

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Number D-11404]

Adoption of Amendment to Prohibited Transaction Exemption 2006-06

(PTE 2006-06) For Services Provided in Connection With the Termination of Abandoned Individual Account Plans

ZRIN 1210-ZA12

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Adoption of Amendment to PTE 2006-06.

SUMMARY: This document amends PTE 2006-06 (71 FR 20856, Apr. 21, 2006), a prohibited transaction class exemption issued under the Employee Retirement Income Security Act of 1974 (ERISA). Among other things, PTE 2006-06 permits a “qualified termination administrator” (QTA) of an individual account plan that has been abandoned by its sponsoring employer to select itself to provide services to the plan in connection with the plan's termination, and to pay itself fees for those services. In response to changes to the Internal Revenue Code of 1986 (the Code) enacted as part of the Pension Protection Act (PPA) of 2006, PTE 2006-06 is amended to require, as a condition of relief under the exemption, that benefits for a missing, designated nonspouse beneficiary be directly rolled over into an inherited individual retirement plan that fully complies with Code requirements. This amendment also conforms to the Department’s final rule amending regulations concerning the Termination of Abandoned Individual Account Plans at 29 CFR 2578.1 (the QTA Regulation), and the Safe Harbor for Distributions from

Terminated Individual Account Plans at 29 CFR 2550.404a-3 (the Safe Harbor Regulation), which appears elsewhere in this issue of the **Federal Register**. The amendment to the class exemption affects plans, participants and beneficiaries of such plans and certain persons engaging in such transactions.

EFFECTIVE DATE: The class exemption is effective [insert date 30 days from the date of publication in the FEDERAL REGISTER of this final amendment.]

FOR FURTHER INFORMATION CONTACT: Brian Buyniski, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693-8545 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On February 15, 2007, a notice was published in the **Federal Register** (72 FR 7461) of the pendency before the Department of a proposed amendment to PTE 2006-06. This class exemption (which was granted in connection with the Department's QTA Regulation, the Department's Safe Harbor Regulation and the Department's regulation relating to the Special Terminal Report for Abandoned Individual Account Plans at 29 CFR 2520.103-13,) provides an exemption from the restrictions of section 406(a)(1)(A) through (D), section 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of section 4975(c)(1)(A) through (E) of the Code.

The Department is granting the amendment on its own motion pursuant to section 408(a)

of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).¹ The notice of pendency gave interested persons an opportunity to comment or request a public hearing on the proposal. No comments were received by the Department, nor were there any requests for a public hearing, in connection with the proposal. Accordingly, the amendment to the class exemption is adopted without change.

The Department amends the class exemption to reflect amendments to the Code that were adopted by enactment of the Pension Protection Act (PPA) of 2006 (Pub. L. 109-280, Aug. 17, 2006). Among other things, section 829 of the PPA amended Code section 402(c) to permit the direct rollover of a deceased plan participant's benefit from an eligible retirement plan to an individual retirement plan established for the designated nonspouse beneficiary of such participant. In this connection, the Department amends its regulatory safe harbor for distributions from a terminated individual account plan, including an abandoned plan, to require that a deceased participant's benefit be directly rolled over to an inherited individual retirement plan established to receive a distribution on behalf of a missing, designated nonspouse beneficiary. Similarly, the Department, on its own motion, amends PTE 2006-06 to ensure conformity with the amended Abandoned Plan Regulations.²

As noted in the proposed amendment, the Department interprets the term "account"

¹Section 102 of the Reorganization Plan No. 4 of 1978 (5 U.S.C. app. at 214 (2000)) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Code to the Secretary of Labor.

² See in this issue of the Federal Register Amendments to Safe Harbor for Distributions from Terminated Individual Account Plans and Termination of Abandoned Individual Account Plans to Require Inherited Individual Retirement Plans for Missing Nonspouse Beneficiaries.

(other than an individual retirement plan) in section I(b)(1)(ii) and the term “other account” in section I(b)(3) and (4) of PTE 2006-06 to include an “inherited individual retirement plan” as used in the amended Safe Harbor Regulation in the context of a distribution to a nonspouse beneficiary that does not qualify for small account treatment under the regulatory safe harbor. Consequently, the exemption, prior to amendment, provided relief to a QTA that selected itself as the provider of an inherited individual retirement plan under the Safe Harbor Regulation. Accordingly, the Department has amended the covered transactions described in Section I(b)(ii) of PTE 2006-06 to expressly provide that a distribution on behalf of a missing nonspouse beneficiary would qualify for exemptive relief only if directly rolled into an individual retirement plan that satisfies the requirements of new section 402 (c)(11) of the Code.³

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is “significant” and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a “significant regulatory action” is an action that is likely to result in a rule: (1) having an annual effect on the economy of \$100 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,

³ See also I.R.S Notice 2007-07, 2007-5 I.R.B. 395.

