

## DEPARTMENT OF JUSTICE

## 28 CFR Part 58

[Docket No. EOUST 100]

RIN 1105-AB17

**Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies and Approval of Providers of a Personal Financial Management Instructional Course by United States Trustees****AGENCY:** Executive Office for United States Trustees, Justice.**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule ("rule") sets forth the proposed application procedures to be used by United States Trustees for approval of nonprofit budget and credit counseling agencies ("agencies") and for approval of providers of a personal financial management instructional course ("providers") under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Under the BAPCPA, individual debtors are required to consult with approved agencies to receive a briefing on the opportunities for credit counseling and a budget analysis, within 180 days before filing for bankruptcy relief, and to consult with approved providers of a personal financial management instructional course, after filing for relief, before receiving a discharge of their debts. The BAPCPA also sets forth procedures and standards for the United States Trustees to use in approving agencies and providers for subsequent inclusion on a publicly available agency list and provider list in each federal judicial district where they are deemed qualified to counsel or instruct individuals.

**DATES:** *Effective Date:* July 5, 2006.*Comment Date:* Comments due by September 5, 2006.

**ADDRESSES:** Comments on the rule should be submitted by e-mail to [ust.ccrules.comment@usdoj.gov](mailto:ust.ccrules.comment@usdoj.gov), by telefax to 202-514-4100, or by postal mail to: Executive Office for United States Trustees ("EOUST"), Credit Counseling Application Processing, 20 Massachusetts Ave, 8th floor, Washington, DC 20530. To ensure proper handling, please reference EOUST Docket No. 100 on your correspondence. You may view an electronic version of this proposed rule at [www.regulations.gov](http://www.regulations.gov). You may also comment via the Internet using the [www.regulations.gov](http://www.regulations.gov) comment form for this regulation. When submitting comments electronically you must

include EOUST Docket No. 100 in the subject box. Comments filed after the end of the comment period may be considered to the extent feasible. Comments received are public records.

**SUPPLEMENTARY INFORMATION:** This rule implements the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (enacted April 20, 2005), Public Law 109-8, sections 106(a), 119 Stat. 37 (codified at 11 U.S.C. 109(h)) and 106(e)(1), 119 Stat. 38 (codified at 11 U.S.C. 111(a)-(e)). Under the BAPCPA, which became effective on October 17, 2005, individual debtors are required to consult with approved agencies to receive a briefing on the opportunities for credit counseling and a budget analysis, within 180 days before filing for bankruptcy relief. 11 U.S.C. 109(h)(1). Debtors are also required to participate in a personal financial management instructional course with approved providers to receive instruction on how to establish and maintain a budget, how to manage one's money, and how to use credit wisely. The debtor will not be granted a discharge if this instruction is not obtained. 11 U.S.C. 727(a)(11), 1328(g)(1), 1141(d)(3)(c).

11 U.S.C. 111(b) provides that, in applicable jurisdictions, the United States Trustee shall only approve an agency or provider after the United States Trustee has thoroughly reviewed, under the standards set forth in BAPCPA, the qualifications of the agency or provider and the services that will be offered by such agency or provider, and has determined that such agency or provider fully satisfies the standards. The United States Trustee may require such agency or provider that has sought approval to provide information with respect to such review.

According to the new Bankruptcy Code provision, 11 U.S.C. 111, the United States Trustee shall only approve an agency that demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides.

Under 11 U.S.C. 111, the United States Trustee shall only approve a provider that demonstrates that it will provide trained personnel with adequate experience and training in providing effective instruction and services, provide learning materials and teaching methodologies designed to assist debtors in understanding personal

financial management, provide adequate facilities situated in reasonably convenient locations where the instructional course is offered, except that such facilities may include the provision of such instructional course by telephone or through the Internet, if such instructional course is effective, and prepare and retain reasonable records to permit evaluation of the effectiveness of such instructional course by the EOUST and the United States Trustee.

As Congress stated in its conference report, "the purpose of the bill is to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system and ensure that the system is fair for both debtors and creditors \* \* \* the bill requires debtors to receive credit counseling before they can be eligible for bankruptcy relief so that they will make an informed choice about bankruptcy, its alternatives, and consequences \* \* \* the bill also penalizes a creditor who unreasonably refuses to negotiate a pre-bankruptcy debt repayment plan with a debtor." H.R. Rep. 109-31, pt. 1 at 2.

By submitting an application, an agency or provider is declaring under penalty of perjury that the information on the application is true, correct, accurate, and complete.

The remaining requirements set forth in the amending regulatory text are self-explanatory. In determining whether an agency or provider meets the qualifications for approval and inclusion on the approved list, the EOUST and United States Trustee may rely on the application submitted by the agency or provider.

The application form that credit counseling agencies must use to apply for approval under these regulations is EOUST-CC1, "*Application for Approval as a Nonprofit Budget and Credit Counseling Agency*," which is available on the EOUST's Web site along with the instructions. The application form that providers of an instructional course must use to apply for approval under these regulations is EOUST-DE1, "*Application for Approval of Provider of a Personal Financial Management Instructional Course*," which is also available on EOUST's Web site along with the instructions. Completed and signed credit counseling application forms should be mailed to the EOUST, Credit Counseling Application Processing, 20 Massachusetts Ave., 8th Floor, Washington, DC 20530. Completed and signed debtor education provider application forms should be mailed to the EOUST, Debtor Education Processing, 20 Massachusetts Ave. 8th

Floor, Washington, DC 20530. Applicants should refer to the EOUST's Web site (<http://www.usdoj.gov/ust>) to determine the current mailing address at the time they submit subsequent applications.

#### **Executive Order 12866**

This rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b). The Principles of Regulation. The Department has determined that this rule is a "significant regulatory action" and accordingly this rule has been reviewed by the Office of Management and Budget.

The Department has also assessed both the costs and benefits of this rule as required by section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. The costs considered in this regulation include the costs of submission of applications required if an agency or provider wishes to be approved for inclusion on the approved list. Costs considered also include the cost of establishing and maintaining the approved list in each Federal judicial district. In an effort to minimize the applicant's burden, the application keeps the number of items on the application to a minimum.

