interventions and related issues such as employee participation. In this respect, the committee requests that members of the public who have participated in studies or programs related to performance measurement and evaluation of occupational safety and health programs share their findings and/or experiences with NACOSH either in written form or in oral presentations before the committee to the extent time permits. Those who are interested in making presentations on January 15 or 16 should notify, no later than December 9, Joanne Goodell, OSHA, Room N–3641, 200 Constitution Avenue NW, Washington, DC 20210, telephone (202) 219–8021, ext. 107, or FAX (202) 219–4383. Presenters must provide their name, the capacity in which the person will appear, a brief outline of the content of the presentation, preference of appearance date if there is one, mail address, telephone and FAX numbers. Presentations will be limited to 10 minutes with time allowed for questions from committee members.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies to Joanne Goodell at the address provided above. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Individuals with disabilities who need special accommodations should contact Tom Hall (phone: 202–219–8615; FAX: 202–219–5986) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202–219–7500). For additional information contact Joanne Goodell (phone, FAX and address provided above.)

Signed at Washington, D.C. this 6th day of November, 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 96–29064 Filed 11–12–96; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

[Application No. D–09988]

Proposed Class Exemption for Bank Collective Investment Fund Conversion Transactions

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

ACTION: Notice of Proposed Class Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act or ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). If granted, the proposed exemption would permit an employee benefit plan (the Client Plan) to purchase shares of a registered investment company (the Fund), the investment adviser for which is a bank (the Bank) that serves as a fiduciary of the Client Plan, in exchange for plan assets transferred in-kind to the Fund from a collective investment fund (the CIF) maintained by the Bank. The proposed exemption, if granted, would affect participants and beneficiaries of the Client Plans that are involved in such transactions as well as the Bank and the Fund.

ADDRESSES: All written comments and requests for a public hearing (preferably 3 copies) should be sent to: Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, 200 Constitution Avenue N.W., Washington, DC 20210, (Attention: ''CIF Conversion Class Exemption''). The application for exemption (Application No. D–09988) and all additional comments received from interested persons will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue N.W., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady or Mr. E.F. Williams, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210 at (202) 219–8881 or (202) 219–8194, respectively, or Ms. Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210 at (202) 219–4600, ext. 105. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This document contains a notice of pendency before the Department of a proposed class exemption from the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application dated March 28, 1995 submitted on behalf of Federated Investors (Federated) pursuant to 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 Part 2570, Subpart B (55 FR 32836, August 10, 1990).[1]

I. Paperwork Reduction Act Analysis

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed new collection of information under the Proposed Class Exemption for Bank Collective Investment Fund Conversion Transactions.

DATES: Written comments must be submitted on or before January 13, 1996 to Mr. Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, D.C. 20210. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

[1] Section 102 of Reorganization Plan No. 4 of 1978, 5 USC App. 1 (1996) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

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

technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Title: Class Exemption for Bank Collective Investment Fund Conversion Transactions.

Summary: The proposed exemption would permit employee benefit plans to purchase shares of a registered investment company in exchange for plan assets transferred in-kind from a bank maintained collective investment fund, where the bank that serves as a fiduciary of the plan is also the investment adviser for the investment company. The proposal is conditioned upon an independent fiduciary receiving advance notice concerning the transfer of assets and written confirmation after the completion of each transaction.

Needs and Uses: ERISA requires that the Department make a finding that the proposed exemption meets the statutory requirements of section 408(a) before granting the exemption. The Department therefore finds it necessary that certain information be provided to an independent fiduciary of each plan in advance of, and subsequent to, the proposed transaction, and that the independent fiduciary approve the proposed transaction.

Respondents and Proposed Frequency of Response: The Department staff estimates that approximately 50 parties will seek to take advantage of the class exemption in any given year. The respondents will be banks and trust companies acting as fiduciaries of plans investing in collective investment funds maintained by such entities.

Estimated Annual Burden: The Department staff estimates the annual burden for preparing the materials required under the proposed class exemption to be 892 hours. The total annual burden cost (operating/maintenance) is estimated to be $113,772.00. There are estimated to be no capital/start-up burden costs. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

II. Background

The application contains facts and representations with regard to the requested exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant. The applicant, Federated, requests retroactive and prospective exemptive relief for the in-kind transfer of assets from a CIF in which Client Plans invest to a Fund in exchange for shares of the Fund. The exemption is being requested in light of the Department's position that Prohibited Transaction Exemption (PTE) 77–4 (42 FR 18732, April 8, 1977) is unavailable for the purchase of shares in Funds other than for cash. In pertinent part, PTE 77–4 permits the purchase or sale by an employee benefit plan of shares of a Fund when a fiduciary with respect to the plan is also the investment adviser of the Fund.

Federated represents that it advises, administers and distributes its own Funds and also administers, distributes and provides related services to Funds that are advised by other financial institutions, including many Banks. In total, Federated provides such services with respect to over $70 billion in assets.

