

Proposed Amendments to Existing Prohibited Transaction Class Exemptions

The following chart summarizes the exemptions under, and the proposed amendments to, six existing PTEs, as well as the DOL's reasoning.

As used in the chart:

- **"Best Interest Contract Exemption"** is the newly proposed principles-based PTE that would permit non-discretionary investment advice fiduciaries to continue to receive certain types of prohibited compensation if they agree contractually to adhere to a "best interest" standard.
- **"Impartial Conduct Standards"** is a new condition that a fiduciary must satisfy in order to rely on certain PTEs, as proposed to be amended (see the chart below for the affected PTEs). The Impartial Conduct Standards require the fiduciary to meet the following conditions with respect to Plan assets involved in the relevant transaction:
 - The fiduciary acts in the **"Best Interest of the Plan"**.
 - **"Best Interest"** means the fiduciary must act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person would exercise based on the investment objectives, risk tolerance, financial circumstances and needs of the Plan, without regard to the financial or other interests of the fiduciary or any other party. Under this standard, the fiduciary must put the interests of the Plan ahead of its own financial interests or those of any affiliate or other party.
 - All compensation received by the fiduciary in connection with the transaction is reasonable in relation to the total services provided by the fiduciary to the Plan.
 - The fiduciary's statements about recommended investments, fees, material conflicts of interest and any other matters relevant to the Plan's investment decisions are not misleading.
 - A **"Material Conflict of Interest"** exists when the fiduciary has a financial interest that could affect the exercise of its best judgment as a fiduciary in rendering advice to the Plan.
 - The fiduciary's failure to disclose a material conflict of interest relevant to the services the fiduciary is providing or other actions it is taking in relation to the Plan's investment decisions is deemed to be a misleading statement.
- **"Plans"** generally refer to employee benefit plans subject to Title I of ERISA and IRAs.

Note: While the Impartial Conduct Standards do not require fiduciaries to contractually warrant compliance with applicable federal and state laws, the DOL has noted that significant violations of applicable federal or state law could amount to violations of the Impartial Conduct Standards (e.g., the "Best Interest" standard), in which case the PTEs that require fiduciaries to meet the Impartial Conduct Standards would not be available for transactions occurring in connection with such violations.

Current PTE	Exemption under Current PTE	Proposed Amendment	DOL Rationale
75-1, Part I	<p>Part I(b) exempts the effecting of securities transactions, including clearance, settlement or custodial functions incidental to effecting the transactions, by parties in interest other than fiduciaries.</p> <p>Part I(c) exempts the furnishing of advice regarding securities or other property to a Plan by parties in interest under circumstances that do not make the party in interest a Plan fiduciary.</p>	Both Part I(b) and Part I(c) are revoked.	Relief provided in Part I(b) and Part I(c) duplicates the relief available under the statutory exemptions (ERISA section 408(b)(2) and Code section 4975(d)(2)).
75-1, Part II	<p>Part II(1) permits the purchase or sale of a security between a Plan and a registered broker-dealer, a reporting dealer who makes primary markets in government securities or a bank supervised by the U.S. or a State.</p> <p>Part II(2) permits the purchase or sale by a Plan of open-end investment company (mutual fund) shares, provided that no fiduciary with respect to the Plan who makes the decision on behalf of the Plan to enter into the transaction is a principal underwriter for, or affiliated with, such investment company.</p>	<p>No change in Part II(1).</p> <p>Part II(2) is revoked.</p>	Proposed new Section I(b) of PTE 86-128 (see below) would provide relief for transactions currently covered in Part II(2) of PTE 75-1.
75-1, Part III	Permits a fiduciary to cause a Plan to purchase securities from a member of an underwriting syndicate other than the fiduciary, when the fiduciary is also a member of the syndicate.	Requires the fiduciary to meet the Impartial Conduct Standards with respect to the assets involved in the transaction.	The DOL has determined that the Impartial Conduct Standards comprise important baseline safeguards that should be required of fiduciaries relying on existing PTEs providing relief for Plan investment transactions. This would result in additional protections for all Plans, especially IRA owners since fiduciaries' dealings with IRAs are governed by the Code, which, unlike ERISA, does not directly impose responsibilities of prudence and loyalty on fiduciaries.

