

forth in writing. The burden estimate allows for one half hour per year to review written lending agreements for compliance with this proposed exemption, and two minutes per agreement for distribution.¹⁴

Compensation. The proposed exemption provides that the compensation paid to a Lending Fiduciary must be reasonable and must be in accordance with the terms of a written agreement. As permitted under section IV(c) of the proposed exemption, the compensation agreement will most likely be written in the form of a master agreement covering a series of securities lending transactions at the time the Lending Fiduciary's services are engaged. Entering into such an agreement is also customary business practice; however, the Department has allowed in its estimates for one half hour per compensation agreement for review of compliance with this proposed exemption and two minutes per agreement for distribution.

For both the lending and compensation agreements, the hour burden for U.S. broker-dealers and U.S. banks, at 32 minutes per agreement, is 14,827 hours; for UK broker-dealers and UK banks, at 122 minutes per agreement, the hour burden is 53 hours. The total hour burden for the lending and compensation agreements is 14,880 hours.

Type of Review: Revision of a currently approved collection. Agency: Employee Benefits Security Administration, Department of Labor.

Title: Securities Lending Prohibited Transaction Exemption.

OMB Number: 1210-0065.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals.

Total Respondents: 13,913.

Frequency: On occasion.

Total Responses: 83,478.

Estimated Total Burden Hours: 16,735.

Estimated Burden Cost: \$56,000.

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 ERISA and the Code. These provisions include any prohibited transaction provisions to which the exemption does

not apply and the general fiduciary responsibility provisions of section 404 of ERISA which, among other things, require a fiduciary to discharge his 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 ERISA; nor does it 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 any exemption may be granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan(s) and of its participants and beneficiaries, and protective of the rights of the participants and beneficiaries of the plan;

(3) This proposed exemption, 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; and

(4) If granted, the pending class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

Written Comments

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments and requests for a hearing will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

On the basis of the facts and representations set forth in the application, the Department proposes to grant the following exemption under the authority of 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, August 10, 1990).

I. Transactions

(a) Effective (60-days after 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 the lending of securities that are assets of an employee benefit plan to a "U.S. Broker-Dealer" or to a "U.S. Bank", provided that the conditions set forth in section II below are met.

(b) Effective (60-days after 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 the lending of securities that are assets of an employee benefit plan to a "Foreign Broker-Dealer" or "Foreign Bank", provided that the conditions set forth in sections II and III below are met.

(c) Effective (60-days after the date of publication of the final class exemption in the **Federal Register**), the restrictions of section 406(b)(1) of ERISA and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to the payment to a fiduciary (the Lending Fiduciary) of compensation for services rendered in connection with loans of plan assets that are securities, provided that the conditions set forth in section IV below are met.

II. General Conditions

(a) Neither the borrower nor any affiliate of the borrower has or exercises discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets;

(b)(1) The plan receives from the borrower by the close of the Lending Fiduciary's business on the day in which the securities lent are delivered to the borrower:

(A) "U.S. Collateral" having, as of the close of business on the preceding business day, a market value or, in the case of bank letters of credit, a stated amount, equal to not less than 100 percent of the then market value of the securities lent, or

(B) "Foreign Collateral" having as of the close of business on the preceding business day, a market value or, in the case of bank letters of credit, a stated amount, equal to not less than:

(i) 102 percent of the then market value of the securities lent as valued on

¹⁴ Estimates of 2 hours rather than 30 minutes are used for both lending and compensation agreements involving UK banks and UK broker-dealers.