Since April 1989, Federated has assisted a number of Banks in establishing ''proprietary'' mutual funds, (i.e., mutual funds advised by the Bank and for which the Bank may provide other services, such as custody or shareholder recordkeeping). These Funds are often established through the complete or partial conversion of the Bank's CIFs into the Funds. Such conversions have been motivated by changes in the investment industry and the increasing trend toward the establishment of participant-directed plans under section 401(k) of the Code. Federated assists these Banks in the conversion process and may serve as administrator, as well as in other capacities (such as transfer agent and portfolio recordkeeper) with respect to such Funds.

Federated explains that these in-kind transfers have been completed in compliance with the banking rules governing CIFs and the requirements of the Investment Company Act of 1940 (the '40 Act). To avoid engaging in a prohibited transaction, the Banks have sought in good faith to comply with PTE 77–4 and have relied on the availability of that class exemption. Federated states that the conditions of PTE 77–4 (as they were interpreted by the banking industry at that time) were met, including the provision of disclosures regarding the Fund to an independent plan fiduciary (the Independent Fiduciary) and prior approval by that fiduciary. However, Federated notes that the Department's position that PTE 77–4 does not apply to in-kind exchanges of assets, such as occur in a CIF-to-Fund conversion, has created uncertainty as to what Banks should do with regard to past and future transactions. Therefore, Federated believes that class exemptive relief is warranted because of the large number of Banks that have entered into, or propose to enter into, such transactions. In Federated's view, the exemptive relief requested would reduce the burden that has been placed on Banks and would create certainty as to how such transactions may be structured to comply with provisions of the Act.

III. Discussion of the Application

The applicant represents that, as part of the conversion process, assets representing the Client Plans' interests in the CIFs are being transferred to the Funds in exchange for which the Client Plans receive shares of the Funds. The in-kind transfers are subject to the prior approval of Independent Fiduciaries and a number of additional safeguards that are discussed below.

The Banks that would be covered by the requested exemption include banks or trust companies that are regulated by federal or state law. The Banks may serve as trustees, investment managers or custodians for Client Plans that are subject to the Act. If a Bank has investment discretion over the assets of a Client Plan, it commonly manages such assets through CIFs. Where a Bank serves as a nondiscretionary trustee or a custodian, it has made CIFs available as investment options for participant-directed plans at the election of the plan sponsor. CIF investments have allowed Client Plans to pool their assets thereby permitting greater diversification and lower management fees than individually-managed portfolios.

Federated represents that over the past 15 years mutual funds have become increasingly popular investments for plan investors. Among the advantages of Funds over CIFs are daily pricing and redemption, published prices available in newspapers of general circulation and greater portability. Daily pricing and redemption permits: (a) immediate investment of plan contributions in various types of investments; (b) greater flexibility in transferring assets from one type of investment to another; and (c) faster distributions. CIFs, by contrast, generally have been valued quarterly and have not permitted daily withdrawals or transfers. Because of the advantages offered by Funds, many Banks have been converting their CIFs into Funds by transferring the assets out of the CIFs and into the Banks' proprietary Funds. In some cases, the Banks have terminated their CIFs. In other cases, the CIFs have been partially converted and not terminated because one or more clients has preferred to remain invested in the CIFs.

The applicant represents that the conversion transaction that is the subject of this exemption request is structured as an in-kind transfer of plan assets held by the CIF to the corresponding Funds, in exchange for shares of the Funds. This approach, according to the applicant, avoids incurring transaction costs in connection with liquidating the CIF investments and making the same investments for the Funds.

It is represented that the process used by Banks assisted by Federated has been designed to comply with the '40 Act and PTE 77–4, as applicable. In this regard, Federated represents that the Bank obtains the approval of an Independent Fiduciary prior to investing a Client Plan's assets in a Fund. The Independent Fiduciary is generally the Client Plan's named fiduciary or plan sponsor. In requesting the Independent Fiduciary's approval, the Bank provides such fiduciary with a description of the transaction, information about each Fund into which assets would be transferred and a current prospectus. It is represented that all disclosures and the form of approval are designed to meet the requirements of PTE 77–4.[2]

To the extent that the Independent Fiduciary of a Client Plan approves the investment in the Funds, the purchase of Fund shares by the Client Plan is accomplished in accordance with Securities and Exchange Commission Rule 17a–7 (Rule 17a–7 or the Rule) under the '40 Act (17 CFR 270.17a–7). Rule 17a–7 is an exemption from the prohibited transaction provisions of section 17(a) of the '40 Act (15 USC 80a–17(a)), which prohibit, among other things, transactions between an investment company and its investment adviser or affiliates of its investment adviser. Thus, Rule 17a–7 permits transactions between the Funds and other accounts that use the same or affiliated investment advisers, subject to certain conditions that are designed to assure fair valuation of the assets involved in the transaction and fair treatment of both parties to the transaction. Among the conditions of Rule 17a–7 is the requirement that the transaction be effected at the ''independent current market price'' for the security involved.[3] In this regard, the ''independent current market price'' for specific types of CIF securities involved in the transactions is determined as follows:

(a) If the security is a ''reported security'' as the term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934 (the '34 Act) (17 CFR 240.11Aa3–1), the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System); or, if there are no reported transactions in the Consolidated System that day, the average of the highest current independent bid and the lowest current independent offer for such security (reported pursuant to Rule 11Ac1–1 under the '34 Act) (17 CFR 240.11Ac1–1), as of the close of business on the CIF valuation date.

