

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden (total nat. hours)
Totals	1,056	Quarterly/Annually	56,281	13,862 hours	783,627

* Assumes only 3 ASCI questions are administered.

Explanation of Burden Hours

Individual Record—736,512 hrs

Baseline: 8,768 hrs./reporting unit (State) (56 reporting units) in last FRN regarding Job Training Partnership Act (JTPA) reporting system (SPIR). Factor: 50% higher due to (1) increase in size of record, and (2) increase in number of program participants. Increases were not cumulative; some allowance made for economies of scale and learning curve.

Annual Report—2,240 hrs

Estimate based on 40 hrs./reporting unit to produce one report per year (includes program run, checking, report formatting for transmission).

Quarterly Report—3,584 hrs

Estimate based on 64 hrs./reporting unit to produce four reports per year (includes program run, checking, report formatting for transmission)—16 hrs./report.

Customer Satisfaction Survey

Respondents—4,667 hrs.

Estimate based on 1,000 responses per reporting unit (500 WIA participants and 500 employers) and 5 min. ($\frac{1}{12}$ hr.) per survey. This assumes only the three ASCI questions are asked.

Survey Administration—28,000 hrs.

Estimate based on 30 min. (0.5 hrs.) to obtain a completed survey (telephone contacts, call-backs, data entry).

Survey Preparation and Overhead—8,624 hrs.

Estimate based on:

Survey development (preparation of questionnaire and telephone script for interviewer)—40 hrs./reporting unit.

Sample selection—24 hrs./reporting unit.

Survey set-up (setting up survey for telephone administration and creation of a database)—40 hrs./reporting unit.

Compilation of results (includes generation of descriptive statistics and calculation of index for participants and employers)—50 hrs./reporting unit.

Total Burden Cost (capital/start-up)—\$825,906

Estimate based on $\frac{1}{3}$ staff year to develop WIASRD data record; this estimate was based on experience of Utah in converting from SPIR to WIASRD and programming time for the Data Validation and Denied Claims

Accuracy pilots. A staff year cost factor of \$44,245 was applied; this is the salary/benefits rate used in the FY 2000 budget.

Total Burden Cost (operating/maintaining)—\$16,653,333.50

The estimate is based on the \$44,245 staff year cost factor applied to the burden hours listed above. The burden hours for participant and employer responses to the customer satisfaction surveys equates to \$24,035, while the burden cost for developing the survey and start-up totals \$183,432.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will become a matter of public record.

III. Documents for Review and Comment

The following documents cited in this notice can be viewed at the Department's Internet website, <http://www.usworkforce.org>:

- The Workforce Investment Act Title IB Standardized Record Data (WIASRD) layout;
- The Workforce Investment Act Quarterly Summary Report Format;
- The Instructions for Submission of WIA Quarterly Summary Report;
- The instructions for submission of the WIA Annual Report; and
- The instructions for capturing, computing and recording outcomes on the Customer Satisfaction Measures

Dated: March 28, 2000.

Raymond L. Bramucci,

Assistant Secretary of Labor.

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2000-14; Exemption Application D-10830]

Amendment to Prohibited Transaction Exemption 80-26 (PTE 80-26) for Certain Interest Free Loans to Employee Benefit Plans

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Adoption of Amendment to PTE 80-26.

SUMMARY: This document provides a temporary amendment to PTE 80-26, a class exemption that permits parties in interest with respect to employee benefit plans to make interest free loans to such plans, provided the conditions of the exemption are met. The amendment affects all employee benefit plans, their participants and beneficiaries, and parties in interest with respect to those plans engaging in the described transactions.

EFFECTIVE DATE: The amendment to PTE 80-26 is effective from November 1, 1999 until December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. J. Martin Jara, Office of Exemptions Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 219-8881. (This is not a toll-free number); or Wendy McColough, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor (202) 219-4600. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On November 29, 1999, notice was published in the **Federal Register** (64 FR 66666) of the pendency before the Department of a proposed amendment to PTE 80-26 (45 FR 28545, Apr. 29, 1980).¹ PTE 80-26 provides an exemption from the restrictions of section 406(a)(1)(B) and (D) and section 406(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

¹ A minor correction was made to the title of the final exemption in a notice published in the **Federal Register** on May 23, 1980. (45 FR 35040).

