

10. Medical Records and Health Information Technicians including Medical Billers and Coders;
11. Pipe fitters and Steamfitters;
12. Radiological Technologists and Technicians;
13. Solar Thermal Installers and Technicians;
14. Weatherization Installers and Technicians; and
15. Wind Turbine Service Technicians.

Those who submitted a video prior to the original deadline of June 18 and wish to submit an alternate version may do so by August 20, and indicate that they wish to substitute it for the original version.

Phase 2 will run from August 23 to September 10. During this phase, the DOL/ETA will screen, review, and identify the top three career videos in each occupational category and post these selected videos online at <http://www.dolvideochallenge.ideascale.com> for public review.

Phase 3 will run from September 13 to October 8. During this phase, the public will recommend the top career video in each occupational category. They will also have the opportunity to comment on videos.

Phase 4 will run from October 11 to October 29. In this final phase, DOL and ETA, will communicate the top career video in each occupational category to the workforce development community, educational community, and job seekers by:

1. Posting an announcement of the top ranking videos on key Web sites including:
  - [DOL.gov](http://DOL.gov);
  - [DOLETA.gov](http://DOLETA.gov);
  - White House Office of Science and Technology Policy blog;
  - [Workforce3One.org](http://Workforce3One.org); and Other sites;
  - 2. Highlighting the videos and occupations on ETA's <http://www.CareerOneStop.org> portal, which already houses a variety of occupational videos for the workforce system;
  - 3. Providing additional coverage of the videos on the ETA Communities of Practice, including: 21st Century Apprenticeship, Green Jobs, Reemployment Works, Regional Innovators, and Disability and Employment.
  - 4. Utilizing other communication outlets such as national associations and intergovernmental organizations like the National Association of State Workforce Agencies, the National Association of Workforce Boards, the National Governor's Association, the National Association of Counties, and the Association of Community Colleges.

**FOR FURTHER INFORMATION CONTACT:**  
 Michael Harding, Room 4510-C  
 Employment and Training  
 Administration, 200 Constitution  
 Avenue, NW., Washington, DC 20210.  
 Telephone number: 202-693-2921 (this  
 is not a toll-free number). Fax: 202-693-  
 3015. E-mail: [Harding.Michael@dol.gov](mailto:Harding.Michael@dol.gov)

Signed at Washington, DC this 8th day of June 2010.

**Jane Oates,**

*Assistant Secretary, Employment and Training Administration.*

[FR Doc. 2010-14141 Filed 6-11-10; 8:45 am]

**BILLING CODE 4510-FN-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Application Number D-11221]

ZRIN 1210-ZA09

### Proposed Amendment to Prohibited Transaction Exemption (PTE) 96-23 for Plan Asset Transactions Determined by In-House Asset Managers

**AGENCY:** Employee Benefits Security Administration.

**ACTION:** Notice of Proposed Amendment to PTE 96-23.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 96-23. The exemption permits various transactions involving employee benefit plans whose assets are managed by in-house asset managers (INHAMs), provided the conditions of the exemption are met. The proposed amendment would affect participants and beneficiaries of employee benefit plans, the sponsoring employers of such plans, INHAMs, and other persons engaging in the described transactions.

**DATES:** Written comments must be received by the Department on or before August 13, 2010.

**ADDRESSES:** All written comments and requests for a public hearing concerning the proposed amendment should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210, Attention: PTE 96-23 Amendment. Interested persons are also invited to submit comments and hearing requests to EBSA via e-mail to: [moffitt.betty@dol.gov](mailto:moffitt.betty@dol.gov) or by fax to 202-219-0204 by the end of the scheduled comment period. The comments received will be available for public

inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210. Comments and hearing requests will also be available online at <http://www.regulations.gov> and <http://www.dol.gov/ebsa>, at no charge.

**Warning:** If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

**FOR FURTHER INFORMATION CONTACT:**

Chris Motta, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Room N-5700, 200 Constitution Avenue NW., Washington DC 20210, (202) 693-8540 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 96-23 (61 FR 15975, April 10, 1996). PTE 96-23 provides an exemption from certain of the restrictions of sections 406 and 407(a) of ERISA, and from certain taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. The Department is proposing this amendment to PTE 96-23 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).<sup>1</sup>

**Executive Order 12866 Statement**

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100

<sup>1</sup> Section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. at 214 (2000 ed.), generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as “economically significant”); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants; user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

OMB has designated this Notice as a significant action under Executive Order 12866 and has reviewed its contents.

#### *Paperwork Reduction Act Analysis*

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and 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 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 Department is soliciting comments concerning the proposed information collection request (ICR) included in the Proposed Amendment to Prohibited Transaction Exemption (PTE) 96-23 for Plan Asset Transactions Determined by In-House Asset Managers. A copy of the ICR may be obtained by contacting the PRA addressee shown below or at <http://www.RegInfo.gov>. PRA Addressee: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N-5718, Washington, DC 20210. Telephone (202) 693-8410; Fax: (202) 219-5333. These are not toll-free numbers. ICRs submitted to OMB are also available at [reginfo.gov](http://www.reginfo.gov/public/do/PRAMain) (<http://www.reginfo.gov/public/do/PRAMain>).

The Department has submitted a copy of the proposed amendment to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are

particularly interested in comments that:

- Evaluate whether the 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 collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. Comments also may be submitted by using the Federal eRulemaking portal at <http://www.regulations.gov> (follow instructions for submission of comments). OMB requests that comments be received within 30 days of publication of the proposed amendment to ensure their consideration. Please note that comments submitted to OMB are a matter of the public record.