(b) If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange or, if there are no reported transactions on such exchange that day, the average of the highest current independent bid and lowest current independent offer on the exchange as of the close of business on the CIF valuation date.

(c) If the security is not a reported security and is quoted in the NASDAQ system, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ as of the close of business on the CIF valuation date.[4]

(d) For all other securities, the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry from at least three independent sources as of the close of business on the CIF valuation date.

Federated represents that these valuation conditions are objective and require documentation to permit review by independent parties.

Federated represents that, in a conversion transaction, a portion of the plan assets in each CIF, representing the interests in the CIF of the Client Plans that approve the asset transfer, are transferred to the corresponding Funds using the then-current market value of the plans' assets in exchange for shares in the Fund. Simultaneously, each Client Plan's investment in the CIF is liquidated and Fund shares of equal value to the Client Plan's interest in the CIF are distributed to the Client Plan.

Prior to the transfers, the applicant states that the CIF assets must be reviewed to determine whether they are appropriate investments for the corresponding Fund, consistent with the Fund's investment objectives and policies and applicable requirements under the '40 Act and the Code. In addition, Federated notes that Rule 17a–7 permits transfers only of securities for which market quotations are readily available and does not include restricted securities (such as those described by SEC Rule 144) or other securities for which market quotations are not readily available.[5] If the class exemption were not available, the transferring plans would request cash distributions, causing the CIF to incur higher transaction costs in liquidating a larger proportion of its securities holdings.

Federated explains that if the CIF will be terminated, the Client Plans not transferring assets to a Fund will receive a distribution, prior to the transfer date, of their *pro rata* portions of each CIF asset. The remaining CIF assets are then transferred to the Funds on behalf of the Client Plans that approve the transaction. If the CIF will not be terminated, the assets of the CIF are divided, prior to the transfer, so that each Client Plan that chooses to remain invested in the CIF retains its *pro rata* share of the CIF assets.

Although the Bank will generally divide the assets held in a CIF among the Client Plans on a *pro rata* basis, Federated explains that in some instances, the CIF may hold ''small investments'' in fixed-income securities that are not divisible, or that can be divided only at substantial cost. Federated states that these investments will typically be issued in units of $1,000 or more. For example, a CIF may have 5 bonds in $1,000 denominations, for an aggregate principal value of $5,000, and 50 percent of the Client Plans participating in the CIF may elect to transfer their investments to a Fund.

[2] In pertinent part, PTE 77–4 requires that a fiduciary of a plan who is independent of and unrelated to the fiduciary/investment adviser, or any affiliate thereof, receive a prospectus issued by the investment company and full written disclosure of the investment advisory and other fees charged to, or paid by, the plan and the investment company. Such information should include: (a) the nature and extent of any differential between the rates of such fees; (b) the reasons why the fiduciary/investment adviser may consider such purchases of shares in the investment company to be appropriate for the plan; (c) whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company; and, if so, (d) the nature of such limitations.

[3] Rule 17a–7 also includes the following requirements: (a) the transaction must be consistent with the investment objectives and policies of the Fund, as described in its registration statement; (b) the security that is the subject of the transaction must be one for which market quotations are readily available; (c) no brokerage commissions or other remuneration may be paid in connection with the transaction; and (d) the Fund's board of directors (i.e., those directors who are independent of the Fund's investment adviser) must adopt procedures to ensure that the requirements of Rule 17a–7 are followed, and determine no less frequently than quarterly that the transactions during the preceding quarter were in compliance with such procedures.

[4] It is represented that Level 1 of NASDAQ provides the best bid and ask quotations for each NASDAQ security that has a minimum of two registered market-makers providing quotations. Level 2 provides the current bid and ask prices for each market-maker in any available NASDAQ securities, not just the best prices. Level 3 allows for market-makers instantaneously to insert new quotations into the system and is generally only used by market-makers and traders.

[5] The Department notes that the Bank retains ongoing responsibilities under ERISA's general standards of fiduciary conduct with respect to plans electing to remain as investors in the CIF and with respect to other aspects of the transfers.

