

certify and maintain these records to show the compliance officer upon inspection.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

## III. Proposed Actions

OSHA proposes to extend OMB's previous approval of the recordkeeping (paperwork) requirement specified in paragraph (e) of the Underground Transportation of Explosives Standard (29 CFR 1926.903). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of this information-collection requirement.

*Type of Review:* Extension of currently approved information-collection requirements.

*Title:* Trucks used Underground to Transport Explosives.

*OMB Number:* 1218-0227.

*Affected Public:* Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

*Number of Respondents:* 1.

*Frequency of Response:* Weekly.

*Total Responses:* 52.

*Average Time per Response:* 10 minutes.

*Estimated Total Burden Hours:* 9.

*Estimated Cost (Operation and Maintenance):* 0.

## IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3-2000 (65 FR 50017).

Signed at Washington, DC, on June 11, 2002.

**John L. Henshaw,**

*Assistant Secretary of Labor.*

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**BILLING CODE 4510-26-M**

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application No.: D-10934]

#### Proposed Amendment to Prohibited Transaction Exemption 97-11 (PTE 97-11) for the Receipt of Certain Investment Services by Individuals for Whose Benefit Individual Retirement Accounts or Retirement Plans for Self-Employed Individuals Have Been Established or Maintained

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

**ACTION:** Notice of proposed amendment to PTE 97-11.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 97-11. PTE 97-11 is a class exemption that permits the receipt of services at reduced or no cost by an individual for whose benefit an individual retirement account (IRA) <sup>1</sup> or, if self-employed, a Keogh Plan, is established or maintained, or by members of his or her family, from a broker-dealer, provided that the conditions of the exemption are met. The proposed amendment, if adopted, would affect individuals with beneficial interests in such plans who receive such services as well as the broker-dealers who provide such services.

**DATES:** If adopted, the proposed amendment would be effective as of January 1, 1998. Written comments and requests for a public hearing should be received by the Department on or before August 2, 2002.

<sup>1</sup> In Advisory Opinion 98-03A (March 6, 1998), the Department stated that a Roth IRA which satisfies the definition of an individual retirement plan contained in section 7701(a)(37)(A) of the Code is an "individual retirement account" described in section 408(a) of the Code. Therefore, a Roth IRA which is not an employee benefit plan covered by Title I of ERISA (except for certain Simplified Employee Pensions and Simple Retirement Accounts described in section 408(k) and 408(p) of the Code, respectively) would be covered by the relief provided in PTE 97-11, if all conditions therein are met. In this regard, the Department wishes to clarify that this proposed modification of section III(b) of PTE 97-11 would include Roth individual retirement annuities described in section 7701(a)(37)(B) of the Code.

**ADDRESSES:** All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N-5649, 200 Constitution Avenue, NW, Washington, DC 20210, (Attention: D-10934). Interested persons are also invited to submit comments and/or hearing requests to PWBA via email to [moffittb@pwba.dol.gov](mailto:moffittb@pwba.dol.gov) or by fax to (202) 219-0204 by the end of the comment period.

**FOR FURTHER INFORMATION CONTACT:** Ms. Allison Padams Lavigne or Mr. Christopher Motta, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 693-8540, (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 97-11 (62 FR 5855, February 7, 1997 as amended, 64 FR 11042, March 8, 1999). PTE 97-11 provides relief from the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of sections 4975(a) and (b), 4975(c)(3) and 408(e)(2) of the Code by reason of section 4975(c)(1)(D), (E) and (F) of the Code.<sup>2</sup> The amendment to PTE 97-11 was requested in an exemption application dated September 26, 2000, filed on behalf of American Funds Distributors, Inc. (AFD), a broker-dealer registered under the Securities Exchange Act of 1934. The Department is proposing this amendment in response to AFD's application.

The application was filed 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 2570, subpart B (55 FR 32836, (August 10, 1990)).

PTE 97-11 permits the receipt of services at reduced or no cost by an individual for whose benefit an IRA or Keogh Plan is established or maintained or by members of his or her family, from a broker-dealer registered under the Securities Exchange Act of 1934 pursuant to an arrangement in which the account value of, or the fees incurred for services provided to, the IRA or Keogh Plan is/are taken into account for purposes of determining eligibility to receive such services, provided that certain conditions are

<sup>2</sup> Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 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(c)(2) of the Code to the Secretary of Labor.

met. In the preamble to the proposal to PTE 97-11 (61 FR 39996 (1996)), the Department noted that programs in which broker-dealers offer reduced sales charges as an individual increases his purchases of investment company shares would be covered by the exemption provided that all of its conditions are satisfied. In granting PTE 97-11, the Department additionally noted in a response to a comment, that "letters of intent" programs in which broker-dealers offer reduced sales commissions based on the aggregate of a customer's actual purchases and anticipated purchases over a specified period of time, as agreed to by the customer, are similarly covered by the exemption. The Department also noted that this conclusion was based on the fact that under these "letters of intent" programs, if a customer ultimately fails to make the anticipated purchases, the broker-dealer would reinstate the sales commission on each account on a pro rata basis. Thus, the IRA or Keogh Plan would only be assessed that portion of the reinstated sales charges related to the IRA and Keogh Plan purchases.

AFD has requested an amendment to PTE 97-11 to modify the definition of the term "IRA". In this regard, section III(b) of PTE 97-11, as previously amended, defines the term "IRA" as "an individual retirement account described in Code section 408(a) or an education individual retirement account described in section 530 of the Code." The exemption states further that "[f]or purposes of the exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions."