The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number.<sup>2</sup> Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number.<sup>3</sup>

The INHAM exemption permits various parties in interest to employee benefit plans to engage in transactions involving plan assets if, among other requirements, the assets are managed by an INHAM. The Department included in the exemption certain requirements intended to preserve plan assets and protect plan participant benefits. The

exemption includes a requirement for written guidelines between an INHAM and a property manager that an INHAM has retained to act on its behalf. Because it is a customary business practice for agreements related to the investment of plan assets or transactions relating to the leasing of space to be described in writing, no burden was estimated for this provision. The information collection requirements included in this paperwork burden estimate consist of the requirements that the INHAM develop written policies and procedures designed to assure compliance with the conditions of the exemption, and have an independent auditor conduct an annual INHAM exemption audit and issue a written audit report.

The Department has made certain specific basic assumptions in order to establish a reasonable estimate of the paperwork burden of this information collection.

First, the Department assumes that INHAMs, which are large, sophisticated financial institutions, will use existing in-house resources to prepare the policies and procedures, rather than hiring outside service providers to do this work. This assumption does not apply to the audit requirements.

Second, given the nature of the information collection requirements, the Department assumes a combination of personnel will perform the information collection. Using data from the Bureau of Labor Statistics, the Department assumes an hourly wage rate of \$107 for 2010, including both wages and benefits, for a financial manager and an hourly wage rate of \$26, similarly including wages and benefits, for clerical personnel.<sup>4</sup> Legal professional time is similarly assumed to be \$119 per hour.

Third, the Department assumes that maintenance of records of the policies and procedures and the audits is generally a usual and customary business practice that would be undertaken regardless of the exemption. The proposed amendment does not contain any additional recordkeeping requirements; no additional burden has been assumed for recordkeeping costs.

<sup>2</sup> EBSA estimates of labor rates include wages, other benefits, and overhead based on the National Occupational Employment Survey (May 2008, Bureau of Labor Statistics) and the Employment Cost Index (June 2009, Bureau of Labor Statistics). Figures are projected forward to 2010. Financial manager wage and benefits estimates of \$107.23 are based on metropolitan wage rates for financial managers. Clerical wage and benefits estimates of \$26.14 are based on metropolitan wage rates for executive secretaries and administrative assistants. Legal professional wage and benefits estimates of \$119.03 are based on metropolitan wage rates for lawyers.

<sup>3</sup> 5 CFR 1320.5 and 1320.3(c).

<sup>4</sup> 5 CFR 1320.6.

Further, given the sophisticated nature of the parties involved, the Department assumes that communications between the parties will occur electronically via means already in existence. Therefore, the costs arising from electronic communications will be negligible.

The Department estimates that there will be approximately 20 INHAMs that will utilize the amended prohibited transaction exemption. Information provided by CIEBA, an industry trade group, indicates that approximately 24 of CIEBA's members manage plan assets in-house and approximately 14–16 of those currently maintain INHAMs and utilize the exemptive relief provided in PTE 96–23.<sup>5</sup> CIEBA's membership is estimated to include about 80 percent of all the large firms that manage plan assets in-house. That leads to an estimate of approximately 18 INHAMs. In addition, the Department expects approximately two more INHAMs to be established due to proposed changes to the definition of an INHAM. The number of INHAMs is assumed to be constant over time.

#### Written Policies and Procedures

The Department assumes that INHAMs will use existing in-house resources to prepare the written policies and procedures. The Department estimates that each INHAM will use 15 hours of a legal professional's time to develop policies and procedures. This leads to an hour burden in the first year of 300 hours.<sup>6</sup> At \$119 per hour, the equivalent cost will be \$35,700 for the first year.<sup>7</sup>

For subsequent years, the Department assumes that INHAMs will change their policies and procedures very infrequently. Therefore, the hour burden for subsequent years is estimated to be negligible. The Department invites comments from interested persons on the appropriateness of this assumption.

<sup>5</sup> CIEBA is a trade association whose membership includes corporate financial officers who serve as fiduciaries of employee benefit plans subject to ERISA and the Code. CIEBA's approximately 115 member companies collectively oversee about \$1.4 trillion of defined benefit and defined contribution plan assets for about 16 million plan participants and beneficiaries. For defined benefit plans in 2008, the member companies oversaw more than \$652 billion in plan assets for more than 10.2 million plan participants. CIEBA 2008 Membership Profile Executive Summary. This figure represents approximately 35 percent of the defined benefit plan assets in the United States. This calculation is based on a projection computed by applying percentage changes in pension assets derived from the Federal Reserve Board's Flow of Funds Accounts to the 2006 Form 5500 filings with the U.S. Department of Labor.

<sup>6</sup> 20 INHAMs × 15 hours = 300 hours.

<sup>7</sup> 300 hours × \$119 per hour = \$35,700.

#### Audit Requirements

INHAMs are assumed to use either a law firm or an accounting firm to conduct the annual audit required by the proposed amendment. The Department has received information from industry representatives that the cost of the annual audit required by PTE 96–23 may range from approximately \$10,000 to \$25,000, depending on asset size and how many years the INHAM has used the auditing firm. The Department has used a conservative estimate for the cost of the outside auditing firm for each audit of \$20,000. This leads to a cost estimate for the annual audits of \$400,000.<sup>8</sup>

For purposes of the hour burden, the Department estimates that each INHAM will use in-house legal professional, financial manager, and clerical time to provide documents and respond to questions from the auditor. Each annual audit will require about ten hours of a legal professional's time, 25 hours of a financial manager's time, and twelve hours of clerical time. This leads to an hour burden of 940 hours.<sup>9</sup> The equivalent cost of this hour burden for the annual audits is approximately \$83,700.<sup>10</sup>

#### Summary

For the first year, the Department estimates that the total hour burden imposed by the information collection is about 1,240 hours.<sup>11</sup> The total equivalent cost of this hour burden is approximately \$119,400.<sup>12</sup> The total cost burden is \$400,000.

For subsequent years, the total annual hour burden is approximately 940 hours. The total equivalent annual cost of this hour burden is about \$83,700. The total annual outside cost is \$400,000.

The paperwork burden estimates are summarized as follows:

**Type of Collection:** New collection (Request for new OMB Control Number).

**Agency:** Employee Benefits Security Administration, Department of Labor.

**Title:** Proposed Amendment to PTE 96–23 for Plan Asset Transactions Determined by In-House Asset Managers.

**OMB Control Number:** New.

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

<sup>8</sup> \$20,000 × 20 INHAMs = \$400,000.

