DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

[Amendment to Prohibited Transaction Exemption 77-9; Application Nos. D-447 and D-1903; Prohibited Transaction Exemption 84-24]

Amendments to Class Exemption for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, Investment Companies and Investment Company Principal Underwriters

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Amendment of class exemption.

SUMMARY: This document amends Prohibited Transaction Exemption 77-9 (PTE 77-9). The amendments exempt

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certain transactions similar to those previously addressed in PTE 77–9 from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act). The amendments will affect participants and beneficiaries of employee benefit plans, fiduciaries of such plans, and persons engaging in transactions to which the exemption applies.

EFFECTIVE DATE: October 31, 1977.

FOR FURTHER INFORMATION CONTACT: Douglas Wham, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor (202) 523–7923. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On April 6, 1982, the Department published in the Federal Register (47 FR 14808) notice of the pendency of proposed amendments to PTE 77–9. PTE 77–9 provides an exemption from the prohibited transaction restrictions of section 406 of ERISA and from the taxes imposed by sections 7975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) of the Code.[1] The notice gave interested persons an opportunity to comment on the proposal and to request a hearing on the matter.

Public comments were received pursuant to the provisions of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Two commenters requested a public hearing, should the Department decide either not to adopt the proposed amendments or not to resolve in their favor certain issues that they raised in their comments. The Department has determined not to hold a public hearing on the matter since, as is discussed below, the Department believes that the exemption, as granted, provides the relief that those commenters have requested.

Discussion: I. General

In brief, PTE 77–9 provides that certain transactions, described in Section III of the exemption, are exempted from the prohibited transaction provisions of section 406 of ERISA. The transactions relate to the purchases, with plan assets, of investment company securities or insurance or annuity contracts and the payment of sales commissions in conjunction with such purchases. Insurance agents and brokers, pension consultants, insurance companies, investment companies, and investment company principal underwriters who are parties in interest with respect to an employee benefit plan because they either are, or are affiliated with, fiduciaries or other service providers for the plan may, subject to the conditions listed in sections IV and V, avail themselves of the exemption in order to engage in such transactions with the plan.

As is discussed more fully in the preamble to the proposed exemption, conditional relief has been available under PTE 77–9 for the purchase by a plan of securities issued by an investment company, where the investment company, its principal underwriter, or its investment adviser are parties in interest with respect to the plan. However, where an affiliate of any of those entities is a trustee of the plan, such relief was available only if the transaction was one described in section III(f) of the exemption, which is limited to situations where the entity is a party in interest solely by reason of the sponsorship of a master or prototype plan, including the provision of nondiscretionary trust or custodial services in connection therewith. The amendment to section V(a) being adopted in this notice, however, will permit the broader range of transactions described in sections III(a)–(d) where the party seeking to use the exemption provides nondiscretionary trust or custodial services to the plan but does not render investment advice with respect to any assets of the plan. With the adoption of amended section III(f), moreover, relief will also be available under that section to plans other than master or prototype plans sponsored by the investment company complex. In addition, the Department is adopting as proposed new section VI(g). That paragraph defines "nondiscretionary trustee" and "nondiscretionary trust services" as those terms are used in sections V(a) and III(f), respectively. For a more complete discussion of the background and scope of PTE 77–9 and the proposed amendments, see the preamble to the proposal of April 6, 1982 (47 FR 14808) and the preamble to the prior version of the exemption published in the Federal Register on June 24, 1977 (42 FR 32395).

II. Discussion of Comments Received

The Department received five written comments regarding the proposed amendments to PTE 77–9. Most of the commenters generally favored the adoption of the proposed amendments. Two commenters, however, suggested that the Department clarify, either in the preamble to the final version or in the final version of the exemption itself, that nondiscretionary custodians are to be treated in the same manner as nondiscretionary trustees and, thus, may take advantage of the exemption to the same extent as nondiscretionary trustees. These commenters requested a hearing on the matter if the Department contemplated not effecting the requested clarification. A third commenter requested assurances from the Department that all of the functions described in footnote three of the proposal are nondiscretionary trust or custodial services for purposes of PTE–77–9. A fourth commenter suggested that changes be made to the exemption to accommodate concerns that the commenter expressed regarding the applicability of the exemption to transactions involving securities issued by "no-load" mutual funds—i.e., securities sold with no sales charge. The fifth commenter offered no suggestion for change to the final version.

The issues raised by the commenters are discussed below.

