

for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption, if granted, would not extend to transactions prohibited under section 406(b)(3) of the Act or section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of ERISA and 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and 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; and

(5) 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 or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

#### Written Comments and Hearing Requests

The Department invites all interested persons 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 received 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 exemption. Comments received will be available for public inspection at the above address.

#### Paperwork Reduction Act

Prohibited Transaction Exemption 92-6 includes a disclosure provision that requires an insured participant to be informed prior to the sale of an applicable life insurance policy. Although this disclosure requirement constitutes a collection of information as defined in the Paperwork Reduction Act of 1995, that collection of information as currently approved under OMB control number 1210-0063 is not substantially or materially altered by the terms of this proposed amendment. Accordingly, no information collection request has been submitted to the Office of Management and Budget in connection with this Notice of Proposed Amendment to PTE 92-6.

#### 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 92-6 as set forth below:

I. Effective January 1, 1975, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act, and 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, shall not apply to the sale of an individual life insurance or annuity contract by an employee benefit plan to: (1) A participant under such plan; (2) a relative of a participant under such plan; (3) an employer any of whose employees are covered by the plan; (4) another employee benefit plan; or (5) effective February 12, 1992, a trust established by or for the benefit of one or more of the persons described in (1) or (2) above;, if:

(a) Such participant is the insured under the contract;

(b) Such relative is a "relative" as defined in section 3(15) of the Act (or a "member of the family" as defined in section 4975(e)(6) of the Code), or is a brother or sister of the insured (or a spouse of such brother or sister), and such relative or trust is the beneficiary under the contract;

(c) The contract would, but for the sale, be surrendered by the plan;

(d) With respect to sales of the policy to the employer, a relative of the insured, a trust, or another plan, the participant insured under the policy is first informed of the proposed sale and is given the opportunity to purchase such contract from the plan, and delivers a written document to the plan stating that he or she elects not to purchase the policy and consents to the sale by the plan of such policy to such employer, relative, trust or other plan;

(e) The amount received by the plan as consideration for the sale is at least equal to the amount necessary to put the plan in the same cash position as it would have been had it retained the contract, surrendered it, and made any distribution owing to the participant on his vested interest under the plan; and

(f) With regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholders or highly compensated employees.

II. Effective October 22, 1986, the exemption provided for transactions described in part I is available for plan

participants who are owner-employees (as defined in section 401(c)(3) of the Code) or shareholder-employees as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the date of enactment of the Subchapter S Revision Act of 1982) if the conditions set forth in part I are met.

Signed at Washington, DC, this 6th day of May, 2002.

**Ivan L. Strasfeld,**

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

[FR Doc. 02-11661 Filed 5-9-02; 8:45 am]

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application Number D-10845]

#### Proposed Amendment to Prohibited Transaction Exemption 86-128 (PTE 86-128) for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers

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

**ACTION:** Notice of Proposed Amendment to PTE 86-128.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 86-128. PTE 86-128 is a class exemption that permits certain persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions on behalf of those plans, provided that specified conditions are met. The exemption also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions for such accounts when certain conditions are met. Currently, PTE 86-128 generally is not available to any person (or any affiliate thereof) who is a trustee [other than a nondiscretionary trustee], plan administrator or an employer, any of whose employees are covered by the plan. The proposed amendment, if adopted, would allow a fiduciary that is a plan trustee to engage in a transaction covered by PTE 86-128. The proposed amendment would affect participants and beneficiaries of employee benefit plans, fiduciaries with respect to such plans, and other persons engaging in the described transactions.

**DATES:** If adopted, the proposed amendment will be effective as of the date the granted amendment is

published in the **Federal Register**. Written comments and requests for a public hearing should be received by the Department on or before June 24, 2002.

**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: PTE 86-128 Amendment).

**FOR FURTHER INFORMATION CONTACT:** Christopher Motta, Office of Exemptions Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 693-8544. (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 86-128 (51 FR 41686, Nov. 18, 1986). PTE 86-128 provides an exemption from the restrictions of section 406(b)<sup>1</sup> 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 Code, by reason of section 4975(c)(1)(E) or (F) of the Code.