<sup>9</sup> (10 hours + 25 hours + 12 hours) × 20 INHAMs = 940 hours.

<sup>10</sup> (10 hours × \$119 per hour + 25 hours × \$107 per hour + 12 hours × \$26 per hour) × 20 INHAMs = \$83,700.

<sup>11</sup> 300 hours + 940 hours = 1,240 hours.

<sup>12</sup> \$35,700 + \$83,700 = \$119,400.

#### Estimated Number of Respondents:

20.

**Estimated Number of Annual Responses:** 40 in the first year, 20 in each subsequent year.

**Frequency of Response:** Annually; occasionally.

**Estimated Total Annual Burden Hours:** 1,240 in the first year, 940 in each subsequent year.

**Estimated Total Annual Burden Cost:** \$400,000.

#### Background

On March 13, 1984, the Department granted Prohibited Transaction Exemption (PTE) 84–14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers (49 FR 9494), a class exemption that permits various parties who are related to employee benefit plans to engage in transactions involving plan assets if, among other conditions, the assets are managed by a “qualified professional asset manager” (QPAM). The Department recently amended the QPAM exemption.<sup>13</sup>

The QPAM exemption granted in 1984 did not provide relief for transactions involving the assets of plans managed by in-house asset managers. The Committee on Investment of Employee Benefit Assets (CIEBA) subsequently requested such relief. CIEBA represented that in-house managers encountered technical problems under the prohibited transaction rules of ERISA in the course of considering arm's-length transactions that would be in the interests of their plans.

CIEBA stated, in its original exemption application, that in-house managers have become an established part of many large companies that manage some or all of their plan assets in-house. According to CIEBA, many of the large corporations that made up its membership maintained one or more employee benefit plans holding, in the aggregate, assets in excess of \$250 million. These large corporations determined that they could reduce costs and maintain high quality management by developing an in-house asset management capability rather than relying exclusively on outside managers or consultants. CIEBA represented that, in addition to providing reduced costs

<sup>13</sup> See Amendment to Prohibited Transaction Exemption (PTE) 84–14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers, 70 FR 49305 (August 23, 2005). See also Proposed Amendment to Prohibited Transaction Exemption (PTE) 84–14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers, 70 FR 49312 (August 23, 2005).

for comparable or better quality management, in-house managers were attractive to employers because they devoted their time solely to the plan's asset management activities, while outside managers had other clients and responsibilities. The applicant also asserted that the named plan fiduciaries benefited from having access to in-house expertise and advice to assist them in carrying out their fiduciary responsibilities.

CIEBA represented that, unless the Department provided broad exemptive relief for in-house asset managers, in-house plans would be disadvantaged because of the restrictions on the types of transactions an in-house manager could engage in on behalf of such a plan. The applicant explained that very large plans may have thousands of parties in interest, making the task of determining whether a particular transaction was prohibited a considerable burden for the plan fiduciaries. According to the applicant, if the in-house manager wished to enter into a transaction he or she believed would be beneficial to the plan but which also involved a party in interest, that manager would be required to either: (1) Seek an individual prohibited transaction exemption; (2) retain a QPAM for the transaction; or (3) forgo the transaction. The applicant argued that seeking an individual exemption involved time and legal expenses. In addition, the use of a QPAM entailed additional expenses for the plan despite the fact that the in-house manager had already done most of the work required for the transaction, including performing the necessary due diligence as to, for example, the creditworthiness of the other parties to the transaction.<sup>14</sup> Finally, the applicant argued that forgoing the transaction might cause the plan to miss out on a beneficial opportunity. CIEBA argued that a class exemption for in-house asset managers was necessary because these limitations on a plan's investment choices could raise a plan's investment costs in the short run by limiting the parties with whom it may deal, and could adversely affect investment performance in the long run. Based on the record developed, the Department determined that relief would be appropriate and granted the Class Exemption for Plan Asset Transactions Determined by In-House Asset Managers (INHAMs).<sup>15</sup>

<sup>14</sup> The Department is expressing no opinion as to whether the above described transaction would come within the scope of relief provided by PTE 84-14, as amended.

<sup>15</sup> 61 FR 15975 (April 10, 1996).

#### *Description of Existing Relief*

The INHAM exemption consists of four separate parts. Part I sets forth the general exemption and enumerates certain conditions applicable to the transactions described therein. The general exemption allows that portion of a plan which is managed by an INHAM to engage in all transactions described in section 406(a)(1)(A) through (D) of ERISA with virtually all party in interest service providers except the INHAM or a person related to the INHAM. The general exemption does not extend to transactions that would give rise to violations of section 406(b) of ERISA.

Part II of the exemption provides limited relief under both sections 406(a) and (b), and 407(a), of ERISA for certain transactions involving employers and their affiliates who cannot qualify for the general exemption provided by Part I. Section II(a) provides limited relief for the leasing of office or commercial space by a plan to an employer if the plan acquired the property subject to an outstanding lease with an employer or affiliate as a result of foreclosure on a mortgage or deed of trust. Section II(b) permits a plan to lease residential space to an employee of an employer any of whose employees are covered by such plan, or to any employee of a 50% or more parent or subsidiary of the employer.

Part III of the exemption provides relief from sections 406(a)(1)(A) through (D), 406(b)(1) and (b)(2) of ERISA for the furnishing of services, facilities and any goods incidental thereto by a place of accommodation owned by a plan managed by an INHAM to a party in interest with respect to the plan, if the services, facilities or incidental goods are furnished on a comparable basis to the general public.

Part IV contains definitions of certain terms used in the exemption.

