

**DEPARTMENT OF LABOR****Pension and Welfare Benefits Administration****[Application No. D-11039]****Notice of Proposed Individual Exemption To Amend Prohibited Transaction Exemption (PTE) 95-31 Involving the Financial Institutions Retirement Fund (the Fund) and the Financial Institutions Thrift Plan (the Thrift Plan) Located in White Plains, NY****AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.**ACTION:** Notice of proposed individual exemption to amend PTE 95-31.

**SUMMARY:** This document contains a notice of pendency before the U.S. Department of Labor (the Department) of a proposed individual exemption which, if granted, would amend PTE 95-31 (60 FR 18619, April 12, 1995), an exemption granted to the Fund and the Thrift Plan. PTE 95-31 involves the provision of certain services, and the receipt of compensation for such services, by Pentegra Services, Inc. (Pentegra), a wholly-owned, for-profit subsidiary corporation of the Fund, to: Employers (the Employers) that participate in the Fund and the Thrift Plan; and employee benefit plans (the Plans) sponsored by such Employers.

If granted, the proposed exemption would incorporate, by reference, certain of the facts, representations and conditions contained in PTE 95-31. However, the proposed exemption would expand the scope of PTE 95-31 by allowing for the provision of certain trust services, and the receipt of compensation for such services, by Trustco, a wholly-owned subsidiary of Pentegra, to the Plans, the Employers, the Thrift Plan, and the individual retirement accounts (the IRAs) established by certain employees, officers, directors and/or shareholders of the Employers (the Individuals). In addition, the proposed exemption would permit the provision of certain services, and the receipt of compensation with respect to such services, by Pentegra to the Thrift Plan and the IRAs.

Thus, the proposed exemption will affect the Fund, the Thrift Plan, the Plans, the Employers, the IRAs, the Individuals, and, when relevant, the participants and beneficiaries thereof.

**DATES:** Written comments and requests for a public hearing should be received by the Department on or before September 16, 2002.

**ADDRESSES:** All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D-11039. 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. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Christopher Motta, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (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 exemption to amend PTE 95-31. PTE 95-31 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code.

The proposed exemption has been requested in an application filed on behalf of the Fund and the Thrift Plan (together, the Applicants) pursuant to 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 December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, the proposed exemption is being issued solely by the Department.

PTE 95-31 provides that—

- The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the provision of certain services, and the receipt of compensation for such

services, by Pentegra Services, Inc. (Pentegra), a wholly-owned, for-profit subsidiary corporation of the Fund, to employee benefit plans (the Plans) and to their sponsoring employers (the Employers) that participate in the Fund and the Thrift Plan; provided that [certain] conditions are met.

As set forth in the Summary of Facts and Representations contained in the proposed notice to PTE 95-31 (60 FR 5700 (January 30, 1995)), the exemption provides relief for the provision of administrative services by Pentegra to the Plans and the Employers, and the receipt of compensation by Pentegra for such provision of services. The services provided by Pentegra include document preparation, the procurement of favorable determination letters from the Internal Revenue Service, the maintenance of plan books, and other similar plan administration services. At the time the exemption was granted, Pentegra did not offer trust services to any of its clients, including the Plans and/or the Employers.

The Applicants state that, to date, Pentegra has been successful in providing services to 66 defined contribution plans, 72 employee stock ownership plans, and 32 nonqualified plans. In addition, the Applicants represent that, in building a large and diverse client base, the Fund and the Thrift Plan complied with all of the conditions contained in PTE 95-31. The Fund now intends to create Trustco, a for-profit, limited purpose, national trust company as a means of providing trust services to, among others, the Plans, the Employers, the Thrift Fund, and the IRAs. The Applicants represent that the Fund seeks to create Trustco primarily in response to requests by numerous of Pentegra's current and prospective clients that Pentegra offer trust services to complement its various other administrative services.

The Applicants state that, once established, Trustco will offer trust services that are similar in nature to the services described in PTE 95-31. In this regard, the Applicants state that Trustco will provide only directed, non-discretionary trust services.<sup>1</sup> Accordingly, the Applicants request that such provision of services be subject to substantially the same conditions as those contained in PTE 95-31.