The amendment to PTE 86-128 proposed herein was requested in an application, dated October 29, 1999, on behalf of the Securities Industry Association (the SIA), a trade association for securities broker-dealers. The Department is proposing the amendment to PTE 86-128 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).<sup>2</sup>

#### **Paperwork Reduction Act Analysis**

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and other federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that

requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed revision of a currently approved collection of information: Prohibited Transaction Class Exemption 86-128 for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers. A copy of the proposed information collection request (ICR) can be obtained by contacting the Department of Labor Clearance Officer, ATTN: Marlene Howze, at (202) 693-4158.

**DATES:** Written comments must be submitted on or before July 9, 2002. Comments concerning the ICR should be directed to the Office of Management and Budget, ATTN: Desk Officer for Pension and Welfare Benefits Administration, 725 17th St., NW., Washington, DC.

#### **Desired Focus of Comments**

The Department of Labor and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### **Current Action**

Prohibited Transaction Class Exemption 86-128 permits certain persons who serve as fiduciaries for employee benefit plans to effect or execute securities transaction on behalf of those plans, provided that specified conditions are met. The exemption also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions under

certain conditions. The conditions of the existing class exemption include specific information disclosure provisions currently approved under OMB control number 1210-0059.

This proposed amendment would allow a fiduciary that is a plan trustee to engage in a transaction covered by PTE 86-128. The existing PTE 86-128 is generally not available to any person (or any affiliate thereof) who is a trustee, plan administrator, or an employer, any of whose employees are covered by the plan. The proposed amendment would add such trustees, subject to conditions involving (1) the size of the plan, and (2) at least annual reporting to the authorizing fiduciary of each plan of annual brokerage commissions expressed in dollars paid to (a) brokerage firms affiliated with the trustee, and (b) brokerage firms unaffiliated with the trustee, and (3) at least annual reporting of average brokerage commissions expressed as cents per share paid to (a) brokerage firms affiliated with the trustee, and (b) brokerage firms unaffiliated with the trustee.

This amendment, if finalized, would result in a larger number of respondents and disclosure requirements that are specific to those respondents. The existing burdens and burden estimated to be associated with the proposed amendment are shown below.

*Agency:* Department of Labor, Pension and Welfare Benefits Administration

*Title:* PTE 86-128 for Certain Transactions Involving Employee Benefit Plans and Securities Broker-Dealers

*Type of Review:* Revision of a currently approved collection OMB Number: 1210-0059

*Affected Public:* Business or other for-profit; Not-for-profit institutions

*Total Respondents:* 22,974 existing;

700 proposal; 23,674 total

*Total Responses:* 542,813 existing;

700 proposal; 543,513 total

*Frequency of Response:* Quarterly; Annually

*Total Annual Burden:* 98,158 hours existing; 875 proposal; 99,033 total

*Total Annual Cost (Operating & Maintenance):* \$188,200 (no addition for proposal)

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

#### *A. General Background*

The prohibited transaction provisions of the Act prohibit certain transactions between a plan and a party in interest

<sup>1</sup>References to section 406 of ERISA as they appear throughout this proposed amendment should be read to refer as well to the corresponding provisions of section 4975 of the Internal Revenue Code of 1986 (the Code).

<sup>2</sup>Section 102 of the Reorganization Plan No. 4 of 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 of the Internal Revenue Code of 1986 (the Code) to the Secretary of Labor.

(including a fiduciary) with respect to such plan. Specifically, unless a statutory or administrative exemption is applicable, section 406(a) of ERISA prohibits, among other things: the provision of services between a plan and parties in interest [including fiduciaries] with respect to such plan; and the transfer of assets from a plan to a party in interest with respect to such plan. In addition, unless exempted, section 406(b) of ERISA prohibits, among other things, a fiduciary's dealing with the assets of a plan in his or her own interest. Although section 408(b)(2) of ERISA provides a conditional statutory exemption permitting plans to make reasonable contractual arrangements with parties in interest for the provision of services necessary for plan operations, that exemption does not extend to acts of self-dealing described in section 406(b) of ERISA.