The costs to applicants will be minimal. The only anticipated costs are the photocopying and mailing of the requested records, along with the salaries of the employees who complete the applications equaling approximately \$500 per application for agencies, and \$300 per application for providers. These costs are inherent in the qualification process mandated by Congress. Those applying for approval as credit counseling agencies must also obtain a surety bond in the amount of two percent of the agency's prior year's gross disbursements made from trust accounts or equal to the average daily balance maintained in all trust accounts for the six months prior to submission of the application. In addition, credit counseling agencies must obtain employee fidelity insurance that equals fifty percent of the surety bond. Agencies are entitled to receive a credit for any state bonds already obtained.

The number of applicants that will ultimately apply is unknown, though the EOUST believes the number may reach approximately eight hundred applicants for agencies and eight hundred for providers. The annual hour burden on agencies is estimated to be ten (10) hours, and the annual hour burden on providers is estimated to be eight (8) hours. This estimate is based

on consultations with individuals in the credit counseling and debtor education industries and from the experience of applicants who completed the initial applications.

The benefits of the rule clearly outweigh the costs because the costs are the lowest costs feasible to comply with the requirement that a list be established as required pursuant to Public Law No. 109-8, section 106(e)(1).

#### **Executive Order 13132**

This rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### **Paperwork Reduction Act**

The information collection requirements contained in this rule are currently under pending review by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520, and assigned OMB control number 1105-0084, for the "Application for Approval as a Nonprofit Budget and Credit Counseling Agency," form number EOUST-CC1. The information collection in connection with the "Application for Approval as a Provider of a Personal Financial Management Instructional Course," form number EOUST-DE1, has been assigned OMB control number 1105-0085. The Department notes that full notice and comment opportunities were provided to the general public through the Paperwork Reduction Act process, and that the applications and associated requirements were modified to take into account the concerns of those who commented in this process.

Further comments and suggestions on these collections should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806.

Comments should address one or more of the following four points: (1) Evaluate whether the collections are necessary for the proper performance of the functions of the United States Trustee, including whether the information will have practical utility; (2) evaluate the accuracy of the agency

or provider's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) 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).

The form "Application for Approval as a Nonprofit Budget and Credit Counseling Agency" EOUST-CC1, is required to evaluate whether the applicants met the established qualifications for credit counseling. The respondents are credit counseling agencies who seek to counsel individuals before they file bankruptcy. The number of applicants for the next year is unknown, though the EOUST estimates there will be approximately 800 applicants, who will complete one application, or a renewal application if submitted previously. The estimated burden imposed on the applicant is ten hours, each, totaling 8,000 estimated annual burden hours.

The form "Application for Approval as a Provider of a Personal Financial Management Instructional Course," EOUST-DE1, is required to evaluate whether the applicants met the established qualifications for providers of a personal financial management instructional course. The respondents are providers who seek to educate individuals after they file bankruptcy. The number of applicants for the next year is unknown, though EOUST estimated there may be approximately 800 applicants, who will complete one application, or a renewal application if submitted previously. The estimated burden imposed on the applicant is eight hours, each, totaling 6,400 estimated annual burden hours.

#### **Regulatory Flexibility Act**

This interim rule does not fall within the definition of "rule" in the Regulatory Flexibility Act, 5 U.S.C. 601(2) because there is good cause for not publishing it as a general notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act.

#### **Unfunded Mandates Reform Act of 1995**

This rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C.

1531. This rule does not include a Federal mandate that may result in the annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act (\$123 million in 2005, adjusted annually for inflation). Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### **Administrative Procedure Act, 5 U.S.C. 553**

This rule provides that nonprofit budget and credit counseling agencies and providers of a personal financial management instructional course desiring to be included on a publicly available list of agencies or providers deemed qualified to counsel or instruct debtors in each federal judicial district shall submit a specified application to the United States Trustee. Under the new Bankruptcy Code provisions, an agency or provider may initially be approved for a period of time not to exceed six months. Agencies or providers must then re-apply for approval annually. In order to have a sufficient number of qualified agencies and providers operating for debtors to receive the requisite credit counseling and debtor education, the United States Trustee must rapidly gather information about agencies and providers through an application process. This information must be gathered with enough time to allow the United States Trustee to review the application materials in order to approve only qualified agencies and providers. Without this information, the United States Trustee will be unable to perform its Congressionally mandated duties.

Existing agencies and providers were approved for a six-month probationary period beginning on September 16, 2005. In light of the imminent expiration of the six-month probationary period for a large group of

initially approved agencies and providers, the Department has determined that there is "good cause" to implement this application process immediately, and that delaying the implementation in order to provide the Administrative Procedure Act's normal pre-promulgation notice-and-comment period would be impracticable and contrary to the public interest. 5 U.S.C. 553(b)(B). This is especially true given that the public has already had an opportunity to comment during the Paperwork Reduction Act review process for the applications and that the Department did make modifications pursuant to public commenters' suggestions.

For the same reasons, the Department also finds "good cause" for exempting this rule from the provision of the Administrative Procedure Act providing for a delayed effective date. U.S.C. 553(d). Delaying the opportunity for agencies and providers to submit an application and to seek to be included on the approved list would be contrary to the public interest since there must be sufficient agencies to offer services after the six month probationary term expires and without the availability of approved agencies, individuals may not have access to bankruptcy relief. In addition, without the availability of approved providers, debtors may not be able to obtain a discharge of debts because the personal financial management instructional course is mandatory before a discharge may be granted. In order for the United States Trustee to evaluate the qualifications of the agencies and providers, an application must be available for the agencies and providers to complete.

The Department welcomes post-promulgation comments regarding this interim final rule including the applications and appendices, which can be viewed at the EOUST's Web site at <http://www.usdoj.gov/ust>, and will consider those comments carefully in continuing to review the application process in the future. The Department also notes that it will publish more comprehensive regulations later this year through a notice of proposed rulemaking with full opportunity for public notice and comment.

#### **Privacy Act Statement.**

Section 111 of title 11, United States Code, authorizes the collection of this information. The primary use of this information is by the Executive Office for United States Trustee to approve nonprofit budget and credit counseling agencies and to approve providers of personal financial management instructional courses. Additional

disclosure of the information may be to district and regional offices of each United States Trustee. The information will not be shared with any other agencies unless allowed by law.

Public Law 104-134 (April 26, 1996) requires that any person doing business with the federal government furnish a Social Security Number or Tax Identification Number. This is an amendment to title 31, section 7701. Furnishing the Social Security Number, as well as other data, is voluntary, but failure to do so may delay or prevent action on the application.