A strict *pro rata* allocation to each Client Plan would require that $2,500 of the principal value of these bonds be transferred to the Fund. However, a $1,000 bond cannot be divided into two segments of $500 each. Federated states that securities, such as the bond in this example, that are incapable of division could be liquidated for cash prior to the transfer but, if there are many such securities, the transaction costs may become significant.

In these situations, solely for purposes of the prospective relief requested herein [6], Federated represents that the Banks will treat equivalent, ''small investment'' fixed-income securities as fungible for allocation purposes if such securities have the same coupon rates, maturities and credit ratings at the time of the transaction. For example, notes with variable interest rates will be treated as fungible only if they have the identical interest rate formulas. This requirement will ensure that all Client Plans receive securities that have equivalent terms and features. The Banks will allocate such fixed-income securities among the Client Plans in a manner such that each receives its pro rata share of the value of such securities.[7] Federated represents that providing Banks with the ability to allocate fixed-income securities other than on a strictly pro rata basis would permit the CIF, and, therefore, the Client Plans, to avoid the transaction costs involved in liquidating these small positions prior to maturity.

In order to establish what constitutes ''small investments,'' Federated proposes that this exception from the general *pro rata* division rule be available only for investment positions in fixed-income securities which, in the aggregate, constitute no more than one (1) percent of the CIF's assets. This one (1) percent limit will ensure that the ''small investment'' positions in fixed-income securities will represent a *de minimis* portion of the overall assets held by the CIF at the time of the transactions.

In implementing the asset transfers, Federated represents that the current market value of the assets of the CIFs have been and will be determined in accordance with Rule 17a–7 and the procedures adopted by the board of directors of the Fund pursuant to such Rule. The assets are valued by the CIF and the Fund in the same manner using the ''independent current market price'' of the securities as defined in Rule 17a–7 as of the close of business on the same business day. In addition, no brokerage commissions or other remuneration is charged to the Client Plans in connection with the asset transfer and any such costs or expenses are paid by the Bank.

Federated states that the same values are used for the securities both in determining the amount transferred from the CIF and the amount received by the Fund. Thus, the total net asset value of the Fund shares received by the Client Plan is equal in value to the Client Plan's share of the assets of the CIF exchanged for shares of the Fund on the date of transfer.

The valuations are based on prices, bids and offers as of the close of business on the date of the asset transfer. Federated states that, in the transactions in which it has been involved, the asset transfers have primarily been scheduled to occur over a weekend to allow sufficient time for processing. As applicable, securities have been valued based on their closing prices, or the average of bid and ask quotations (or prices obtained from pricing services) obtained from at least three independent sources, as of the close of business on the Friday preceding the weekend of the asset transfers. The transfer of the securities has been completed by the following Monday, at which time the Client Plans whose assets were formerly invested in a CIF hold shares in the corresponding Fund of equal value to their units in the CIF as of the close of business the previous Friday.

Subsequent to the transaction, Federated explains that compliance with Rule 17a–7 procedures of the Fund is reviewed by independent members of the Fund's board of directors and by independent auditors. In this regard, records pertaining to Rule 17a–7 transactions are reviewed by SEC staff during their periodic inspections of the Funds.

Thus, in Federated's view, the asset transfer transactions are ministerial in nature because they are performed in accordance with procedures that are prescribed by Rule 17a–7 and approved by the Fund's board of directors. Further, Federated states that the pricing of all securities transferred to a Fund is accomplished by reference to independent sources. In each case, the affected Client Plans receive shares of the Funds that are of equal value to the previously-held CIF units.

IV. Description of the Proposed Exemption

The proposed class exemption consists of four sections. Section I would provide conditional exemptive relief for transactions occurring from October 1, 1988 until the date the notice granting the final exemption is published in the Federal Register. Section II would provide prospective relief for transactions which must meet certain additional conditions which are described below. Section III provides that a transaction that meets the applicable conditions of the proposed exemption will be deemed a purchase by the Client Plan of shares of an open-end investment company registered under the Investment Company Act of 1940 for purposes of PTE 77–4. Accordingly, if the exemption is granted, a Bank that complies with the terms of this exemption and with the terms of PTE 77–4 would be able to receive investment management and investment advisory fees from the Fund and the Client Plan with respect to the plan's assets invested in shares of the Fund to the extent permitted under PTE 77–4. Section III also provides that compliance with the proposed exemption will constitute compliance with paragraphs (a), (d) and (e) of section II of PTE 77–4. Finally, Section IV contains definitions for certain terms used in the proposed exemption.