A fiduciary performing both investment management and brokerage services for the same plan is in a position where his or her decision to engage in a portfolio trade on behalf of the plan, as an exercise of fiduciary discretion, would result in the plan paying the fiduciary an additional fee for the provision of the brokerage services. In the Department's view, such a decision involves an act of self-dealing prohibited by ERISA section 406(b) with respect to which section 408(b)(2) of ERISA does not provide relief.

#### *B. Description of Existing Relief*

PTE 86-128 provides relief from the restrictions of section 406(b) for a plan fiduciary to use its authority to cause a plan to pay a fee to such fiduciary for effectuating or executing securities transactions as agent for the plan. Section I of PTE 86-128 contains definitions and special rules. Notably, for purposes of this class exemption, a "person" is defined to include "the person and affiliates of the person", and an "affiliate" of a "person" is defined, in part, to include: (1) Any person directly or indirectly controlling, controlled by, or under common control with, the person; (2) any officer, director, partner, employee, relative (as defined in section 3(15) of ERISA), brother, sister, or spouse of a brother or sister, of the person; and (3) any corporation or partnership of which the person is an officer, director or partner.

Section II describes the transactions covered under PTE 86-128, to include: A plan fiduciary using his or her authority to cause a plan to pay a fee for effectuating or executing securities transactions to that person as agent for the plan, but only to the extent that such

transactions are not excessive, under the circumstances, in either amount or frequency; a plan fiduciary acting as the agent in an agency cross transaction for both the plan and one or more other parties to the transaction; and the receipt by a plan fiduciary of reasonable compensation for effectuating or executing an agency cross transaction to which a plan is a party in interest from one or more other parties to the transaction.

Section III contains conditions designed to protect the interests of plan participants and beneficiaries. These conditions require prior authorization to engage in covered transactions and periodic disclosure of the fiduciary's activities to the authorizing plan fiduciary. Section III(a) provides that the person engaging in a covered transaction is not a trustee (other than a nondiscretionary trustee) or an administrator of the plan, or an employer any of whose employees are covered by the plan. The term "person" is defined to include "affiliates" of the person, thus discretionary trustees, plan administrators, sponsoring employers, and their affiliates are generally precluded from relying on the relief provided by the exemption.

Section IV contains exceptions to several of the conditions in section III. Specifically, section IV provides that the conditions of section III do not apply to covered transactions to the extent such transactions are engaged in on behalf of individual retirement accounts which meet the requirement set forth in 29 CFR 2510.3-2(d) or plans, other than training programs, that do not cover any employees within the meaning of 29 CFR 2510.3-3. In addition, section IV provides that the conditions of section III do not apply in the case of agency cross transactions to the extent that the person effectuating or executing the transaction: Does not render investment advice to any plan for a fee with respect to the transaction; is not otherwise a fiduciary who has investment discretion with respect to any plan assets involved in the transaction; and does not have the authority to engage, retain or discharge any person who is, or is proposed to be, a fiduciary regarding any such plan assets. Section IV also provides that a plan trustee, plan administrator, or sponsoring employer may engage in a covered transaction if he or she returns or credits to the plan all profits earned by that person in connection with the securities transactions associated with the covered transaction. Finally, Section IV contains special rules for pooled investment funds.

#### *C. Discussion of the Proposed Exemption*

The SIA requests an amendment to PTE 86-128 which would enable a discretionary trustee of an ERISA covered plan, or an affiliate of such trustee, to use its fiduciary authority to cause the plan to pay a fee to such trustee for effectuating or executing securities transactions as agent for the plan. The applicant represents that the amendment is necessary since, as a result of the consolidation in the nation's financial services industry, plans are finding it increasingly difficult to select service providers that are unaffiliated with plan trustees. In addition, the applicant notes that banks, as trustees with investment discretion, are currently precluded under PTE 86-128 from using their affiliated broker-dealers to execute securities transactions.

