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Signed at Washington, DC, this 19th day of February 2002.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 02-4372 Filed 2-28-02; 8:45 am]

**BILLING CODE 4510-27-M**

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002-13  
 Application Number: D-10616]

**Amendment to Prohibited Transaction Exemption (PTE) 79-15 (44 FR 26979, May 8, 1979); PTE 80-26 (45 FR 28545, April 29, 1980); PTE 80-83 (45 FR 73189, November 4, 1980); PTE 81-6 (45 FR 7527, January 23, 1981 (as Amended at 52 FR 18754, May 19, 1987)); PTE 81-8 (46 FR 7511, January 23, 1981 (as Amended by 50 FR 14043, April 9, 1985)); PTE 82-63 (47 FR 14804, April 6, 1982); PTE 83-1 (48 FR 895, January 7, 1983); PTE 84-14 (49 FR 9494, March 13, 1984) PTE 88-59 (53 FR 24811, June 30, 1988); PTE 91-38 (56 FR 31966, July 12, 1991); PTE 95-60 (60 FR 35925, July 12, 1995); PTE 96-62 (61 FR 39988, July 31, 1996)**

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

**ACTION:** Adoption of amendment to certain class exemptions.

**SUMMARY:** This document amends certain class exemptions to define the term "employee benefit plan," as such term is used therein, to include plans described in section 4975(e)(1) of the Internal Revenue Code of 1986 (the Code). The amendment affects individuals with beneficial interests in such plans, as well as the financial institutions that provide services and products to the plans.

**EFFECTIVE DATES:** The amendment is effective as of: May 1, 1979 with respect to PTE 79-15; January 1, 1975 with respect to PTE 80-26; December 1, 1980 with respect to Section I(B) of PTE 80-83 (the amendment is effective January 1, 1975 with respect to the remainder of PTE 80-83); January 23, 1981 with respect to PTE 81-6; January 1, 1975 with respect to PTE 81-8; April 6, 1982 with respect to PTE 82-63; January 1, 1975 with respect to PTE 83-1; December 21, 1982 with respect to PTE 84-14; January 1, 1975 with respect to PTE 88-59; July 1, 1990 with respect to PTE 91-38; January 1, 1975 with respect to PTE 95-60; and July 31, 1996 with respect to PTE 96-62.

**FOR FURTHER INFORMATION CONTACT:** Christopher J. Motta, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 693-8544, (this is not a toll-free number); or Paul Mannina, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor (202) 693-5600. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On October 29, 2001, notice was published in the **Federal Register** (66 FR 54541) of the pendency before the Department of Labor (the Department) of a proposed amendment to PTE 79-15; PTE 80-26; PTE 80-83; PTE 81-6; PTE 81-8; PTE 82-63; PTE 83-1; PTE 84-14; PTE 88-59; PTE 91-38; PTE 95-60; and PTE 96-62. These class exemptions provide relief from certain of the restrictions described in section 406 of the Employee Retirement Income Security Act of 1974 (ERISA), and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(A) through (F) of the Code, provided that the conditions of the relevant exemption have been met. The amendment to the above-described exemptions adopted by this notice was proposed by the Department on its own motion, pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

The notice gave interested persons an opportunity to submit written comments or requests for a public hearing on the proposed amendment to the Department. No public comments or requests for a hearing were received.

As noted in the proposed amendment, after consultation with the Internal Revenue Service (the Service), the Department determined that plans described in 4975(e)(1) of the Code are included within the scope of relief provided by certain class exemptions issued jointly by the Department and the Service. These exemptions are as follows:

PTE 75-1, 40 FR 50845 (1975);  
 PTE 77-4, 42 FR 18732 (1977);  
 PTE 77-7, 42 FR 31575 (1977), amended and redesignated as PTE 92-5 by 57 FR 5019 (1992);  
 PTE 77-8, 42 FR 31574 (1977), amended and redesignated as PTE 92-6, 57 FR 5189 (1992);  
 PTE 77-9, 42 FR 32395 (1977), amended and redesignated as PTE 84-24, 49 FR 13208 (1984); and  
 PTE 78-19, 43 FR 59915 (1978), amended and redesignated as PTE 90-1, 55 FR 2891 (1990).

The class exemptions amended by this notice were issued pursuant to the sole authority of the Department. These exemptions did not always expressly define the terms "employee benefit plan" and "plan" as used therein.<sup>1</sup> The

amendment adopted by this notice expressly defines the terms "employee benefit plan" and "plan", as such terms are found in such exemptions, to include an employee benefit plan described in ERISA section 3(3)<sup>2</sup> and/or a plan described in section 4975(e)(1) of the Code.<sup>3</sup>

#### 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 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties with respect to the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA; 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) In accordance with section 408(a) of ERISA and 4975(c)(2) of the Code, the Department makes the following determinations:

(i) The amendment set forth herein is administratively feasible;

(ii) The amendment set forth herein is in the interests of plans and of their participants and beneficiaries; and

(iii) The amendment set forth herein is protective of the rights of participants and beneficiaries of plans,

(3) Each exemption amended herein is applicable to a particular transaction

issue administrative exemptions under section 4975 of the Code to the Secretary of Labor.

<sup>2</sup> Section 3(3) of ERISA provides that the term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

<sup>3</sup> Section 4975(e)(1) of the Code provides that, for purposes of that Code section, the term "plan" means: (A) A trust described in Code section 401(a) which forms a part of a plan, or a plan described in Code section 403(a), which trust or plan is exempt from tax under section 501(a); (B) an individual retirement account described in Code section 408(a); (C) an individual retirement annuity described in section Code 408(b); (D) an Archer MSA described in Code section 220(d); (E) an education individual retirement account described in Code section 530, or (f) a trust, plan, account, or annuity which, at any time, has been determined by the Secretary to be described in any preceding subparagraph of this paragraph.

only if the transaction satisfies the conditions specified in such exemption, and

(4) The amendment is supplemental to, and not in derogation of, any 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.

#### Paperwork Reduction Act

This proposed amendment to the class exemptions specifically enumerated does not contain a collection of information as that term is defined in 44 U.S.C. 3502(3), nor does it substantially or materially modify the terms of any collection of information included in the class exemptions that would be amended as to the definition of "employee benefit plan" and "plan" (specifically, PTE 80-83, PTE 81-6, PTE 81-8, PTE 82-63, PTE 88-59, PTE 91-38, and PTE 96-62). The amendment would clarify definitions already relied upon in the analyses of these information collections conducted in pursuant to the Paperwork Reduction Act of 1995.

#### Amendment

Under section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), the Department amends the following class exemptions as set forth below:

1. PTE 79-15 is amended by adding the following paragraph at the end of the exemption to read as follows: For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

2. PTE 80-26 is amended by adding the following paragraph at the end of the exemption to read as follows: For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

3. PTE 80-83 is amended by adding the following paragraph 4. to Section II. b. to read as follows: 4. For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

<sup>1</sup> Section 102 of the Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 [1996]) generally transferred the authority of the Secretary of the Treasury to

4. PTE 81-6 is amended by adding the following paragraph at the end of the exemption to read as follows: For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

5. PTE 81-8 is amended by adding the following paragraph at the end of the exemption to read as follows: For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

6. PTE 82-63 is amended by adding the following paragraph (4) to section II. Definitions to read as follows: (4) For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

7. PTE 83-1 is amended by adding the following paragraph I. to Section III. Definitions to read as follows: I. For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

8. PTE 84-14 is amended by adding the following paragraph (n) to Part V. Definitions and General Rules to read as follows: (n) The terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

9. PTE 88-59 is amended by adding the following paragraph (F) to Section III. Definitions to read as follows: (F) The terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

10. PTE 91-38 is amended by adding the following paragraph (k) to Section IV. Definitions and General Rules to read as follows: The terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

11. PTE 95-60 is amended by adding the following paragraph (j) to Section V. Definitions to read as follows: (j) The terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or

or a plan described in section 4975(e)(1) of the Code.

12. PTE 96-62 is amended by adding paragraph (g) to Section IV. Definitions to read as follows: (g) For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

Signed at Washington, DC, this 25th day of February, 2002.

**Ivan L. Strasfeld,**

*Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.*

[FR Doc. 02-4872 Filed 2-28-02; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 2002-14 Application Number D-11034]**

#### **Amendment to Prohibited Transaction Exemption 80-26 (PTE 80-26) for Certain Interest Free Loans to Employee Benefit Plans**

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

**ACTION:** Adoption of amendment to PTE 80-26.

**SUMMARY:** This document amends PTE 80-26, a class exemption that permits parties in interest with respect to employee benefit plans to make interest free loans to such plans, provided the conditions of the exemption are met. The amendment affects all employee benefit plans, the participants and beneficiaries of such plans, and parties in interest with respect to those plans engaging in the described transactions.

**DATES:** The amendment is effective from September 11, 2001 until January 9, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Christopher Motta, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 693-8544. (This is not a toll-free number); or Charles Jackson, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 693-5600. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On September 28, 2001, notice was published in the **Federal Register** (66 FR 49703) of the pendency before the Department of a proposed amendment to PTE 80-26 (45 FR 28545, April 29,

1980, as amended at 65 FR 17540, April 3, 2000).<sup>1</sup> PTE 80-26 provides an exemption from the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of section 4975(c)(1)(B) and (D) of the Code.

The amendment to PTE 80-26 adopted by this notice was proposed by the Department on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).<sup>2</sup>

The notice of pendency gave interested persons an opportunity to comment or to request a hearing on the proposed amendment. No public comments or requests for a hearing were received.

For the sake of convenience, the entire text of PTE 80-26, as amended, has been reprinted with this notice.

#### **Description of the Exemption**

Section I of PTE 80-26 permits the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, and the repayment of such loan or other extension of credit in accordance with its terms or other written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only—

(1) For the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract, or

(2) For a period of no more than three days, for a purpose incidental to the ordinary operation of the plan;

(c) The loan or extension of credit is unsecured; and

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan.

On April 3, 2000, PTE 80-26 was amended through the addition of

<sup>1</sup> A minor correction was made to the title of the final exemption in a notice published in the **Federal Register** on May 23, 1980. (45 FR 35040).

<sup>2</sup> Section 102 of the Reorganization Plan No. 4 of 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 of the Code to the Secretary of Labor.