

## PTE 2020-02

### Improving Investment Advice for Workers & Retirees

#### Section I—Transactions

##### (a) In General.

~~(a) In general.~~ ERISA Title I (Title I) and the Internal Revenue Code (the Code) prohibit fiduciaries, as defined therein, that provide investment advice to Plans and individual retirement accounts (IRAs) from receiving compensation that varies based on their investment advice and compensation that is paid from third parties. Title I and the Code also prohibit fiduciaries from engaging in purchases and sales with Plans or IRAs on behalf of their own accounts (principal transactions). This exemption permits Financial Institutions and Investment Professionals who ~~provide~~ comply with the exemption's conditions to receive otherwise prohibited compensation when providing fiduciary investment advice to Retirement Investors ~~to receive otherwise prohibited compensation and engage in riskless~~ and engaging in principal transactions ~~and certain other principal transactions (Covered Principal Transactions)~~ with Retirement Investors, as described below. ~~The~~

Specifically, this exemption provides relief from the prohibitions of ERISA section ~~68~~ Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 (2018)) generally transferred the authority of the Secretary of the Treasury to grant administrative exemptions under Code section 4975 to the Secretary of Labor. 406(a)(1)(A), (D), and 406(b), and the sanctions imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A), (D), (E), and (F), ~~if the~~ to Financial Institutions and Investment Professionals that provide fiduciary investment advice and engage in the conditions described in Section I, in accordance with the conditions set forth in Section II and are eligible pursuant to Section III, subject to the definitional terms and recordkeeping requirements in Sections IV and V. This exemption is available to allow Financial Institutions and Investment Professionals to receive

reasonable compensation for recommending a broad range of investment products to Retirement Investors, including insurance and annuity products.

**(b) Covered transactions.**

This exemption permits Financial Institutions and Investment Professionals, and their Affiliates and Related Entities, to engage in the following transactions, including as part of a rollover ~~from a Plan to an IRA as defined in Code section 4975(e)(1)(B) or (C)~~, as a result of the provision of investment advice within the meaning of ERISA section 3(21)(A)(ii) and Code section 4975(e)(3)(B) and regulations thereunder:

- (1) ~~(1)~~ The receipt, directly or indirectly, of reasonable compensation; and
- (2) ~~(2)~~ The purchase or sale of an ~~asset in a riskless principal transaction or a Covered Principal Transaction~~ investment product to or from a Retirement Investor, and the receipt of payment, including a mark-up, or mark-down, ~~or other payment~~.

**(c) Exclusions**

This exemption ~~does~~ is not ~~apply~~ available if:

(1) The Plan is covered by Title I of ERISA and the Investment Professional, Financial Institution, or any Affiliate ~~providing investment advice~~ is:

- (A) ~~(A)~~ the employer of employees covered by the Plan, or
- (B) ~~(B)~~ the Plan's named fiduciary or administrator; provided, however, that a named fiduciary or administrator or their Affiliate, including a Pooled Plan Provider (PPP) registered with the Department of Labor under 29 CFR 2510.3-44, may rely on the exemption if it is: ~~(i)~~ selected to provide investment advice by a fiduciary who is Independent of the Financial Institution, Investment Professional, and their Affiliates, ~~or (ii) a Pooled Plan Provider (PPP) registered with the Department under 29 CFR 2510.3-44~~; or

(2) The transaction involves the Investment Professional or Financial Institution acting in a fiduciary capacity other than as an investment advice fiduciary within the meaning of ERISA section 3(21)(A)(ii) and Code section 4975(e)(3)(B) and regulations thereunder.

