### DEPARTMENT OF LABOR

## Pension and Welfare Benefits Administration

## 29 CFR Parts 2560 and 2570

## RIN 1210-AA49

# Employee Retirement Income Security Act of 1974; Administration and Enforcement, Delinquent Filer Voluntary Compliance Program

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Rule related notice, reduced civil penalty.

**SUMMARY:** This Notice announces the implementation of a new Delinquent Filer Voluntary Compliance Program by the Department of Labor's Pension and Welfare Benefits Administration (PWBA). This Program is intended to encourage, through the assessment of reduced civil penalties, delinquent plan administrators to comply with their annual reporting obligations under Title I of the Employee Retirement Income Security Act of 1974, as amended, (ERISA).

**EFFECTIVE DATE:** April 27, 1995. **FOR FURTHER INFORMATION CONTACT:** PWBA's Delinquent Filer Voluntary Compliance Program Hotline, (202) 219–8776 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Department must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as 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.

Pursuant to the terms of the Executive Order, the Department has determined that this program creates a novel method for statutory compliance that will reduce paperwork and regulatory compliance burdens on businesses, including small businesses and organizations, and make better use of scarce federal resources, in accord with the mandates of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the President's priorities. Therefore, this notice is "significant" and subject to OMB review.

## **Regulatory Flexibility Act Statement**

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a regulatory flexibility analysis for all rules that are likely to have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

Given the existing requirement on small businesses to file the Form 5500 Series Annual Return/Reports, we believe this delinquency program imposes no significant additional burden on small entities. First, no entity is required to file under this program. Thus, unless a plan sponsor chooses to take advantage of the relief offered by this program, this program would not impose any increased burden on small entities that sponsor pension and welfare benefit plans. Second, the additional documentation that would be required to be submitted under this program is minimal. Third, the program offers a substantial reduction in the penalties that might otherwise be imposed on the entities, including small entities, that participate in the program. A second tier of requirements, in the form of further reduced penalties, has been provided for small plans (those filing Form 5500-C).

### **Paperwork Reduction Act Statement**

Public reporting burden for this collection of information is estimated to average 21 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the Department of Labor, Office of IRM Policy, Room N-1301 (1210-0XXX), 200 Constitution Avenue, NW, Wash., DC 20210, and to Allison Herron Eydt, PWBA Desk Officer, Office of Management and

Budget, Room 10235, New Executive Office Building, Washington, DC 20507.

### Section 1—Background

The Secretary of Labor has the authority, under section 502(c)(2) of ERISA, to assess civil penalties of up to \$1,000 a day against plan administrators who fail or refuse to file complete and timely annual reports (Form 5500 Series Annual Return/Reports) as required under section 101(b)(4) of ERISA and the Secretary's regulations codified in 29 CFR Part 2520. Pursuant to 29 CFR 2560.502c-2 and 2570.60 et seq., PWBA has maintained a program for the assessment of civil penalties for noncompliance with the annual reporting requirements. Under this program, plan administrators filing annual reports after the date on which the report was required to be filed may be assessed \$50 per day for each day an annual report is filed after the date on which the annual report(s) was required to be filed, without regard to any extensions for filing. Plan administrators who fail to file an annual report may be assessed a penalty of \$300 per day, up to \$30,000 per year, until a complete annual report is filed. Penalties are applicable to each annual report required to be filed under Title I of ERISA. The Department may, in its discretion, waive all or part of a civil penalty assessed under section 502(c)(2)upon a showing by the administrator that there was reasonable cause for the failure to file a complete and timely annual report.

The Department has determined that the possible assessment of the above described civil penalties may deter certain delinquent filers from voluntarily complying with the annual reporting requirements under Title I of ERISA. In an effort to encourage annual reporting compliance, therefore, the Department has decided to implement the Delinquent Filer Voluntary Compliance (DFVC) Program, described herein, under which administrators otherwise subject to the assessment of higher civil penalties will be permitted to pay reduced civil penalties for voluntarily complying with the annual reporting requirements under Title I of ERISA.

# Section 2—The Delinquent Filer Voluntary Compliance (DFVC) Program

.01 *General.* The DFVC Program is intended to afford eligible plan administrators (described in subsection .02 of this Section) the opportunity to avoid the assessment of civil penalties otherwise applicable to administrators who fail to file timely annual reports for plan years beginning on or after January