#### **List of Subjects in 28 CFR Part 58**

Administrative practice and procedure, Bankruptcy, Credit, Debts.

■ Accordingly, for the reasons set forth in the preamble, part 58 of chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

#### **PART 58—[AMENDED]**

■ 1. The authority citation for part 58 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 509, 510, 586; 11 U.S.C. 109(h), 111, 727(a)(11), 1328(g)(1), 1141(d)(3)(c).

■ 2. Add §§ 58.15, 58.16, and 58.17 to read as follows:

#### **§ 58.15 Qualifications for approval as a nonprofit budget and credit counseling agency.**

(a) *Definition of agency.* As used in this section the term "agency" means nonprofit budget and credit counseling agency.

(b) *Qualifications.* To be included on the list of approved nonprofit budget and credit counseling agencies under 11 U.S.C. 111 an agency shall meet the qualifications set forth in paragraphs (d) through (i) of this section. An agency shall continuously meet these qualifications in order to remain included on this list when the list is updated thereafter.

(c) *Preemption.* Nothing contained in these regulations or the related application, appendices or instructions is intended to preempt any applicable law or regulation governing the conduct or operations of an agency.

(d) *Structure and organization.* A nonprofit budget and credit counseling agency must:

(1) Be organized and operated as a nonprofit entity;

(2) Be in compliance with all applicable laws and regulations of the United States and each state, commonwealth, district, or territory of the United States in which the agency conducts credit counseling services;

(3) Have an independent board of directors the majority of which:

(i) Are not employed by such agency; and

(ii) Will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency;

(4) Ensure that no member of the board of directors or trustees, officer, manager, employee, counselor, or agent is a United States Trustee Program employee, a panel or standing trustee, a Federal judge, a Federal court employee, a certified public accountant that performs audits of the agency's trust accounts, or a person with a financial or familial connection to the United States Trustee Program.

(5) Avoid any conduct or transactions that generate or create the appearance of generating a private benefit for any individual or group related or connected to the Agency.

(e) *Fees.* If a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee; the agency's criteria for providing services without a fee or at a reduced rate must be provided to the United States Trustee. In addition, an agency shall:

(1) Have sufficient computer capabilities or secure access to issue certificates of completion of credit counseling in conformance with the directives established by the EOUST;

(2) Not withhold a certificate of counseling completion because of a client's inability to pay;

(3) Advise the client of the fee schedule before services are provided and inform the client that services are available for free or at a reduced rate based on a client's ability to pay;

(4) Issue a certificate to any client who completes credit counseling and a budget analysis, regardless of whether a client agrees to participate in a debt management plan and without regard to the client's ability to pay;

(5) Issue the certificate within one business day to a client after completion of the required counseling or upon the earlier of the following:

(i) A request by a client for the issuance of a certificate; or

(ii) The completion or termination of a counseling session, which may include the administration of a debt management plan;

(6) Not charge a separate fee for the issuance of a certificate of counseling unless the agency has clearly disclosed such fee before the initial credit counseling session;

(7) Issue a certificate to each spouse whether counseling was provided individually or in a joint session;

(8) Maintain adequate records to issue replacement certificates and to verify the authenticity of certificates filed by bankruptcy debtors;

(9) Provide full disclosures to a client, including funding sources, counselor qualifications, possible impact on credit reports, the cost of services to be paid by the client and how such costs will be paid, before services are rendered and regardless of whether the client enters into a debt management plan.

(f) *Standards for counseling and counselors.* Agencies and credit counselors shall not, unless otherwise authorized by law, provide legal advice on any matter. Agencies and credit counselors shall:

(1) Provide adequate briefings, budget analysis, and credit counseling services to clients lasting an average of 60 to 90 minutes in length that include an outline of available counseling opportunities to resolve a client's credit problems, an analysis of the client's current financial condition, discussion of the factors that caused such financial condition, and assistance in developing a plan to respond to the client's problems without incurring negative amortization of debt;

(2) Provide trained counselors who receive no commissions or bonuses based on the outcome of the counseling services provided by such agency, and who have adequate experience, and have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in sub-paragraph (1) of this paragraph. A counselor shall be deemed to have adequate training and experience to provide credit counseling and budget analysis if the counselor is accredited or certified by a recognized independent organization, or has successfully completed a course of study acceptable to the United States Trustee and has worked a minimum of six months in a related area, including personal finance, budgeting, and debt management. The United States Trustee Program does not endorse any specific course or certification program;

(3) Demonstrate adequate experience and background in providing credit counseling, which means, at a minimum, that an agency must:

(i) Have experience in providing credit counseling for the previous two years. Alternatively, if an agency fails to meet the two-year requirement, the agency must currently employ in each office location that serves clients at least one office supervisor with experience and background in providing credit counseling for no less than two of the five years preceding the relevant application date, including only

experience obtained on or after January 1, 2003; and

(ii) If an agency offers telephone or Internet credit counseling services, the agency must, in addition to all other requirements, demonstrate sufficient experience and proficiency in designing and providing such services over the telephone and/or Internet, including verification procedures to identify the person receiving the counseling services and to ensure that the counseling services are properly completed.

(g) *Activity report.* Upon application for annual approval, the agency must furnish an estimate of the information requested in Appendix E, "*Activity Report for Approved Agencies*," of the application projected to the end of either the probationary period or annual period. Within thirty (30) days after the completion of either the probationary period or annual period, the agency must furnish an amended Appendix E which includes the actual information.

