

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 on the proposed extension of the information collection provisions of Prohibited Transaction Exemption 98-54 (PTE 98-54).

A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the ADDRESSES section of this notice.

**DATES:** Written comments must be submitted to the office shown in the ADDRESSES section on or before January 31, 2005.

**ADDRESSES:** Gerald B. Lindrew, 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).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

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 the Employee Retirement Income Securities Act (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 which 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 provides 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 a written confirmation statement with respect to each covered transaction within five days of execution. The fifth requires that the bank or broker-dealer maintains records necessary for plan fiduciaries, participants, and the Department and Internal Revenue Service to determine whether the conditions of the exemption are being met for 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 insures 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.

##### 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 (OMB) approval of this ICR will expire on February 28, 2005. 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 approval of the information collection

request; they will also become a matter of public record.

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

*Title:* Prohibited Transaction Class Exemption 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:* Individuals or households; Business or other for-profit; Not-for-profit institutions.

*Respondents:* 35.

*Responses:* 8,400.

*Average Response Time:* 30 minutes.

*Estimated Total Burden Hours:* 4,200.

*Total Annualized Capital/Startup Costs:* \$0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* \$0.

Dated: November 24, 2004.

**Gerald B. Lindrew,**

*Deputy 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; Delinquent Filer Voluntary Compliance Program

**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 Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (Public Law 104-13, 44 U.S.C. Chapter 35). 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 included in the Delinquent Filer Voluntary Compliance Program.

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed 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 January 31, 2005.

**ADDRESSES:** Gerald B. Lindrew, 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).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Secretary of Labor has the authority, under section 502(c)(2) of the 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.

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,

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

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 February 28, 2005. 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.

*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: November 24, 2004.

**Gerald B. Lindrew,**

*Deputy 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; Suspension of Benefits**

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation

<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.