

Currently, the Department is soliciting comments concerning the proposed revision of the information collection request (ICR) included in this Notice of Proposed Amendment to PTE 81-6 and Proposed Restatement and Redesignation of PTE 82-63. A copy of the ICR may be obtained by contacting Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW, Room N-5647, Washington, DC 20210. Telephone (202) 693-8410; Fax: (202) 219-4745. These are not toll-free numbers.

The Department has submitted a copy of the proposed information collection to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. Although comments may be submitted through December 22, 2003 OMB requests that comments be received within 30 days of publication of the Notice of Proposed Rulemaking to ensure their consideration.

The proposed amendment and restatement of existing exemptions was requested in two applications, one submitted by the ABA and a second submitted by RMA. The applicants requested that PTE 81-6, which currently provides exemptive relief from section 406(a)(1)(A) through (D) of ERISA and Code section 4975(c)(1)(A) through (D) for the lending of securities

by employee benefit plans to banks and broker-dealers registered under the Securities Exchange Act of 1934, or broker-dealers exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted government securities that are parties in interest with respect to such plans, be broadened to exempt certain foreign banks and broker-dealers and to permit additional forms of collateral. In response to the applications, and provided that certain conditions outlined in the proposed exemption are met, the Department proposes to amend PTE 81-6 to also exempt the lending of securities by employee benefit plans to foreign banks and broker dealers and to provide for the receipt of additional forms of collateral.

PTE 82-63, used in conjunction with PTE 81-6, exempts certain compensation arrangements for the provision of securities lending services by a plan fiduciary to an employee benefit plan provided that the lending fiduciary is authorized to engage in lending transactions on behalf of the plan and the other conditions of the exemption are met. The Department has amended PTE 81-6 and incorporated PTE 82-63 in this proposed exemption. The Department also gives notice of its revocation of PTE 81-6 and PTE 82-63. The ICR for the proposed exemption restates and combines existing ICRs previously approved<sup>12</sup> in PTE 81-6 (1210-0065) and PTE-82-63 (1210-0062) but with a program change to reflect both the addition of foreign broker-dealers and banks as potential borrowers and the related changes in conditions applicable to these borrowers, and an adjustment in the burden estimates of the number of respondents based on updated and corrected information. This ICR constitutes a revision of both PTE 81-6 and PTE 82-63, in that the two exemptions are combined and revised. Continued approval has been requested under control number 1210-0065; the control number 1210-0062 will be removed from OMB inventory when OMB approval of the information collection provision of this revised exemption is received.

The Department estimates that there are approximately 13,913 borrowers that might take advantage of the class exemption. Generally, a plan is authorized to lend securities to two groups of broker dealers and banks as these are defined in the proposed amended and restated exemption—U.S.

Broker-Dealers and reporting dealers<sup>13</sup> and U.S. Banks, and Foreign Broker-Dealers and Foreign Banks regulated under the laws of the United Kingdom (UK). According to the Securities and Exchange Commission, 7,900 broker-dealers were registered as members at the close of FY 2001. Not all member broker-dealers perform services for employee benefit plans, and, among those broker-dealers that perform services for employee benefit plans, only those that borrow plans securities will make use of the exemption. Although fewer broker-dealers than are registered with the SEC may actually make use of the proposed exemption, the Department has conservatively based its burden analysis on the total number of broker-dealers that could borrow securities. There are also about 6,000 U.S. banks that might choose to take advantage of the restated exemption; the Department has conservatively assumed that all U.S. banks with trust powers will engage in borrowing securities. The applicants have indicated that 5 UK broker-dealers and 8 UK banks are also likely to borrow securities. Therefore, approximately 13,913 broker-dealers and banks might borrow securities under the proposed exemption.

The proposed exemption provides that before a plan can lend securities: the borrower must provide the plan with a financial statement; the transaction or series of transactions must be described in a written agreement; and, the compensation for the Lending Fiduciary must be described in a written agreement.

Furnishing a financial statement to the plan. The Department has not accounted for an hour or cost burden for preparing financial statements because borrowers of securities will have already prepared the statements required under the exemption in order to comply with SEC and FSA rules. It is assumed that borrowers will incur costs of \$1 per mailing and 2 minutes of administrative time to distribute financial statements quarterly in order to comply with the conditions of the proposed exemption. This provision is expected to require 1,855 hours and \$56,000 annually.

*Providing a written agreement covering the transaction or series of transactions.* The Department understands that it is customary business practice for agreements related to the lending of securities to be set

<sup>12</sup> Approval for the ICR included in PTE 81-6 expires on July 31, 2004; approval for the ICR included in PTE 82-63 expires on June 30, 2004.

<sup>13</sup> Reporting dealers covered by the exemption are not accounted for separately because they are bond and security brokerages that trade in U.S. Government Securities; thus, reporting dealers are already accounted for in the number of broker-dealer firms and banks.