

Employee Retirement Income Security Act of 1974 (ERISA), to assess civil penalties of up to \$1,000 a day<sup>1</sup> 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) 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 of providing 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<sup>2</sup> that has been filed, along with the penalty payment.

<sup>1</sup> Adjusted to \$1,100 per day pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 and the Debt Collection Improvement Act of 1996. See 62 FR 40696, July 29, 1997.

<sup>2</sup> DFVC information collection provisions originally required submission of the first page of

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.

## II. Review Focus

The Department of Labor is particularly interested in comments that:

- 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 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., permitting electronic submissions of responses.

## III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on April 30, 2008. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time. Comments submitted in response to this notice will be summarized and/or included in the request for OMB.

the Form 5500 annual report. Because of the recent revisions to the Form 5500, the information needed to process the DFVC filing is no longer confined to the first page of the Form 5500. DFVC filers using a 1999 or later Form 5500 must submit a copy of all pages of the Form 5500 (generally 4), dated with original signature but without any schedules or attachments.

*Type of Review:* Extension of a currently approved collection.

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

*Title:* Delinquent Filer Voluntary Compliance Program.

*OMB Number:* 1210-0089.

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

*Frequency:* On occasion.

*Average Burden Hours/Minutes Per Response:* 21 minutes.

*Number of Respondents:* 4,100.

*Total Annual Responses:* 4,100.

*Total Annual Burden Hours:* 145.

*Total Burden Cost (Operating and Maintenance):* \$107,300.

Dated: December 7, 2007.

**Joseph S. Piacentini,**

*Director, Office of Policy and Research,  
Employee Benefits Security Administration.*

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Class Exemption 77-4

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, 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 continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested 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. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments concerning the proposed extension of a currently approved collection of information, Class Exemption 77-4 for certain transactions between investment companies and employee benefit plans.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 19, 2008.

**ADDRESSES:** Interested parties are invited to submit written comments regarding the collection of information. Send comments to Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N-5718, Washington, DC 20210. Telephone: (202) 693-8410 Fax: (202) 693-4745 (These are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Without the relief provided by this exemption, an open-end mutual fund would be unable to sell shares to or purchase shares from a plan when the fiduciary with respect to the plan is also the investment advisor for the mutual fund. As a result, plans would be compelled to liquidate their existing investments involving such transactions and to amend their plan documents to establish new investment structures and policies.

In order to insure that the exemption is not abused and that the rights of participants and beneficiaries are protected, the Department has included in the exemption three basic disclosure requirements. The first requires at the time of the purchase or sale of such mutual fund shares that the plan's independent fiduciary receive a copy of the current prospectus issued by the open-end mutual fund and a full and detailed written statement of the investment advisory fees charges to or paid by the plan and the open-end mutual fund to the investment advisor. The second requires that the independent fiduciary approve in writing such purchases and sales. The third requires that the independent fiduciary, once notified of changes in the fees, re-approve in writing the purchase and sale of mutual fund shares.

**II. Review Focus**

The Department of Labor (Department) is particularly interested in comments that:

- 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 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., permitting electronic submissions of responses.

**III. Current Actions**

The Office of Management and Budget's approval of this ICR will expire on April 30, 2008. This notice requests comments on the extension of the ICR. The Department is not proposing or implementing changes to the existing ICR at this time in connection with this extension. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

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

*Title:* Prohibited Transaction Class Exemption 77-4 for Certain Transactions Between Investment Companies and Employee Benefit Plans.

*Type of Review:* Extension of currently approved collections.

*OMB Numbers:* 1210-0049.

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

*Total Respondents:* 431.

*Total Responses:* 82,000.

*Frequency of Response:* On occasion.

*Average Time Per Response:* 5 minutes.

*Total Annual Burden:* 7,000 hours.

Dated: December 10, 2007.

**Joseph S. Piacentini,**

*Director, Office of Policy and Research, Employee Benefits Security Administration.*

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**BILLING CODE 4510-29-P**

**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

**Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations Prohibited Transaction Class Exemption 81-8**

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

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested 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.

Currently, the Employee Benefits Security Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Class Exemption 81-8 on investment of plan assets in certain types of short-term investments. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

**DATES:** Written comments must be submitted on or before February 19, 2008.

**ADDRESSES:** Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N-5718, Washington, DC 20210. Telephone: (202) 693-8410; Fax (202) 693-4745. These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Prohibited Transaction Class Exemption 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 of the Employee Retirement Income Security Act (ERISA).

Provided that the requirements of the exemption are met, the exemption allows plans to invest in certain short term investments in debt obligations issued by certain persons who provide