## **Section II—Investment Advice Arrangement**

Section II(a) requires Investment Professionals and Financial Institutions to comply with Impartial Conduct Standards, including a ~~best interest standard~~ Care Obligation and Loyalty Obligation, when providing fiduciary investment advice to Retirement Investors. ~~In addition,~~ Section II(b) requires Financial Institutions to acknowledge fiduciary status under Title I and/or the Code, and provide ~~investors~~ Retirement Investors with a written statement of the ~~best interest standard of care~~ Care Obligation and Loyalty Obligation, a written description of the services they will provide and ~~their~~ all material facts relating to Conflicts of Interest, that are associated with their recommendations, and a rollover disclosure (as if applicable), ~~Financial Institution, and additional disclosure with respect to Pooled Employer Plans (as applicable)~~. Section II(c) requires Financial Institutions to adopt policies and procedures prudently designed to ensure compliance with the Impartial Conduct Standards ~~when providing fiduciary investment advice to Retirement Investors regarding compliance with the Impartial Conduct Standards~~ and other conditions of this exemption. Section II(d) requires the Financial Institution to conduct a retrospective review ~~of,~~ at least annually, that is reasonably designed to detect and prevent violations of, and achieve compliance with, the Impartial Conduct Standards and the ~~policies and procedures~~ terms of this exemption. Section II(e) allows Financial Institutions to correct certain violations of the exemption conditions and continue to rely ~~upon~~ on the exemption for relief.

### **(a) Impartial Conduct Standards.**

The Financial Institution and Investment Professional must comply with the following “Impartial Conduct Standards”:

(1) Investment advice ~~is~~must, at the time it is provided, ~~in the Best Interest of the Retirement Investor~~satisfy the Care Obligation and Loyalty Obligation. As defined in Section V(b), ~~such advice:~~ ~~(A) reflects~~to meet the Care Obligation, advice must reflect the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor; ~~and (B) does.~~ As defined in Section V(h), to meet the Loyalty Obligation, the advice must not place the financial or other interests of the Investment Professional, Financial Institution or any Affiliate, Related Entity, or other party ahead of the interests of the Retirement Investor; ~~or subordinate the Retirement Investor’s interests to their own.~~ For example, in choosing between two commission-based investments offered and available to the Retirement Investor ~~from the~~on a Financial Institution, ~~it is not permissible~~Institution’s product menu, it would be impermissible for the Investment Professional to ~~advise investing in the one~~recommend the investment that is worse for the Retirement Investor but better or more profitable for the Investment Professional or the Financial Institution. Similarly, in recommending whether a Retirement Investor should pursue a particular investment strategy through a brokerage or advisory account, the Investment Professional must base the recommendation on the Retirement Investor’s financial interests, rather than any competing financial interests of the Investment Professional. For example, an Investment Professional generally could not recommend that the Retirement Investor enter into an arrangement requiring the Retirement Investor to pay an ongoing advisory fee to the Investment Professional, if the

Retirement Investor's interests were better served by the payment of a one-time commission to buy and hold a long-term investment. In making recommendations as to account type, it is important for the Investment Professional to ensure that the recommendation carefully considers the reasonably expected total costs over time to the Retirement Investor, and that the Investment Professional base its recommendations on the financial interests of the Retirement Investor and avoid subordinating those interests to the Investment Professional's competing financial interests.

(2)(A) The compensation received, directly or indirectly, by the Financial Institution, Investment Professional, their Affiliates and Related Entities for their services ~~does~~must not exceed reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2); and (B) as required by the Federal securities laws, the Financial Institution and Investment Professional must seek to obtain the best execution of the investment transaction reasonably available under the circumstances; and

(3) The Financial Institution's and its Investment Professionals' statements ~~(written and oral)~~ to the Retirement Investor (whether written or oral) about the recommended transaction and other relevant matters ~~are~~must not be materially misleading at the time statements are made, ~~materially misleading~~. For purposes of this paragraph, the term "materially misleading" includes omitting information that is needed to prevent the statement from being misleading to the Retirement Investor under the circumstances.

~~(b) Disclosure Prior to engaging in a transaction pursuant to this exemption, the Financial Institution provides the disclosures set forth in (1)-(4) to the Retirement Investor:~~

**(b) Disclosure**

At or before the time a covered transaction occurs, as described in Section I(b) of this exemption, the Financial Institution must provide, in writing, the disclosures set forth in paragraphs (1)-(4) below to the Retirement Investor. For purposes of the disclosures required by

Section II(b)(1)-(4), the Financial Institution or Investment Professional is deemed to engage in a covered transaction on the later of (A) the date the recommendation is made or (B) the date the Financial Institution or Investment Professional becomes entitled to compensation (whether now or in the future) by reason of making the recommendation.