Specifically, the proposed class exemption set forth in Section I would provide retroactive relief from the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act for the purchase of Fund shares by an employee benefit plan, where a Bank that serves as investment adviser to the Fund is also a fiduciary with respect to the plan, in exchange for plan assets transferred in-kind to the Fund from a CIF maintained by the Bank. The exemption is generally similar to a number of individual exemptions that have been granted by the Department for such transactions, but the operative language of this proposal differs from that of the individual exemptions.[8] The principal purpose of the language in the proposal is to make clear that the class exemption would not provide relief for any prohibited transactions that may arise in connection with terminating a CIF, permitting certain plans to

[6] In this regard, the Department wishes to emphasize that the proposed class exemption would provide no retroactive relief for any past in-kind transfer of CIF assets to a Fund unless all or a pro rata portion of the assets of the CIF were transferred to the Fund in exchange for shares of such Fund. (See Section I(c) below.)

[7] The applicant represents that the valuation of fixed income securities will be performed in accordance with Rule 17a–7.

[8] See, for example, PTE 94–82 involving Marshall & Ilsley Trust Company (59 FR 62422, December 5, 1994); PTE 94–86 involving The Bank of California, N.A. (59 FR 65403, December 19, 1994); PTE 95–33 involving Bank South, N.A. (60 FR 20773, April 27, 1995); PTE 95–48 involving Mellon Bank, N.A. (60 FR 32995, June 26, 1995); and PTE 95–49 involving Norwest Bank (60 FR 33000, June 26, 1995).

withdraw from a CIF that is not terminating, or liquidating or transferring any plan assets held by the CIF. The class exemption would provide relief only for the purchase of Fund shares by a Client Plan in exchange for assets that are transferred from a CIF. Although the Department interprets the individual exemptions as being similarly limited in their scope, the language of the proposed class exemption is intended to clarify this limitation. The Department believes that the scope of the proposed class exemption is consistent with the applicant's request for relief based on the applicant's mistaken reliance on PTE 77–4. The Department, however, specifically solicits comments on whether the scope of the proposed exemption should be modified to include other aspects of in-kind transfers of CIF assets. The Department also notes that the proposal defines the term ''Client Plan'' in section IV so as to exclude exemptive relief for purchases of Fund shares by plans sponsored by the Bank for its own employees.

The conditions applicable to the retroactive exemption set forth in Section I of the proposal are described below.

Under section I(a) of the proposal, no sales commissions or other fees are paid by Client Plan in connection with the transaction.

Section I(b) and (c) of the proposed exemption requires that the transferred assets be securities for which market quotations are readily available and consist of the Client Plan's *pro rata* portion of all the transferable assets held by the CIFs immediately prior to the transfer. Under section I(d), the Client Plan must receive shares of a Fund to which the CIF assets have been transferred that have a total net asset value that is equal to the value of the Client Plan's *pro rata* portion of the transferred assets on the date of the transfer, based on the current market value of such assets, as determined in a single valuation for each asset, with all valuations performed in the same manner at the close of the same business day, in accordance with Rule 17a–7 of the '40 Act (using sources independent of the Bank) and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. The same valuation must be used for each asset in determining the amount transferred from the CIF and the amount received by the Fund.

Section I(e) provides that an Independent Fiduciary must receive advance written notice of the transaction, as well as the following written information concerning the Funds: (a) a current prospectus for each Fund in which a Client Plan is considering investing; (b) full and detailed written disclosure of the investment advisory and other fees charged to, or paid by, the Client Plan (and by such Fund) to the Bank or any unrelated third party, including the nature and extent of any differential between the rates of the fees; (c) the reasons why the Bank may consider an exchange of the Client Plan's CIF assets for investments in the Fund to be appropriate for the Client Plan; and (d) a statement describing whether there are any limitations applicable to the Bank with respect to which assets of the Client Plan may be invested in the Fund, and, if so, the nature of such limitations.

Moreover, under section I(f), the Independent Fiduciary gives prior approval in writing of each in-kind transfer of the Client Plan's CIF assets to a Fund in exchange for shares of the Fund, on the basis of the information disclosed to the Independent Fiduciary. In addition, section I(g) requires that the Independent Fiduciary receive written confirmation of the transaction no later than 105 days after the transaction. This written confirmation must disclose the number of CIF units held by the Client Plan immediately before the transaction and the number of Fund shares held by the Client Plan immediately following the transaction, the related per unit and per share values, and the dollar amounts of the CIF units and the Fund shares involved in the transaction.

Section I(h) requires that, for each Client Plan, the combined total of all fees received by the Bank for the provision of services to the Client Plan, and in connection with the provision of services to a Fund in which a Client Plan invests, must not exceed ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act. Finally, section I(i) provides that all dealings between a Client Plan and a Fund are on a basis no less favorable to the Client Plan than such dealings are with other shareholders of the Fund.

On a prospective basis, Section II requires that the transactions meet certain conditions in addition to those described in Section I of the proposal. These additional conditions are described below.

