

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94-71;

Application No. D-9484]

Grant of Class Exemption to Permit Certain Transactions Authorized Pursuant to Settlement Agreements Between the U.S. Department of Labor and Plans

Agency: Pension and Welfare Benefits Administration (PWBA), Department of Labor.

Action: Grant of Class Exemption.

Summary: This document contains a final exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (the Code). The class exemption applies to certain prospective transactions involving employee benefit plans where such transactions are specifically authorized by the Department pursuant to a settlement agreement. The exemption affects plans, participants and beneficiaries of such plans, and certain individuals engaging in such transactions or activities.

For further information contact: Eric Berger, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor (202) 219-8971 (not a toll-free number); or Vicki Shteir-Dunn, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor (202) 219-8610 (not a toll-free number).

Supplementary Information: On May 27, 1994, the Department of Labor (the Department) published a notice in the Federal Register (59 FR 27581) of the pendency of a proposed class exemption from the restrictions of sections 406(a)(1)(A) through (D), 406(a)(2), 406(b)(1) and 406(b)(2) of ERISA and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code.

The Department proposed the class exemption 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).¹

The notice gave interested persons an opportunity to submit written comments or requests for a hearing on the proposed exemption to the Department. No public comments and no requests for a public hearing with respect to the proposed class exemption were received by the Department. Upon consideration of the record as a whole, the Department had determined to grant the class exemption as proposed.²

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 with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not expressly apply and the general fiduciary responsibility provisions of section 404 of ERISA. Section 404 requires, in part, that a fiduciary discharge his or her duties respecting 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. This exemption does not affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The exemption will not extend to transactions prohibited under section 406(b)(3) of ERISA and section 4975(c)(1)(F) of the Code.

(3) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of plans and of their participants and beneficiaries and protective of the rights of the participants and beneficiaries of such plans.

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

(5) The exemption is applicable to a transaction only if the conditions specified in the class exemption are satisfied.

;Exemption

Accordingly, the following exemption is granted under the authority of section 408(a) of the Act 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).

Effective as of October 7, 1994, the restrictions of sections 406(a)(1)(A) through (D), 406(a)(2), 406(b)(1) and 406(b)(2) of ERISA and the taxes imposed by sections 4975(a) and 4975(b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a transaction or activity which is authorized, prior to the occurrence of such transaction or activity, by a settlement agreement resulting from an investigation of an employee benefit plan conducted by the Department under the authority of section 504(a) of ERISA, provided that:

(A) The nature of such transaction or activity is specifically described in writing, by the terms of such settlement agreement.

(B) The Department of Labor is a party to the settlement agreement.

(C) A party who will be engaging in the transaction or activity has provided written notice to the affected participants and beneficiaries in a manner that is reasonably calculated to result in the receipt of such notice at least 30 days prior to entry into the settlement agreement.

(D) A copy of the notice and the method of distribution is approved in advance by the area or district office of the Department which negotiated the settlement.

(E) The notice includes an objective description of the transaction or activity, the approximate date on which the transaction will occur, the address of the area or district office of the Department which negotiated the settlement agreement, and a statement apprising participants and beneficiaries of their right to forward their comments to such office.

Signed at Washington, DC, this 30th day of September 1994.

ALAN D. LEBOWITZ
Deputy Assistant Secretary of
Program Operations
Pension and Welfare Benefits
Administration

U.S. Department of Labor

¹ (1) Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) 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.

²The Department notes that the exemption will not affect the liability of any person for the civil penalties imposed on applicable recovery amounts under section 502(1) of ERISA.