(1) A written acknowledgment that the Financial Institution and its Investment Professionals are providing fiduciary investment advice to the Retirement Investor and are fiduciaries under Title I, ~~the Code~~ of ERISA, Title II of ERISA, or both ~~when making an investment~~ with respect to the recommendation;

(2) A written statement of the ~~Best Interest standard of care~~ Care Obligation and Loyalty Obligation, described in Section II(a), that is owed by the Investment Professional and Financial Institution to the Retirement Investor;

~~(3) A written description of the services to be provided and the Financial Institution's and Investment Professional's material Conflicts of Interest that is accurate and not misleading in any material respect. This description will include a statement on whether the Retirement Investor will pay for such services, directly or indirectly, including through Third Party Payments. If, for example, the Retirement Investor will pay through commissions or transaction based payments, the written statement must clearly disclose that fact. This statement must be written in plain English, taking into consideration a Retirement Investor's level of financial experience;~~

~~(4) A written statement that the Retirement Investor has the right to obtain specific information regarding costs, fees, and compensation, described in dollar amounts, percentages, formulas, or other means reasonably designed to present full and fair disclosure that is materially accurate in scope, magnitude, and nature, with sufficient detail to permit the Retirement Investor to make an informed judgment about the costs of the transaction and about the significance and severity of the Conflicts of Interest, and that describes how the Retirement Investor can get the information, free of charge;~~

(3) All material facts relating to the scope and terms of the relationship with the Retirement Investor, including:

(A) The material fees and costs that apply to the Retirement Investor's transactions, holdings, and accounts; and

(B) The type and scope of services provided to the Retirement Investor, including any material limitations on the recommendations that may be made to them; and

(4) All material facts relating to Conflicts of Interest that are associated with the recommendation.

(5) *Rollover disclosure.* Before engaging in or recommending that a Retirement Investor engage in a rollover from a Plan that is covered by Title I of ERISA, or making a recommendation to a Plan participant or beneficiary as to the post-rollover investment of assets currently held in a Plan that is covered by Title I of ERISA, the Financial Institution and Investment Professional must consider and document the ~~basis~~bases for their ~~conclusions as to whether a rollover is in the Retirement Investor's Best Interest~~recommendation to engage in the rollover, and must provide that documentation to the Retirement Investor. Relevant factors to consider must include, to the extent applicable, but in any event are not limited to:

(A) ~~(A)~~ the alternatives to a rollover, including leaving the money in the Plan ~~or account type, as, if~~ if applicable;

(B) ~~(B)~~ the fees and expenses associated with the Plan and the recommended investment or account;

(C) ~~(C)~~ whether an employer or other party pays for some or all of the Plan's administrative expenses; and

(D) ~~(D)~~ the different levels of services and investments available under the Plan and the recommended investment or account.

(6) ~~(6)~~ The Financial Institution will not fail to satisfy the conditions in Section II(b) solely because it, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the required information, provided that the Financial Institution discloses the correct information as soon as practicable, but not later than 30 days after the date on which it discovers or reasonably should have discovered the error or omission.

(7)~~(7)~~ Investment Professionals and Financial Institutions may rely in good faith on information and assurances from the other entities that are not Affiliates as long as they do not know or have reason to know that such information is incomplete or inaccurate.

(8)~~(8)~~ The Financial Institution is not required to disclose information pursuant to this Section II(b) if such disclosure is otherwise prohibited by law.

### **(c) Policies and Procedures**

(1)~~(1)~~ The Financial Institution establishes, maintains, and enforces written policies and procedures prudently designed to ensure that the Financial Institution and its Investment Professionals comply with the Impartial Conduct Standards ~~in connection with covered fiduciary advice and transactions~~ and other exemption conditions.

(2)~~(2)~~ The Financial Institution's policies and procedures must mitigate Conflicts of Interest to the extent that a reasonable person reviewing the policies and procedures and incentive practices as a whole would conclude that they do not create an incentive for ~~at~~ the Financial Institution or Investment Professional to place their interests, or those of any Affiliate or Related Entity, ahead of the interests of the Retirement Investor. Financial Institutions may not use quotas, appraisals, performance or personnel actions, bonuses, contests, special awards, differential compensation, or other similar actions or incentives in a manner that ~~are~~ is intended, or that a reasonable person would conclude are likely, to result in recommendations that ~~are not in Retirement Investors' Best Interest~~ do not meet the Care Obligation or Loyalty Obligation.

(3) Financial Institutions must provide their complete policies and procedures to the Department upon request within ~~10-business~~ 30 days of request.

