

September 11, 1993. These Customer Satisfaction Surveys provide information on customer attitudes about the delivery and quality of agency products/services and are used as part of an ongoing process to improve DOL programs. This generic clearance allows agencies to gather information from both Federal and non-Federal users.

In addition to conducting Customer Satisfaction Surveys, the Department also includes the use of evaluation forms for those DOL agencies conducting conferences. These evaluations are helpful in determining the success of the current conference, in developing future conferences, and in meeting the needs of the Department's product/service users.

## II. Current Actions

Over the past three years the DOL has conducted more than two dozen customer satisfaction surveys and conference evaluations, which have helped assess the Department's products and services and has led to improvements in areas deemed necessary. Office of Management and Budget approval for this collection of information expires July 31, 2006. DOL proposes to seek continued approval for this collection of information for an additional three years.

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

*Agency:* Office of the Assistant Secretary for Administration and Management.

*Title:* Customer Satisfaction Surveys and Conference Evaluations Generic Clearance.

*OMB Number:* 1225-0059.

*Affected Public:* Individuals and households; business or other for-profit; not-for-profit institutions; Farms; Federal Government; and State, Local, or Tribal Government.

*Estimated Total Respondents/Responses:* 200,000.

*Frequency:* On occasion and usually only one-time per respondent.

*Average Time per Response:* Varies by survey/evaluation generally ranging from 3 to 15 minutes with an average of approximately 6 minutes.

*Total Burden Hours:* 20,000.

*Total Burden Cost (Capital/Startup):* \$0.

*Total Burden Cost (Operating/Maintenance):* \$0.

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

Signed at Washington, DC, this 13th day of April, 2006.

**Darrin A. King,**

*Agency Clearance Officer, Office of the Assistant Secretary for Administration and Management.*

[FR Doc. E6-5860 Filed 4-18-06; 8:45 am]

**BILLING CODE 4510-23-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Application No. D-11261]

RIN 1210-A05

#### Amendment to Prohibited Transaction Exemption 2002-51 (PTE 2002-51) to Permit Certain Transactions Identified in the Voluntary Fiduciary Correction Program

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

**ACTION:** Adoption of Amendment to PTE 2002-51.

**SUMMARY:** This document amends PTE 2002-51 (67 FR 70623 November 25, 2002), a class exemption that provides relief from certain prohibited transaction restrictions imposed by section 4975 of the Internal Revenue Code of 1986 (the Code) for certain eligible transactions identified in the Department of Labor's (the Department) Voluntary Fiduciary Correction (VFC) Program, which was adopted on March 28, 2002. This amendment is being adopted in conjunction with the Department's adoption of the updated VFC Program (final VFC Program), which is being published simultaneously in this issue of the **Federal Register**. The VFC Program allows certain persons to avoid potential civil actions under the Employee Retirement Income Security Act of 1974 (ERISA) initiated by the Department and the assessment of civil penalties under section 502(l) or 502(i) of ERISA in connection with an investigation or civil action by the Department. The amendment affects plans, participants and beneficiaries of such plans and certain other persons engaging in such transactions.

**EFFECTIVE DATE:** The class exemption is effective May 19, 2006.

**FOR FURTHER INFORMATION CONTACT:** Brian J. Buyniski, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Room N-5649, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693-8545 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:** On April 6, 2005, a notice was published in the **Federal Register** (70 FR 17476) of the Department before the Department of a proposed amendment to PTE 2002-51. PTE 2002-51 provides relief from the sanctions resulting from the application of section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The amendment expands the relief under the exemption to additional transactions included in the final VFC Program. The amendment to PTE 2002-51 adopted by this notice was proposed by the Department on its own motion pursuant to section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, 32847, August 10, 1990).<sup>1</sup>

The notice of pendency gave interested persons an opportunity to comment on the proposed amendment. The Department received two comment letters. Upon consideration of all the comments received, the Department has determined to grant the proposed amendment, subject to certain modifications. These modifications and the comments are discussed below.

#### Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a "significant regulatory action" is an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that the final VFC Program is significant under

<sup>1</sup> Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, 5 U.S.C. App. 1 [1996]) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

section 3(f)(4) because it raises novel legal or policy issues arising from the President's priorities.