(A) Nondiscretionary Custodians

Two commenters noted that, under the proposed amendments, PTE 77–9 would provide relief for transactions described in sections III(a)–(d) of the exemption where a trustee of the plan is affiliated with the investment company (or with its adviser or principal underwriter), provided that the trustee's duties are nondiscretionary. See section V(a) of the exemption. They argue, however, that since sections 401(f) and 408(h) of the Code provide that custodians shall be treated as trustees for certain purposes,[2] PTE 77–9 may not be available for purchases by plans of mutual fund shares where the mutual fund complex provides nondiscretionary custodial services to such plans through persons who are *not* trustees. Because of this concern, these commenters requested that a hearing be held on the matter unless the Department made clear that the provision by a mutual fund complex of such "in-house" custodial services would not operate as a bar to the availability of the exemption.

In the Department's opinion, the conditions contained in section V(a) of

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of the type granted herein to the Secretary of Labor. In the discussion of the exemption, references to the various provisions of section 406 of ERISA should be read to refer as well to the corresponding provision of section 4975 of the Code.

[2] Sections 401(f) and 408(h) of the Code provide, in part, that a custodial account that is not a trust shall be treated, nevertheless, as a trust for purposes of sections 401 and 408, respectively, if certain specified conditions are met. In such cases, the custodian of the account is treated as the account's trustee for purposes of the Code.

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the exemption as amended herein do not create the difficulties perceived by the commenters. The availability of the exemption as amended to a person providing nondiscretionary custodial services to a plan is not affected by the person's designation as a trustee or custodian to the extent that the services are limited in the manner described in sections V(a) and VI(g) of the exemption.[3]

(B) List of Nondiscretionary Trust Services

On the matter of providing assurances regarding specific services, the Department cannot state categorically that certain services in all cases are nondiscretionary for purposes of PTE 77-9. Whether or not a particular trust or custodial service is nondiscretionary in nature generally will depend on the facts and circumstances surrounding the provision of the service. Those services listed in footnote three of the proposal were described in a submission by one of the applicants as typical nondiscretionary trust or custodial services, and, thus, "ministerial in nature". The Department believes that the provision of such services is within the scope of the definition of "nondiscretionary trust services" contained in section VI(g) of the exemption, if they are in fact ministerial in nature.[4]

(C) Additional Services and No-Load Mutual Fund Complexes

The Department received one comment on behalf of a no-load mutual fund complex, requesting the Department to amend the definition of "nondiscretionary trust services" to include any additional services described in section 408(b)(2) of ERISA. This would allow the provision of all such services in connection with a transaction decribed in section III(f) by any party qualifying for the exemption under that section. According to the commenter, no-load complexes in particular would benefit from such an amendment, as explained below. As an alternative, the commenter requested an amendment to section III(c) so that no-load mutual fund complexes which, according to the commenter, do not necessarily engage a principal underwriter, as that term is defined in section 2(a)(29) of the Investment Company Act of 1940 (the 1940 Act), qualify for the exemptions provided in section III(b)–(c). The exemptions described in those sections currently allow the provision of services in addition to "nondiscretionary trust services", but the exempted transactions are those engaged in by an "investment company principal underwriter."[5]

Amended section III(f) describes transactions engaged in by an investment company or its principal underwriter and, therefore, according to the commenter, can be used by no-load mutual fund complexes. That section, however, does not allow the provision of any services other than nondiscretionary trust or custodial services. Thus, the commenter contended that if no-load mutual fund complexes are not allowed to use the exemptions provided in section III(b)–(c), and if the definition of nondiscretionary trust services in section VI(g) is not expanded to include all services described in section 408(b)(2), no-load complexes will be more limited in their ability to provide additional services to employee benefit plans under PTE 77-9 than load complexes. By comparison, load mutual fund complexes, because they engage a principal underwriter, qualify for the exemptions in III (b) and (c). Consequently, they are able to provide any additional services described in section 408(b)(2) without contravening the terms of the exemption. The commenter argues that it was not the intent of PTE 77-9 to allow load mutual fund complexes to engage in certain transactions with employee benefit plans and provide certain additional servcies while not similarly permitting no-load complexes to engage in those same transactions and provide those same services.