### **(d) Retrospective Review**



(1) ~~(1)~~ The Financial Institution conducts a retrospective review, at least annually, that is reasonably designed to ~~assist the Financial Institution in detecting and preventing~~ detect and prevent violations of, and ~~achieving~~ achieve compliance with, the conditions of this exemption, including the Impartial Conduct Standards and the policies and procedures governing compliance with the exemption. The Financial Institution ~~updates~~ must update the policies and procedures as business, regulatory, and legislative changes and events dictate, ~~and to ensure they~~ that the policies and procedures remain prudently designed, effective, and compliant with Section II(c).

(2) ~~(2)~~ The methodology and results of the retrospective review ~~are~~ must be reduced to a written report that is provided to a Senior Executive Officer of the Financial Institution.

(3) ~~(3)~~ ~~A~~ The Senior Executive Officer ~~of the Financial Institution certifies~~ must certify, annually, that:

(A) ~~(A)~~ The ~~officer~~ Senior Executive Officer has reviewed ~~the report of~~ the retrospective review report;

(B) ~~(B)~~ The Financial Institution has filed (or will file timely, including extensions) Form 5330 reporting any non-exempt prohibited transactions discovered by the Financial Institution in connection with investment advice covered under Code section 4975(e)(3)(B), corrected those transactions, and paid any resulting excise taxes owed under Code section 4975 (a) or (b);

(C) ~~(C)~~ The Financial Institution has written policies and procedures that meet the ~~conditions~~ requirements set forth in Section II(c) ~~(1)~~; and

(D) ~~(D)~~ The Financial Institution has ~~in place~~ a prudent process to modify such policies and procedures as ~~set forth in~~ required by Section II(d)(1).

(4) ~~(4)~~ The review, report, and certification ~~are~~ must be completed no later than six months ~~following~~ after the end of the period covered by the review.

(5) ~~(5)~~ The Financial Institution ~~retains~~ must retain the report, certification, and supporting data for a period of six years and ~~makes~~ make the report, certification, and supporting data available to the Department, ~~within 10 business~~ 30 days of request, ~~to the extent permitted by law~~ (including 12 U.S.C. 484 (regarding limitations on visitorial powers for national banks)).

**(e) Self-Correction**

~~(e) Self-Correction.~~ A non-exempt prohibited transaction will not occur due to a violation of ~~the~~ this exemption's conditions with respect to a covered transaction, provided:

(1) ~~(1)~~ Either the violation did not result in investment losses to the Retirement Investor or the Financial Institution made the Retirement Investor whole for any resulting losses;

(2) ~~(2)~~ The Financial Institution corrects the violation ~~and notifies the Department of Labor of the violation and the correction via email to HAWR@dol.gov within 30 days of correction;~~

(3) ~~(3)~~ The correction occurs no later than 90 days after the Financial Institution learned of the violation or reasonably should have learned of the violation; and

(4) ~~(4)~~ The Financial Institution notifies the person(s) responsible for conducting the retrospective review during the applicable review cycle and the violation and correction is specifically set forth in the written report of the retrospective review required under subsection II(d)(2).

**(f) ERISA section 3(38) Investment Managers.**

To the extent a Financial Institution or Investment Professional provides fiduciary investment advice to a Retirement Investor as part of its response to a request for proposal to provide investment management services under section 3(38) of ERISA, and is subsequently hired to act as investment manager to the Retirement Investor, it may receive compensation as a result of the advice under this exemption, provided that it complies with the Impartial Conduct Standards as set forth in Section II(a). This paragraph does not relieve the Investment Manager,

however, from its obligation to refrain from engaging in any non-exempt prohibited transactions in the ongoing performance of its activities as an Investment Manager.