Current PTE	Exemption under Current PTE	Proposed Amendment	DOL Rationale
75-1, Part IV	Permits a Plan to purchase securities in a principal transaction from a fiduciary that is a market maker with respect to such securities.	Requires the fiduciary to meet the Impartial Conduct Standards with respect to the assets involved in the transaction.	See PTE 75-1, Part III.
75-1, Part V	<p>Permits the extension of credit to a Plan by a registered broker-dealer in connection with the purchase or sale of securities, including the extension of credit for the settlement of securities transactions, short sales of securities, the writing of option contracts on securities and purchase of securities on margin.</p> <p>Requires that broker-dealers that are deemed fiduciaries do not receive compensation for the extension of credit.</p>	<p>Provides that broker-dealers that are deemed fiduciaries <u>may</u> receive reasonable compensation for extending credit to a Plan to avoid a failed purchase or sale of securities involving the Plan, if the following conditions are met:</p> <ul style="list-style-type: none"> ▪ the potential failure of the purchase or sale of the securities may not be the result of the action or inaction by the broker-dealer or any affiliate; ▪ the terms of the extension of credit are at arm's length; and ▪ the Plan must receive written disclosure of certain terms prior to the extension of credit, including written disclosure of any changes to these terms. 	The DOL is of the view that the extension of credit to avoid a failed securities transaction falls within the contours of the existing relief under PTE 75-1, Part V.
77-4	Provides relief for a Plan's purchase or sale of open-end investment company (mutual fund) shares where the investment adviser for such company is also a Plan fiduciary and is not an employer of employees covered by the Plan.	Requires the fiduciary to meet the Impartial Conduct Standards with respect to the assets involved in the transaction.	See PTE 75-1, Part III.

Current PTE	Exemption under Current PTE	Proposed Amendment	DOL Rationale
80-83	<p>Provides relief for a fiduciary causing a Plan to purchase securities in a public offering when the proceeds of the securities issuance may be used by the issuer to retire or reduce indebtedness to a party in interest other than the fiduciary.</p> <p>Provides relief for a fiduciary, which is a bank or an affiliate, causing a Plan to purchase securities in a public offering when the proceeds of the securities issuance may be used by the issuer to retire or reduce indebtedness to the bank fiduciary or an affiliate.</p>	Requires the fiduciary to meet the Impartial Conduct Standards with respect to the assets involved in the transaction.	See PTE 75-1, Part III.
83-1	Provides relief for the sale of certificates in an initial issuance of certificates, by the sponsor of a mortgage pool to a Plan, when the sponsor, trustee or insurer of the mortgage pool is a fiduciary with respect to the Plan assets invested in such certificates.	Requires the fiduciary to meet the Impartial Conduct Standards with respect to the assets involved in the transaction.	See PTE 75-1, Part III.
84-24	<p>Permits insurance agents, insurance brokers and pension consultants that are parties in interest or fiduciaries with respect to Plans to effect the purchase of insurance or annuity contracts for such Plans and receive a commission on the sale.</p> <p>Permits the purchase of insurance or annuity contracts (including variable annuity contracts) for a Plan where the insurance company selling such contracts is a party in interest with respect to the Plan.</p> <p>Permits mutual fund principal underwriters that are parties in interest or fiduciaries with respect to Plans to effect the purchase of</p>	<p><u>Impartial Conduct Standards</u></p> <p>Requires insurance agents, insurance brokers, pension consultants, insurance companies and mutual fund principal underwriters that are fiduciaries to meet the Impartial Conduct Standards with respect to the assets involved in the transaction.</p> <p><u>IRAs</u></p> <p>Revokes relief for purchase by an IRA of variable annuity contracts and other annuity contracts that are securities under federal securities laws, and mutual fund shares.</p>	<p>Because IRA owners generally do not benefit from the protections afforded by the fiduciary duties owed by plan sponsors, the DOL is of the view that some of the transactions involving IRAs that are currently permitted under PTE 84-24 (specifically, transactions involving variable annuity contracts and other annuity contracts that are securities under federal securities laws, and mutual fund shares) should occur under the conditions of the newly proposed Best Interest Contract Exemption.</p> <ul style="list-style-type: none"> Transactions involving insurance and annuity contracts that are not securities can continue to occur under PTE 84-24,

Current PTE	Exemption under Current PTE	Proposed Amendment	DOL Rationale
	mutual fund shares by such Plans and receive a commission on the transaction.	<p><u>Commissions</u></p> <p>Limits “insurance commission” to sales commission paid by the insurance company or an affiliate to the insurance agent, insurance broker or pension consultant for the service of effecting the purchase or sale of an insurance or annuity contract. “Insurance commission” would <u>not</u> include:</p> <ul style="list-style-type: none"> ▪ revenue sharing payments, administrative fees or market fees; ▪ payments from parties other than the insurance company or its affiliates; or ▪ payments resulting from the underlying investments that are held pursuant to the insurance contract (e.g., payments derived from a variable annuity’s investments). <p>Limits “mutual fund commission” to commission or sales load paid either by the plan or the mutual fund for the service of effecting or executing the purchase or sale of mutual fund shares. “Mutual fund commission” would <u>not</u> include any 12b-1 fee, revenue sharing payment, administrative fee or marketing fee.</p> <p><u>Recordkeeping</u></p> <p>Strengthens the recordkeeping requirement for fiduciaries engaging in the covered transactions.</p>	<p>with the added protection of the Impartial Conduct Standards.</p> <ul style="list-style-type: none"> ▪ The DOL further explains that annuity contracts that are securities and mutual fund shares are distributed through the same channels as many other investments covered by the Best Interest Contract Exemption and they all have similar disclosure requirements, so they should all be subject to the conditions of the Best Interest Contract Exemption. <p>Definitions of “insurance commission” and “mutual fund commission” are proposed to provide certainty with respect to the payments permitted under PTE 84-24.</p> <p>The proposed recordkeeping requirement is consistent with the requirement in other existing PTEs and is intended to be protective of rights of plan participants and beneficiaries and IRA owners by ensuring that they and the DOL can confirm that the exemption has been satisfied.</p>