After careful consideration, the Department has decided not to adopt the requested changes. The suggestion of the commenter with regard to amending the definition in section VI(g) would be inconsistent with one of the purposes of the exemption. Section III (b) and (c), as previously stated, do not preclude the provision by a mutual fund complex to a plan of additional services described in section 408(b)(2) of ERISA, provided, however, that the conditions in both sections IV and V are satisfied. Amended section III(f), on the other hand, is available only where an entity in the mutual fund complex is a fiduciary or service provider (or both) solely by reason of the sponsorship of a master or prototype plan, the provision of nondiscretionary trust or custodial services, or both. It covers situations where the relationship between the plan and the mutual fund complex is more limited than that permitted under sections III(b)–(c). In view of that more limited relationship, the Department has determined that only the conditions contained in Section IV (and not those contained in Section V) of the exemption need be satisfied in connection with transactions described in III(f). Thus, the provision of additional services to the plan in connection with a transaction described in section III(f), such as services described in ERISA section 408(b)(2), is not within the

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[3] It should be noted that the Code's treatment of certain custodians as "trustees" does not mean that the requirement contained in section 403(a) of ERISA, that the assets of a plan shall be held in trust by one or more trustees, is satisfied by reason of such treatment. In the case of a plan subject to the provisions of Title I of ERISA, and except as specifically provided otherwise in section 403(b) of ERISA, the assets of the plan must be held in trust notwithstanding the potential application, for purposes of the Code, of sections 401(f) and 408(h) of the Code. See H.R. Rep. 1280, 93d Cong., 2d Sess. 299 (1974).

[4] The Services listed in footnote three of the proposal are reprinted here for the sake of convenience. They are:

(a) Open and maintain plan accounts and, in the case of defined contribution plans, individual participant accounts, pursuant to the employer's instructions;

(b) Receive contributions from the employer and credit them to individual participant accounts in accordance with the employer's instructions;

(c) Invest contributions and other plan assets in shares of a mutual fund or funds or other products such as insurance or annuity contracts designated by the employer, plan trustee, or participants, and reinvest dividends and other distributions in such investments;

(d) Redeem, transfer, or exchange mutual fund shares or surrender insurance or annuity contracts as instructed by the employer, plan trustee, or participant;

(e) Provide or maintain "designation of beneficiary" forms and make distributions from the trust or custodial account to participants or beneficiaries in accordance with the instructions of the employer, plan trustee, participants, or beneficiaries;

(f) Deliver to participants or their employer all notices, prospectuses, and proxy statements, and vote proxies in accordance with the participants' instructions;

(g) Maintain records of all contributions, investments, distributions, and other transactions and report them to the employer and participants;

(h) Make necessary filings with the Internal Revenue Service and other government agencies;

(i) Keep custody of the plan's assets;

(j) Reply to and prepare correspondence, either directly or through the mutual fund distributor or adviser, regarding the investment account and the operation and interpretation of a master or prototype plan sponsored by the complex to which the nondiscretionary trustee or custodian belongs.

[5] The commenter indicates that shares of the funds in the complex on whose behalf the comment was written are sold through an entity that is wholly-owned by all of the funds in the complex. While the commenter does not assert that the entity is not a "principal underwriter" as defined in the 1940 Act, he does assert that there is "no clear authority" for the proposition that it is. In section VI(a) of the exemption, the term "principal underwriter" is defined in the same manner as it is defined in the 1940 Act.

The commenter does not state that the situation described above is representative of the no-load fund industry in general.

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intended scope of the exemption provided under that section.

As to the suggestion to amend section III(c), it should be noted that the proposed exemption in this matter did not include a proposal to amend that paragraph.* The Department has no way of knowing, on the basis of one individual request, whether the factual situation described by the commenter regarding its own method of operation (which may be unique or at least unusual) is sufficiently representative of all parties potentially affected by such an amendment to justify the relief requested on a class basis, especially since it is not certain that additional relief is necessary [see note 4, *supra*]. The Department believes it inappropriate to proceed along the lines requested in the absence of information that would provide a basis for determining how any such changes would affect employee benefit plans and the mutal fund industry as a whole.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary of a plan to which the exemption is applicable from certain othter provisions of the Act, 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 with respect to the plan solely in the interest of the plan's participants and beneficiaries 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 plan and their beneficiaries.

(2) The exemption set forth herein is supplemental to, and not in derogation of, any other provisions of the Act or Code, including statutory 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.

(3) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

(4) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, including the written comments submitted in response to the notice of April 6, 1982, the Agency makes the following determination:

(i) The class exemption set forth herein is administratively feasible;

(ii) It is in the interest of plans and of their participants and beneficiaries; and

(iii) It is protective of the rights of participants and beneficiaries of the plans.

Exemption

Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1954 (the Code), and in accordance with the procedure set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). For the sake of convenience, the entire exemption is reprinted here, including the amendments to sections III(f) and V(a) and new section VI(g) adopted in this notice.

Section I—Retroactive Application. The restrictions of sections 406(a)(1)(A) through (D) and 406(b) of the Act and the taxes imposed by section 4975 of the Code do not apply to any of the transactions described in section III of this exemption in connection with purchases made before November 1, 1977, if the conditions set forth in section IV are met.