According to the applicant, there has been an increase in the number of discretionary trustees that have affiliates providing brokerage services. The applicant states that, as a result, there are fewer brokers that are not affiliated in some way with a plan trustee. The applicant represents that further consolidation is likely under the Gramm-Leach-Bliley Act, signed into law on November 12, 1999 (Pub. L. 106-102, 113 Stat. 1338 (1999)).<sup>3</sup>

The SIA represents that, as a result of this consolidation, the discretionary trustees of larger plans, or affiliated investment managers thereof, often have little choice but to pay the higher transaction costs associated with executing securities transactions only through unaffiliated broker-dealers. In addition, the SIA represents that the investment strategies of certain plans, such as small cap, emerging markets or international investing, are increasingly becoming stunted as the number of available brokers having the requisite specialized expertise decreases. The proposed amendment, the applicant represents, will therefore be beneficial to plans because plan fiduciaries will no longer be forced to: appoint a plan trustee that does not have affiliated investment managers; appoint investment managers that are not affiliated with the trustee; or effect or execute securities transactions only through unaffiliated broker-dealers.

The SIA states that the relief sought in this application was originally

<sup>3</sup> The new law will facilitate cross-ownership and control among bank holding companies and securities firms through the creation of "financial hold companies" that will be permitted to engage in broad range of financial and related activities, including underwriting and dealing activities.

requested in 1986, when the Department replaced PTE 79-1 with PTE 86-128. At that time, the Department granted relief only where the trustee was strictly custodial and had no discretionary powers noting that "as a general matter, the position of a plan trustee may carry with it so great an influence over the general operation of the plan that an independent fiduciary may not be effective in examining critically and objectively multiple service arrangements", (Preamble to PTE 86-128, 51 FR 41686, 41692 (November 18, 1986)). However, the SIA represents that the comparative benefits gained by continuing to deny relief to discretionary trustees and their affiliates are at best speculative. They note that federal securities laws and banking laws, and the duties imposed upon fiduciaries by ERISA section 404(a), require that investment managers, regardless of whether they are affiliated with the trustee, seek "best execution" in effecting securities transactions on behalf of plans. The SIA also states that brokerage commissions have become very competitive and very transparent.

Moreover, the SIA represents that the compensation arrangements that investment managers have with plans encourage investment managers to seek "best execution" in effecting securities transactions through affiliated broker-dealers. In this regard, the SIA represents that an investment manager is typically compensated based upon the amount of assets under its management. The SIA represents further that the amount of "assets under management", in turn, is reduced by the brokerage commissions paid by such investment manager. Thus, according to the SIA, investment managers have an incentive to seek "best execution" in effecting securities transactions through affiliated broker-dealers since, to the extent a plan pays higher brokerage commissions than is required under the particular circumstances, the amount of compensation received by the plan's investment manager will be directly impacted by the amount of brokerage commissions paid by the plan.

The SIA is of the opinion that plans can be additionally protected from the risk of discretionary trustees "steering" brokerage to a broker-dealer affiliate by requiring such trustees to disclose annually to an independent fiduciary all brokerage commissions paid to affiliated and unaffiliated broker-dealers. They state that a plan sponsor, advised in writing of the potential conflicts and provided with significant comparative reporting, should be able to oversee the investment manager, regardless of whether the manager is affiliated with

the trustee. The SIA notes that the underwriter exemptions<sup>4</sup> provide similar relief to, among others, fiduciaries, including trustees, as long as certain reporting requirements are met and to the extent affected plans meet a minimum size threshold. The SIA represents that a comparable minimum size threshold and certain reporting requirements should adequately protect plans and ensure that the requested relief is in the best interest of affected plans.

Finally, the SIA notes that plan sponsors, especially large ones, have become increasingly sophisticated such that many trustees with broker-dealer affiliates maintain collective investment funds that passively manage portfolios to minimize trading and transaction costs. The SIA represents that, in such instances, the use by discretionary trustees of their own affiliates to provide brokerage services poses very little of the risk previously described by the Department. The SIA represents that, for all of the reasons cited above, it is appropriate for the Department to reconsider its position.