AFD requests that the term "IRA" be amended to include an "individual retirement plan", as such term is defined in section 7701(a)(37) of the Code. In this regard, section 7701(a)(37) of the Code provides that the term "individual retirement plan" means "an individual retirement account described in section 408(a)" and "an individual retirement annuity described in section 408(b)". Section 408(a) of the Code, in turn, provides that, the term "individual retirement account" means "a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument

creating the trust meets the following requirements\* \* \*" In this regard, section 408(a) of the Code requires that, among other things, no part of the trust funds will be invested in life insurance contracts and that the interest of an individual in the balance in his account is nonforfeitable. Section 408(b) of the Code provides that the term "individual retirement annuity" means "an annuity contract, or an endowment contract (as determined under regulations prescribed by the Secretary), issued by an insurance company which meets the following requirements\* \* \*" In this regard, section 408(b) requires, among other things, that the annuity contract is not non-transferrable by the owner and that the entire interest of the owner is nonforfeitable.

AFD seeks to amend the definition of the "IRA" in PTE 97-11 in order to include Individual Retirement Annuities. AFD states that allowing annuity owners, or members of their families, to obtain reduced sales commissions from independent broker-dealers would be consistent with the conditions of PTE 97-11, and would enable individuals to receive the same advantages that PTE 97-11 affords to persons for whose benefit IRAs are maintained.

AFD states that programs offering discounted commissions for the purchase of mutual fund shares typically determine the amount of such discount by aggregating an individual's (and possibly his family's) total purchases of the funds offered by the fund "family". Thus, where the "family" also manages variable annuity separate accounts invested in mutual funds managed by the adviser to the fund "family", investments in the variable annuities are aggregated with other investments in mutual fund shares for purposes of determining the level of commission discounts applicable to the purchase of fund shares.<sup>3</sup>

AFD additionally represents that, similarly, programs offering discounted commissions for the purchase of variable annuities often determine the amount of such discount by aggregating an individual's (and possibly his family's) total investment in variable annuities offered by the "family" and mutual fund shares of the fund "family". Once the appropriate discount is determined, the reduced commission

<sup>3</sup> AFD represents that in determining the aggregate investments of an investor in mutual fund shares held through an Individual Retirement Account, variable annuities held through an Individual Retirement Annuity would typically be included in aggregate investments (as would certain other types of retirement plan investments, such as SEPS and non-ERISA 403(b) plans.)

is deducted "up front", and the remainder is invested in the annuity contract. AFD states that, in the situations described above, the mutual funds and the variable annuities are sold by independent registered broker-dealers, who are bound to give the commission discounts by a selling group agreement with the principal underwriter.<sup>4</sup>

The amendment is appropriate, AFD represents, in that Individual Retirement Accounts and Individual Retirement Annuities serve the same purpose and are identical in all relevant features, including tax benefits. AFD states that although Individual Retirement Accounts and Individual Retirement Annuities use different investment vehicles to hold their respective assets, such a distinction is irrelevant for purposes of the relief provided by PTE 97-11.

Based on AFD's representations, it appears that Individual Retirement Annuities share many of the same characteristics exhibited by other investment vehicles covered by the exemption. Thus, the Department sees merit in AFD's request that the term "IRA" be amended to include Individual Retirement Annuities. Accordingly, the Department has determined to modify the definition of IRA contained in section III(b) of PTE 97-11 to include Individual Retirement Annuities, as such term is defined in section 408(b) of the Code. The Department notes that all of other the conditions of PTE 97-11 must be satisfied with respect to Individual Retirement Annuities, as is the case with Individual Retirement Accounts, Education IRAs and Keogh Plans covered by the exemption. In this regard, the Department notes that, among other things, all reduced sale charges offered under a variable annuity contract must be offered by a broker-dealer or its affiliate.<sup>5</sup>

#### Notice to Interested Persons

Because many participants in IRAs and Keogh Plans and broker-dealers sponsoring IRAs or Keogh Plans could

<sup>4</sup> The Department notes that where the sales charge is reduced under a letter of intent program, in the event the customer does not make the anticipated purchases and the broker-dealer reinstates the sales charge, the IRA or Keogh Plan is only assessed that portion of the of the reinstated charge related to the IRA and Keogh Plan purchases.

<sup>5</sup> Section II (c) of PTE 97-11 states that: "The services offered under the (relationship brokerage) arrangement are offered by the broker-dealer (or an affiliate of the broker-dealer) in the ordinary course of the broker-dealer's business to customers who qualify for reduced or no cost services, but do not maintain IRAs or Keogh Plans with the broker-dealer."

conceivably be considered interested persons, the only practical form of notice is publication in the **Federal Register**.

### General Information

The attention of interested persons is directed to the following:

(1) Before an exemption may be granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the IRAs and Keogh Plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of such plans.

(2) The proposed amendment, if granted, will be 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 exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) If granted, the proposed amendment will be applicable to a transaction only if the conditions specified in the class exemption are met.

### Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed amendment to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed amendment. Comments received will be available for public inspection with the referenced application at the above address.

### Proposed 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 proposes to amend PTE 97-11 as set forth below:

Section III(b) is amended to read: "The term "IRA" means an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b) or an education individual retirement account described in section 530 of the Code. For purposes of this exemption, the term IRA shall not include an IRA which is an employee

benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions."

**Ivan Strasfeld,**

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

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application No. D-11050, et al.]

### Proposed Exemptions; Provident Mutual Life Insurance Company (Provident)

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

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions 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).

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N-5649, U.S.

Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. \_\_\_\_\_, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: "moffittb@pwba.dol.gov", or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). 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 requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

### Provident Mutual Life Insurance Company (Provident)

*Located in Berwyn, PA*

[Application No. D-11050]

### Proposed Exemption

Based on the facts and representations set forth in the application, the