The amended PTE 2002–51 provides excise tax relief for six of the transactions identified in the final VFC Program. Parties who wish to take advantage of the exemption must have met all of the applicable requirements of the final VFC Program and the conditions of the exemption. One of those conditions is receipt of a no action letter from the Employee Benefits Security Administration (EBSA) with respect to the transaction at issue. In conjunction with the final VFC Program, PTE 2002–51, as amended, has also been determined to be significant under section 3(f)(4) of the Executive Order. Accordingly the Department has assessed the costs and benefits of this amendment to PTE 2002–51.

PTE 2002–51 provides relief from the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. In general, the exemption enhances the benefits of participation in the VFC Program by granting relief from excise taxes under section 4975 for certain breaches of fiduciary duty that are prohibited transactions. The purpose of the VFC Program is to encourage the correction of breaches of fiduciary duty, resulting in the recovery of lost earnings or profits for the benefit of plan participants and beneficiaries. The class exemption will have positive economic effects by eliminating excise taxes and promoting increased participation in the VFC Program.

The amendment to PTE 2002–51 is being adopted in connection with the final VFC Program, which is published in this issue of the **Federal Register**. The class exemption has been amended to provide relief for two additional transactions. One of the transactions was introduced in the April 2005 VFC Program and the proposed Amendment to PTE 2002–51. That transaction has now become effective in the amended exemption. The transaction concerns the purchase of an asset (including real property) by a plan where the asset has later been determined to be illiquid as described in the final VFC Program, and/or the subsequent sale of the illiquid asset by the plan in a transaction that was prohibited pursuant to section 4975(c)(1) of the Code. The second transaction included in this amendment covers the use of plan assets to pay expenses to a service provider for services that are properly characterized as settlor expenses, provided such payments were not

expressly prohibited in the plan documents.

The Department has assumed, based on experience, that not all applicants who apply to the final VFC Program will take advantage of the excise tax relief provided under the exemption, either by choice or because the exemption does not provide relief for the transaction they are correcting under the final VFC Program. The Department has more specifically calculated that the number of applicants who will rely on the class exemption will equal approximately one-fifth of the total number of applicants, or 250 applicants ( $.2 \times 1,250$ ).

#### Paperwork Reduction Act

The amendment to PTE 2002–51 engenders no significant new paperwork burden for the notification and other written documentation requirements in comparison with the previous version of this exemption. Applicants to the final VFC Program who rely on the amended class exemption may be eligible, as well, for a new optional provision. Under this option, qualifying applicants may choose not to send notices to interested persons. The conditions of the optional provision are described in detail in the amendment to PTE 2002–51. However, while these particular parties would be relieved of the responsibility to send notices to interested persons, they do need to provide the Department with certain additional documentation on their calculations and the payment they remitted to the plan when submitting their application to the VFC Program. Documentation of the calculation of the amount of excise tax otherwise due consists of a copy of a completed IRS Form 5330 or equivalent written evidence containing the information required by IRS Form 5330; proof of payment to the plan is required. The Department has determined that the difference between the paperwork burden of plans using the optional provision versus the burden of those that do not is negligible.

Service providers will likely do the work on behalf of parties relying on PTE 2002–51. For parties who do not rely on the optional provision, service providers will prepare and send out notices to interested persons. A copy of the notice must be provided to the Department. As to those parties that opt not to provide notice, service providers will submit to the Department evidence of the required calculations described in IRS Form 5330 and evidence of the payment to the plan of the excise tax otherwise payable along with the application to the final VFC program. These respective tasks should require no more than an hour for

each service provider to complete. Assuming that as many as one-fifth of the annual 1,250 applicants to the VFC Program (250) also use the class exemption, the burden cost posed by PTE 2002–51 equals \$8,625 ( $\$34.50 \times 1 \text{ hr.} \times 250$ ). One-half of the parties using the exemption (125) are estimated to be eligible to take advantage of PTE 2002–51's new optional provision, thereby being relieved of the notice requirement, while the other half of the parties using the exemption (125) are estimated as being required to send notices to interested persons. Notices will be sent, on average, to 136 interested persons for each plan. PTE 2002–51 permits notification of interested persons by electronic means. The Department assumes that only 62 percent of the parties using the exemption will send notices to interested persons by first class mail. Therefore, the total number of notices sent by mail will be 10,540 ( $136 \times 125 \times 62 \text{ percent}$ ). The remaining 38 percent will be delivered electronically. The total mailing costs arising from the class exemption will equal roughly \$4,427 ( $\$0.42 \times 10,540 \text{ mailings}$ ). The Department assumes, however, that all applicants who send interested party notices will send the Department its copy of the notice by mail, using certified or overnight delivery services and that this copy will be included in the application package described above under costs for the VFC Program. The annual mailing costs for notice to interested persons and the Department is therefore estimated at \$4,427. In sum, the burden costs attributable to the amended PTE 2002–51 will be approximately \$13,052 ( $\$8,625 + \$4,427$ ).