(h) *Agency declarations and acknowledgments.* (1) The agency's president, chairman, trustee, or other authorized official is required to declare, by signing the application, that such individual is authorized to complete the application on behalf of the agency; that such individual has read and knows the contents of the application and all enclosures and attachments submitted; and that such individual affirms under penalty of perjury that all of the representations and statements contained therein are true and correct to the best of such individual's knowledge, information, and belief;

(2) By executing and submitting the "*Application for Approval as a Nonprofit Budget and Credit Counseling Agency*," the agency acknowledges and agrees to abide by the prohibitions, limitations, and obligations set forth in Appendix A, "*Acknowledgments, Agreements, and Declarations in Support of Application for Approval as a Nonprofit Budget and Credit Counseling Agency*," of the application which include, but are not limited to, the following:

(i) Making all records relating to the agency's compliance with 11 U.S.C. 111 available to the United States Trustee and EOUST upon request and cooperating with the United States Trustee and EOUST for any scheduled or unscheduled on-site visits and customer service audits;

(ii) Cooperating with the United States Trustee and the EOUST in timely responding to any questions or inquiries concerning the agency's operations and services;

(iii) Not excluding a creditor from a debt management plan because the creditor declines to make a "fair share" contribution to the agency;

(iv) Agreeing that any forms, agreements, contracts, or other materials provided to a client will not limit the client's right to seek damages against an agency as provided for in 11 U.S.C. 111(g)(2);

(v) Conducting a state and Federal criminal background check at least every five years for each person providing credit counseling services, if such criminal background check is authorized under state law, and not employing as a counselor anyone who has been convicted of any felony, or a crime involving fraud, dishonesty, or false statements, unless the United States Trustee determines, upon review and in his or her discretion, circumstances warrant a waiver of this employment requirement. The state criminal background check shall be conducted in the state where the counselor resides. If a criminal background check is not authorized by state law, the agency shall obtain a sworn statement from each counselor, at least every five years, which attests to whether the counselor has been convicted of any felony or a crime involving fraud, dishonesty, or false statements;

(vi) Referring clients for counseling services only to agencies that are approved by the United States Trustee;

(vii) Complying with the EOUST's directions on approved advertising, which is located in Appendix A to the application;

(viii) Not disclosing or providing to a credit reporting agency information concerning whether a client has received or sought instruction concerning credit counseling or personal financial management from an agency, and not selling information about a client to any third party without the client's written permission, regardless of whether the counseling is presented in a classroom, on the telephone, on the Internet, or any other venue;

(3) Upon request of the United States Trustee or EOUST, an agency shall submit a completed and signed tax waiver, which authorizes the United States Trustee or EOUST to seek confidential information regarding the agency from the Internal Revenue Service.

(i) *Agency financial requirements and surety bonds.* (1) If an agency offers debt management plans, the agency must have adequate financial resources to provide continuing support services for budgeting plans over the life of any

repayment plan, and provide for the safekeeping and payment of client funds, including an annual audit of the trust accounts in accordance with generally accepted auditing standards by an independent certified public accountant, and appropriate employee bonding; which includes:

(i) Depositing all client funds into a trust account insured by a Federal institution with respect to each client. The records creating the trust account must demonstrate that the trust account was established in a fiduciary capacity and must comply with the Federal institution's regulations so that each client's funds are insured up to the maximum amount allowable by the Federal institution;

(ii) Keeping and maintaining books, accounts, and records to provide a clear and readily understandable record of all business conducted by the agency; and

(iii) Obtaining a surety bond payable to the United States in an amount which is the lesser of:

(A) Two percent of the agency's prior year disbursements made from trust accounts; or

(B) Equal to the average daily balance maintained in all trust accounts for the six months prior to submission of the application. At a minimum, the bond must be \$5,000;

(2) An agency may receive an offset or credit for the surety bond amount as follows:

(i) The agency has obtained a surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit, in compliance with the requirements of the state, commonwealth, district, or territory ("state") in which the agency seeks approval from the United States Trustee;

(ii) The surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit provides protection for the clients of the agency;

(iii) The surety bond, or similar cash, securities, insurance, or letter of credit, must be written in favor of the state or the appropriate state agency; and

(iv) The offset or credit is based on the annual disbursements or average daily bank balance directly related to the clients in the particular state;

(3) An agency must have adequate employee bonding or fidelity insurance. The amount of such bonding or fidelity shall be 50 percent of the surety bond amount calculated prior to any offset/credit that the agency may receive for state bonds. At a minimum, the employee bond or fidelity insurance must be \$5,000;

(4) An agency may receive an offset or credit in the employee bond/fidelity insurance amount as follows:

(i) The agency has obtained an employee bond or fidelity insurance in compliance with the requirements of a state, commonwealth, district, or territory in which the agency seeks approval from the United States Trustee;

(ii) The deductible cannot exceed a reasonable amount considering the financial resources of the agency; and

(iii) The offset/credit is based on the annual disbursements or average daily bank balance directly related to the clients in the particular state;

(5) If the agency has contracted with another entity ("service provider") to administer any part of its debt management plan, the service provider is approved by the United States Trustee as a nonprofit budget and credit counseling agency, or the service provider is specifically covered under the agency's surety bond or has a surety bond in a sufficient amount to provide for the safekeeping of the agency's client funds, and the service provider agrees in writing to allow the United States Trustee or EOUST to audit the trust accounts maintained by the service provider and to review the service provider's internal controls and administrative procedures.

#### **§ 58.16 Procedures for inclusion on the approved list.**

(a) As used in this section the term "agency" means nonprofit budget and credit counseling agency.

(b) Each nonprofit budget and credit counseling agency seeking to be included on the list of approved agencies must complete in its entirety the application form EOUST-CC1, "Application for Approval as a Nonprofit Budget and Credit Counseling Agency" (application), including all appendices, and submit it at the address indicated on the application.

(c) The application must be executed under penalty of perjury in a manner specified in 28 U.S.C. 1746.

(d) An application may not be accepted by the EOUST unless it is complete and has been signed by an agency representative who is authorized to sign on behalf of the agency. An application that is incomplete or has been altered, amended, or changed in any respect from the application at the United States Trustee Program's Web site may not be accepted by the EOUST. Such an application will be denied, and no further action will be taken on the request for inclusion on the approved list until a new application is submitted that corrects the defects.

(e) The EOUST will not accept an application submitted by an agency on behalf of another individual or group of individuals. Each agency that desires to be included on the approved list must submit its own application.

(f) Each agency must submit a new application 45 to 60 days before expiration of its six month probationary period or annual period to be considered for annual approval. After the application is completed and signed, the originals must be mailed to the EOUST, Credit Counseling Application Processing, at the address indicated on the application. The EOUST will not accept a photocopy or facsimile of the application.

(g) An agency whose name appears on the list incorrectly may submit a written request that the name be corrected. An agency whose name appears on the list may submit a written request that its name be removed from the list.

(h) By submitting an application, the agency expressly consents to the release and disclosure of the agency's name on the approved list and the publication of the agency's contact information.

