

offered to non-IRA or non-Keogh Plan customers with account values of the same amount or the same amount of fees generated.

### Section III: Definitions

The following definitions apply to this exemption:

(a) The term *broker-dealer* means a broker-dealer registered under the Securities Exchange Act of 1934.

(b) The term *IRA* means an individual retirement account described in Code section 408(a) or an education individual retirement account described in section 530 of the Code. For purposes of this exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.

(c) The term *Keogh Plan* means a pension, profit-sharing, or stock bonus plan qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in section 401(c) of the Code. For purposes of this exemption, the term Keogh Plan shall not include a Keogh Plan which is an employee benefit plan covered by Title I of ERISA.

(d) The term *account value* means investments in cash or securities held in the account for which market quotations are readily available. For purposes of this exemption, the term cash shall include savings accounts that are insured by a federal deposit insurance agency that constitute deposits as that term is defined in section 29 CFR 2550.408b-4(c)(3). The term account value shall not include investments in securities that are offered by the broker-dealer (or its affiliate) exclusively to IRAs and Keogh Plans.

(e) An affiliate of a broker-dealer includes any person directly or indirectly controlling, controlled by, or under common control with the broker-dealer. The term control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term *members of his or her family* refers to beneficiaries of the individual for whose benefit the IRA or Keogh Plan is established or maintained, who would be members of the family as that term is defined in

Code section 4975(e)(6), or a brother, a sister, or spouse of a brother or sister.

(g) The term *service* includes incidental products of a de minimis value which are directly related to the provision of services covered by the exemption.

(h) The term *fees* means commissions and other fees received by the broker-dealer from the IRA or Keogh Plan for the provision of services, including, but not limited to, brokerage commissions, investment management fees, custodial fees, and administrative fees.

Signed at Washington, DC, this 26th day of February 1999.

**Alan D. Lebowitz,**

*Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U. S. Department of Labor.*  
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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application Number: D-10567]

#### **Amendment to Prohibited Transaction Exemption 93-33 (PTE 93-33) for the Receipt of Certain Services by Individuals for Whose Benefit Individual Retirement Accounts or Retirement Plans for Self-Employed Individuals Have Been Established or Maintained**

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

**ACTION:** Adoption of Amendment to PTE 93-33.

**SUMMARY:** This document amends PTE 93-33, a class exemption that permits the receipt of services at reduced or no cost by an individual for whose benefit an individual retirement account (IRA) or, if self-employed, a Keogh Plan, is established or maintained, or by members of his or her family, from a bank, provided that the conditions of the exemption are met. The amendment affects individuals with a beneficial interest in IRAs and Keogh Plans who receive such services as well as the banks that provide such services.

**DATES:** The amendment is effective January 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ms. Allison Padams Lavigne, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 219-8971 (this is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On October 21, 1998, notice was published

of the pendency before the Department of a proposed amendment to PTE 93-33 (58 FR 31053, May 28, 1993, as amended, 59 FR 22686, May 2, 1994). PTE 93-33 provides relief from the restrictions of sections 406(a)(1)(D) and 406(b) of the Employee Retirement Income Security Act of 1974 (ERISA) and the sanctions resulting from the application of sections 4975(a) and (b), 4975(c)(3) and 408(e)(2) of the Internal Revenue Code of 1986 (the Code) by reason of section 4975(c)(1)(D), (E) and (F) of the Code.\* The amendment was requested in an exemption application dated January 26, 1998 filed by the American Bankers Association.

The application was filed 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, August 10, 1990). The notice of pendency gave interested persons an opportunity to comment or to request a hearing on the proposed amendment. No public comments nor requests for a hearing on the proposed amendment were received. For the sake of convenience, the entire text of PTE 93-33, as amended, has been reprinted with this notice.

PTE 93-33, as amended, permits the receipt of services at reduced or no cost by an individual for whose benefit an IRA or Keogh Plan is established or maintained or by members of his or her family, from a bank pursuant to an arrangement in which the account balance of the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided the conditions of the exemption are met.