### Section III—Eligibility

#### (a) General

~~(a) General.~~ Subject to the timing and scope of ineligibility provisions set forth in subsection (b) ~~and the opportunity to be heard as set forth in subsection (c),~~ an Investment Professional or Financial Institution will ~~be~~ become ineligible to rely on ~~the~~ this exemption with respect to any covered transaction, if on or after [INSERT DATE THAT IS 150 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], the Financial Institution, ~~its Affiliate, or an~~ entity in the same Controlled Group as the Financial Institution, or an Investment Professional ~~is~~ described in (1) or (2) has been:

(1) ~~The Investment Professional or Financial Institution has been convicted~~ Convicted by either:

(A) ~~by~~ a U.S. Federal or ~~state~~ State court as a result of any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or a crime that is identified or described in ERISA section 411; or

(B) ~~by~~ a foreign court of competent jurisdiction as a result of any crime, however denominated by the laws of the relevant foreign or state government, that is substantially equivalent to an offense described in (A). ~~For purposes of this section (a)(1), a person shall be deemed to~~

~~have been convicted of a crime as of the “conviction date,” which is the date of the judgment of the trial court (or the date of the judgment of any court in a foreign jurisdiction that is the equivalent of a U.S. Federal or state trial court), regardless of whether that judgment remains under appeal.~~ above (excluding convictions that occur within a foreign country that is included on the Department of Commerce’s list of “foreign adversaries” that is codified in 15 CFR 7.4 as amended); or

(2) ~~The Investment Professional or Financial Institution has received a written ineligibility notice issued by the Department for:~~ Found or determined in a final judgment or court-approved settlement in a Federal or State criminal or civil court proceeding brought by the Department, the Department of the Treasury, the Internal Revenue Service, the Securities and Exchange Commission, the Department of Justice, the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Commodity Futures Trading Commission, a State insurance or securities regulator, or State attorney general to have participated in one or more of the following categories of conduct irrespective of whether the court specifically considers this exemption or its terms:

(A) ~~(A)~~ engaging in a systematic pattern or practice of ~~violating~~ conduct that violates the conditions of this exemption in connection with otherwise non-exempt prohibited transactions;

(B) ~~(B)~~ intentionally ~~violating~~ engaging in conduct that violates the conditions of this exemption in connection with otherwise non-exempt prohibited transactions;

(C) ~~(C)~~ engaging ~~engaged~~ in a systematic pattern or practice of failing to correct prohibited transactions, report those transactions to the IRS on Form 5330 ~~and/or~~ pay the resulting excise taxes imposed by Code section 4975 in connection with non-exempt prohibited transactions involving investment advice as defined under Code section 4975(e)(3)(B); or

(D) ~~providing~~ provided materially misleading information to the Department, the Department of the Treasury, the Internal Revenue Service, the Securities and Exchange

Commission, the Department of Justice, the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Commodity Futures Trading Commission, a State insurance or securities regulator, or State attorney general in connection with the conditions of ~~the~~this exemption.

(3) Controlled Group. An entity is in the same Controlled Group as a Financial Institution if the entity (including any predecessor or successor to the entity) would be considered to be in the same “controlled group of corporations” as the Financial Institution or “under common control” with the Financial Institution as those terms are defined in Code section 414(b) and (c) (and any regulations issued thereunder),

**(b) Timing and Scope of Ineligibility.**

(1) Ineligibility shall begin ~~six months after~~upon either:

(A) the date of a conviction, which shall be the date of conviction by a U.S. Federal or State trial court described in Section III(a)(1) (or the date of the conviction of any trial court in a foreign jurisdiction that is the equivalent of a U.S. Federal or State trial court) that occurs on or after [INSERT DATE THAT IS 150 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], regardless of whether that conviction remains under appeal; or

~~(A) the conviction date defined in Section (a)(1);~~

~~(B) the date of the Department’s written determination under Section (c)(1)(C) for a petition regarding a foreign conviction; or~~

(B) ~~(C)~~ the date of ~~the written ineligibility notice~~ a final judgment (regardless of whether the judgment remains under appeal) or a court-approved settlement described in ~~subsection~~ Section III(a)(2) that occurs on or after [INSERT DATE THAT IS 150 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

(2) One-Year Transition Period. A Financial Institution or Investment Professional that becomes ineligible under Section III(a) may continue to rely on this exemption for up to 12

months after its ineligibility begins as determined under subsection (1) if the Financial Institution or Investment Professional provides notice to the Department at IAWR@dol.gov within 30 days after ineligibility begins.