Section II—Prospective Application. The restrictions of section 406(a)(1)(A) through (D) and 406(b) of the Act and the taxes imposed by section 4975 of the Code do not apply to any of the transactions described in section III of this exemption in connection with purchases made after October 31, 1977, if the conditions set forth in sections IV and V are met.

Section III—Transactions. (a) The receipt, directly or indirectly, by an insurance agent or broker or a pension consultant of a sales commission from an insurance company in connection with the purchase, with plan assets of an insurance or annuity contract.

(b) The receipt of a sales commission by a principal underwriter for an investment company registered under the Investment Company Act of 1940 (hereinafter referred to as an investment company) in connection with the purchase, with plan assets, of securities issued by an investment company.

(c) The effecting by an insurance agent or broker, pension consultant or investment company principal underwriter of a transaction for the purchase, with plan assets, of an insurance or annuity contract or securities issued by an investment company.

(d) The purchase, with plan assets, of an insurance or annuity contract from an insurance company.

(e) The purchase, with plan assets, of an insurance or annuity contract from an insurance company which is a fiduciary or a service provider (or both) with respect to the plan solely by reason of the sponsorship of a master or prototype plan.

(f) The purchase, with plan assets, of securities issued by an investment company from, or the sale of such securities to, an investment company or an investment company principal underwriter, when such investment company, principal underwriter, or the investment company investment adviser is a fiduciary or a service provider (or both) with respect to the plan solely by reason of: (1) The sponsorship of a master or prototype plan; or (2) the provision of nondiscretionary trust services to the plan; or (3) both (1) and (2).

Section IV—Conditions With Respect to Transactions Described in Section III. (a) The transaction is effected by the insurance agent or broker, pension consultant, insurance company or investment company principal underwriter in the ordinary course of its business as such a person.

(b) The transaction is on terms at least as favorable to the plan as an arm's-length transaction with an unrelated party would be.

(c) The combined total of all fees, commissions and other consideration received by the insurance agent or broker, pension consultant, insurance company, or investment company principal underwriter:

(1) For the provision of services to the plan; and

(2) In connection with the puchase of insurance or annuity contracts or securities issued by an investment company

is not in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and 408(c)(2) of the Act and sections 4975(d)(2) and 4975(d)(10) of the Code. If such total is in excess of "reasonable compensation," the "amount involved" for purposes of the civil penalties of section 502(i) of the Act and the excise taxes imposed by

*Section 408(a) of the Act provides, in part, that before granting an exemption from section 406(a) of the Act, the Department shall, among other things, publish notice in the Federal Register of the pendency of the exemption, and afford interested persons an opportunity to present views. Section 408(a) also requires that, before granting an exemption from section 406(b), the Department must afford an opportunity for a hearing on the matter.

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section 4975 (a) and (b) of the Code is the amount of compensation in excess or "reasonable compensation."

Section V—Conditions for Transactions Described in Section III (a) Through (d). The following conditions apply solely to a transaction described in paragraphs (a), (b), (c) or (d) of section III:

(a) The insurance agent or broker, pension consultant, insurance company, or investment company principal underwater is not (1) a trustee of the plan (other than a nondiscretionary trustee who does not render investment advice with respect to any assets of the plan), (2) a plan administrator (within the meaning of section 3(16)(A) of the Act and section 414(g) of the Code), (3) a fiduciary who is expressly authorized in writing to manage, acquire or dispose of the assets of the plan on a discretionary basis, or (4) for transactions described in sections III (a) through (d) entered into after December 31, 1978, an employer any of whose employees are covered by the plan.

(b) (1) With respect to a transaction involving the purchase with plan assets of an insurance or annuity contract or the receipt of a sales commission thereon, the insurance agent or broker or pension consultant provides to an independent fiduciary with respect to the plan prior to the execution of the transaction the following information in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) If the agent, broker, or consultant is an affiliate of the insurance company whose contract is being recommended, or if the ability of such agent, broker or consultant to recommend insurance or annuity contracts is limited by any agreement with such insurance company, the nature of such affiliation, limitation, or relationship;

(B) The sales commission, expressed as a percentage of gross annual premium payments for the first year and for each of the succeding renewal years, that will be paid by the insurance company to the agent, broker or consultant in connection with the purchase of the recommended contract; and

(C) For purchases made after June 30, 1979, a description of any charges, fees, discounts, penalties or adjustments which may be imposed under the recommended contract in connection with the purchase, holding, exchange, termination or sale of such contract.