Section II(c) provides an exception to the general requirement that the assets transferred to a Fund consist of the Client Plan's *pro rata* portion of each of the assets of the CIF. This exception applies to certain investments in fixed-income securities. The fixed-income securities which are allocated between the CIF and the Fund must have the same coupon rates, maturities and credit ratings at the time of the transaction and cannot exceed one (1) percent of the aggregate assets held by the CIF as of each transfer. In this regard, section IV(j) defines the term ''fixed-income security'' as any interest-bearing or discounted government or corporate security with a face amount of $1,000 or more that obligates the issuer to pay the holder a specified sum of money, usually at specific intervals, and to repay the principal amount of the loan at maturity.

Under section II(f) of the proposal, the Independent Fiduciary must give prior approval in writing of each in-kind transfer of the Client Plan's CIF assets to a Fund in exchange for shares of the Fund. The advance notice required by section II(e) will include the identity of securities that will be valued in accordance with Rule 17a–7(b)(4) of the '40 Act and allocated under section II(c), and the identity of any fixed-income securities allocated under section II(c).[9]

Section II(g)(1) requires a Bank to send the Independent Fiduciary of a Client Plan an additional written confirmation, not later than 30 days after the completion of the transaction, for securities that were valued in accordance with Rule 17a–7(b)(4). The additional confirmation must contain the following information: (a) the identity of each such security; (b) the current market price as of the date of the transaction of each such security involved in the transaction; and (c) the identity of each pricing service or market-maker consulted in determining the value of such securities.

In addition, section II(h) requires the Bank to provide certain ongoing disclosures to the Independent Fiduciary of a Client Plan. Such written disclosures must include: (a) a copy of an updated prospectus for each Fund in which such plan has invested, which is to be provided at least on an annual basis; and (b) upon the request of the Independent Fiduciary, a report or statement (which may take the form of the most recent financial report, the current Statement of Additional Information, or some other written statement) containing a description of

[9] Rule 17a–7(b)(4) describes the method for determining the current market price of securities that are not reported securities under Rule 11Aa3–1 (17 CFR 240.11Aa3–1), are not traded principally on an exchange and are not quoted in the NASDAQ system. 17 CFR 270.17a–7(b)(4). Because the proper valuation of such securities may require more extensive inquiry than in the valuation of securities described in Rule 17a–7(b)(1)–(b)(3), the Department believes that the Independent Fiduciary should receive advance notice that the transfer will entail such valuations.

all fees paid by the Fund to the Bank. The purpose of this additional disclosure is to ensure that the Independent Fiduciary will continue to have the information necessary to effectively monitor the Fund investments made by the Client Plan.

The Department wishes to note that the requirement under sections I and II of the proposal that all valuations of all plan assets transferred from a CIF to a Fund be determined in accordance with Rule 17a–7 under the '40 Act is designed to provide flexibility for future transactions. Thus, for example, if Rule 17a–7 is subsequently amended by the SEC to accommodate new pricing systems, Banks could take advantage of the amended Rule without having to request an amendment to the class exemption. However, the Department cautions that the exemption would not be available for transactions involving assets that are not valued by reference to sources independent of the Bank.

Unlike the individual exemptions cited above, this proposed class exemption does not grant relief for fees that the Bank may receive from the Fund as a result of the Client Plans' purchase of Fund shares. However, section III of this proposal provides that a purchase of Fund shares that complies with sections I and II will be deemed a purchase of shares of an open-end investment company for purposes of PTE 77–4, and in compliance with paragraphs (a), (d) and (e) of section II of that exemption. Compliance with all of the conditions of PTE 77–4 would permit the Bank to receive investment advisory and similar fees from the Fund with respect to shares acquired by a Client Plan in accordance with the proposal.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act 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 the Act which require, among other things, that a fiduciary discharge his duties with respect to the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plans and their participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans;

(3) If granted, the proposed exemption will be applicable to a transaction only if the conditions specified in the class exemption are met; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code and the Act, 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.

Written Comments and Hearing Requests

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

Proposed Exemption

The Department has under consideration the grant of the following class exemption 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 Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.)

Section I. Retroactive Exemption for the Purchase of Fund Shares With Assets Transferred In-Kind From A CIF

For the period from October 1, 1988, to [date of publication of final class exemption], the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E), shall not apply to the purchase by an employee benefit plan (the Client Plan) of shares of one or more diversified open-end management investment companies (the Fund or Funds) registered under the Investment Company Act of 1940, the investment adviser for which is a bank (the Bank) that is also a fiduciary of the Client Plan, in exchange for assets of the Client Plan transferred in-kind to the Fund from a collective investment fund (the CIF) maintained by the Bank, if the following conditions are met:

(a) No sales commissions or other fees are paid by the Client Plan in connection with the purchase of Fund shares.

(b) All transferred assets are securities for which market quotations are readily available.

(c) The transferred assets constitute the Client Plan's *pro rata* portion of such assets that were held by the CIF immediately prior to the transfer.