The Applicants state that the Fund, the Plans, the IRAs, and the Thrift Plan will be adequately protected with respect to the receipt by each such entity of services from Trustco. In this

<sup>1</sup> In so doing, the applicant represents, Trustco, will not participate in securities lending transactions or provide cash management services.

regard, with respect to the Fund, the Applicants state that the provision of trust services by Trustco to the Thrift Plan, the Plans, the IRAs and the Employers will be subject to, among other things, the prior approval of an independent fiduciary. In addition, the financial statements of Trustco will be subject to an annual audit conducted by an independent certified accountant and an annual review conducted by an independent fiduciary. With respect to the adequate protection of the Plans and the IRAs, the Applicants state that, among other things, the terms associated with any receipt of services by the Plans and the IRAs from Trustco will be no less favorable to the Plans and the IRAs than the terms contained in comparable agreements for services between unrelated parties. With respect to the adequate protection of the Thrift Plan, the Applicants state that, among other things, any selection of Trustco as provider of trust services to the Thrift Plan will be made by the Board of Directors of the Thrift Plan upon the Thrift Plan Board's determination that the services are necessary and the associated fees are reasonable.<sup>2</sup>

The Applicants additionally seek relief for the provision of certain services by Pentegra to the Thrift Plan and the IRAs. The Applicants state that such provision of services is important to the continued success of Pentegra given that the employer market for pension plan services appears to be declining. The Applicants state that the proposed transactions involve services of the same nature and type as those described in PTE 95-31 and request that the terms and conditions applicable to this proposed provision of services be substantially the same as the terms and conditions contained therein. The Applicants state that the Thrift Plan will be adequately protected since, among other things, any selection of Pentegra as provider of trust services to Thrift Plan will be made by the Board of Directors of the Thrift Plan, such Board being independent of Pentegra as

<sup>2</sup> In this regard, the Applicants state that the Thrift Plan's Board of Directors will at all times be independent of the Fund's Board of Directors, Trustco's Board of Directors, and Pentegra's Board of Directors. Specifically, with respect to the provision of services by Trustco (Pentegra) to the Thrift Plan, a majority of the members of the Thrift Plan Board will not contemporaneously participate as members of the Trustco Board (Pentegra Board). Moreover, to the extent a Thrift Plan Board member does participate as a member of the Trustco Board (Pentegra Board), such member will abstain from any discussions or deliberations involving the provision of services by Trustco (Pentegra); and will not otherwise exercise, with respect to such provision of services, any of the authority, control or responsibility which makes him or her a fiduciary.

described in footnote 2, upon the Thrift Plan Board's determination that the services are necessary and the associated fees are reasonable. The Applicants additionally state that the IRAs will be adequately protected since, among other things, the terms associated with any receipt of services by the IRAs from Pentegra will be no less favorable to the IRAs than the terms contained in comparable agreements for services between unrelated parties.

Accordingly, this proposed exemption amends and revises the operative language of PTE 95-31 through the addition of: (1) The provision of non-discretionary, directed trust services by Trustco to the Plans, the Employers, the IRAs, and the Thrift Plan; and (2) the provision of certain services by Pentegra to the IRAs and the Thrift Plan.

#### Notice to Interested Persons

*Notice to Interested Persons:* The applicant represents that notice to interested persons will be made within forty-five (45) business days following publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than seventy-five (75) days from the date of publication of this notice of proposed exemption in the **Federal Register**.

#### 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 the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act 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 the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the

Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. 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; and

(5) This proposed exemption, if granted, is subject to the express condition that the facts and representations set forth in the notice of proposed exemption relating to PTE 95-31 and this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

#### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

#### Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption 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).