Persons are not required to respond to the revised information collection unless it displays a currently valid OMB control number 1210–0118.

#### Description of the Exemption

Title I of ERISA, which establishes certain standards of conduct for fiduciaries of employee benefit plans covered by ERISA, includes provisions prohibiting fiduciaries from causing a plan to engage in certain classes of transactions with persons defined as parties in interest. Similarly, Title II of ERISA prohibits plans described in section 4975(e)(1) of the Code from engaging in certain classes of transactions with persons defined under the Code as disqualified persons. Generally, such transactions are subject to taxation under section 4975 of the Code.

The VFC Program was adopted by the Department on a permanent basis in

March 2002.<sup>2</sup> Under the VFC Program, persons who are potentially liable for a breach of fiduciary duty can avoid the possibility of civil investigations and/or civil actions initiated by the Department for that breach and the imposition of civil penalties under section 502(l) or 502(i) of ERISA if they satisfy the conditions for correcting the breach as described in the VFC Program. The VFC Program was based on the Department's experience with the Pension Payback Program, 61 FR 9203 (March 7, 1996), and continued public interest in such correction programs. In response to comments received on the VFC Program requesting that the Department provide relief from the excise taxes imposed by section 4975 of the Code for prohibited transactions, the Department proposed a class exemption for four of the eligible transactions described in the VFC Program. A final exemption, PTE 2002-51, was published in the **Federal Register** on November 25, 2002. The four eligible transactions described in the exemption are as follows:

(A) The failure to transmit participant contributions to a pension plan within the time frames described in the Department's regulations at 29 CFR section 2510.3-102 and/or the failure to transmit participant loan repayments to a pension plan within a reasonable time after withholding or receipt by the employer.

(B) The making of a loan by a plan at a fair market interest rate to a disqualified person<sup>3</sup> with respect to the plan.

(C) The purchase or sale of an asset (including real property) between a plan and a disqualified person at fair market value.

(D) The sale of real property to a plan by the employer and leaseback of such property to the employer, at fair market value and fair market rental value, respectively.

Based on growing public utilization and experience in administering the VFC Program, EBSA decided to amend and modify the VFC Program to expand the categories of eligible transactions and to make it more useful to employers

and others who wish to avail themselves of the relief provided. Specifically, the VFC Program now includes relief under Title I of ERISA for the purchase of an asset by a plan where the asset was later determined to be illiquid as described under the final VFC Program.

In this regard, the final VFC Program provides relief for both the plan's original acquisition of the asset that was later determined to be illiquid under the final VFC Program, as well as the correction involving the sale of such asset in a transaction that violates the prohibited transaction rules under Title I of ERISA, and section 4975 of the Code provides that all of the requirements of the final VFC Program are met. Similarly, the class exemption has been amended to provide relief from the excise taxes imposed by section 4975 of the Code for both the plan's original acquisition and/or the subsequent sale of the illiquid asset by the plan in a transaction prohibited pursuant to section 4975(c)(1), provided all the requirements of the class exemption are met. Moreover, as distinguished from the other eligible transactions covered in the VFC Program<sup>4</sup> and PTE 2002-51, correction in the VFC Program for this category of eligible transactions will involve a prohibited transaction.

The other category of transactions being restructured under the final VFC Program (see Section 7.6) includes the use of plan assets to pay expenses, including commissions or fees, that should have been paid by the plan sponsor, to a service provider for: (i) services provided in connection with the administration and maintenance of the plan, in circumstances where a plan provision requires that such plan expenses be paid by the plan sponsor, or (ii) services provided in connection with the establishment, design, or termination, of the plan, which relate to the activities of the plan sponsor in its capacity as settlor. The class exemption is being amended to provide excise tax relief where plan assets are used to pay for services appropriately characterized as settlor expenses, which relate to the activities of the plan sponsor in its capacity as settlor.

