

been corrected according to the terms and conditions of the VFC Program, the Department will issue a "no action" letter, thereby releasing the applicant from possible civil penalties under section 502(l) of ERISA. The VFC Program provides applicants with information both on identifying eligible transactions for correction and on the means for achieving fully acceptable corrections. The information collection consists of an application, description of the transaction and correction, and other appropriate supporting documentation.

The Exemption, used only in conjunction with the VFC Program, permits applicants to the VFC Program to make full correction of certain eligible transactions without incurring sanctions in the form of excise taxes imposed under sections 4975(a) and (b) of the Internal Revenue Code (the Code) by reason of sections 4975(c)(1)(A) through (E) of the Code. For those fiduciaries wishing to take advantage of the Exemption, the information collection for the VFC Program also includes notification to interested persons, generally participants and beneficiaries, that an application has been submitted under the VFC Program. A copy of the notice must also be furnished to a Regional Office of the Employee Benefits Security Administration.

## II. Desired Focus of Comments

The 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 submission of responses.

## III. Current Action

This notice requests comments on the extension of the ICR included in the VFC Program and the Exemption. The Department is not proposing or

implementing changes to the existing ICR at this time.

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

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

*Title:* Voluntary Fiduciary Correction Program and Prohibited Transaction Class Exemption.

*OMB Number:* 1210-0118.

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

*Respondents:* 1,250.

*Frequency of Response:* Annually.

*Responses:* 11,790.

*Estimated Total Burden Hours:* 5,625.

*Total Burden Cost (Operating and Maintenance):* \$109,000.

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.

Dated: January 22, 2009.

**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; Comment Request ERISA Advisory Opinion Procedure 76-1

**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 continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the data the Department gathers can be provided in the desired format, that the reporting burden on the public (time and financial resources) is minimized, that the public understands the Department's collection instruments, and that the Department can accurately assess the impact of collection requirements on respondents.

Currently, the Employee Benefits Security Administration (EBSA) is

soliciting comments concerning an extension of the information collection provisions incorporated in ERISA Advisory Opinion Procedure 76-1. A copy of the information collection request (ICR) can be obtained by contacting the office shown in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office shown in the **ADDRESSES** section of this notice on or before March 30, 2009.

**ADDRESSES:** Interested parties are invited to submit written comments regarding the information collection request and burden estimates to: G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693-8410, FAX (202) 693-4745 (these are not toll-free numbers). Comments may also be submitted electronically to [ebsa.opr@dol.gov](mailto:ebsa.opr@dol.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Under the Employee Retirement Income Security Act of 1974 as amended, (ERISA), the Secretary of Labor is responsible for administration and enforcement of reporting, disclosure, fiduciary, and other standards established for pension and welfare benefit plans. These responsibilities have been delegated within the Department to EBSA. ERISA Advisory Opinion Procedure 76-1 describes the administrative procedures through which the public may request a written interpretation of ERISA from EBSA to resolve issues arising out of specific actual transactions or circumstances. The procedure is designed to promote efficient handling of such inquiries and to facilitate prompt responses. The Procedure requires requesters seeking advisory opinions or information letters to submit certain information that EBSA has determined is essential for determining the nature of a request for interpretation and EBSA's response. EBSA has previously submitted the information collection provisions of Advisory Opinion Procedure 76-1 to the Office of Management and Budget (OMB) for review in an ICR and received approval from OMB under OMB Control No. 1210-0066. The current ICR approval is scheduled to expire on May 31, 2009.

##### II. Desired Focus of Comments

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

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

### III. Current Action

This notice requests comments on an extension of the information collection provisions included in ERISA Advisory Opinion Procedure 76-1. The Department is not proposing or implementing changes to the existing ICR at this time. A summary of the ICR and the current burden estimates follows:

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

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

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

*OMB Number:* 1210-0066.

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

*Respondents:* 83.

*Responses:* 83.

*Estimated Total Burden Hours:* 855.

*Estimated Total Burden Cost (Operating and Maintenance):* \$51,000.

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

Dated: January 22, 2009.

**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; Comment Request; Regulation Regarding Participant Directed Individual Account Plans Under ERISA 404(c)

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (the Department), 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) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the data the Department gathers can be provided in the desired format, that the reporting burden on the public (time and financial resources) is minimized, that the public understands the Department's collection instruments, and that the Department can accurately assess the impact of collection requirements on respondents.

Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments concerning an extension of the information collections in regulation section 2550.404c-1, pertaining to participant-directed individual account plans under section 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA). A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted on or before March 30, 2009.

**ADDRESSES:** Direct all written comments regarding the information collection request and burden estimates to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5647, Washington, DC 20210. Telephone: (202) 693-8410; Fax: (202) 219-4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: [ebbsa.opr@dol.gov](mailto:ebbsa.opr@dol.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 404(c) of ERISA provides that, if an individual account pension plan permits a participant or beneficiary to exercise control over assets in his or her

account and the participant or beneficiary in fact exercises such control, the participant or beneficiary shall not be deemed to be a fiduciary by such exercise of control and no person otherwise a fiduciary shall be liable for any loss or breach that results from the participant's or beneficiary's exercise of control.

The Department's regulation at 29 CFR 2550.404c-1 describes the circumstances in which a participant or beneficiary will be considered to have exercised independent control over the assets in his or her individual account as contemplated in section 404(c). The regulation specifies information that must be made available to participants or beneficiaries in order for them to exercise independent control over the assets in their individual accounts. The regulation provides that the relief from fiduciary liability specified in section 404(c) is not available with respect to a transaction undertaken by a participant or beneficiary unless the specific information is provided to the participant or beneficiary. EBSA submitted the information collection provisions in the regulation to the Office of Management and Budget (OMB) for review in an information collection request (ICR) in connection with promulgation of the final rulemaking, and OMB approved the ICR under OMB Control No. 1210-0090. The ICR approval is scheduled to expire on March 31, 2009.

##### II. Desired Focus of Comments

The 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., by permitting electronic submission of responses.

##### III. Current Action

This notice requests comments on an extension of the information collections