Revenue Code of 1986 (the Code), by reason of section 4975(c)(1)(B) and (D) of the Code in connection with certain interest free loans to employee benefit plans.

The amendment to PTE 80-26 adopted by this notice was proposed by the Department 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).²

The notice gave interested persons an opportunity to submit written comments or requests for a public hearing on the proposed amendment to the Department. The Department received three comments and no requests for a public hearing. Upon consideration of the record as a whole, the Department has determined to grant the proposed amendment with minor modifications.

For the sake of convenience, the entire text of PTE 80-26, as amended, has been reprinted with this notice.

Discussion of the Comments Received

The Department received three comments with regard to the proposed amendment, all generally supporting the grant of the exemption. Two of the comments requested additional modifications, as addressed below.

The proposed amendment limited relief to transactions involving the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan for a purpose incidental to the ordinary operation of the plan which arises in connection with the plan's inability to liquidate, or otherwise access its assets or data as a result of a Y2K problem. A Y2K problem was defined in Section III of the proposed amendment as 'a disruption of computer operations resulting from a computer system's inability to process data because such system recognizes years only by the last two digits, causing a "00" entry to read as the year "1900" rather than the year "2000."'

The Association of Private Pension and Welfare Plans (APPWP) raised concerns regarding the language in the preamble to the proposed amendment which states that " * * * plan fiduciaries must establish a contingency

plan that will be implemented in the event that the plans' essential operations are affected." ³ The APPWP is concerned that this language adds a new standard of liability for plan sponsors and other fiduciaries. Accordingly, the APPWP suggests that this sentence be restated as follows: "[a]s in dealing with all situations in which plan operations could suffer some level of disruption, plan fiduciaries should consider whether to create a contingency plan to be implemented in the event that the plan's essential operations are affected by Y2K problems."

The language in the preamble did not create a new fiduciary standard of care. The relevant standard of care is set forth in the Act at section 404(a)(1)(B) as follows:

A fiduciary shall discharge his duties with respect to the plan * * * with the care, skill and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

The preamble merely stated the Department's view that, given the well-documented risk that was associated with Y2K, a prudent person similarly situated would have established a contingency plan. The Department notes that the comprehensiveness of a particular contingency plan an employee benefit plan adopts would necessarily depend on the facts and circumstances of each case. Accordingly, the Department has determined not to adopt the suggested modification to the preamble.

In addition, the APPWP urged the Department to expand the relief under the amendment to include situations such as computer viruses, "hacking," and other technological problems caused by human malfeasance that would impede benefits administration. In this regard, the Department does not believe it has sufficient information on the record at this time to provide additional relief. However, upon further demonstration that there is a need for lending of money to plans in such circumstances, the Department would be prepared to consider further relief.

Another commentator noted that the relief proposed is too restrictive and requested that the language be liberalized. Specifically, the commentator was concerned that the broad relief contemplated by the proposal may not be available if such relief is conditioned on the establishment by a plan fiduciary of a nexus between the cash shortfall and a

specific disruption of computer operations. The commentator further stated that, given the rippling nature of Y2K problems, it may be impossible to determine the specific cause of a particular cash shortfall. Accordingly, the commentator urged the Department to modify the final exemption to provide that any cash shortfall incurred by a plan between November 1, 1999 and December 31, 2000, should be presumed to be related to a Y2K problem and, thus, eligible for relief under the final exemption. After reviewing the commentator's suggestion, the Department does not believe that the commentator has adequately demonstrated the need for such broad exemptive relief. Accordingly, the Department has determined not to adopt the commentator's suggestion.