(2) Following the receipt of the information required to be disclosed in paragraph (b)(1), and prior to the execution of the transaction, the independent fiduciary acknowledges in writing receipt of such information and approves the transaction on behalf of the plan. Such fiduciary may be an employer of employees covered by the plan, but may not be an insurance agent or broker, pension consultant or insurance company involved in the transaction. Such fiduciary may not receive, directly or indirectly (e.g. through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(c)(1) With respect to a transaction involving the purchase with plan assets of securities issued by an investment company or the receipt of a sales commission thereon by an investment company principal underwriter, the investment company principal underwriter provides to an independent fiduciary with respect to the plan, prior to the execution of the transaction, the following information in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) If the person recommending securities issued by an investment company is the principal underwriter of the investment company whose securities are being recommended, the nature of such relationship and of any limitation it places upon the principal underwriter's ability to recommend investment company securities;

(B) The sales commission, expressed as a percentage of the dollar amount of the plan's gross payment and of the amount actually invested, that will be received by the principal underwriter in connection with the purchase of the recommended securities issued by the investment company; and

(C) For purchases made after December 31, 1978, a description of any charges, fees, discounts, penalties, or adjustments which may be imposed under the recommended securities in connection with the purchase, holding, exchange, termination or sale of such securities.

(2) Following the receipt of the information required to be disclosed in paragraph (c)(1), and prior to the execution of the transaction, the independent fiduciary approves the transaction on behalf of the plan. Unless facts or circumstances would indicate the contrary, such approval may be presumed if the fiduciary permits the transaction to proceed after receipt of the written disclosure. Such fiduciary may be an employer of employees covered by the plan, but may not be a principal underwriter involved in the transaction. Such fiduciary may not receive, directly or indirectly (e.g. through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(d) With respect to additional purchases of insurance or annuity contracts or securities issued by an investment company, the written disclosure required under paragraphs (b) and (c) of this section V need not be repeated, unless—

(1) More than three years have passed since such disclosure was made with respect to the same kind of contract or security, or

(2) The contract or security being recommended for purchase or the commission with respect thereto is materially different from that for which the approval described in paragraphs (b) and (c) of this section was obtained.

(e)(1)) In the case of any transaction described in paragraphs (a), (b), or (c) of section III, the insurance agent or broker (or the insurance company whose contract is being described if designated by the agent or broker), pension consultant or investment company principal underwriter shall retain or cause to be retained for a period of six years from the date of such transaction, the following:

(A) The information disclosed pursuant to paragraphs (b), (c), and (d) of this section V;

(B) Any additional information or documents provided to the fiduciary described in paragraphs (b) and (c) of this section V with respect to such transaction; and

(C) The written acknowledgement described in paragraph (b) of this section.

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the insurance agent or broker, pension consultant, or principal underwriter, such records are lost or destroyed prior to the end of such six-year period.

(3) Notwithstanding anything to the contrary in sections 504 (a)(2) and (b) of the Act, such records are unconditionally available for examination during normal business hours by duly authorized employees or representatives of the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, and any employer of plan participants and beneficiaries, any employee organization any of whose members are covered by the plan.

Section VI—Definitions. For purposes of this exemption:

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(a) The term "principal underwriter" is defined in the same manner as that term is defined in section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(29)).

(b) The terms "insurance agent or broker," "pension consultant," "insurance company," "investment company," and "principal underwriter" mean such persons and any affiliates thereof.

(c) The term "affiliate" of a person means:

(1) Any person directly or indirectly controlling, controlled by, or under common control with such person;

(2) Any officer, director, employee (including, in the case of principal underwriter, any registered representative thereof, whether or not such person is a common law employee of such principal underwriter), or relative of any such person, or any partner in such person; or

(3) Any corporation or partnership of which such person is an officer, director, or employee, or in which such person is a partner.

(d) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(f) The term "master or prototype plan" means a plan which is approved by the Service under Rev. Proc. 72-7, 1972-1 C.B. 715, or Rev. Proc. 72-8, 1972-1 C.B. 716, or their successors.

(g) The term "nondiscretionary trust services" means custodial services and services ancillary to custodial services, none of which services are discretionary, and the term "nondiscretionary trustee" of a plan means a trustee whose powers and duties with respect to any assets of the plan are limited to (1) the provision of nondiscretionary trust services to the plan, and (2) duties imposed on the trustee by any provision or provisions of the Act or the Code. For purposes of this exemption, a person who is otherwise a nondiscretionary trustee will not fail to be a nondiscretionary trustee solely by reason of his having been delegated, by the sponsor of a master or prototype plan, the power to amend such plan.

Signed at Washington, D.C., this 28th day of March 1984.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor Management Services Administration, U.S. Department of Labor.

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