The Department is proposing the amendment 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).  

A. General Background

The prohibited transaction provisions of the Act generally prohibit transactions between a plan and a party in interest (including a fiduciary) with respect to such plan. Specifically, section 406(a)(1)(B) and (D) of the Act states that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—

(B) Lending of money or other extension of credit between a plan and a party in interest; or

(D) Transfer to, or use by or for the benefit of, a party in interest of any assets of a plan. Accordingly, loans, including interest free loans, to a plan from a party in interest and the repayment of such loans may be prohibited by those provisions of the Act.

In addition, section 406(b)(2) of the Act provides that a fiduciary with respect to a plan shall not, in his individual or any other capacity, act in a transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.

B. Description of Existing Relief

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.

C. Discussion of the Proposed Exemption

The Department, on its own motion, proposes an amendment to PTE 80–26 in order to expand its interest free loan exemption to address potential Y2K problems. The Y2K problem is a computer problem where date-dependent computations or operations produce erroneous results because systems recognize years only by the last two digits, causing a “00” entry to be read as the year “1900” rather than the year “2000”. Congress has passed several Acts to address the Y2K problem and has found that it could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, government, and safety and defense systems, in the United States and throughout the world.

Employee benefit plans rely on computers to perform critical operations such as benefit calculations and

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 80–26 (45 FR 28545, Apr. 29, 1980). 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.

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).

Section 102 of the Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, 5 U.S.C. App. 1) 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.

In discussion of the exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

**NOTE:** This is not a toll-free number; or Wendy McCollough, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor (202) 219–4600. (This is not a toll-free number).
addition, employee benefit plans may incur costs associated with addressing and fixing Y2K problems that may arise. As a result, the Department has determined to amend PTE 80-26 to expand its provisions for interest free loans to employee benefit plans to meet Y2K contingencies.

In the event of a possible Y2K disruption to ordinary plan operations related to the payment of benefits or insurance premiums, relief for an interest free loan or extension of credit on an unlimited basis from a party in interest to deal with these problems would already be available under the first prong, paragraph (b)(1) of PTE 80-26.

However, plans may need interest free loans to address potential Y2K problems that are only incidental to the ordinary operation of the plan. Specifically, the Department notes that the three day limit on loans for purposes incidental to the ordinary operation of the plan, under the second prong, paragraph (b)(2), of PTE 80-26 may not be a sufficient period of time to address such Y2K contingencies. Accordingly, beginning November 1, 1999 and ending December 31, 2000, the proposed amendment to PTE 80-26 would permit certain interest free loans for an extended period of no more than fourteen months. All loans made pursuant to this amendment must be repaid by December 31, 2000.

Examples of transactions that may require loans or other extensions of credit for a period longer than three days due to Y2K temporary cash flow problems or computer malfunctions created by Y2K would include: (1) The transfer of all or part of a participant’s account balance from one investment option to another; (2) participant loans; (3) temporary overdraft protection; (4) failure of a plan’s internal computer systems; and (5) the crediting of dividends or interest by a bank trustee prior to receipt of such dividends or interest.

**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 an employer of the obligation to fix Y2K problems that may arise.

(2) The fact that a transaction is approved under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve an employer of the obligation to fix Y2K problems that may arise.

(3) 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 interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan.

(4) If granted, the proposed amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption.

Proposed Amendment

Under 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, 32847, August 10, 1990), the Department proposes to amend PTE 80-26 as set forth below:

Section I: General Exemption

Effective January 1, 1975, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section...
Section III: Definition

For the purposes of section II, a Y2K problem is a disruption of computer operations resulting from a computer system’s inability to process data because such system recognizes years only by the last two digits, causing a “00” entry to be read as the year “1900” rather than the year “2000.”

Signed at Washington, DC, this 23rd day of November, 1999.

Ivan L. Strasfeld,
Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

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BILLING CODE 4510-29-P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on November 29, 1999 via conference call. The meeting will begin at 11:00 a.m. and continue until conclusion of the Board’s agenda.

LOCATION: 750 First Street, NE, 11th Floor, Washington, DC 20002, in Room 11026.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the agenda.
2. Consider and act on the Board of Directors’ Semiannual Report to Congress for the period of April 1, 1999 to September 30, 1999.
3. Consider and act on a staff proposal to move funds from Grant Recoveries to Grants line in order to fund an emergency grant to Legal Services of North Carolina.
4. Consider and act on staff request to revise the Corporation’s FY 2000 Consolidated Operating Budget to add to U.S. Court of Veterans Appeals line an additional $15,000 received from the U.S. Court of Veterans Appeals.
5. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336-8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336-8810.

Dated: November 24, 1999.

Victor M. Fortuno,
Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 99-31066 Filed 11-24-99; 1:44 pm]