The commentator also suggested that the three day repayment period for interest-free loans made for a purpose incidental to the ordinary operation of the plan be eliminated on a permanent basis. Alternatively, the commentator suggested that either: (1) The concept of ordinary operating expenses be amended to include investment transfers and participant loans; or (2) the three day requirement be amended to require repayment of such loans over a period of time that is materially longer than three days. The Department believes that consideration of the issues involved in amending PTE 80-26 as requested by the commentator are beyond the scope of the current proceeding. In this regard, the Department notes that, pursuant to the requirements of section 408(a) of the Act, it is required to offer interested persons an opportunity to present their views and an opportunity for a hearing prior to amending an exemption. Consequently, the Department has determined not to revise the final exemption in this regard.

Finally, the commentator requested that the Department clarify whether the three day repayment requirement for loans used for a purpose incidental to the ordinary operation of the plan refers to three business days or three calendar days. According to the commentator, the adoption of "T plus three" as the normal settlement practice for securities trades means that the proceeds of a sale of securities will generally not be received until three business days after the trade is executed. Accordingly, to be consistent with the prevailing market practice, the commentator urged the Department to clarify that "three days" means three business days for purposes of PTE 80-26. In this regard, it is the view of the Department that the phrase

² Section 102 of the Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, 5 U.S.C. App. 1 [1995]) 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.

In the discussion of the exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

³ 64 FR 66667 (1999).

“three days” as set forth in section I(b)(2) of PTE 80–26, as amended, means three business days, and the final exemption has been modified to make this clear.

Description of the Exemption

PTE 80–26 permits the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, and the repayment of such loan or other extension of credit in accordance with its terms or other written modifications thereof, provided that:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only:

(1) For the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract; or

(2) For a period of no more than three days, for a purpose incidental to the ordinary operation of the plan;

(c) The loan or extension of credit is unsecured; and

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan.

The amendment to PTE 80–26 granted pursuant to this notice temporarily broadens the availability of PTE 80–26 to include certain interest-free loans to be used for a purpose incidental to the ordinary operations of a plan which arise in connection with a Y2K problem, as defined in the amendment. The amendment to PTE 80–26 permits these loans to be repaid no later than December 31, 2000.

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 the plan solely in the interests of the participants and beneficiaries of the plan; 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) This exemption does not extend to transactions prohibited under section 406(b)(1) and (3) of the Act or section 4975(c)(1)(E) and (F) of the Code;

(3) In accordance with section 408(a) of the Act and 4975(c)(2) of the Code, the Department makes the following determinations:

(i) The amendment set forth herein is administratively feasible;

(ii) It is in the interests of plans and of their participants and beneficiaries; and

(iii) It is protective of the rights of participants and beneficiaries of 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.

Exemption

Accordingly, PTE 80–26 is amended under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, 32847, August 10, 1990), as set forth below:

Section I: General Exemption

Effective January 1, 1975, the restrictions of section 406(a)(1)(B) and (D) and section 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)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only:

(1) For the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan

and periodic premiums under an insurance or annuity contract; or

(2) For a period of no more than three business days, for a purpose incidental to the ordinary operation of the plan;

(c) The loan or extension of credit is unsecured; and

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan.

Section II: Temporary Exemption

Effective November 1, 1999 through December 31, 2000, the restrictions of section 406(a)(1)(B) and (D) and section 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)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only for a purpose incidental to the ordinary operation of the plan which arises in connection with the plan's inability to liquidate, or otherwise access its assets or access data as a result of a Y2K problem.

(c) The loan or extension of credit is unsecured;

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan;

(e) The loan or extension of credit begins on or after November 1, 1999 and is repaid or terminated no later than December 31, 2000.

Section III: Definition

For the purposes of section II, a Y2K problem is a disruption of computer operations resulting from a computer system's inability to process data because such system recognizes years only by the last two digits, causing a “00” entry to be read as the year “1900” rather than the year “2000.”

Signed at Washington, DC, this 28th day of March, 2000.

Ivan L. Strasfeld,

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

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