(i) Obligation to Update Information:  
(1) The agency has a continuing duty to promptly notify the EOUST of any circumstances that would materially alter or change a response to any section of the application, including but not limited to, changes in the location of primary or satellite business office(s); the principal contact person; name or fictitious name under which the agency does business; management, including the board of directors; a merger or consolidation with another entity; and the banks or financial institutions used by the agency;

(2) The agency shall request approval by amendment to its application, and prior to occurrence of the following changes:

(i) Cancellation or change in amount of the surety bond or employee fidelity bond or insurance;

(ii) The engagement of a service provider to provide counseling services to administer debt management plans, or to otherwise control or account for client funds;

(iii) An increase in the fees, contributions, or payments received from clients for counseling services or a change in the agency's policy for the reduction or waiver of fees;

(iv) Expansion into additional judicial districts or withdrawal from judicial districts where the agency is approved; and

(v) Method of delivery or type of counseling services;

(3) The agency must include with any amendment to its application, a newly executed "certification and signature;"

(4) The agency will notify the EOUST immediately upon the occurrence of any of the below noted events:

(i) Cancellation or termination of tax exempt status of the agency by the Internal Revenue Service;

(ii) Cessation of business of the agency or of any office of the agency;

(iii) Termination or cancellation of any surety bond or fidelity insurance;

(iv) Any action brought against the agency by a Federal or state agency, including, but not limited to, the Federal Trade Commission, or any action against the surety bond or fidelity insurance;

(v) Any action by a state agency to suspend the license or cancel other authorization to do business;

(vi) A suspension by an accreditation organization or denial of accreditation;

(vii) Withdrawal as an approved agency; and

(viii) Change in the agency's nonprofit status;

(j) An approved agency may not transfer or assign its United States Trustee approval under section 111 as a nonprofit budget and credit counseling agency to any party.

**§ 58.17 Procedures for denying an application or removing an agency from the approved list, and the administrative review rights granted to denied or removed agencies.**

(a) As used in this section the term "agency" means nonprofit budget and credit counseling agency.

(b) No administrative review will be granted to any applicant that submitted an incomplete application and had its application denied due to incompleteness and failed to subsequently submit a completed application.

(c) The agency shall be notified in writing of any decision to deny the agency's application or to remove the agency from the approved list ("notice"). The notice shall state the reason(s) for the decision and shall reference any documents or communications with the agency, which were relied upon in making the denial or removal decision. If such documents or communications were not provided to the United States Trustee or the EOUST by the agency, copies of the documents or communications shall be provided with the notice. The notice shall be sent to the agency by overnight courier, for delivery the next business day.

(d) The notice shall advise the agency that the decision is final unless the

agency requests in writing a review ("request for review") by the Director, Executive Office for United States Trustees ("Director"), no later than 20 calendar days from the date of issuance of the denial or removal notice. In order to be timely, a request for review must be received at the Office of the Director no later than 20 calendar days from the date of the denial or removal notice to the agency.

(e) A decision to remove an agency from the approved list shall take effect upon the expiration of an agency's time to seek review from the Director or, if the agency timely seeks such review, upon the issuance of a final written decision by the Director.

(f) Notwithstanding sub-paragraph (e) of this section, a decision to remove an agency from the approved list may include, or may later be supplemented by, an interim directive, which may immediately remove an agency from the approved list. Such an interim directive may be issued if one or more of the following are specifically found:

(1) The agency is not providing for the safekeeping and payment of client funds;

(2) The agency's surety bond has been canceled;

(3) The agency made a material false statement on the application;

(4) The agency (board of directors, officer, manager, employee, counselor, or agent) has engaged in conduct that is dishonest, deceitful, fraudulent, or criminal in nature;

(5) The agency (board of directors, officer, manager, employee, counselor, or agent) has engaged in other gross misconduct that is unbecoming the agency's position as an approved agency;

(6) The agency's nonprofit status has been revoked by the entity that issued the agency its nonprofit status;

(7) Revocation of the agency's license to do business in a particular state, provided the immediate removal shall apply only to the federal judicial districts within the particular state; or

(8) The Internal Revenue Service revokes the agency's tax exempt status.

(g) The agency's request for review shall fully describe why the agency disagrees with the denial or removal decision, and shall be accompanied by all documents and materials that the agency wants the Director to consider in reviewing the decision. The agency shall send a copy of the request for review, and the accompanying documents and materials, to the Director by overnight courier, for delivery the next business day, and must be received by the Director within

20 calendar days of the denial or removal notice.

(h) The Director may seek additional information from any party, in the manner and to the extent the Director deems appropriate.

(i) The Director shall issue a written decision no later than 45 calendar days from the receipt of the agency's request for review, unless the agency agrees to a longer period of time or the Director extends the period. That decision shall determine whether the denial or removal decision is supported by the record and the action is an appropriate exercise of discretion, and shall adopt, modify, or reject the denial or removal decision. The Director's decision shall constitute final government agency action.

(j) In reaching a determination, the Director may specify a person to act as a reviewing official. The reviewing official shall not be a person who was involved in the denial or removal decision. The reviewing official's duties shall be specified by the Director on a case by case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, or such other duties as the Director shall prescribe in a particular case.

(k) An agency that files a request for review shall bear its own costs and expenses, including counsel fees.

#### **§§ 58.18 through 58.24 [Reserved]**

■ 3. Add and reserve §§ 58.18 through 58.24.

■ 4. Add §§ 58.25, 58.26, and 58.27 to read as follows:

#### **§ 58.25 Qualifications for approval as providers of a personal financial management instructional course:**

(a) *Definition of provider.* As used in this section the term "provider" means a provider of a personal financial management instructional course.

(b) *Qualifications.* To be included on the list of approved providers under 11 U.S.C. 111, a provider shall meet the qualifications set forth in paragraphs (d) through (k) of this section. A provider shall continuously meet these qualifications in order to remain included on this list when the list is updated thereafter.

(c) *Preemption.* Nothing contained in these regulations or the related application, appendices or instructions is intended to preempt any applicable law or regulation governing the conduct or operations of a provider.

(d) *Structure and organization.* A provider of a personal financial management instructional course must

be in compliance with all applicable laws and regulations of the United States and each state, commonwealth, district, or territory of the United States in which the provider conducts courses. Nothing contained in these instructions, the application, or the appendices thereto, is intended to preempt any applicable law or regulation governing the conduct or operations of the provider.