Current PTE	Exemption under Current PTE	Proposed Amendment	DOL Rationale
86-128	<p>Permits a Plan fiduciary to cause a Plan to pay a fee for effecting or executing securities transactions as agent for the Plan, but only to the extent that such transactions are not excessive in either amount or frequency.</p> <p>Permits a Plan fiduciary to act as the agent in an agency cross transaction for both the Plan and one or more other parties to the transaction with discretion on either side (but not both), and for such fiduciaries and their affiliates to receive fees from other party(ies) in connection with the agency across transaction.</p> <p>Contains an exception from the conditions of the exemption for covered transactions engaged in on behalf of IRAs and plans that cover no employees.</p>	<p><u>Impartial Conduct Standards</u></p> <p>Requires the fiduciary to meet the Impartial Conduct Standards with respect to the assets involved in the transaction, to the extent they are applicable to the fiduciary's actions.</p> <p><u>IRAs</u></p> <p>Requires fiduciaries that exercise discretionary authority or control with respect to IRAs to, among other things, make the disclosures and receive approvals that are currently required by the exemption with respect to other types of plans (<i>i.e.</i>, revokes the exception for IRAs).</p> <p>Revokes relief to IRA fiduciaries engaging in the covered transactions if they are fiduciaries due to the provision of investment advice for a fee. Such fiduciaries would now need to rely on the Best Interest Contract Exemption for the receipt of various compensation.</p> <p>Conforms the definition of "IRA" to that in the Best Interest Contract Exemption.</p> <ul style="list-style-type: none"> ▪ "IRA" means any trust, account or annuity described in Code section 4975(e)(1)(B) through (F), including, for example, an individual retirement account described in Code section 408(a) and a health savings account described in Code section 223(d). <p><u>New Mutual Fund Exemption</u></p> <p>Adds a new Section I(b) that would permit a broker-dealer fiduciary to use its authority to</p>	<p>The DOL is of the view that the exception from the conditions to PTE 86-128 for IRAs no longer makes sense, given that the amount of assets held in IRAs has grown dramatically and IRA owners generally do not benefit from the protections afforded by the fiduciary duties owed by plan sponsors. DOL believes that compliance with these conditions would enhance the ability of IRA owners to monitor fees and compensation paid in connection with their accounts.</p> <p>The DOL is of the view that IRA fiduciaries must rely on the Best Interest Contract Exemption to receive compensation for executing the covered transactions, because this exemption ensures that IRA owners have a contract-based claim to hold their fiduciary investment advisers accountable if they violate basic obligations of prudence and loyalty.</p> <p>On the new mutual fund exemption, the DOL has noted that, consistent with the exemption under current PTE 75-1, Part II(2), relief would not be available if the fiduciary is a principal underwriter for, or affiliated with, the mutual fund, and that compensation to the broker-dealer fiduciary would be limited to the commission (<i>i.e.</i>, sales load) disclosed by the mutual fund, but may be paid either by the Plan or the mutual fund.</p>

Current PTE	Exemption under Current PTE	Proposed Amendment	DOL Rationale
		<p>cause a Plan to purchase mutual fund shares from such fiduciary, acting as principal, where the shares were acquired solely to cover the Plan's prior order, and for the receipt of a commission by such fiduciary in connection with the transaction.</p> <p>Limits "commission" to brokerage commission or sales load paid for the service of effecting or executing the transaction; excludes any 12b-1 fee, revenue sharing payment, marketing fee, administrative fee, sub-TA fee or sub-accounting fee.</p> <p>Incorporates conditions currently applicable to PTE 75-1, Part II(2) (e.g., the fiduciary must customarily sell securities for its own account in the ordinary course of its business as a broker-dealer, the transaction must be at arm's length) to the newly proposed covered transaction.</p> <p><u>Relief for Related Entities</u></p> <p>Expands relief for covered transactions when fees are paid to a "related entity", which is defined as an entity, other than an affiliate, in which a fiduciary has an interest that may affect the exercise of its best judgment as a fiduciary.</p> <p><u>Discretionary Trustees</u></p> <p>Permits discretionary trustees to rely on the "recapture of profits" provision of PTE 86-128 as an alternative to complying with Section III(h) (which provides that discretionary trustees may engage in the covered transactions only with Plans with total assets</p>	

Current PTE	Exemption under Current PTE	Proposed Amendment	DOL Rationale
		<p>of at least \$50 million) and Section III(i) (which requires discretionary trustees to provide additional disclosures).</p> <p><u>Recordkeeping</u></p> <p>Strengthens the recordkeeping requirement for fiduciaries engaging in the covered transactions.</p>	