#### *Description of the Proposed Amendments*

##### *Definition of INHAM*

The Department is proposing to amend several provisions of the INHAM exemption, including the definition of INHAM in section IV(a). Section IV(a) currently provides that:

The term "in-house asset manager" or "INHAM" means an organization which is—

(1) Either (A) a direct or indirect wholly-owned subsidiary of an employer, or a direct or indirect wholly-owned subsidiary of a parent organization of such employer, or (B) a membership nonprofit corporation a majority of whose members are officers or directors of such an employer or parent organization; and

(2) an investment adviser registered under the Investment Advisers Act of 1940 that, as

of the last day of its most recent fiscal year, has under its management and control total assets attributable to plans maintained by affiliates of the INHAM (as defined in section IV(b)) in excess of \$50 million; provided that if it has no prior fiscal year as a separate legal entity as a result of it constituting a division or group within the employer's organizational structure, then this requirement will be deemed met as of the date during its initial fiscal year as a separate legal entity that responsibility for the management of such assets in excess of \$50 million was transferred to it from the employer.

In addition, plans maintained by affiliates of the INHAM and/or the INHAM, must have, as of the last day of each plan's reporting year, aggregate assets of at least \$250 million.

The Department has been informed by interested persons that the requirement that an INHAM be a wholly owned subsidiary of an employer or its parent organization unduly limited some entities from serving as INHAMs. Interested parties requested, in comments submitted in connection with the proposed amendment to the QPAM class exemption [68 FR 52419, September 3, 2003], that the Department consider broadening the definition of INHAM to permit a greater number of entities to take advantage of the relief provided by the exemption.

In response to such comments, the Department proposes to expand the definition of INHAM to include a subsidiary that is 80% or more owned by the employer or parent company. Additionally, the plan assets under management requirement would be increased from \$50 million to \$85 million, effective as of the last day of the first fiscal year beginning on or after the date of publication in the **Federal Register** of the final amendment to this exemption. The increase reflects the change in the Consumer Price Index.

#### *Requested Clarifications*

The Department has also been asked informally to clarify several issues regarding the definition of an INHAM and the scope of the exemption. First, the Department has been asked whether an INHAM can act on behalf of its own plans. The exemption provides relief for transactions involving a "plan" as defined in section IV(h). As noted by the Department in the preamble to the original exemption, the definition of plan adopted by the Department includes a plan maintained by the INHAM or an affiliate of the INHAM. Accordingly, the exemption currently provides relief for an INHAM to act on behalf of its own plans.

Additionally, interested persons have asked the Department to clarify certain aspects of transactions involving both INHAMs and QPAMs. The Department

was asked whether a QPAM could be employed to negotiate the specific terms of a deal after an employer or its INHAM have agreed on general terms with the counterparty. The Department stated in the preamble to the original QPAM class exemption that, while a QPAM may adhere to investment guidelines established by persons with the power to appoint it, the retention of a veto or approval power by the plan sponsor or its designee would be inconsistent with the underlying concept of the QPAM exemption, that is, the transfer of plan assets to an independent, discretionary, manager.<sup>16</sup> In the Department's view, an INHAM directing a QPAM to negotiate specific terms of a deal that has already been generally agreed upon by the INHAM or the employer represents a more significant limitation on the QPAM's discretion than the imposition of investment guidelines. Similar to a veto or approval power, this amount of involvement would be inconsistent with the basic premise of the QPAM exemption.

Interested persons also asked the Department to clarify that a transaction that is entered into by an INHAM, but subsequently overseen by a QPAM, or vice versa, may satisfy the terms of the INHAM and the QPAM exemption, as applicable. The Department believes that, unlike the situation described in the previous paragraph, the INHAM and the QPAM may each operate independently of one another and have discretionary authority for different aspects of the same plan investment. Thus, for example, the INHAM may exercise its discretionary authority to purchase an office building on behalf of the plan. Pursuant to an investment management agreement with the plan, the QPAM may have independent discretionary authority to operate the building on a day to day basis, including negotiating all lease agreements. Under those circumstances, the Department agrees that the QPAM and the INHAM exemptions would be available for the transactions independently negotiated by the INHAM and QPAM, respectively, provided that the conditions of the relevant exemption are satisfied.

Interested persons also requested that the Department clarify section I(b) of PTE 96-23 in a manner similar to the clarification made by the Department in the proposed amendment to the QPAM class exemption.<sup>17</sup> Section I(b) of PTE 96-23 excludes from exemptive relief those transactions described in PTEs

81-6 (relating to securities lending arrangements), 83-1 (relating to acquisitions by plans of interests in mortgage pools) and 88-59 (relating to certain mortgage financing arrangements). The Department understands that there is uncertainty regarding the application of the INHAM class exemption to certain types of transactions that, although similar to the transactions that are the subject of the three specialized exemptions, are beyond the scope of relief provided by those exemptions. It is the view of the Department that the INHAM class exemption would provide relief for such transactions if the conditions of the exemption are otherwise satisfied. The Department cautions, however, that the INHAM class exemption would not be available for any transaction specifically described in PTEs 81-6, 83-1 or 88-59, if a person determines not to satisfy one or more of the conditions of the specialized exemptions solely in order to take advantage of the relief provided by the INHAM class exemption.

The Department notes that on October 31, 2006, it amended and replaced PTEs 81-6 and 82-63, relating to securities lending arrangements (PTE 2006-16, 71 FR 63786). That amendment extended the relief provided under PTEs 81-6 and 82-63 to additional parties and additional forms of collateral, subject to modified conditions. Recognizing that class exemptions are often amended over time to reflect changes in the marketplace, the Department intends that section I(b)(1) of the INHAM class exemption will continue to exclude from relief transactions described in PTE 2006-16 as it is amended or superseded. Accordingly, the Department proposes to amend the reference to PTE 2006-16 in section I(b), as well as the references in that section to the other class exemptions, to include the phrase "as amended or superseded."

#### Permitted Counterparties

The Department also received requests from interested persons to amend section I(e) of the exemption, which as currently drafted provides that the party in interest dealing with the plan: (1) Is a party in interest with respect to the plan (including a fiduciary) solely by reason of providing services to the plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of ERISA; and (2) does not have discretionary authority or control with respect to the investment of the plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets.