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. Pursuant to the terms of the Executive Order, it has been determined that this action is not "significant" within the meaning of section 3(f) of the Executive Order, and, therefore, is not subject to review by OMB.

Paperwork Reduction Act

The information collections included in PTE 2006-06 are currently approved, together with information collections included in the safe harbor and termination of abandoned plans regulations, by the Office of Management and Budget (OMB) under OMB control number 1210-0127. This approval is currently scheduled to expire on June 20, 2009. The specific burden for the exemption includes a recordkeeping requirement for a QTA that terminates an abandoned plan and chooses to distribute the account balances of nonresponsive participants and beneficiaries into proprietary or affiliated individual retirement plans. These amendments do not make any changes to the information collections of the exemption. Accordingly, the Department has not made a submission for OMB approval in connection with the amendments.

Background

PTE 2006-06 is comprised of five sections. Section I describes the transactions that are covered by the exemption. Section II contains conditions for the provision of termination services and the receipt of fees. Section III contains the conditions for distributions. Section IV contains the general recordkeeping provisions imposed on the QTA, and section V contains

definitions.

Section I(b) of the exemption currently provides relief from the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, for a QTA to use its authority in connection with the termination of an abandoned individual account plan to designate itself or an affiliate as provider of an individual retirement plan⁴ or other account to receive the account balance of a participant or beneficiary who does not provide direction as to the disposition of such assets. The other accounts currently permitted by the exemption include: an account (other than an individual retirement plan, as described in paragraph (d)(1)(ii) of the Safe Harbor Regulation) for a distribution made to a distributee other than a participant or spouse; or an interest-bearing, federally insured bank or savings association account maintained in the name of the participant or beneficiary for distributions of \$1,000 or less, as described in section (d)(1)(iii) of the Safe Harbor Regulation.

C. Discussion of the Amendment

Section 829 of the PPA amended section 402(c) of the Code to permit the direct rollover of a deceased participant's benefit from an eligible retirement plan to an individual retirement plan established on behalf of a designated nonspouse beneficiary of such participant.⁵ These rollover distributions would not trigger immediate tax consequences and mandatory tax withholding for the nonspouse beneficiary. Accordingly, in light of the favorable changes to the

⁴ For purposes of the class exemption, the term "individual retirement plan" means an individual retirement plan described in section 7701(a)(37) of the Code.

⁵ Section 829 of the Pension Protection Act requires that the individual retirement plan established on behalf of a nonspouse beneficiary must be treated as an inherited individual retirement plan within the meaning of Code § 408(d)(3)(C) and must be subject to the applicable mandatory distribution requirement of Code § 401(a)(9)(B).

Code, the Department is amending both PTE 2006-06 and the Safe Harbor Regulation to require that a deceased participant's benefit be directly rolled over to an inherited individual retirement plan established to receive the distribution on behalf of a missing, designated nonspouse beneficiary.

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 act prudently and discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan. Additionally, the fact that a transaction is the subject of an exemption does not affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

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

(3) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, the Department finds 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 such plans;

(4) The amendment is applicable to a particular transaction only if the transaction

satisfies the conditions specified in the exemption; and

(5) The amendment is 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.

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 2570, Subpart B (55 FR 32836, 32847, August 10, 1990), the Department amends PTE 2006-06 as set forth below:

Exemption ***

I. Covered Transactions ***

(b) ***

(1) Designate itself or an affiliate as: (i) provider of an individual retirement plan; (ii) provider, in the case of a distribution on behalf of a designated beneficiary (as defined by section 401(a)(9)(E) of the Code) who is not the surviving spouse of the deceased participant, of an inherited individual retirement plan (within the meaning of section 402(c)(11) of the Code) established to receive the distribution on behalf of the nonspouse beneficiary under the circumstances described in section (d)(1)(ii) of the Safe Harbor Regulation for Terminated Plans (29 CFR section 2550.404a-3) (the Safe Harbor Regulation); or (iii) provider of an interest bearing, federally insured bank or savings association account maintained in the name of the participant or beneficiary, in the case of a distribution described in section (d)(1)(iii) of the Safe Harbor Regulation, for the distribution of the account balance of the participant or beneficiary of

the abandoned individual account plan who does not provide direction as to the disposition of such assets;

V. Definitions ***

(b) The term “individual retirement plan” means an individual retirement plan described in section 7701(a)(37) of the Code. For purposes of section III of this exemption, the term “individual retirement plan” shall also include an inherited individual retirement plan (within the meaning of section 402(c)(11) of the Code) established to receive a distribution on behalf of a nonspouse beneficiary. Notwithstanding the foregoing, the term individual retirement plan shall not include an individual retirement plan which is an employee benefit plan covered by Title I of ERISA.

Signed at Washington, DC, this 26th day of September, 2008.

IVAN L. STRASFELD

Director

Office of Exemption Determinations

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