(23) A person ~~shall~~will become eligible to rely on this exemption again only upon the earliest occurrence of the following:

(A) ~~(A)~~ the date of a subsequent judgment reversing such person's conviction or other court decision described in Section III(a)(4);

(B) ~~(B)~~ 10 years after the person became ineligible under Section III(b)(1) or, if later, 10 years after the person was released from imprisonment as a result of a crime described in Section III(a)(1), ~~if later~~; or

(C) ~~(C)~~ the effective date, ~~if any, the Department grants~~ of an individual prohibited transaction exemption (under which the Department may impose additional conditions) ~~to~~permitting the person ~~permitting its continued reliance~~to continue to rely on this exemption ~~notwithstanding the conviction.~~

### ~~(c) Opportunity to be heard.~~ Alternative Exemptions

#### ~~(1) Foreign Convictions.~~

~~(A) A Financial Institution, its Affiliate, or an Investment Professional that has been convicted by a foreign court of competent jurisdiction as provided in subsection (a)(1)(B)), the Financial Institution or Investment Professional may submit a petition to the Department that informs the Department of the conviction and seeks the Department's determination that the Financial Institution's continued reliance on the exemption would not be contrary to the purposes of the exemption. Petitions must be submitted to the Department within 10 business days after the conviction date by email to IAWR@dol.gov.~~

~~(B) Following receipt of the petition, the Department will provide the Investment Professional or Financial Institution with the opportunity to be heard in person (including by phone or videoconference), in writing, or a combination thereof. The opportunity to be heard will be limited to one conference unless the Department determines in its sole discretion to allow additional conferences.~~

~~(C) Following the hearing, the Department will issue a written determination to the Financial Institution or Investment Professional, as applicable, articulating the basis for its determination whether or not to allow the Financial Institution or Investment Professional to continue relying on PTE 2020-02.~~

~~(2) Written Ineligibility Notice. Prior to issuing a written ineligibility notice, the Department will issue a written warning to the Investment Professional or Financial Institution, as applicable, identifying specific conduct implicating subsection (a)(2) and providing a six month opportunity to cure. At the end of the six month period, if the Department determines that the Investment Professional or Financial Institution has not taken appropriate action~~

~~to prevent recurrence of the disqualifying conduct, it will provide the Investment Professional or Financial Institution with the opportunity to be heard, in person (including by phone or videoconference), in writing, or a combination, before the Department issues the written ineligibility notice. The opportunity to be heard will be limited to one conference unless the Department determines in its sole discretion to allow additional conferences. The written ineligibility notice will articulate the basis for the determination that the Investment Professional or Financial Institution engaged in conduct described in subsection (a)(2).~~

~~(3) Department's Considerations. For hearings under (c)(1) and (c)(2), the Department will consider: the gravity of the offense; the degree to which the underlying conduct concerned individual misconduct, or, alternately, corporate managers or policy; recency of the conduct at issue; any remedial measures taken; and other factors the Department determines in its discretion are reasonable in light of the nature and purposes of the exemption.~~

~~(d) Alternative exemptions.~~ A Financial Institution or Investment Professional that is ineligible to rely on this

exemption may rely on ~~a~~ an existing statutory or separate ~~administrative~~ class prohibited transaction exemption if one is available or ~~seek~~ may request an individual prohibited transaction exemption from the Department. To the extent an applicant ~~seeks~~ requests retroactive relief in connection with an individual exemption application, the Department will consider the application in accordance with its retroactive exemption policy ~~as~~ set forth in 29 CFR 2570.35(d). The Department may require additional prospective compliance conditions as a condition of providing retroactive relief.

#### **Section IV—Recordkeeping**

The Financial Institution ~~maintains~~ must maintain for a period of six years following the covered transaction records demonstrating compliance with this exemption and ~~makes~~ make such records available, to the extent permitted by law, including 12 U.S.C. 484, to any authorized employee of the Department or the Department of the Treasury.

, which includes the Internal Revenue Service. **Section V—Definitions**

(a) “**Affiliate**” means:

(1) ~~(1)~~ Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Investment Professional or Financial Institution. (For this purpose, “control” ~~would mean~~ means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(2) ~~(2)~~ Any officer, director, partner, employee, or relative (as defined in ERISA section 3(15)), of the Investment Professional or Financial Institution; and

(3) ~~(3)~~ Any corporation or partnership of which the Investment Professional or Financial Institution is an officer, director, or partner.