On occasion, since the issuance of PTE 96-23, the Department has at times been asked to remove all limits on the types of parties in interest that could engage in transactions with the plan pursuant to the exemption. The Department also received a more limited request to permit the plan to engage in transactions with "co-joint venturers." Such entities own at least 10% of a joint venture in which an employer (or its parent) has at least a 50% interest and are parties in interest pursuant to section 3(14)(I) of ERISA. The interested person represented that it is administratively burdensome for INHAMs to monitor every joint venture in which employers may participate.

The Department has determined not to remove all restrictions on the types of parties in interest that may engage in transactions with plans pursuant to the exemption. In this regard, the Department notes that a commenter on the original INHAM exemption requested that the restrictions on parties in interest be removed, and at that time the Department stated that there had not been a sufficient showing that the safeguards contained in the proposed exemption would adequately discourage the exercise of undue influence upon the INHAM if the exemption were expanded in such manner. For that reason, the Department is not persuaded at this time that such an amendment is warranted.

However, the Department has determined to propose the more limited relief requested for entities that are parties in interest because they are "co-joint venturers." Section I(e) would provide as follows:

(e) The party in interest dealing with the plan: (1) Is a party in interest with respect to the plan (including a fiduciary) either (i) solely by reason of providing services to the plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of ERISA, or (ii) solely by reason of being a 10 percent or more shareholder, partner or joint venturer, in a person, which is 50 percent or more owned by an employer of employees covered by the plan (directly or indirectly in capital or profits), or the parent company of such an employer, provided that such person is not controlled by, controlling, or under common control with such employer, or (iii) by reason of both (i) and (ii) only, and (2) does not have discretionary authority or control with respect to the investment of the plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets.

The Department cautions that, under section I(e), a co-joint venturer may engage in a transaction with a plan only if the joint venture relationship is the

<sup>16</sup> 49 FR 9497.

<sup>17</sup> See 68 FR 52422, September 3, 2003.

entity's sole relationship to the employer, or if the entity is both a joint venturer and a service provider or an entity with a relationship to a service provider as described above. If a person has any other relationship with the employer described in section 3(14) of the Act, the person would not fall within the scope of section I(e), and, therefore, could not take advantage of the relief provided by the exemption. In addition, the co-joint venturer may not be controlled by, controlling, or under common control with such employer. Finally, section I(e) clarifies that the co-joint venturer may not have discretionary authority or control with respect to the investment of the plan assets involved in the transaction and may not render investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets.

#### *Parties Related to the INHAM*

The Department proposes to amend the definition of "related" to in section IV(d) of the exemption. Under section I(f), the party in interest dealing with the plan may not be the INHAM nor a person related to the INHAM. Section IV(d) currently provides that an INHAM is related to a party in interest.

If the party in interest (or a person controlling, or controlled by, the party in interest) owns a five percent or more interest in the INHAM or if the INHAM (or a person controlling, or controlled by, the INHAM) owns a five percent or more interest in the party in interest.

The Department understands that compliance with the "related" to requirement may create administrative burdens for a number of INHAMS. In order to ease such burdens, the Department determined to increase the five percent threshold in section IV(d) to ten percent.

The Department notes that, under the proposed amendment, the requirements in section I(f) may overlap with the limitations contained in section I(e) under certain circumstances. Thus, for example, if the party in interest owns a 10 percent interest in the INHAM, the party in interest would fail section I(e) because, as a 10% shareholder of the INHAM, it would no longer be a party in interest solely by reason of being a service provider to the plan. In addition, it would fail section I(f) as it would be considered "related" to the INHAM because of its ownership interest. Conversely, under the proposed amendment, relief would be available to a service provider that is 9% owned by the parent corporation of the INHAM.

In addition, the Department is proposing to make several other amendments to section IV(d) to ease

compliance burdens. As amended, that section would require ownership interests to be calculated only as of the last day of the entity's most recent calendar quarter. Finally, ownership interests held in a fiduciary capacity would not have to be considered in applying the percentage limitation in section IV(d) of the exemption.

#### *Continuing Transactions*

The Department has received several inquiries about section IV(e) of PTE 96-23, which defines "the time as of which any transaction occurs." The Department understands that there is uncertainty regarding the role of an INHAM in a continuing transaction. Section IV(e) states the following with respect to a continuing transaction:

[I]n the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after April 10, 1996, or any renewal that requires the consent of the INHAM occurs on or after April 10, 1996, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Nothing in this paragraph shall be construed as exempting a transaction entered into by a plan which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, section I(e) will be deemed satisfied if the transaction was entered into between a plan and a person who was not then a party in interest.

In the Department's view, the exemption would be available for a continuing transaction (e.g., a loan or lease), provided that all the conditions of the exemption are satisfied on the date on which the transaction is entered into (or on the date of a renewal that requires the consent of the INHAM), notwithstanding the subsequent failure to satisfy one or more of the conditions of the exemption. Nonetheless, the Department cautions that, although Part I may continue to be available for the entire term of a continuing transaction which subsequently fails to satisfy one or more of the conditions of that Part, no relief would be provided for an act of self-dealing described in section 406(b)(1) of ERISA if the INHAM has an interest in the person which may affect the exercise of its best judgment as a fiduciary. Although Part I provides an exemption from section 406(a)(1)(A)

through (D) of ERISA, it does not provide relief from acts described in section 406(b) of ERISA. The Department urges fiduciaries to take appropriate steps to avoid engaging in 406(b) violations should circumstances change during the course of a continuing transaction.

#### *Exemption Audit*

It has come to the Department's attention that practitioner uncertainty exists regarding certain aspects of the exemption audit, as required by section I(h), and defined in section IV(f), of PTE 96-23. The Department is therefore proposing to amend the class exemption, and is offering the following views, to provide clarity to those sections.