#### Section I. Covered Transactions

If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the provision of certain services, and the receipt of compensation for such services, by Pentegra Services, Inc. (Pentegra), a wholly-owned, for-profit subsidiary corporation of the Fund, and Trustco, a wholly-owned subsidiary corporation of Pentegra (collectively, the Service Providers), to: The Thrift Plan;

employers that participate in the Fund and/or the Thrift Plan (the Employers); employee benefit plans sponsored by the Employers (the Plans); and the individual retirement accounts (the IRAs) established by certain employees, officers, directors and/or shareholders of the Employers (the Individuals); provided that the following conditions are met:

(a) A qualified, independent fiduciary of the Fund determines that the services provided by the Service Providers are in the best interests of the Fund and are protective of the rights of the participants and beneficiaries of the Fund;

(b) The terms associated with the provision of services by the Service Providers to the Plans, the Thrift Fund, and the IRAs, at the time such services are entered into, are not less favorable to all parties to the transaction than the terms generally available in comparable arm's-length transactions involving unrelated parties;

(c) The Service Providers receive reasonable compensation for the provision of services, as determined by an independent fiduciary;

(d) Prior to the provision of services by the Service Providers, the independent fiduciary will first review such services and will determine that such services are reasonable and appropriate for the Service Providers, taking into account such factors as: whether the Service Providers have the capability to perform such services, whether the fees to be charged reflect arm's-length terms, whether Service Provider personnel have the qualifications to provide such services, and whether such arrangements are reasonable based upon a comparison with similarly qualified firms in the same or similar locales in which the Service Providers propose to operate;

(e) No services will be provided by the Service Providers without the prior review and approval of the independent fiduciary;

(f) Not less frequently than quarterly, the independent fiduciary will perform periodic reviews to ensure that the services offered by the Service Providers remain appropriate for the Service Providers and that the fees charged by the Service Providers represent reasonable compensation for such services;

(g) Not less frequently than annually, the Service Providers will provide a written report to the board of directors of the Fund describing in detail the services provided to the Plans, the Employers, the IRAs, and the Thrift Plan, a detailed accounting of the fees received for such services, and an

estimate as to the amount of fees the Service Providers expect to receive during the following year from such Plans and Employers;

(h) Not less frequently than annually, the independent fiduciary will conduct a detailed review of approximately 10 percent of all transactions completed by the Service Providers which will include a reasonable cross-section of all services performed; such transactions will be reviewed for compliance with the terms and conditions of this exemption;

(i) The financial statements of the Service Providers will be audited each year by an independent certified public accountant, and such audited statements will be reviewed by the independent fiduciary;

(j) The independent fiduciary shall have the authority to prohibit the Service Providers from performing services that such fiduciary deems inappropriate and not in the best interests of the Service Providers and the Fund;

(k) Each Service Provider contract with an Employer, an IRA, the Thrift Plan or a Plan will be subject to termination without penalty by any of the parties to the contract for any reason upon reasonable written notice;

(l) Trustco will act solely as a directed trustee and will not:

(1) Have any investment discretion with respect to the assets being held in trust,

(2) engage in any securities lending transactions, and/or

(3) provide any cash management services; and

(m) A majority of the Board of Directors of the Thrift Plan will at all times be independent of, and separate from, the Board of Directors of the Fund, the Board of Directors of Pentegra, and the Board of Directors of Trustco, and, with respect to the selection of Trustco and/or Pentegra as provider(s) of services to the Thrift Plan:

(1) Such majority members alone will give prior approval upon determining that such services are necessary and the associated fees charged are reasonable; and

(2) Any member of the Board of Directors of the Thrift Plan contemporaneously participating as a member of the Board of Directors of Pentegra (Trustco) will remove himself or herself from all consideration by the Thrift Plan regarding the provision of services by Trustco (Pentegra) to the Thrift Plan and will not otherwise exercise, with respect to such provision(s) of services, any of the authority, control or responsibility which makes him or her a fiduciary.

## Section II. Recordkeeping

(1) The independent fiduciary and the Fund will maintain, or cause to be maintained, for a period of 6 years, the records necessary to enable the persons described in paragraph (2) of this section to determine whether the conditions of this exemption have been met, except that: (a) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the independent fiduciary and the Fund, or their agents, the records are lost or destroyed before the end of the six year period; and (b) no party in interest other than the independent fiduciary and the Board of Directors of the Fund shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (2) below.

(2)(a) Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (1) of this section shall be unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) Any employer participating in the Fund and/or Thrift Plan or any duly authorized employee or representative of such employer;

(3) Any participant or beneficiary of the Fund, Thrift Plan, or Plan or any duly authorized representative of such participant or beneficiary; and

(4) Any Individual.