(e) *Standards for teachers.* A provider shall employ trained personnel with adequate experience and training in providing effective instruction and services, which means the provider shall employ, at a minimum, an individual who holds at least one of the following current certifications and/or accreditations, or who has equivalent training or experience, to supervise instructors:

(1) A state teacher's certificate in any subject;

(2) Certification as a Certified Financial Planner (CFP);

(3) Certification or accreditation as a credit counselor or a financial counselor by a recognized independent organization;

(4) Certification by the American Association of Family and Consumer Sciences;

(5) Registered as a Registered Financial Consultant (RFC); or

(6) Certified as a Certified Public Accountant (CPA).

(f) *Learning materials and methodologies.* A provider shall provide learning materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such instructional course, which include written information and instruction on all of the following topics:

(1) Budget development, which consists of the following:

(i) Setting short-term and long-term financial goals, as well as developing skills to assist in achieving these goals;

(ii) Calculating gross monthly income and net monthly income;

(iii) Identifying and classifying monthly expenses as fixed, variable, or periodic;

(2) Money management, which consists of the following:

(i) Keeping adequate financial records;

(ii) Developing decision-making skills required to distinguish between wants and needs, and to comparison shop for goods and services;

(iii) Maintaining appropriate levels of insurance coverage, taking into account the types and costs of insurance;

(iv) Saving for emergencies, for periodic payments, and for financial goals;

(3) Wise use of credit, which consists of the following:

(i) The types, sources, and costs of credit and loans;

(ii) Identifying debt warning signs;

(iii) Appropriate use of credit and alternatives to credit use;

(iv) Checking a credit rating;

(4) Consumer information, which consists of the following:

(i) Public and non-profit resources for consumer assistance;

(ii) Applicable consumer protection laws and regulations, such as those governing correction of a credit record and protection against consumer fraud.

(g) *Course procedures.* A provider shall ensure the following procedures are followed:

(1) Generally, the provider shall:

(i) Require each debtor student to provide proof of identification, to provide his/her bankruptcy case number, and to sign in and sign out of the course;

(ii) Conduct the course for a minimum of two hours in length. Courses offered via the Internet or telephone should be designed for completion with a minimum of two hours;

(iii) At the end of the course, collect from each debtor student a completed course evaluation. The evaluation shall be in a form acceptable to the EOUST;

(2) For classroom instruction, the provider shall ensure:

(i) A teacher is present for purposes of instruction and interaction with debtor students;

(ii) Class size is reasonably limited to ensure an effective presentation of the course materials;

(3) For telephone instruction, the provider shall:

(i) Provide a toll-free telephone number;

(ii) Comply with the Americans with Disabilities Act and also include a toll-free number for deaf or hearing-impaired debtor students, e.g. TTY, TDD, or Text Telephone;

(iii) Employ adequate procedures to ensure that the debtor student is the individual who completed the course;

(iv) Ensure that a teacher is present telephonically for purposes of instruction and interaction with debtor students;

(v) Provide copies of the learning materials to debtor students before the telephone instruction session;

(4) For Internet instruction, the provider shall:

(i) Comply with the Americans with Disabilities Act and its application to the Internet;



(ii) Employ adequate procedures to ensure that the debtor student is the individual who completed the course and that the individual received two hours of instruction;

(iii) Ensure that a teacher will respond within one business day to a debtor student's questions or comments;

(5) In addition to meeting all other requirements, the provider who conducts telephone or Internet courses must demonstrate sufficient experience and proficiency in designing and providing services over the telephone or Internet.

(h) *Facilities.* A provider shall provide adequate facilities situated in a reasonably convenient location at which such instructional course is offered, except that such facilities may include the provisions of such instructional course by telephone or through the Internet, if such instructional course is effective;

(1) The provider shall ensure that any facility used by debtor students complies with all applicable laws and regulations including, but not limited to, the Americans with Disabilities Act Accessibility Guidelines, and all federal, state, and local fire, health, safety, and occupancy laws, codes, rules, or regulations.

(i) *Activity report and records.* A provider shall prepare and retain reasonable records (which shall include the debtor's bankruptcy case number) to permit evaluation of the effectiveness of such instructional course, including any evaluation of satisfaction of instructional course requirements for each debtor attending such instructional course, which shall be available for inspection and evaluation by the EOUST or the United States Trustee for the district in which such instructional course is offered;

(1) Upon application for annual approval, the provider must furnish an estimate of the information requested in Appendix F to the application, projected to the end of either the probationary period or annual period. Within 30 days after the completion of either the probationary period or annual period, the provider must furnish an amended Appendix F which includes the actual information;

(2) Make all records related to the provider's compliance with 11 U.S.C. 111 available to the United States Trustee or EOUST upon request and cooperate with the United States Trustee or EOUST for any scheduled or unscheduled on-site visit or customer service audit.

(j) *Fees and certificates.* If a fee is charged for counseling services, a provider shall charge a reasonable fee,

and provide services without regard to ability to pay the fee; the provider's criteria for providing services without a fee or at a reduced rate must be provided to the United States Trustee. In addition, a provider shall:

(1) Have sufficient computer capabilities to issue certificates of completion of an instructional course in conformance with the directives established by the EOUST;

(2) Advise the debtor student of the fee schedule before the instructional course is provided and inform the debtor student that services are available for free or at a reduced rate based on the debtor student's ability to pay;

(3) Issue certificates to any debtor student who completes an instructional course without regard to the debtor student's ability to pay;

(4) Issue the certificate within three business days to a debtor student after completion of the required instructional course;

(5) Not withhold the issuance of a certificate because of a debtor student's failure to obtain a passing grade on a quiz, examination, or test. Although a test may be incorporated into the curriculum to evaluate the effectiveness of the course and to ensure that the course has been completed, the provider cannot deny a certificate to a debtor student if the debtor student has completed the course as designed;

(6) Not charge a separate fee for the issuance of a certificate unless the provider has clearly disclosed such fee before the beginning of the instructional course;

(7) Issue a certificate to each spouse in a joint case whether the course is completed independently or jointly;

(8) Maintain adequate records to issue replacement certificates and to verify the authenticity of certificates filed by bankruptcy debtors.