Section IV(f) of PTE 96-23 currently requires, in part, an auditor to test a representative sample of a plan's transactions covered by the exemption in order to make findings regarding whether the INHAM is in compliance with the INHAM's policies and procedures, and with the objective requirements of the exemption. The Department notes, however, that in certain instances, an auditor may need to construct and test more than one sample of transactions. For example, an auditor may initially believe that the most appropriate way to make the required findings is to construct a sample that represents a subset of the total universe of relevant transactions engaged in by the INHAM under the exemption. In testing the sample, however, the auditor should look for, and may find, patterns of compliance failures that indicate that certain types of transactions are more prone to compliance failures than others. If such patterns appear, the auditor may need to test additional transactions to more accurately assess the extent and causes of non-compliant transactions. Ultimately, an auditor must construct and test a sampling of transactions that is sufficient in size (i.e., number of transactions) and nature (i.e., type of transactions) to afford the auditor a reasonable basis to make its required determinations under the class exemption. Since, as noted in the preamble to PTE 96-23, the sole purpose of the audit is to assure compliance with the exemption, the sample should also be sufficient in size and nature for the auditor to render an overall opinion regarding whether the INHAM's program complied with the objective requirements of the exemption, and with the INHAM's own policies and procedures.

Accordingly, the Department is proposing to amend section IV(f)(2) of

the exemption in a manner that is consistent with the views expressed above.

Section I(h) of the exemption requires that an independent auditor conduct an exemption audit on an annual basis, and issue a written report to the plan presenting its specific findings regarding the level of compliance with the policies and procedures adopted by the INHAM. However, the exemption does not currently specify the date by which each audit must be completed. To avoid any uncertainty on this issue, the Department is proposing to amend section I(h) of the exemption to expressly provide that the audit must be completed within six months following the end of the year to which it relates. The Department is further proposing to amend section I(h) to clarify that the written report must contain both specific findings required under section IV(f)(2), and an overall opinion regarding the level of compliance of the INHAM's program with the objective requirements of the exemption.

The preamble to the original INHAM class exemption points out that relief is not available under the exemption for those transactions that did not satisfy its conditions. As a result, the Department anticipates that an auditor's report will clearly identify each transaction examined by the auditor that does not comply with the INHAM's policies and procedures or the exemption. In this regard, the report should identify the specific policies, procedures or exemption conditions that were not satisfied. The Department expects further that each written report will include a description of the steps, if any, taken by the INHAM to remedy transactions that did not comply with the objective requirements of the exemption. The report should also contain a description of the steps taken by the auditor to construct the sample(s) and an explanation as to why the auditor believes that the sample on which the required findings are based is an adequate representation of the total universe of transactions engaged in by the INHAM.

The INHAM retains responsibility for reviewing the written report and taking any appropriate actions deemed necessary for assuring compliance with the exemption. The Department cautions that the failure of the INHAM to take appropriate steps to address any adverse findings or prohibited transactions in an audit would raise issues under the fiduciary responsibility provisions of section 404 of ERISA.

## Section II Transactions

Finally, the Department was asked by CIEBA, the original applicant, to amend section II(a) of the exemption, which provides relief for the leasing of office or commercial space owned by a plan managed by an INHAM to an employer with respect to the plan or an affiliate of such employer. As originally granted, the relief provided in section II(a) was limited to situations in which the plan acquired the space subject to an existing lease as a result of a foreclosure on a mortgage or deed of trust. CIEBA noted that situations other than a foreclosure can give rise to a lease relationship between a plan and an employer or its affiliate. For example, CIEBA noted that the plan may purchase a building subject to a pre-existing lease. Alternatively, the employer could acquire a company with an existing lease in a building owned by the plan. CIEBA asserted that in both situations, the terms of the existing lease were negotiated by a third party at arm's length. CIEBA additionally requested that section II(a) of the exemption be expanded to cover all situations in which the plan's lease to the employer or an affiliate arises as a result of a corporate transaction outside the INHAM's control.

The Department concurs with CIEBA that it is appropriate to expand the relief provided by section II(a) to include additional situations involving existing leases with an employer or an affiliate beyond foreclosure situations, provided that the decision to acquire the office or commercial space subject to the lease is made by the INHAM. The Department has proposed to amend section II(a) accordingly. In the case of a transaction involving the employer's acquisition of a company with an existing lease in a building purchased by the plan, the Department notes that the last sentence of section IV(e) provides that:

[i]n determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, section I(e) will be deemed satisfied if the transaction was entered into between a plan and a person who was not then a party in interest.

Accordingly, it is the view of the Department that section II(a) would be available for the entire lease term, notwithstanding the employer's subsequent acquisition of the lessee, provided that the conditions of the exemption were met at the time the transaction first was entered into. Finally, in light of the fact that the INHAM is affiliated with the employer maintaining the plan, the Department is not convinced that it is appropriate to

provide broad relief for all situations in which the plan's lease to the employer or an affiliate arises as a result of a corporate transaction outside of the INHAM's control.

## 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 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) 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;

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

(4) 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 public hearing should

state the reasons for the writer's interest in the proposed amendment. 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 96-23, effective as of the date of publication of the final class exemption in the **Federal Register**, as set forth below:

### Part I—Basic Exemption

Effective as of the date of publication of the final class exemption in the **Federal Register**, the restrictions of section 406(a)(1)(A) through (D) 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 (D) of the Code, shall not apply to a transaction between a party in interest with respect to a plan (as defined in section IV(h)) and such plan, provided that an in-house asset manager (INHAM) (as defined in section IV(a)) has discretionary authority or control with respect to the plan assets involved in the transaction and the following conditions are satisfied:

(a) The terms of the transaction are negotiated on behalf of the plan by, or under the authority and general direction of, the INHAM, and either the INHAM, or (so long as the INHAM retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the INHAM, makes the decision on behalf of the plan to enter into the transaction. Notwithstanding the foregoing, a transaction involving an amount of \$5,000,000 or more, which has been negotiated on behalf of the plan by the INHAM will not fail to meet the requirements of this section I(a) solely because the plan sponsor or its designee retains the right to veto or approve such transaction;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 2006-16 (71 FR 63786, October 31, 2006) (relating to securities lending arrangements) (as amended or superseded);