(b) None of the persons described above in subparagraphs (a)(2) and (a)(3) of this paragraph (2) shall be authorized to examine trade secrets of the independent fiduciary or the Fund, or their affiliates, or commercial or financial information which is privileged or confidential.

(3) For purposes of this section, references to the Fund shall also include the Service Providers.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of

the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 95-31, refer to the proposed exemption and the grant notice which are cited above.

Signed at Washington, DC, this 28th day of June, 2002.

**Ivan L. Strasfeld,**

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

[FR Doc. 02-16735 Filed 7-2-02; 8:45 am]

**BILLING CODE 4510-29-P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that six meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506 as follows:

*Theater/Musical Theater (A):* July 15-19, 2002, Room 714 (Creativity category). A portion of this meeting, from 2:30 p.m. to 4:30 p.m. on July 18th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:30 a.m. to 6:30 p.m. on July 15th to 17th, 9:30 a.m. to 2:30 p.m. and 4:30 p.m. to 6:30 p.m. on July 18th, and from 9:30 a.m. to 5 p.m. on July 19th, will be closed.

*Literature:* July 30-August 1, 2002, Room 730 (Creativity and Organizational Capacity categories). A portion of this meeting, from 9 a.m. to 10:30 a.m. on August 1st, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 7 p.m. on July 30th and July 31st, and from 10:30 a.m. to 4 p.m. on August 1st, will be closed.

*Theater (B):* August 5-9, 2002, Room 714 (Creativity and Organizational Capacity categories). A portion of this meeting, from 2:30 p.m. to 4:30 p.m. on August 8th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:30 a.m. to 6:30 p.m. on August 5th-7th, from 9:30 a.m. to 2:30 p.m. and 4:30 p.m. to 6:30 p.m. on August 8th, and from 9:30 a.m. to 5 p.m. on August 9th, will be closed.

*Dance:* August 5-9, 2002, Room 716 (Creativity and Organizational Capacity

categories). A portion of this meeting, from 9:30 a.m. to 10:30 a.m. on August 9th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on August 5th-8th, and from 10:30 a.m. to 4 p.m. on August 9th, will be closed.

*Local Arts Agencies (A):* August 7-8, 2002, Room 730 (Creativity category). A portion of this meeting, from 9 a.m. to 9:45 a.m. on August 8th, will be open to the public for policy discussion. The remaining portion of this meeting, from 9 a.m. to 5:30 p.m. on August 7th, will be closed.

*Local Arts Agencies (B):* August 8, 2002, Room 730 (Organizational Capacity category). A portion of this meeting, from 1:15 p.m. to 1:45 p.m., will be open to the public for policy discussion. The remaining portion of this meeting, from 10 a.m. to 1:15 p.m., will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682-5691.

Dated: June 27, 2002.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations,  
National Endowment for the Arts.*

[FR Doc. 02-16669 Filed 7-2-02; 8:45 am]

**BILLING CODE 7537-01-P**

## NATIONAL SCIENCE FOUNDATION

### Committee Management; Renewals

The NSF management officials having responsibility for the four advisory committees listed below have determined that renewing these groups for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

1. Committee on Equal Opportunities in Science and Engineering (#1173).
2. Advisory Committee for Computer and Information Sciences and Engineering (#1115).
3. Advisory Committee for Mathematical and Physical Sciences (#66).

4. Advisory Committee for Social, Behavioral & Economic Sciences (#1171).

Effective date for renewal is July 1, 2002. For more information, please contact Susanne Bolton, NSF, at (703) 292-7488.

Dated: June 28, 2002.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 02-16727 Filed 7-2-02; 8:45 am]

**BILLING CODE 7555-01-M**

## NATIONAL SCIENCE FOUNDATION

### Committee Management; Renewals

The NSF management officials having responsibility for the advisory committees listed below determined that renewing these groups for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 *et seq.* The committees will be renamed (the previous name is in parenthesis). The committee number is the stay the same. This determination following consultation with the Committee Management Secretariat, General Services Administration.

1. #1209—Proposal Review Panel for Polar Programs (Special Emphasis Panel in Polar Programs).

2. #1185—Proposal Review Panel for Advanced Computational Infrastructure and Research (Special Emphasis Panel in Advanced Computational Infrastructure and Research).

3. #1207—Proposal Review Panel for Advanced Networking and