On the basis of the SIA's representations, and after reevaluating the Department's previously expressed concerns, the Department has tentatively concluded that it would be appropriate to extend relief under PTE 86-128 to discretionary plan trustees, provided that certain additional conditions are met. In this regard, the Department believes that a minimum plan size requirement is necessary in order to ensure an appropriate level of plan investor sophistication to monitor the covered transactions. Thus, the Department proposes to limit relief to plans with more than \$50 million in assets. While the SIA has agreed to this dollar limitation, it has also suggested that this dollar limitation be reviewed periodically and that the \$50 million requirement permit aggregation of all plans of an employer.<sup>5</sup>

Accordingly, the Department is proposing to limit the relief provided to trustees to plans that have net assets

<sup>4</sup> See e.g., PTE 2000-25 (65 FR 35129, June 1, 2000), an individual underwriter exemption which permits purchases of securities by the applicant's asset management affiliate, on behalf of employee benefit plans for which such asset management affiliate is a fiduciary, from underwriting or selling syndicates where the applicants' broker-dealer affiliate participates as a manager or syndicate member.

<sup>5</sup> PTE 2000-25, Section I (o) provides, in part, that for purposes of meeting the net asset tests, where a group of plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the \$50 million net asset requirement \* \* \* may be met by aggregating the assets of such plans, if the assets are pooled for investment purposes in a single master trust.

valued at least \$50 million. In the case of a pooled fund, the \$50 million requirement will be met if 50 percent or more of the units of beneficial interest in such pooled fund are held by plans having total net assets with a value of at least \$50 million. For purposes of the net asset tests described above, where a group of plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the \$50 million net asset requirement may be met by aggregating the assets of such plans, if the assets are pooled for investment purposes in a single master trust.

The Department also proposes that the trustee (other than a nondiscretionary trustee) furnish, at least annually, to the independent fiduciary of each authorizing plan, the following information:

(i) The total amount of brokerage commissions, expressed in dollars, paid by the plan (or fund in situations where a plan invests in a pooled fund) to brokerage firms affiliated with the trustee;

(ii) The total amount of brokerage commissions, expressed in dollars, paid by the plan (or fund in situations where a plan invests in a pooled fund) to brokerage firms unaffiliated with the trustee;

(iii) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms affiliated with the trustee; and

(iv) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms unaffiliated with the trustee.

### 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 apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan. Additionally, the fact that a transaction is the subject of an exemption does not 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 does not extend to transactions prohibited under section 406(a) of the Act;

(3) Before an exemption may be granted under section 408(a) of ERISA and 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; and

(5) 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 or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

#### Written Comments and Hearing Request

The Department invites all interested persons 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 received 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 exemption. Comments received will be available for public inspection at the above address.

#### 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 86-128 as set forth below:

(1) Section III(a) is amended to read: "The person engaging in the covered transaction is not an administrator of the plan, or an employer any of whose employees are covered by the plan.

(2) Adding to Section III new paragraph (h) to read: "(h) A trustee [other than a nondiscretionary trustee] may only engage in a covered transaction with a plan that has total net assets with a value of at least \$50 million and in the case of a pooled fund, the \$50 million requirement will be met if 50 percent or more of the units of beneficial interest in such pooled fund

are held by plans having total net assets with a value of at least \$50 million.

For purposes of the net asset tests described above, where a group of plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the \$50 million net asset requirement may be met by aggregating the assets of such plans, if the assets are pooled for investment purposes in a single master trust.

(3) Adding to Section III new paragraph (i) to read:

"(i) The trustee (other than a nondiscretionary trustee) engaging in a covered transaction furnishes, at least annually, to the authorizing fiduciary of each plan the following:

(1) The aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms affiliated with the trustee;

(2) The aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms unaffiliated with the trustee;

(3) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms affiliated with the trustee; and

(4) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms unaffiliated with the trustee."

For purposes of this paragraph (i), the words "paid by the plan" shall be construed to mean "paid by the pooled fund" when the trustee engages in covered transactions on behalf of a pooled fund in which the plan participates.

Signed at Washington, DC, this 6th day of May, 2002.

**Ivan L. Strasfeld,**

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

[FR Doc. 02-11662 Filed 5-9-02; 8:45 am]

**BILLING CODE 4520-29-P**

#### NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

##### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records

schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites 1 public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before June 24, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740-6001. Requests also may be transmitted by FAX to 301-837-3698 or by e-mail to [records.mgt@nara.gov](mailto:records.mgt@nara.gov). Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. Telephone: (301) 713-7110. E-mail: [records.mgt@nara.gov](mailto:records.mgt@nara.gov).

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and