(2) Prohibited Transaction Exemption 83-1 (48 FR 895, January 7, 1983) (relating to acquisitions by plans of interests in mortgage pools) (as amended or superseded); or

(3) Prohibited Transaction Exemption 88-59 (53 FR 24811, June 30, 1988) (relating to certain mortgage financing

arrangements) (as amended or superseded);

(c) The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest;

(d) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the INHAM, the terms of the transaction are at least as favorable to the plan as the terms generally available in arm's length transactions between unrelated parties;

(e) The party in interest dealing with the plan: (1) Is a party in interest with respect to the plan (including a fiduciary) either (i) solely by reason of providing services to the plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of ERISA, or (ii) solely by reason of being a 10 percent or more shareholder, partner or joint venturer, in a person, which is 50 percent or more owned by an employer of employees covered by the plan (directly or indirectly in capital or profits), or the parent company of such an employer, provided that such person is not controlled by, controlling, or under common control with such employer, or (iii) by reason of both (i) and (ii) only, and (2) does not have discretionary authority or control with respect to the investment of the plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets.

(f) The party in interest dealing with the plan is neither the INHAM nor a person related to the INHAM (within the meaning of section IV(d));

(g) The INHAM adopts written policies and procedures that are designed to assure compliance with the conditions of the exemption; and

(h) An independent auditor, who has appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions and so represents in writing, conducts an exemption audit (as defined in section IV(f)) on an annual basis. Following completion of the exemption audit, the auditor shall issue a written report to the plan presenting its specific findings regarding the level of compliance: (1) With the policies and procedures adopted by the INHAM in accordance with section I(g); and (2) with the objective requirements of the exemption. The written report shall also contain the auditor's overall opinion regarding whether the INHAM's program complied: (1) With the policies and procedures adopted by the INHAM; and (2) with the objective requirements

of the exemption. The exemption audit and the written report must be completed within six months following the end of the year to which the audit relates.

### Part II—Specific Exemptions

Effective as of the date of publication of the final class exemption in the **Federal Register**, the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of Code section 4975(c)(1)(A) through (E), shall not apply to:

(a) The leasing of office or commercial space owned by a plan managed by an INHAM to an employer any of whose employees are covered by the plan or an affiliate of such employer (as defined in section 407(d)(7) of the Act), if—

(1) The plan acquires the office or commercial space subject to an existing lease with the employer or its affiliate;

(2) The lease was negotiated by a party unrelated to the employer or its affiliate;

(3) The INHAM makes the decision on behalf of the plan to acquire the office or commercial space as part of the exercise of its discretionary authority;

(4) The exemption provided for transactions engaged in with a plan pursuant to section II(a) is effective until the later of the expiration of the lease term or any renewal thereof which does not require the consent of the plan lessor;

(5) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building or the commercial center; and

(6) The requirements of sections I(c), I(g) and I(h) are satisfied with respect to the transaction.

(b) The leasing of residential space by a plan to a party in interest if—

(1) The party in interest leasing space from the plan is an employee of an employer any of whose employees are covered by the plan or an employee of an affiliate of such employer (as defined in section 407(d)(7) of the Act);

(2) The employee who is leasing space does not have any discretionary authority or control with respect to the investment of the assets involved in the lease transaction and does not render investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets;

(3) The employee who is leasing space is not an officer, director, or a 10% or more shareholder of the employer or an affiliate of such employer;

(4) At the time the transaction is entered into, and at the time of any subsequent renewal or modification

thereof that requires the consent of the INHAM, the terms of the transaction are not less favorable to the plan than the terms afforded by the plan to other, unrelated lessees in comparable arm's length transactions;

(5) The amount of space covered by the lease does not exceed five percent (5%) of the rentable space of the apartment building or multi-unit residential subdivision [townhouses or garden apartments], and the aggregate amount of space leased to all employees of the employer or an affiliate of such employer does not exceed ten percent (10%) of such rentable space; and

(6) The requirements of sections I(a), I(c), I(d), I(g) and I(h) are satisfied with respect to the transaction.

### Part III—Places of Public Accommodation

Effective as of the date of publication of the final class exemption in the **Federal Register**, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of ERISA and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4957(c)(1)(A) through (E), shall not apply to the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by a plan and managed by an INHAM to a party in interest with respect to the plan, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

### Part IV—Definitions

For purposes of this exemption:

(a) The term "in-house asset manager" or "INHAM" means an organization which is—

(1) either (A) a direct or indirect 80 percent or more owned subsidiary of an employer, or a direct or indirect 80 percent more owned subsidiary of a parent organization of such an employer, or (B) a membership nonprofit corporation a majority of whose members are officers or directors of such an employer or parent organization; and

(2) an investment adviser registered under the Investment Advisers Act of 1940 that, as of the last day of its most recent fiscal year, has under its management and control total assets attributable to plans maintained by affiliates of the INHAM (as defined in section IV(b)) in excess of \$50 million; provided that if it has no prior fiscal year as a separate entity as a result of it constituting a division or group within the employer's organizational structure, then this requirement will be deemed met as of the date during its

initial fiscal year as a separate legal entity that responsibility for the management of such assets in excess of \$50 million was transferred to it from the employer. Effective as of the last day of the first fiscal year of the investment adviser beginning on or after the date of publication of this amendment to PTE 96-23 in the **Federal Register**, substitute "\$85 million" for "\$50 million" in (a)(2) of section IV above.

In addition, plans maintained by affiliates of the INHAM and/or the INHAM must have, as of the last day of each plan's reporting year, aggregate assets of at least \$250 million.