#### Discussion of Written Comments Received

The Department received two letters commenting on the proposed amendments to PTE 2002-51. One commenter suggested expanding the scope of the VFC Program to include

relief for plans that are subject to the prohibited transaction excise tax described in section 4975 of the Code, but are not subject to Title I of ERISA, including individual retirement accounts (IRAs) described in section 408 of the Code. This commenter suggested that certain VFC Program applicants (e.g., financial institutions) may have caused ERISA-covered plans, as well as plans that are subject only to the prohibited transaction provisions of the Code, to engage in prohibited transactions. According to the commenter, plan officials with respect to these IRAs and certain other plans are unable to participate in the VFC Program and, therefore, are not eligible for relief under PTE 2002-51. Accordingly, these plan officials must seek excise tax relief through an individual exemption application submitted to the Department.<sup>5</sup> The commenter believes that it would be administratively convenient if the Department extended VFC Program eligibility to encompass the full range of plans that are subject to section 4975 of the Code. The Department has determined that it cannot expand the VFC Program as requested by the commenter, since it lacks jurisdiction to issue a no action letter under the VFC Program with respect to violations of the prohibited transaction provisions under the Code. Consequently, in light of the decision not to expand the VFC Program to include plans only subject to section 4975 of the Code, the Department does not believe that it would be appropriate to modify the final exemption as requested by the commenter. Notwithstanding the foregoing, the Department wishes to take the opportunity to state that the grant of this amendment does not foreclose its future consideration of individual exemption requests for transactions involving IRAs that are outside the scope of relief provided by both the VFC Program and the class exemption under circumstances when, for example, a financial institution received a no action letter applicable only to plans subject to the Program for a transaction(s) that involved both plans and such IRAs. The Department cannot provide assurances in advance that an individual exemption will be issued with respect to a particular transaction involving an IRA, however, interested persons are encouraged to contact the Department to discuss the particular facts of their case.

<sup>5</sup> PTE 2002-51 requires that a VFC Program applicant comply with all of the applicable requirements of the VFC Program and receive a no action letter with respect to transactions corrected under the VFC Program.

<sup>2</sup> 67 FR 15062 (Mar. 28, 2002). Prior to adoption in March 2002, the VFC Program was made available on an interim basis during which the Department invited and considered public comments on the Program. (See 65 FR 14164, Mar. 15, 2000).

<sup>3</sup> The Department notes that the term "party in interest" was used in the description of the eligible transactions covered under PTE 2002-51 although that exemption provided, and this amendment will provide, relief only from the sanctions imposed under section 4975 of the Code, which prohibits certain transactions between a plan and a "disqualified person." For purposes of clarity, references in the exemption to a "party in interest" are changed to "disqualified person."

<sup>4</sup> Under the VFC Program prior to the current revision, correction could not be achieved by engaging in a new prohibited transaction. See VFC Program, 67 FR 15073 (Mar. 28, 2002) Section 2(d).

The Internal Revenue Service (the Service) submitted a comment requesting a modification to the current requirement in PTE 2002-51 which provides that an applicant must notify interested persons in writing of the transactions for which relief is being sought pursuant to the VFC Program and this exemption.<sup>6</sup> The Service requested that the notice requirement not apply in those situations where: (a) The excise tax due under section 4975 of the Code for a failure to timely transmit participant contributions and loan repayments is less than or equal to \$100.00; (b) the excise tax that otherwise would be owed and payable to the United States Treasury is contributed to the plan; and (c) the contribution is allocated to the accounts of the plan's participants and beneficiaries in a manner consistent with the plan's provisions concerning the allocation of plan earnings. Lastly, the Service noted that, under the circumstances outlined above, employers that meet the applicable conditions of the class exemption would not be required to file a Return of Excise Taxes Related to Employee Benefit Plans (IRS Form 5330) with the IRS. After considering the issue, the Department has determined to modify the final exemption as requested by the Service. The Department notes that, for the purpose of determining whether the excise tax due under section 4975 of the Code for failing to timely transmit participant contributions and loan repayments is less than or equal to \$100, and determining the amount to be contributed to the plan, an applicant may calculate the excise tax that would otherwise be imposed by section 4975 of the Code based upon the Lost Earnings amount computed using the Online Calculator.

### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a fiduciary or other disqualified person with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply, the requirement that all assets of an employee benefit plan be held in trust by one or more trustees, and the general fiduciary responsibility provisions of ERISA which require, among other things, that a fiduciary

discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The amendment will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code.

(3) In accordance with section 4975(c)(2) of the Code, the Department finds that the amendment is administratively feasible, in the interests of plans and their participants and beneficiaries, and protective of the rights of participants and beneficiaries of such plans.

(4) The amendment is supplemental to and not in derogation of other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) The amendment is applicable to a transaction only if the conditions specified in the class exemption are satisfied.

### Amendment

Accordingly, the following amendment to Sections I and II of PTE 2002-51 is granted under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, Aug. 10, 1990).

### Section I. Eligible Transactions

The sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the following eligible transactions described in Section 7 of the Voluntary Fiduciary Correction (VFC) Program, published simultaneously in this issue of the **Federal Register**, provided that the applicable conditions set forth in Sections II., III. and IV. are met:

A. Failure to transmit participant contributions to a pension plan within the time frames described in the Department's regulation at 29 CFR section 2510.3-102, and/or the failure to transmit participant loan repayments to a pension plan within a reasonable time after withholding or receipt by the employer. (See VFC Program, Section 7.1(a)).

B. Loan at a fair market interest rate to a disqualified person with respect to

a plan. (See VFC Program, Section 7.2(a)).

C. Purchase or sale of an asset (including real property) between a plan and a disqualified person at fair market value. (See VFC Program, Sections 7.4(a) and 7.4(b)).

D. Sale of real property to a plan by the employer and the leaseback of the property to the employer, at fair market value and fair market rental value, respectively. (See VFC Program, Section 7.4(c)).

E. Purchase of an asset (including real property) by a plan where the asset has later been determined to be illiquid as described under the VFC Program in a transaction which was a prohibited transaction pursuant to section 4975(c)(1) of the Code, or in which the asset was acquired from an unrelated third party, and/or the subsequent sale of such asset in a transaction prohibited pursuant to section 4975(c)(1). (See VFC Program, Section 7.4(f)).

F. Use of plan assets to pay expenses, including commissions or fees, to a service provider (e.g., attorney, accountant, recordkeeper, actuary, financial advisor, or insurance agent) for services provided in connection with the establishment, design or termination of the plan (settlor expenses)<sup>7</sup>, which relate to the activities of the plan sponsor in its capacity as settlor, provided that the payment of the settlor expense was not expressly prohibited by a plan provision relating to the payment of expenses by the plan. (See VFC Program, section 7.6(b)).

### Section II. Conditions

A. With respect to a transaction involving participant contributions or loan repayments to pension plans described in Section I.A., the contributions or repayments were transmitted to the pension plan not more than 180 calendar days from the date the amounts were received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the date the amounts otherwise would have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

B. With respect to the transactions described in Sections I.B., I.C., I.D., or I.E., the plan assets involved in the transaction, or series of related transactions, did not, in the aggregate, exceed 10 percent of the fair market value of all the assets of the plan at the time of the transaction.

C. The fair market value of any plan asset involved in a transaction described

<sup>6</sup> The class exemption mandates that notice be provided to interested persons of the transaction and the method of correction.

<sup>7</sup> See Advisory Opinion 2001-01A (Jan. 18, 2001).

in Sections I.C., I.D., or I.E. was determined in accordance with section 5 of the VFC Program.

D. The terms of a transaction described in Sections I.B., I.C., I.D., I.E., or I.F., were at least as favorable to the plan as the terms generally available in arm's-length transactions between unrelated parties.

E. With respect to any transaction described in Section I., the transaction was not part of an agreement, arrangement or understanding designed to benefit a disqualified person.

F. (1) With respect to any transaction described in Section I., the applicant has not taken advantage of the relief provided by the VFC Program and this exemption for a similar type of transaction(s) identified in the current application during the period which is three years prior to submission of the current application.