(k) *Provider declarations and acknowledgments.* (1) The provider's owner, president, chairman, trustee, or other authorized official is required to declare, by signing the application, that such individual is authorized to complete the application on behalf of the provider; that such individual has read and knows the contents of the application and all enclosures and attachments submitted; and to affirm under penalty of perjury that all of the representations and statements contained therein are true and correct to the best of such individual's knowledge, information, and belief;

(2) The provider shall disclose the following information to each debtor student before the commencement of the instructional course:

(i) The provider's fee schedule, including any cost to the debtor student in addition to the course fee;

(ii) A statement that the course is offered to debtor students without regard to a debtor student's ability to pay;

(iii) The qualifications, including educational and training background, of the provider's teachers;

(iv) A schedule of course dates, times, and locations;

(v) A statement that the provider does not pay or receive fees or other consideration for the referral of debtor students to or by the provider;

(vi) A statement that, upon completion of the course, the provider will provide a certificate of course completion to the debtor student;

(3) By executing and submitting the "Application for Approval as a Provider of a Personal Financial Management Instructional Course," the provider acknowledges and agrees to abide by the prohibitions, limitations, and obligations set forth in Appendix A, "Acknowledgments, Agreements, and Declarations in Support of Application for Approval as a Provider of a Personal Financial Management Instructional Course," which include, but are not limited to, the following:

(i) Ensuring that no member of the board of directors or trustees, owner, officer, manager, employee, or agent is a United States Trustee Program employee, panel trustee, or person with a financial or familial connection to a panel trustee or an employee of the United States Trustee Program. For purposes of this paragraph, a person is not deemed to have a financial relationship to a panel trustee solely because the person is an employee of the panel trustee;

(ii) Not paying or receiving referral fees or other consideration for the referral of debtor students;

(iii) Ensuring that the course will not contain any commercial advertising, and that the provider shall not promote, market, or sell financial products; solicit business of any type; or sell information about the debtor to any third party without the debtor's permission, whether the course is presented in a classroom, on the telephone, or on the Internet;

(iv) Complying with the EOUST's directions on approved advertising, which is located in Appendix A to the application;

(v) Cooperating with the EOUST and the United States Trustee in timely responding to any questions or inquiries concerning the provider's operations and/or instructional course;



(vi) Consenting that any forms, agreements, contracts, or other materials furnished to a debtor student will not limit the debtor student's ability to bring an action or claim under the provision of the United States Bankruptcy Code. 11 U.S.C. 101 et. seq.

(l) Universities. Accredited universities and community colleges ("universities") are eligible to apply to become providers using a streamlined version of the application. Universities need to complete only the following portions of the application:

(1) In section 1—General Information Concerning the Provider—complete sections: 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, and 1.10;

(2) In section 4—Learning Materials and Methodologies—complete sections: 4.1, 4.2, 4.4, 4.5, 4.6, 4.7, and 4.8;

(3) In section 6—Fees and Issuance of Certificates—complete section 6.1;

(4) In section 7—Activity Report for Approved Providers—complete section 7.1;

(5) In section 8—Acknowledgments, Agreements, and Declarations—complete sections 8.1 and 8.2;

(6) In section 9—Certification and Signature—execute the application as indicated in the instructions;

(7) Completed applications should be submitted to the EOUST in accordance with the procedures in section 58.19.

#### **§ 58.26 Procedures for inclusion on the approved provider list.**

(a) As used in this section the term "provider" means a provider of a personal financial management instructional course.

(b) Each provider seeking to be included on the list of approved providers must complete in its entirety the application form EOUST-DE1, "Application for Approval as a Provider of a Personal Financial Management Course" (application), including all appendices, and submit it at the address indicated on the application. Accredited universities may complete only the portions of the application as indicated in section 58.25(l).

(c) The application must be executed under penalty of perjury in a manner specified in 28 U.S.C. 1746.

(d) An application will not be accepted by the EOUST unless it is complete and has been signed by a provider representative who is authorized to sign on behalf of the provider. An application that is incomplete or has been altered, amended, or changed in any respect from the application at the United States Trustee Program's Web site will not be accepted by the EOUST. Such an application will be denied, and no

further action on the request for inclusion on the approved list will be taken until a new application is submitted that corrects the defects.

(e) The EOUST will not accept an application submitted by a provider on behalf of another individual or group of individuals. Each provider that desires to be included on the approved list must submit its own application.

(f) Each provider must submit a new application 45 to 60 days before expiration of its six month probationary period or annual period to be considered for annual approval. After the application is completed and signed, the originals and a copy must be mailed to the EOUST, Debtor Education Provider Application Processing, at the address indicated on the application. The EOUST will not accept a photocopy or facsimile of the application in lieu of the original.

(g) A provider whose name appears on the list incorrectly may submit a written request that the name be corrected. A provider whose name appears on the list may submit a written request that its name be removed from the list.

(h) By submitting an application, the provider expressly consents to the release and disclosure of the provider's name on the approved list, and the publication of the provider's contact information.

(i) Obligation to Update Information:

(1) The provider has a continuing duty to promptly notify the EOUST of any circumstances that would materially alter or change a response to any section of the application, including but not limited to, changes in the location of primary or satellite business office(s); the principal contact person; name or fictitious name under which the provider does business; management, including the board of directors; and a merger or consolidation with another entity;

(2) The provider shall request approval by amendment to its application, and prior to occurrence of the following changes:

(i) An increase in the fees, contributions, or payments received from debtor students for the instructional course or a change in the provider's policy for the reduction or waiver of fees;

(ii) Expansion into additional judicial districts or withdrawal from judicial districts where the provider is approved; and

(iii) Method of delivery type of instructional services or course curriculum;

(3) The provider must include with any amendment to its application, a

newly executed "certification and signature;"

(4) The provider will notify the EOUST immediately upon the occurrence of any of the below noted events:

(i) Cessation of business of the provider or of any office of the provider;

(ii) Any action by a state agency to suspend the license or cancel other authorization to do business;

(iii) A suspension by an accreditation organization or denial of accreditation; and

(iv) Withdrawal as an approved provider;

(j) An approved provider may not transfer or assign its United States Trustee approval under section 111 as a provider of a personal financial management instructional course.

#### **§ 58.27 Procedures for denying an application or removing a provider from the approved list, and the administrative review rights granted to denied or removed providers.**

(a) As used in this section the term "provider" means a provider of a personal financial management instructional course.

(b) No administrative review will be granted to any applicant that submitted an incomplete application and had its application denied due to incompleteness and failed to subsequently submit a completed application.