(b) Advice ~~is in a Retirement Investor's "Best Interest" if~~ meets the "Care Obligation" if, with respect to the Retirement Investor, such advice (A) reflects the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor, ~~and (B) does not place the financial or other interests of the Investment Professional, Financial Institution or any Affiliate, Related Entity, or other party ahead of the interests of the Retirement Investor, or subordinate the Retirement Investor's interests to their own.~~

(c) A "Conflict of Interest" is an interest that might incline a Financial Institution or Investment Professional—consciously or unconsciously—to make a recommendation that is not ~~in the Best Interest of the Retirement Investor~~ disinterested.

~~(d) A "Covered Principal Transaction" is a principal transaction that:~~

~~(1) For sales to a Plan or an IRA:~~

~~(A) Involves a U.S. dollar denominated debt security issued by a U.S. corporation and offered pursuant to a registration statement under the Securities Act of 1933, a U.S. Treasury Security, a debt security issued or guaranteed by a U.S. federal government agency other than the U.S. Department of the Treasury, a debt security issued or guaranteed by a government sponsored enterprise, a municipal security, a certificate of deposit, an interest in a Unit Investment Trust, or any investment permitted to be sold by an investment advice fiduciary to a Retirement Investor under an individual exemption granted by the Department after the effective date of this exemption that includes the same conditions as this exemption; and~~

~~(B) A debt security may only be recommended in accordance with written policies and procedures adopted by the Financial Institution that are reasonably designed to ensure that the security, at the time of the recommendation, has no greater than moderate credit risk and sufficient liquidity that it could be sold at or near carrying value within a reasonably short period of time; and~~

~~(2) For purchases from a Plan or an IRA, involves any securities or investment property.~~



(ed) “**Financial Institution**” means an entity that is not suspended, barred or otherwise prohibited (including under Section III of this exemption) from making investment recommendations by any insurance, banking, or securities law or regulatory authority (including any self-regulatory organization), that employs the Investment Professional or otherwise retains such individual as an independent contractor, agent or registered representative, and that is:

(1)~~(1)~~ Registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) or under the laws of the state in which the adviser maintains its principal office and place of business;

(2)~~(2)~~ A bank or similar financial institution supervised by the United States or a state, or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)));

(3)~~(3)~~ An insurance company qualified to do business under the laws of a state, that:

(A) has obtained a Certificate of Authority from the insurance commissioner of its domiciliary state which has neither been revoked nor suspended; (B) has undergone and shall continue to undergo an examination by an independent certified public accountant for its last completed taxable year or has undergone a financial examination (within the meaning of the law of its domiciliary state) by the state’s insurance commissioner within the preceding five years, and (C) is domiciled in a state whose law requires that an actuarial review of reserves be conducted annually and reported to the appropriate regulatory authority;

(4)~~(4)~~ A broker or dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); ~~or~~

(5) A non-bank trustee or non-bank custodian approved under Treasury Regulation 26 CFR §1.408-2(e) (as amended), but only to the extent they are serving in these capacities with respect to Health Savings Accounts (HSAs), or

(~~5~~6) An entity that is described in the definition of Financial Institution in an individual exemption granted by the Department after the date of this exemption that provides relief for the receipt of compensation in connection with investment advice provided by an investment advice fiduciary under the same conditions as this class exemption.

(~~e~~e) For purposes of subsection I(c)(1), a fiduciary is “**Independent**” of the Financial Institution and Investment Professional if:

(1)(~~1~~) the fiduciary is not the Financial Institution, Investment Professional, or an Affiliate;

(2)(~~2~~) the fiduciary does not have a relationship to or an interest in the Financial Institution, Investment Professional, or any Affiliate that might affect the exercise of the fiduciary’s best judgment in connection with transactions covered by ~~the~~this exemption; and

(3)(~~3~~) the fiduciary does not receive and is not projected to receive within ~~the~~its current Federal income tax year, compensation or other consideration for ~~his or her~~its own account from the Financial Institution, Investment Professional, or an Affiliate, in excess of two (2%) percent of the fiduciary’s annual revenues based upon its prior income tax year.

(~~f~~f) “**Individual Retirement Account**” or “**IRA**” means any plan that is an account or annuity described in Code section 4975(e)(1)(B) through (F).