(2) Notwithstanding the foregoing, Section II.F.(1) shall not apply to an applicant provided that:

(a) The applicant was a broker-dealer registered under the Securities Exchange Act of 1934, a bank supervised by the United States or a State thereof, a broker-dealer or bank subject to foreign government regulation, an insurance company qualified to do business in a State, or an affiliate thereof;

(b) The applicant was a disqualified person (including a fiduciary) solely by reason of providing services to the plan or solely by reason of a relationship to such service provider described in section 4975(e)(2)(F) and (G) of the Code;

(c) Neither the applicant nor any affiliate (i) was a fiduciary (within the meaning of section 3(21)(A) of ERISA and 4975(e)(3) of the Code) with respect to the assets of the plan involved in the transaction and (ii) used its discretion to cause the plan to engage in the transaction;

(d) Individuals acting on behalf of the applicant had no actual knowledge or reason to know that the transaction was not exempt pursuant to a statutory or administrative exemption under ERISA and/or the Code; and

(e) Prior to the transaction, the applicant established written policies and procedures that were reasonably designed to ensure compliance with the prohibited transaction rules and the applicant engaged in periodic monitoring for compliance.

G. With respect to a transaction involving a sale of an illiquid asset under the VFC Program described in Section I.E., the plan paid no brokerage fees, or commissions in connection with the sale of the asset.

H. With respect to any transaction described in Section I.F., the amount of plan assets involved in the transaction or series of related transactions did not, in the aggregate, exceed the lesser of \$10,000 or 5% of the fair market value of all the assets of the plan at the time of the transaction.

### Section III. Compliance With the VFC Program

A. The applicant has met all of the applicable requirements of the VFC Program.

B. EBSA has issued a no action letter to the applicant pursuant to the VFC Program with respect to a transaction described in Section I.

### Section IV. Notice

A. Written notice of the transaction(s) for which the applicant is seeking relief pursuant to the VFC Program, and this exemption, and the method of correcting the transaction, was provided to interested persons within 60 calendar days following the date of the submission of an application under the VFC Program. A copy of the notice was provided to the appropriate Regional Office of the United States Department of Labor, Employee Benefits Security Administration, within the same 60-day period, and the applicant indicated the date upon which notice was distributed to interested persons. Plan assets were not used to pay for the notice. The notice included an objective description of the transaction and the steps taken to correct it, written in a manner reasonably calculated to be understood by the average Plan participant or beneficiary. The notice provided for a period of 30 calendar days, beginning on the date the notice was distributed, for interested persons to provide comments to the appropriate Regional Office. The notice included the address and telephone number of such Regional Office.

B. Notice was given in a manner that was reasonably calculated, taking into consideration the particular circumstances of the plan, to result in the receipt of such notice by interested persons, including but not limited to posting, regular mail, or electronic mail, or any combination thereof. The notice informed interested persons of the applicant's participation in the VFC Program as amended and intention of availing itself of relief under the exemption.

C. Notwithstanding the foregoing, Section IV.A. and B. shall not apply to a transaction described in Section I.A., provided that (i) the applicant under the VFC Program has met all of the other Program requirements; (ii) the amount

of the excise tax that otherwise would be imposed by section 4975 of the Code with respect to any transaction(s) described in Section I.A. would be less than or equal to \$100.00; (iii) the amount of the excise tax that otherwise would be imposed by section 4975 of the Code was paid to the plan and allocated to the participants and beneficiaries in the same manner as provided under the plan with respect to plan earnings; and (iv) the applicant under the VFC Program provides a copy of a completed IRS Form 5330 or written documentation containing the information required by IRS Form 5330 and proof of payment with the submission of the application to the appropriate EBSA Regional Office. For the sole purpose of determining whether the excise tax due under section 4975 of the Code on the "amount involved" with respect to the prohibited transaction involving the failure to timely transmit participant contributions and loan repayments is less than or equal to \$100, an applicant may calculate the excise tax due based upon the Lost Earnings amount computed using the Online Calculator.

Signed at Washington, DC, this 12th day of April, 2006.

**Ivan L. Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

[FR Doc. 06-3675 Filed 4-18-06; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

#### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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 (PRA95) [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 Bureau of Labor Statistics (BLS) is soliciting