(c) The provider shall be notified in writing of any decision denying the provider's application or to remove the provider from the approved list ("notice"). The notice shall state the reason(s) for the decision and shall reference any documents or communications with the provider, which were relied upon in making the denial or removal decision. If such documents or communications were not provided to the United States Trustee or the EOUST by the provider, copies of the documents or communications shall be provided with the notice. The notice shall be sent to the provider by overnight courier, for delivery the next business day.

(d) The notice shall advise the provider that the decision is final unless the provider requests in writing a review ("request for review") by the Director, Executive Office for United States Trustees ("Director"), no later than 20 calendar days from the date of issuance of the denial or removal notice. In order to be timely, a request for review must be received at the Office of the Director no later than 20 calendar days from the date of the removal notice to the provider.

(e) A decision to remove a provider from the approved list shall take effect upon the expiration of a provider's time to seek review from the Director or, if the provider timely seeks such review, upon the issuance of a final written decision by the Director.

(f) Notwithstanding sub-paragraph (e) of this section, a decision to remove a provider from the approved list may include, or may later be supplemented by, an interim directive, which may immediately remove a provider from the approved list. Such an interim directive may be issued if one or more of the following are specifically found:

(1) The provider made a material false statement on the application;

(2) The provider (board of directors, officer, manager, employee, counselor, or agent) has engaged in conduct that is dishonest, deceitful, fraudulent, or criminal in nature;

(3) The provider (board of directors, officer, manager, employee, counselor, or agent) has engaged in other gross misconduct that is unbefitting the provider's position as an approved provider;

(4) Revocation of the provider's license to do business in a particular state, provided the immediate removal shall apply only to the federal judicial districts within the particular state.

(g) The provider's request for review shall fully describe why the provider disagrees with the denial or removal decision, and shall be accompanied by all documents and materials that the provider wants the Director to consider in reviewing the decision. The provider shall send a copy of the request for review, and the accompanying documents and materials, to the Director by overnight courier, for delivery the next business day, and must be received by the Director within 20 calendar days of the denial or removal notice.

(h) The Director may seek additional information from any party, in the manner and to the extent the Director deems appropriate.

(i) The Director shall issue a written decision no later than 45 calendar days from the receipt of the provider's request for review, unless the provider agrees to a longer period of time or the Director extends the period. That decision shall determine whether the denial or removal decision is supported by the record and the action is an appropriate exercise of discretion, and shall adopt, modify, or reject the denial or removal decision. The Director's decision shall constitute final government agency action.

(j) In reaching a determination, the Director may specify a person to act as

a reviewing official. The reviewing official shall not be a person who was involved in the denial or removal decision. The reviewing official's duties shall be specified by the Director on a case by case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, or such other duties as the Director shall prescribe in a particular case.

(k) A provider that files a request for review shall bear its own costs and expenses, including counsel fees.

Dated: June 22, 2006.

**Clifford J. White III,**

*Acting Director, Executive Office for United States Trustees.*

[FR Doc. E6-10234 Filed 7-3-06; 8:45 am]

**BILLING CODE 4410-40-P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Parts 1910, 1915, and 1926

##### RIN 1218-AB45

### Occupational Exposure to Hexavalent Chromium; Approval of Information Collection Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Final rule; notice of Office of Management and Budget (OMB) approval of collection of information requirements.

**SUMMARY:** OSHA is announcing that the collection of information requirements contained in the Chromium (VI) standard (29 CFR parts 1910, 1915, 1917, 1918, and 1926) have been approved by OMB under the Paperwork Reduction Act of 1995. The OMB approval number is 1218-0252.

**DATES:** This final rule is effective July 5, 2006.

#### FOR FURTHER INFORMATION CONTACT:

Todd Owen, OSHA, Directorate of Standards and Guidance, Room N-3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2222.

**SUPPLEMENTARY INFORMATION:** OSHA published a final rule for chromium (VI) (Cr(VI)) on February 28, 2006, after determining that employees exposed to Cr(VI) are at increased risk of developing lung cancer (71 FR 10099). In addition, occupational exposure to Cr(VI) may result in asthma, and damage to the nasal passages and the

skin. The final rule becomes effective on May 30, 2006. As required by the Paperwork Reduction Act of 1995, the **Federal Register** notice for the Cr(VI) final rule stated that compliance with the collection of information requirements was not required until these requirements are approved by OMB, and the Department of Labor publishes a notice in the **Federal Register** announcing that OMB approved and assigned a control number to the Cr(VI) requirements. Under 5 CFR 1320.5(b), an agency may not conduct or sponsor a collection of information unless: (1) The collection of information displays a current valid OMB control number, and (2) the agency informs members of the public who must respond to the collection of information that they are not required to respond to the collection of information unless the agency displays a currently valid OMB control number.

On February 27, 2006, OSHA submitted the Cr(VI) information collection request for the final rule to OMB for approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). On March 28, 2006, OMB approved the collections of information contained in the final rule and assigned this collection OMB Control Number 1218-0252 title "Chromium (VI) Standards for General Industry (29 CFR 1910.1026), Shipyard Employment (29 CFR 1915.1026),<sup>1</sup> and Construction (29 CFR 1926.1126)." The approval for the collection expires on March 31, 2009. The approved collections of information are:

- Exposure Determination—1910.1026(d), 1915.1026(d), and 1926.1126(d).

- Paragraphs 1910.1026(d)(2), 1915.1026(d)(2), and 1926.1126(d)(2)—Scheduled monitoring option.

- Paragraphs 1910.1026(d)(3), 1915.1026(d)(3), and 1926.1126(d)(3)—Performance-oriented option.

- Paragraphs 1910.1026(d)(4), 1915.1026(d)(4), and 1926.1126(d)(4)—Employee notification of determination results.

- Regulated Areas—1910.1026(e). Paragraphs 1910.1026(e)(2)—Demarcation.

- Respiratory Protection—1910.1026(g), 1915.1026(f), and 1926.1126(f).

- Paragraphs 1910.1026(g)(2), 1915.1026(f)(2), and 1926.1126(f)(2)—Respiratory protection program (in accordance with 29 CFR 1910.134).

<sup>1</sup> The standard for shipyard employment also applies to marine terminals (29 CFR part 1917) and longshoring (29 CFR part 1918).