(b) For purposes of sections IV(a) and IV(h), an "affiliate" of an INHAM means a member of either (1) a controlled group of corporations (as defined in section 414(b) of the Code) of which the INHAM is a member, or (2) a group of trades or businesses under common control (as defined in section 414(c) of the Code) of which the INHAM is a member; provided that "50 percent" shall be substituted for "80 percent" wherever "80 percent" appears in section 414(b) or 414(c) or the rules thereunder.

(c) The term "party in interest" means a person described in the Act section 3(14) and includes a "disqualified person" as defined in Code section 4975(e)(2).

(d) An INHAM is "related" to a party in interest for purposes of section I(f) of this exemption if, as of the last day of its most recent calendar quarter: (i) the INHAM (or a person controlling, or controlled by, the INHAM) owns a ten percent or more interest in the party in interest; or (ii) the party in interest (or a person controlling, or controlled by, the party in interest) owns a ten percent or more interest in the INHAM. For purposes of this definition:

(1) The term "interest" means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest if, other than in a fiduciary capacity, the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest; and

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

(e) For purposes of this exemption, the time as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after April 10, 1996, or any renewal that requires the consent of the INHAM occurs on or after April 10, 1996, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied with respect to the transaction. Nothing in this paragraph shall be construed as exempting a transaction entered into by a plan which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, section I(e) will be deemed satisfied if the transaction was entered into between a plan and a person who was not then a party in interest.

(f) Exemption Audit. An "exemption audit" of a plan must consist of the following:

(1) A review of the written policies and procedures adopted by the INHAM pursuant to section I(g) for consistency with each of the objective requirements of this exemption (as described in section IV(g)).

(2) A test of a sample of the INHAM's transactions during the audit period that is sufficient in size and nature to afford the auditor a reasonable basis: (A) To make specific findings regarding whether the INHAM is in compliance with (i) the written policies and procedures adopted by the INHAM pursuant to section I(g) of the exemption and (ii) the objective requirements of the exemption; and (B) to render an overall opinion regarding the level of compliance of the INHAM's program with section IV(f)(2)(A)(i) and (ii) of the exemption.

(3) A determination as to whether the INHAM satisfied the definition of an INHAM under the exemption; and

(4) Issuance of a written report describing the steps performed by the

auditor during the course of its review and the auditor's findings.

(g) For purposes of section IV(f), the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by the INHAM to assure compliance with each of these requirements:

(1) The definition of an INHAM in section IV(a).

(2) The requirements of Part I and section I(a) regarding the discretionary authority or control of the INHAM with respect to the plan assets involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the plan to enter into the transaction.

(3) That any procedure for approval or veto of the transaction meets the requirements of section I(a).

(4) For a transaction described in Part I:

(A) That the transaction is not entered into with any person who is excluded from relief under section I(e)(1), section I(e)(2), to the extent such person has discretionary authority or control over the plan assets involved in the transaction, or section I(f), and

(B) that the transaction is not described in any of the class exemptions listed in section I(b).

(5) For a transaction described in Part II:

(A) If the transaction is described in section II(a),

(i) that the transaction is with a party described in section II(a);

(ii) that the transaction occurs under the circumstances described in section II(a)(1), (2) and (3);

(iii) that the transaction does not extend beyond the period of time described in section II(a)(4); and

(iv) that the percentage test in section II(a)(5) has been satisfied or

(B) If the transaction is described in section II(b),

(i) that the transaction is with a party described in section II(b)(1);

(ii) that the transaction is not entered into with any person excluded from relief under section II(b)(2) to the extent such person has discretionary authority or control over the plan assets involved in the lease transaction or section II(b)(3); and

(iii) that the percentage test in section II(b)(5) has been satisfied.

(h) The term "plan" means a plan maintained by the INHAM or an affiliate of the INHAM.

Signed at Washington, DC this 9th day of June 2010.

**Ivan L. Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

[FR Doc. 2010-14205 Filed 6-11-10; 8:45 am]

**BILLING CODE 4510-29-P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Sunshine Act; Notice of Agency Meeting

**TIME AND DATE:** 10 a.m., Thursday, June 17, 2010.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

**STATUS:** Open.

#### MATTERS TO BE CONSIDERED:

1. Final Rule—Part 701 of NCUA's Rules and Regulations, Interpretive Ruling and Policy Statement (IRPS) 10-1, NCUA's Chartering and Field of Membership Policies.

2. Delegations of Authority—Chartering.

3. Proposed Rule—Part 741 of NCUA's Rules and Regulations, Requirements for Insurance, Interest Rate Risk Policy and Program.

4. Insurance Fund Report.

5. Temporary Corporate Credit Union Stabilization Fund Accounting Standard.

6. Temporary Corporate Credit Union Stabilization Fund Payment of Insured Shares.

7. Temporary Corporate Credit Union Stabilization Fund Assessment.

**RECESS:** 11:30 a.m.

**TIME AND DATE:** 11:45 a.m., Thursday, June 17, 2010.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

**STATUS:** Closed.

#### MATTERS TO BE CONSIDERED:

1. Consideration of Supervisory Activities (2). Closed pursuant to some or all of the following exemptions: (8), (9)(A)(ii) and 9(B).

**FOR FURTHER INFORMATION CONTACT:** Mary Rupp, Secretary of the Board, Telephone: 703-518-6304.

**Mary Rupp,**  
*Board Secretary.*

[FR Doc. 2010-14402 Filed 6-10-10; 4:15 pm]

**BILLING CODE P**

## THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meetings of Humanities Panel

**AGENCY:** The National Endowment for the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

#### FOR FURTHER INFORMATION CONTACT:

Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606-8282.

**SUPPLEMENTARY INFORMATION:** The proposed 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 discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. **Date:** July 13, 2010.

**Time:** 8:30 a.m. to 5 p.m.

**Room:** 315.

**Program:** This meeting will review applications for Musicology in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

2. **Date:** July 13, 2010.

**Time:** 9 a.m. to 5 p.m.

**Room:** 421.

**Program:** This meeting will review applications for Colleges and Universities I, submitted to the Office of