(d) The Client Plan receives Fund shares that have a total net asset value equal to the value of the Client Plan's *pro rata* share of transferred assets on the date of the transfer, as determined in a single valuation for each asset, with all valuations performed in the same manner, at the close of the same business day, in accordance with Securities and Exchange Commission Rule 17a–7 (using sources independent of the Bank and the Fund) and the procedures established by the Funds pursuant to Rule 17a–7.

(e) With respect to each Client Plan owning assets held by the CIF, an Independent Fiduciary with respect to such plan receives advance written notice of the in-kind transfer and purchase and full written disclosure of information concerning the Funds which includes the following:

(1) A current prospectus for each Fund to which the CIF assets may be transferred;

(2) A statement describing the fees to be charged to, or paid by, a Client Plan and the Funds to the Bank or any unrelated third party, including the nature and extent of any differential between the rates of the fees;

(3) A statement of the reasons why the Bank may consider the transfer and purchase to be appropriate for the Client Plan; and

(4) A statement of whether there are any limitations on the Bank with respect to which plan assets may be invested in shares of the Funds, and, if so, the nature of such limitations.

(f) On the basis of the foregoing information, the Independent Fiduciary gives approval, in writing, for each purchase of Fund shares in exchange for the Client Plan's transferred CIF assets, consistent with the responsibilities, obligations and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(g) The Bank sends by regular mail to the Independent Fiduciary of each

Client Plan that purchases shares in connection with the in-kind transfer, no later than 105 days after completion of each purchase, a written confirmation of the transaction containing—

(1) The number of CIF units held by the Client Plan immediately before the transfer, the related per unit value and the total dollar amount of such CIF units; and

(2) The number of shares in the Funds that are held by the Client Plan immediately following the transfer, the related per share net asset value and the total dollar amount of such shares.

(h) As to each Client Plan, the combined total of all fees received by the Bank for the provision of services to the Client Plan, and in connection with the provision of services to a Fund in which a Client Plan holds shares purchased in connection with the in-kind transfer is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(i) All dealings in connection with the in-kind transfer and purchase between the Client Plan and a Fund are on a basis no less favorable to the Client Plan than dealings between the Fund and other shareholders.

Section II. Prospective Exemption for the Purchase of Fund Shares With Assets Transferred In-Kind From A CIF

Effective [date of publication of final class exemption], the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the purchase by an employee benefit plan (the Client Plan) of shares of one or more diversified open-end management investment companies (the Fund) registered under the Investment Company Act of 1940, the investment adviser for which is a bank (the Bank) that is also a fiduciary of the Client Plan, in exchange for assets of the Client Plan transferred in-kind to the Fund from a collective investment fund (the CIF) maintained by the Bank if the following conditions are met:

(a) No sales commissions or other fees are paid by the Client Plans in connection with the purchase of Fund shares through the transfer of assets from the CIF.

(b) All transferred assets are securities for which market quotations are readily available.

(c) The transferred assets constitute the Client Plan's *pro rata* portion of such assets that were held by the CIF immediately prior to the transfer. Notwithstanding the foregoing, the allocation of fixed-income securities held by a CIF among Client Plans on the basis of each Client Plan's *pro rata* share of the aggregate value of such securities will not fail to meet the requirements of section II(b) if:

(1) The aggregate value of such securities does not exceed one (1) percent of the total value of the assets held by the CIF immediately prior to the transfer; and

(2) Such securities have the same coupon rate and maturity, and at the time of the transfer, the same credit ratings from nationally recognized statistical rating agencies.

(d) The Client Plan receives Fund shares that have a total net asset value equal to the value of the Client Plan's *pro rata* share of transferred assets on the date of the transfer, as determined in a single valuation for each asset, with all valuations performed in the same manner, at the close of the same business day, in accordance with Securities and Exchange Commission Rule 17a–7 (using sources independent of the Bank and the Fund) and the procedures established by the Funds pursuant to Rule 17a–7.

(e) With respect to each Client Plan owning assets held in the CIF, an Independent Fiduciary for such Client Plan receives advance written notice of the in-kind transfer and purchase of assets and full written disclosure of information concerning the Funds which includes the following:

(1) A current prospectus for each Fund to which the CIF assets may be transferred;

(2) A statement describing the fees to be charged to or paid by the Client Plan and the Funds to the Bank or any unrelated third party, including the nature and extent of any differential between the rates of such fees;

(3) A statement of the reasons why the Bank may consider the transfer and purchase to be appropriate for the Client Plan;

(4) A statement of whether there are any limitations on the Bank with respect to which plan assets may be invested in shares of the Funds, and, if so, the nature of such limitations;

(5) The identity of securities that will be valued in accordance with Rule 17a–7(b)(4) and allocated under section II(c); and

(6) The identity of any fixed-income securities allocated pursuant to section II(c).