Section III (b) of PTE 93-33, as amended, defines the term "IRA" as an individual retirement account described in Code section 408(a). In addition, section III(b) provides that for purposes of this exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code which provides participants with the unrestricted authority to transfer their SEP balances to IRAs sponsored by different financial institutions. The amendment set forth in this notice modifies section III(b) of PTE 93-33 to include Education IRAs described in section 530 of the Code and Simple

\* Section 102 of Reorganization Plan No. 4 of 1978 (42 FR 47713, October 17, 1978) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

Retirement Accounts described in section 408(p) of the Code. The Department notes that all conditions contained in PTE 93-33 still must be met pursuant to the amendment.

### General Information

The attention of interested persons is directed to the following:

(1) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, and based upon the entire record, the Department finds that the amendment is administratively feasible, in the interests of the IRAs and Keogh Plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of such plans.

(2) 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 exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The exemption is applicable to a transaction only if the conditions specified in the class exemption are met.

### Exemption

Accordingly, PTE 93-33 is amended 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).

### Section I: Covered Transactions

Effective January 1, 1998, the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code, including the loss of exemption of an individual retirement account (IRA) pursuant to section 408(e)(2)(A) of the Code, by reason of section 4975(c)(1)(D), (E) and (F) of the Code, shall not apply to the receipt of services at reduced or no cost by an individual for whose benefit an IRA, or, if self-employed, a Keogh Plan, is established or maintained, or by members of his or her family, from a bank pursuant to an arrangement in which the account balance in the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided that each condition of Section II of this exemption is satisfied.

### Section II: Conditions

(a) The IRA or Keogh Plan, the balance of which is taken into account for purposes of determining eligibility to receive services at reduced or no cost, is established and maintained for the exclusive benefit of the participant covered under the IRA or Keogh Plan, his or her spouse or their beneficiaries.

(b) The services must be of the type that the bank itself could offer consistent with applicable federal and state banking law.

(c) The services are provided by the bank (or an affiliate of the bank) in the ordinary course of the bank's business to customers who qualify for reduced or no cost banking services but do not maintain IRAs or Keogh Plans with the bank.

(d) For the purpose of determining eligibility to receive services at reduced or no cost, the account balance required by the bank for the IRA or Keogh Plan is equal to the lowest balance required for any other type of account which the bank includes to determine eligibility to receive reduced or no cost services.

(e) The rate of return on the IRA or Keogh Plan investment is no less favorable than the rate of return on an identical investment that could have been made at the same time at the same branch of the bank by a customer of the bank who is not eligible for (or who does not receive) reduced or no cost services.

### Section III: Definitions

The following definitions apply to this exemption:

(a) The term bank means a bank described in section 408(n) of the Code.

(b) The term IRA means an individual retirement account described in Code section 408(a) or an education individual retirement account described in section 530 of the Code. For purposes of this exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.

(c) The term Keogh Plan means a pension, profit sharing, or stock bonus plan qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in section 401(c) of the Code.

For purposes of this exemption, the term Keogh Plan shall not include a Keogh Plan which is an employee benefit plan covered by title I of ERISA.

(d) The term account balance means deposits as that term is defined under 29 CFR 2550.408b-4(c)(3), or investments in securities for which market quotations are readily available. For purposes of this exemption, the term account balance shall not include investments in securities offered by the bank (or its affiliate) exclusively to IRAs and Keogh Plans.

(e) An affiliate of a bank includes any person directly or indirectly controlling, controlled by, or under common control with a bank. The term control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term members of his or her family refers to beneficiaries of the individual for whose benefit the IRA or Keogh Plan is established or maintained, who would be members of the family as that term is defined in Code section 4975(e)(6), or a brother, a sister, or spouse of a brother or a sister.

(g) The term service includes incidental products of a de minimis value provided by third persons pursuant to an arrangement with the bank, which are directly related to the provision of banking services covered by the exemption.

Signed at Washington, DC this 26th day of February 1999.

**Alan D. Lebowitz,**

*Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99-10; Exemption Application No. D-10630, et al.]

**Grant of Individual Exemptions; Genito-Urinary Surgeons, Inc. Profit Sharing Plan (GUS Plan) Michael J. Rosenberg Money Purchase Pension Plan (Rosenberg Plan); Robert Savage Qualified Retirement Plan (Savage Plan), et al.**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of