can be confirmed. The exemption affects participants and beneficiaries of the plans that are

involved in such transactions, as well as, certain banks, broker-dealers, and domestic affiliates thereof. The ICR was approved by OMB under OMB Control Number 1210-0111 and is scheduled to expire on September 30, 2017.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Request for Assistance from Department of Labor, EBSA

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0146

Affected Public: Individuals or Households

Respondents: 6,500

Responses: 6,500

Estimated Total Burden Hours: 3,250

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

Description: The Department of Labor's Employee Benefits Security Administration (EBSA) maintains a program designed to provide education and technical assistance to participants and beneficiaries as well as to employers, plan sponsors, and service providers related to their health and retirement benefit plans. EBSA assists participants in understanding their rights, responsibilities, and benefits under employee benefit law and intervenes informally on their behalf with the plan sponsor in order to assist them in obtaining the health and retirement benefits to which they may have been inappropriately denied, which can avert the necessity for a formal investigation or a civil action. EBSA maintains a toll-free telephone number through which inquirers can reach Benefits Advisors in ten Regional Offices.

EBSA also makes a request for assistance form available on its Web site for those wishing to contact EBSA online. Contact with EBSA is entirely voluntary. The Web form includes basic identifying information which is necessary for EBSA to contact the inquirer—first name, last name, street address, city, zip code, and telephone number—as well as information to improve customer service and enhance its capacity to handle greater inquiry volume, such as the plan type, broad categories of problem type, contact information for responsible parties, and a mechanism for the inquirer to attach relevant documents.

This information is used by EBSA to make informed and efficient decisions when contacting inquirers who have requested EBSA’s informal assistance with understanding their rights and obtaining benefits they may have been denied inappropriately. EBSA uses the information to evaluate its service to inquirers, support the development of a broader understanding of the nature of current issues in employee benefit plans, and to respond to requests for information regarding employee benefit plans from members of Congress and governmental oversight entities in accordance with ERISA section 513. The ICR was approved by the Office of Management and Budget (OMB) under OMB Control Number 1210-0146 and is scheduled to expire on October 31, 2017.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Alternative Method of Compliance for Certain Simplified Employee Pensions

Type of Review: Extension of a currently approved information collection

OMB Number: 1210-0034

Affected Public: Businesses or other for-profits

Respondents: 36,000

Responses: 68,000

Estimated Total Burden Hours: 21,000

Estimated Total Burden Cost (Operating and Maintenance): \$25,000

Description: Section 110 of ERISA authorizes the Secretary to prescribe alternative methods of compliance with the reporting and disclosure requirements of Title I of ERISA for pension plans. Simplified employee pensions (SEPs) are established in section 408(k) of the Code. Although SEPs are primarily a development of the Code and subject to its requirements, SEPs are also pension plans subject to the reporting and disclosure requirements of Title I of ERISA.

The Department previously issued a regulation under the authority of section 110 of ERISA (29 CFR 2520.104–49) that intended to relieve sponsors of certain SEPs from ERISA’s Title I reporting and disclosure requirements by prescribing an alternative method of compliance. These SEPs are, for purposes of this Notice, referred to as “non-model” SEPs because they exclude (1) those SEPs which are created through use of Internal Revenue Service (IRS) Form 5305–SEP, and (2) those SEPs in which the employer limits or influences the employees’ choice to IRAs into which employers’ contributions will be made and on which participant withdrawals are prohibited. The disclosure requirements in this regulation were developed in conjunction with the Internal Revenue Service (IRS Notice 81–1). Accordingly, sponsors of “nonmodel” SEPs that satisfy the limited disclosure requirements of the regulation are relieved from otherwise applicable reporting and disclosure requirements under Title I of ERISA, including the requirements to file annual reports (Form 5500 Series) with the Department, and to

furnish summary plan descriptions and summary annual reports to participants and beneficiaries.