(f) On the basis of the foregoing information, the Independent Fiduciary gives prior approval, in writing, for each purchase of Fund shares in exchange for the Client Plan's assets transferred from the CIF, consistent with the responsibilities, obligations and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(g) The Bank sends by regular mail to the Independent Fiduciary of each Client Plan that purchases Fund shares in connection with the in-kind transfer, the following information:

(1) Not later than 30 days after the completion of the purchase, a written confirmation which contains—

(i) The identity of each security that was valued for purposes of the purchase of Fund shares in accordance with Rule 17a–7(b)(4);

(ii) The current market price, as of the date of the in-kind transfer, of each such security involved in the purchase of Fund shares; and

(iii) The identity of each pricing service or market-maker consulted in determining the current market price of such securities.

(2) Within 105 days after the completion of each purchase, a written confirmation which contains—

(i) The number of CIF units held by the Client Plan immediately before the in-kind transfer, the related per unit value, and the total dollar amount of such CIF units; and

(ii) The number of shares in the Funds that are held by the Client Plan immediately following the purchase, the related per share net asset value and the total dollar amount of such shares.

(h) With respect to each of the Funds in which a Client Plan continues to hold shares acquired in connection with the in-kind transfer, the Bank provides the Independent Fiduciary of the Client Plan with—

(1) A copy of an updated prospectus of such Fund, at least annually; and

(2) Upon request of the Independent Fiduciary, a report or statement (which may take the form of the most recent financial report, the current Statement of Additional Information, or some other written statement) containing a description of all fees paid by the Fund to the Bank.

(i) As to each Client Plan, the combined total of all fees received by the Bank for the provision of services to the Client Plan, and in connection with the provision of services to a Fund in which a Client Plan holds shares acquired in connection with the in-kind transfer, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(j) All dealings in connection with the in-kind transfer and purchase between the Client Plan and a Fund are on a basis no less favorable to the Client Plan than dealings between the Fund and other shareholders.

Section III. Availability of Prohibited Transaction Exemption (PTE) 77–4

Any purchase of Fund shares that complies with the conditions of either Section I or Section II of this class exemption shall be treated as a ''purchase or sale'' of shares of an open-end investment company for purposes of PTE 77–4 and shall be deemed to have satisfied paragraphs (a), (d) and (e) of section II of that exemption. 42 FR 18732 (April 8, 1977).

Section IV. Definitions

For purposes of this proposed exemption:

(a) The term ''Bank'' means a bank or trust company, and any affiliate thereof [as defined below in paragraph (b)(1)], which is supervised by a state or federal agency.

(b) An ''affiliate'' of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person.

(2) Any officer, director, employee or relative of such person, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''collective investment fund'' or ''CIF'' means a common or collective trust fund or pooled investment fund maintained by a ''Bank'' as defined in paragraph (a) of this Section IV.

(e) The term ''Fund'' or ''Funds'' means any diversified open-end management investment company or companies registered under the '40 Act for which the Bank serves as an investment adviser, and may also serve as a custodian, shareholder servicing agent, transfer agent or provide some other secondary service (as defined below in paragraph (i) of this section).

(f) The term ''net asset value'' means the amount calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities chargeable to each portfolio, by the number of outstanding shares.

(g) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(h) The term ''Independent Fiduciary'' means a fiduciary of a Client Plan who is independent of and unrelated to the Bank. For purposes of this exemption, the Independent Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank or any affiliate thereof;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of such fiduciary, is an officer, director, partner, employee of the Bank (or is a relative of such persons) or any affiliate thereof;

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, employee of the Bank (or relative of such persons) or any affiliate thereof, is a director of such Independent Fiduciary, and if he or she abstains from participation in (i) the choice of the Client Plan's investment adviser, and (ii) the approval of any purchase or sale between the Client Plan and the Funds, as well as any transaction described in Sections I and II above, then paragraph (h)(2) of this Section IV shall not apply.

(i) The term ''secondary service'' means a service provided by a Bank to a Fund other than investment management, investment advisory or similar services.

(j) The term ''fixed-income security'' means any interest-bearing or discounted government or corporate security with a face amount of $1,000 or more that obligates the issuer to pay the holder a specified sum of money, at specific intervals, and to repay the principal amount of the loan at maturity.

(k) The term ''Client Plan'' means a pension plan described in 29 CFR 2510.3–2, a welfare benefit plan described in 29 CFR 2510.3–1, and a plan described in section 4975(e)(1) of the Code, but does not include an employee benefit plan established or maintained by the Bank or by an affiliate thereof, for its own employees.

(l) The term ''security'' shall have the same meaning as defined in section 2(36) of the '40 Act, as amended, 15 U.S.C. 80a–2(36) (1996).

Signed at Washington, D.C., this 5th day of November, 1996.

Alan D. Lebowitz,

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

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[Prohibited Transaction Exemption 96–82; Exemption Application No. D–10034, et al.]

Grant of Individual Exemptions; Dimensional Fund Advisors Inc.

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 the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon