

a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or 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, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; 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) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or 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; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of September, 2004.

**Ivan Strasfeld,**

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

[FR Doc. 04-20537 Filed 9-9-04; 8:45 am]

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Prohibited Transaction Exemption 2004-13; Exemption Application No. D-11213 et al.]

#### Grant of Individual Exemptions; The Prudential Insurance Company of America

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

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

#### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

#### The Prudential Insurance Company of America, Located in Newark, NJ

[Prohibited Transaction Exemption 2004-13; Exemption Application No. D-11213]

#### Exemption

The Prudential Insurance Company of America and its current and future affiliates (collectively, Prudential) shall not be precluded, as of November 21, 2003, from functioning as a "qualified professional asset manager" (QPAM), pursuant to Prohibited Transaction Class Exemption 84-14 (PTCE 84-14), 49 FR 9494 (March 13, 1984), solely because of a failure to satisfy Section I(g) of PTCE 84-14, as a result of Prudential's affiliation with an entity convicted of violating a dual-penalty law of Korea, Japan or Taiwan.

This exemption is subject to the following conditions:

(a) The affiliate convicted under a dual-penalty law does not provide fiduciary or QPAM services to employee benefit plans covered by the Employee Retirement Income Security Act of 1974 (ERISA) or otherwise exercise discretionary control over ERISA assets.

(b) ERISA-covered assets are not involved in the misconduct that is the subject of the affiliate's conviction(s).

(c) Prudential imposes its internal procedures, controls, and protocols on the affiliate to reduce the likelihood of any recurrence of misconduct to the extent permitted by local law.

(d) This exemption is not applicable if Prudential, or any affiliate (other than affiliates convicted of violating a dual-penalty law of Korea, Japan or Taiwan) is convicted of any of the crimes described in Section I(g) of PTCE 84-14.

(e) Prudential maintains records that demonstrate that the conditions of the exemption have been and continue to be met for at least six years following the conviction of an affiliate under the dual-penalty laws of Korea, Japan or Taiwan.

(f) The criminal acts in question are neither authorized nor condoned by Prudential.

(g) Prudential complies with the other conditions of PTCE 84-14, combined with the procedures it adopts to afford ample protection of the interests of participants and beneficiaries of employee benefit plans.

*Effective Date:* This exemption is effective as of November 21, 2003.

*Written Comments*

During the comment period, the Department received one written comment with respect to the proposed exemption, and no requests for public hearing. The comment, which was submitted by Prudential, is a request to expand the relief proposed by the Department. In this regard, Prudential notes that the operative language of the proposed exemption provides relief only to Prudential. However, Prudential states that the relief requested in its application to the Department also included relief for Prudential's current and future affiliates that provide QPAM services to ERISA plans. Prudential explains that without such relief for its current affiliates, any time an affiliate of Prudential is convicted of violating a Korean, Japanese or Taiwanese dual-penalty law, and all conditions of the exemption are met, the QPAM status of every Prudential affiliate that provides QPAM services (other than the affiliate convicted of violating a dual-penalty law) would be jeopardized. Therefore, Prudential states that every Prudential affiliate providing QPAM services (other than the affiliate convicted of violating a dual-penalty law) would be required to seek relief through the individual exemption process, or via authorization made pursuant to PTCE 96-62 (61 FR 39988, July 31, 1996), in order to maintain its QPAM status following the dual-penalty law conviction.

In addition, Prudential notes that QPAM services are currently provided by Prudential itself and its affiliate, Prudential Investment Management Services LLC. Prudential requests that the exemption be made flexible enough to allow Prudential to restructure the delivery of its QPAM services in the future as business needs and circumstances evolve. It is Prudential's view that without relief that extends to the current and future affiliates of Prudential that provide QPAM services, the usefulness and flexibility of the exemption would be significantly compromised over time.

In response to this comment, the Department has revised the operative language of the final exemption in order to extend relief to Prudential's current and future affiliates that provide QPAM services.

Accordingly, after giving full consideration to the entire record, including the comment letter, the Department has determined to grant the exemption as modified herein. For further information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the

exemption application file (Exemption Application No. D-11213) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anna M. N. Mpras of the Department, telephone (202) 693-8565. (This is not a toll-free number.)

**Les Olson Company, Inc. Profit Sharing Plan (the Plan), Located in Salt Lake City, Utah**

[Prohibited Transaction Exemption 2004-14; Exemption Application No. D-11225]

*Exemption*

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (i) The series of loans (the Loans), originated within the five-year period, by the Plan to REVCO Leasing Company, LLC (Revco), a party in interest with respect to the Plan; and (ii) a guarantee of the Loans (the Guarantee) by Les Olson Company, Inc. (the Employer), a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The total amount of the outstanding Loans under this exemption and PTE 2000-03 do not, in the aggregate, exceed 20 percent (20%) of the Plan's total assets at any time during the transactions;

(b) Each Loan entered into by the Plan is made pursuant to the terms and conditions of a loan agreement (the Loan Agreement) executed by the parties and signed on behalf of the Plan by the Plan's duly-appointed independent, qualified fiduciary (the I/F);

(c) All terms and conditions of the Loans are at least as favorable to the Plan as those the Plan could obtain in an arms-length transaction with an unrelated third party;

(d) Each Loan is: (i) For a maximum term of five (5) years pursuant to terms and conditions of the Loan Agreement; (ii) fully amortized and payable in equal monthly installments of principal and interest; (iii) used exclusively by Revco to purchase office equipment (the Equipment) from the Employer, which Revco will lease to the Employer's customers (in the ordinary course of its

business); and (iv) secured by duly perfected security interests in the new and used Equipment, and by certain leases of Equipment (Equipment Leases) where such Equipment Leases are assigned and pledged as collateral for the Loans, which is at all times equal to 200% of the outstanding principal balance of such Loan;

(e) New Equipment is valued for collateralization purposes at 80 percent (80%) of the invoice price paid by Revco to purchase such Equipment less taxes and transportation expenses. Used Equipment and any Equipment Lease pledged as collateral for the Loans is valued by an independent, qualified appraiser;

(f) Prior to the approval of each Loan, the I/F determines, on behalf of the Plan, that each Loan is prudent and in the best interests of the Plan, and protective of the Plan and its participants and beneficiaries;

(g) The I/F conducts a review of all terms and conditions of the exemption, and the Loans, including: (i) The applicable interest rate; (ii) the sufficiency of the collateral pledged for each Loan; (iii) the financial condition of the Employer, in connection with the Guarantee, on at least a quarterly basis; and (iv) compliance with the 20% limitation for the Plan's maximum total Loan amount prior to approving each disbursement under the Loan Agreement; and

(h) The I/F takes whatever action is necessary to protect the Plan's interests, throughout the duration of the exemption, with respect to any Loan entered into under the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 4, 2004 at 69 FR 24676.

*Temporary Nature of Exemption*

The exemption will be temporary and will expire five (5) years from the date of publication in the **Federal Register** of the final grant of this exemption. Subsequent to the expiration of the exemption, the Plan may hold any Loans originated during this five-year period until the Loans are repaid or otherwise terminated.

**FOR FURTHER INFORMATION CONTACT:** Ekaterina A. Uzlyan of the Department at (202) 693-8540. (This is not a toll-free number.)

**The Employees' Retirement Plan of Storytown U.S.A., Inc. and Participating Affiliated Companies (the Plan), Located in Glen Falls, New York**

[Prohibited Transaction Exemption 2004-15; Exemption Application No. D-11251]

**Exemption**

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act (or ERISA) and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective July 29, 2004, to: (1) The making of a loan (the Loan) to the Plan in an original principal amount sufficient to cover the Plan's unfunded liability upon termination, by Storytown U.S.A., Inc. (Storytown), the Plan sponsor and a party in interest with respect to the Plan; (2) the assignment (the Assignment) by the Plan to Storytown of all rights, title and interest the Plan has in claims (the Claims) against certain investment advisers (the Responsible Parties), in connection with losses the Plan incurred during 2003 and 2004; and (3) the potential repayment, by the Plan to Storytown, of the Loan obligation from proceeds recovered on the Claims against the Responsible Parties.

This exemption is subject to the following conditions:

- (a) The Plan pays no interest in connection with the Loan.
- (b) The Loan proceeds are utilized only to satisfy the Plan's unfunded liability.
- (c) None of the assets of the Plan are pledged to secure the Loan amount.
- (d) The Loan is a non-recourse obligation of the Plan.
- (e) The Plan is properly terminated and Mr. Charles Wood, the principal shareholder of Storytown, agrees to waive any benefits he would have received on the termination of the Plan.
- (f) The Plan's rights to any Claims that are not resolved before final distributions are completed and assigned by the Plan to Storytown under the terms of the Assignment.
- (g) The Assignment is deemed a repayment in full of the Loan by the Plan. As a result, the Plan has no liability for the Loan and no interest in the Claims. However,

(1) If the net amount recovered on the Claims against the Responsible Parties after the Assignment, from any judgment or settlement of any arbitration proceeding, is equal to or less than the amount of the Loan, the balance due on the Loan will be automatically forgiven and such unpaid balance will be treated by Storytown as an employer contribution to the Plan; or

(2) If the net amount recovered on the Claims against the Responsible Parties from any judgment or settlement of arbitration proceeding exceeds the amount of the Loan (the Excess Amount), such Excess Amount will be treated as a reversion paid by the Plan to Storytown pursuant to the Plan document.

(h) Notwithstanding the Assignment, the Plan does not release any claims, demands and/or causes of action which it may have against Storytown and/or its affiliates.

(i) The Plan incurs no expenses, commissions or transaction costs in connection with the contemplated transactions, all of which are one-time occurrences.

(j) All terms of the transactions are at least as favorable to the Plan as those which the Plan could obtain in similar transactions negotiated at arm's length with unrelated third parties.

(k) The subject transactions do not involve any risk of loss to either the Plan or to any of the participants and beneficiaries of the Plan.

(l) Prior to the Plan's entering the transactions, a qualified, independent fiduciary (the I/F), which is acting on behalf of the Plan and which is unrelated to Storytown and/or its affiliates,

(1) Reviews, negotiates and approves the terms and conditions of the Loan and the Assignment exclusively (but does not monitor legal proceedings against the Responsible Parties following the Assignment);

(2) Determines that such transactions are prudent and in the interest of the Plan and its participants and beneficiaries; and

(3) Confirms that the Loan amount is sufficient to satisfy all Plan liabilities, including the Plan's unfunded liability, and permits the Plan to terminate on a standard termination basis.

(m) If the I/F resigns, is removed, or for any reason unable to serve as I/F, prior to the Plan's entering into the transactions, such I/F is replaced by a successor I/F:

(1) Who is appointed immediately upon the occurrence of such event;

(2) Who is independent of Storytown and its affiliates;

(3) Who is qualified to serve as the I/F; and

(4) Who assumes the duties and responsibilities of the predecessor I/F.

The Department is also provided written notification of such change in I/F.

**Effective Date:** This exemption is effective from July 29, 2004.

For a more complete statement of the facts and representations supporting the

Department's decisions to grant this exemption, refer to the notice of proposed exemption published on July 20, 2004 at 69 FR 43447.

**Written Comments**

The Department received one written comment with respect to the proposed exemption and no requests for a public hearing. The comment, which was submitted on behalf of Storytown and the Plan, informed the Department that the Loan was made by Storytown to the Plan on July 29, 2004 and that the last distributions were processed from the Plan on July 30, 2004 pursuant to the Plan Termination Loan and Assignment Agreement. The comment also stated that the Plan has currently paid out all participants, with the exception of Mr. Wood, who previously executed a waiver of all benefits under the Plan upon the Plan's termination.

In response to this comment, the Department has revised the operative language of the exemption by making the exemption effective as of July 30, 2004. In addition, after giving full consideration to the entire record, including the written comment, the Department has decided to grant the exemption, as modified herein.

For further information regarding the comment and other matters described therein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-11251) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Ms. Shelly Mui of the Department, telephone (202) 693-8530. (This is not a toll-free number.)

**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 the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and

beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; 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) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of September, 2004.

**Ivan Strasfeld,**

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

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## DEPARTMENT OF LABOR

### Employment Standards Administration

#### Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be

enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

#### Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

##### Volume I

###### Massachusetts

MA030001 (Jun. 13, 2003)  
MA030002 (Jun. 13, 2003)  
MA030003 (Jun. 13, 2003)  
MA030004 (Jun. 13, 2003)  
MA030008 (Jun. 13, 2003)  
MA030017 (Jun. 13, 2003)  
MA030018 (Jun. 13, 2003)  
MA030019 (Jun. 13, 2003)  
MA030021 (Jun. 13, 2003)

##### Volume II

###### West Virginia

WV030002 (Jun. 13, 2003)

##### Volume III

NONE

##### Volume IV

###### Illinois

IL030001 (Jun. 13, 2003)  
IL030002 (Jun. 13, 2003)  
IL030007 (Jun. 13, 2003)  
IL030016 (Jun. 13, 2003)  
IL030017 (Jun. 13, 2003)  
IL030029 (Jun. 13, 2003)  
IL030030 (Jun. 13, 2003)  
IL030035 (Jun. 13, 2003)  
IL030042 (Jun. 13, 2003)  
IL030043 (Jun. 13, 2003)  
IL030049 (Jun. 13, 2003)  
IL030052 (Jun. 13, 2003)  
IL030054 (Jun. 13, 2003)  
IL030057 (Jun. 13, 2003)  
IL030061 (Jun. 13, 2003)  
IL030069 (Jun. 13, 2003)

##### Volume V

###### Iowa

IA030002 (Jun. 13, 2003)  
IA030003 (Jun. 13, 2003)  
IA030004 (Jun. 13, 2003)  
IA030005 (Jun. 13, 2003)  
IA030006 (Jun. 13, 2003)  
IA030007 (Jun. 13, 2003)  
IA030008 (Jun. 13, 2003)  
IA030009 (Jun. 13, 2003)  
IA030010 (Jun. 13, 2003)  
IA030012 (Jun. 13, 2003)  
IA030013 (Jun. 13, 2003)  
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IA030018 (Jun. 13, 2003)  
IA030020 (Jun. 13, 2003)  
IA030024 (Jun. 13, 2003)  
IA030025 (Jun. 13, 2003)  
IA030028 (Jun. 13, 2003)  
IA030029 (Jun. 13, 2003)  
IA030031 (Jun. 13, 2003)  
IA030032 (Jun. 13, 2003)  
IA030040 (Jun. 13, 2003)