(~~g~~g) “**Investment Professional**” means an individual who:

(1)(~~1~~) Is a fiduciary of a Plan or an IRA by reason of the provision of investment advice ~~described~~defined in ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B), or both, and the applicable regulations, with respect to the assets of the Plan or IRA involved in the recommended transaction;

(2)(~~2~~) Is an employee, independent contractor, agent, or representative of a Financial Institution; and

(3) Satisfies the Federal and ~~state~~State regulatory and licensing requirements of insurance, banking, and securities laws (including self-regulatory organizations) with respect to the covered transaction, as applicable, and is not disqualified or barred from making investment recommendations by any insurance, banking, or securities law or regulatory authority (including any self-regulatory organization and by the Department under Section III of this exemption).

(h) Advice meets the “Loyalty Obligation” if, with respect to the Retirement Investor, such advice does not place the financial or other interests of the Investment Professional, Financial Institution or any Affiliate, Related Entity, or other party ahead of the interests of the Retirement Investor, or subordinate the Retirement Investor’s interests to those of the Investment Professional, Financial Institution or any Affiliate, Related Entity, or other party.

(i) ~~(+)~~ “Plan” means any employee benefit plan described in ERISA section 3(3) and any plan described in Code section 4975(e)(1)(A).

~~(j) A “Pooled Employer Plan” or “PEP” means a pooled employer plan described in ERISA section 3(43).~~

(j) ~~(+)~~ A “Pooled Plan Provider” or “PPP” means a pooled plan provider described in ERISA section 3(44).

~~(l) “Riskless Principal Transaction” means a transaction in which a Financial Institution, after having received an order from a Retirement Investor to buy or sell an asset, purchases or sells the asset for the Financial Institution’s own account to offset the contemporaneous transaction with the Retirement Investor. A Riskless Principal Transaction is not a Covered Principal Transaction.~~

(k) ~~(+)~~ A “Related Entity” is means any party that is not an Affiliate, ~~but which either has~~ and (i) has an interest in an Investment Professional or Financial Institution that may affect the exercise of the fiduciary’s best judgment as a fiduciary, or (ii) in which the Investment Professional or Financial Institution has, an interest that may affect the exercise of the fiduciary’s best judgment as a fiduciary.

(l) “Retirement Investor” means a Plan, Plan participant or beneficiary, IRA, IRA owner or beneficiary, Plan fiduciary within the meaning of ERISA section (3)(21)(A)(i) or (iii)

and Code section 4975(e)(3)(A) or (C) with respect to the Plan, or IRA fiduciary within the meaning of Code section 4975(e)(3)(A) or (C) with respect to the IRA.

~~(n) “Retirement Investor” means:~~

- ~~(1) A participant or beneficiary of a Plan with authority to direct the investment of assets in their account or to take a distribution;~~
- ~~(2) The beneficial owner of an IRA acting on behalf of the IRA; or~~
- ~~(3) A fiduciary acting on behalf of a Plan or an IRA.~~

~~(em)~~ A “**Senior Executive Officer**” is any of the following: the chief compliance officer, the chief executive officer, president, chief financial officer, or one of the three most senior officers of the Financial Institution.

~~(p) “Third Party Payments” include sales charges when not paid directly to the Financial Institution by the Plan, from a participant or beneficiary’s account, or from an IRA; gross dealer concessions; revenue sharing payments; 12b-1 fees; distribution, solicitation or referral fees; volume based fees; fees for seminars and educational programs; and any other compensation, consideration, or financial benefit provided to the Financial Institution or an Affiliate or Related Entity by a third party as a result of a transaction involving a Plan, participant or beneficiary account, or IRA.~~

## Section VI—Phase-In Period

During the one-year period beginning [INSERT DATE THAT IS 150 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], Financial Institutions and Investment Professionals may receive compensation under Section I of this exemption if the Financial Institution and Investment Professional comply with the Impartial Conduct Standards set forth in Section II(a) and the fiduciary acknowledgment requirement set forth in Section II(b)(1).

<b>Summary report:</b>	
<b>Litera Compare for Word 11.4.0.111 Document comparison done on 4/23/2024 2:20:59 PM</b>	
<b>Style name:</b> Dechert Default	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> PTE 2020-02 (Proposed).docx	
<b>Modified filename:</b> PTE 2020-02 (2024).docx	
<b>Changes:</b>	
<u>Add</u>	252
<del>Delete</del>	216
<del>Move From</del>	8
<u>Move To</u>	8
<u>Table Insert</u>	0
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>484</b>