This ICR includes four separate disclosure requirements. First, at the time an employee becomes eligible to participate in the SEP, the administrator of the SEP must furnish the employee in writing specific and general information concerning the SEP; a statement on rates, transfers and withdrawals; and a statement on tax treatment. Second, the administrator of the SEP must furnish participants with information concerning any amendments. Third, the administrator must notify participants of any employer contributions made to the IRA. Fourth, in the case of a SEP that provides integration with Social Security, the administrator shall provide participants with statement on Social Security taxes and the integration formula used by the employer. The ICR was approved by OMB under OMB Control Number 1210-0034 and is scheduled to expire on December 31, 2017.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Procedure for Application for Exemption from the Prohibited Transaction Provisions of Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA)

Type of Review: Extension of a currently approved information collection

OMB Number: 1210-0060

Affected Public: Businesses or other for-profits.

Respondents: 43

Responses: 20,500

Estimated Total Burden Hours: 2,200

Estimated Total Burden Cost (Operating and Maintenance): \$1,200,000

Description: Both ERISA and the Code contain various statutory exemptions from the prohibited transaction rules. In addition, section 408(a) of ERISA authorizes the Secretary of Labor to grant administrative exemptions from the restrictions of ERISA sections 406 and 407(a), while section 4975(c)(2) of the Code authorizes the Secretary of the Treasury or his delegate to grant exemptions from the prohibitions of Code section 4975(c)(1). Sections 408(a) of ERISA and 4975(c)(2) of the Code also direct the Secretary of Labor and the Secretary of the Treasury, respectively, to establish procedures to carry out the purposes of these sections.

Under section 3003(b) of ERISA, the Secretary of Labor and the Secretary of the Treasury are directed to consult and coordinate with each other with respect to the establishment of rules applicable to the granting of exemptions from the prohibited transaction restrictions of ERISA and the Code. Under section 3004 of ERISA, moreover, the Secretary of Labor and the Secretary of the Treasury are authorized to develop jointly rules appropriate for the efficient administration of ERISA.

Under section 102 of Reorganization Plan No. 4 of 1978 (Reorganization Plan No. 4), the foregoing authority of the Secretary of the Treasury to issue exemptions under section 4975 of the Code was transferred, with certain enumerated exceptions not discussed herein, to the Secretary of Labor. Accordingly, the Secretary of Labor now possesses the authority under section 4975(c)(2) of the Code, as well as under section 408(a) of ERISA, to issue individual and class exemptions from the prohibited transaction rules of ERISA and the Code.

On April 28, 1975, the Department published ERISA Procedure 75-1 in the Federal Register (40 FR 18471). This procedure provided necessary information to the affected public regarding the procedure to follow when requesting an exemption. On October 27, 2011, the Department issued its current exemption procedure regulation, which superseded ERISA Procedure 75-1 (and intervening amendments).

The amended rule by the Department expands the ICR contained in sections 2570.34 and 2570.35 of the current exemption procedure regulation in several respects. For instance, the current requirement of specialized statements from qualified independent appraisers, where applicable, includes the appraiser's rationale, credentials, and a statement regarding the appraiser's independence from the parties involved in the transaction. In this connection, the appraisal report prepared by the independent appraiser must be current and not more than one year old as of the date of the transaction. In addition, the content of specialized statements submitted by qualified independent fiduciaries, where applicable, require the disclosure of information concerning the independent fiduciary's qualifications, duties, independence from the parties involved in the transaction, and current compensation. The content of specialized statements from other kinds of experts would also be clarified in the new regulation to require disclosure of information concerning the expert's qualifications and their independence from the parties involved in the transaction.

In addition, a requirement contained in section 2570.43(d) and (e) provides the Department with the discretion to require an applicant to furnish interested persons with a Summary of Proposed Exemption (SPE). Finally, the Department amended § 2570.43 to permit applicants to utilize electronic means (such as e-mail) to deliver notice to

interested persons of a pending exemption, provided that the applicant can demonstrate satisfactory proof of electronic delivery to the entire class of interested persons. The ICR was approved by OMB under OMB Control Number 1210-0060 and is scheduled to expire on December 31, 2017.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Investment Advice Participants and Beneficiaries

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0134

Affected Public: Businesses or other for-profits

Respondents: 10,000

Responses: 20,544,000

Estimated Total Burden Hours: 1,981,000

Estimated Total Burden Cost (Operating and Maintenance): \$276,474,000

Description: The Department's regulation implements the provisions of the statutory exemption set forth in sections 408(b)(14) and 408(g) of ERISA, and parallel provisions in sections 4975(d)(17) and 4975(f)(8) of the Code, relating to the provision of investment advice described in section 3(21)(A)(ii) of ERISA by a fiduciary adviser to participants and beneficiaries in participant-directed individual account plans, such as 401(k) plans, and beneficiaries of individual retirement accounts (and certain similar plans).

Section 408(b)(14) sets forth the investment advice-related transactions that will be exempt from the prohibitions of ERISA section 406 if the requirements of section

408(g) are met. The transactions described in section 408(b)(14) are: the provision of investment advice to the participant or beneficiary with respect to a security or other property available as an investment under the plan; the acquisition, holding or sale of a security or other property available as an investment under the plan pursuant to the investment advice; and the direct or indirect receipt of compensation by a fiduciary adviser or affiliate in connection with the provision of investment advice or the acquisition, holding or sale of a security or other property available as an investment under the plan pursuant to the investment advice. The requirements in section 408(g) are met only if advice is provided by a fiduciary adviser under an “eligible investment advice arrangement.” Section 408(g) provides for two general types of eligible arrangements: one based on compliance with a “fee-leveling” requirement (imposing limitation on fees and compensation of the fiduciary adviser); the other, based on compliance with a “computer model” requirement (requiring use of a certified computer model).

The regulation contains the following collections of information: (1) A fiduciary adviser must furnish an initial disclosure that provides detailed information to participants about an advice arrangement before initially providing investment advice; (2) a fiduciary adviser must engage, at least annually, an independent auditor to conduct an audit of the investment advice arrangement for compliance with the regulation; (3) if the fiduciary adviser provides the investment advice through the use of a computer model, then before providing the advice, the fiduciary adviser must obtain the written certification of an eligible investment expert as to the computer model's compliance with certain standards (e.g., applies generally accepted investment theories, unbiased operation, objective criteria) set forth in the regulation; and (4) fiduciary advisers must

maintain records with respect to the investment advice provided in reliance on the regulation necessary to determine whether the applicable requirements of the regulation have been satisfied.

The ICR was approved by OMB under OMB Control Number 1210-0134 and is scheduled to expire on December 31, 2017.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Alternative Reporting Methods for Apprenticeship and Training Plans and Top Hat Plans

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0153

Affected Public: Businesses or other for-profits, Not-for-profit institutions

Respondents: 2,120

Responses: 2,120

Estimated Total Burden Hours: 636

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

Description: The Department's regulations (29 CFR 2520.104-22) provide an exemption to the reporting and disclosure provisions of Part 1 of Title I of ERISA for employee welfare benefit plans that provide only apprenticeship or training benefits, or both, if the plan administrator: (1) Files a notice with the Secretary that provides the name of the plan, the plan sponsor's Employer Identification Number (EIN), the plan administrator's name, and the name and location of an office or person from whom interested individuals can obtain certain information about courses offered by the plan;

(2) takes steps reasonably designed to ensure that the information required to be contained in the notice is disclosed to employees of employers contributing to the plan who may be eligible to enroll in any course of study sponsored or established by the plan; and (3) makes the notice available to these employees upon request. The plan administrator must file the notice with the Secretary of Labor by mailing or delivering it to the Department at the address set forth in the regulation.

The regulation (29 CFR 2520.104-23) provides an alternative method of compliance with the reporting and disclosure provisions of Title I of ERISA for unfunded or insured plans established for a select group of management or highly compensated employees (i.e., top hat plans). In order to satisfy the alternative method of compliance, the plan administrator must: (1) file a statement with the Secretary of Labor that includes the name and address of the employer, the employer EIN, a declaration that the employer maintains a plan or plans primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees, and a statement of the number of such plans and the employees covered by each; and (2) make plan documents available to the Secretary upon request. Only one statement needs to be filed for each employer maintaining one or more of the plans. The statements may be filed with the Secretary by mail or personal delivery. The ICR was approved by OMB under OMB Control Number 1210-0153 and is scheduled to expire on December 31, 2017.

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.

Joseph S. Piacentini,

Director,

Office of Policy and Research,

Employee Benefits Security Administration.

[Billing Code: 4510-29-P]

[FR Doc. 2017-10394 Filed: 5/19/2017 8:45 am; Publication Date: 5/22/2017]