

demographic and socioeconomic characteristics of the area.

The alternatives considered in the preparation of this FONSI were as follows: (1) No Action; and (2) Continue Project as Proposed. The No Action alternative was not selected. The U.S. Department of Labor's goal of improving the Job Corps Program by improving the learning environment at Job Corps Centers would not be met under this alternative. Due to the suitability of the proposed site for establishment of a new Job Corps Center, and the absence of any identified significant adverse environmental impacts from locating a Job Corps Center on the subject property, the "Continue Project as Proposed" alternative was selected.

Based on the information gathered during the preparation of the EA, no environmental liabilities, current or historical, were found to exist on the proposed Job Corps Center site. The construction of the Job Corps Center at the Dome Industrial Park on 5th Avenue and 22nd Street in St. Petersburg, Florida will not create any significant adverse impacts on the environment.

Dated: April 3, 2006.

Esther R. Johnson,

National Director of Job Corps.

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Number D-11046]

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

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Adoption of Amendment to PTE 80-26.

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

DATES: *Effective Date:* The amendment to PTE 80-26 is effective December 15, 2004.

FOR FURTHER INFORMATION CONTACT: Christopher Motta, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693-8540 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On December 15, 2004, notice was published in the **Federal Register** (69 FR 75088) of the pendency before the Department of a proposed amendment to PTE 80-26 (45 FR 28545 (April 29, 1980), as amended at 65 FR 17540 (April 3, 2000) and 67 FR 9485 (March 1, 2002)).¹ PTE 80-26 provides an exemption from the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of section 4975(c)(1)(B) and (D) of the Code.

The amendment to PTE 80-26 adopted by this notice was proposed by the Department on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).²

The notice of pendency gave interested persons an opportunity to comment or to request a hearing on the proposed amendment. The Department received two comment letters, and no requests for a public hearing. Upon consideration of the comments received, the Department has determined to grant the proposed amendment, with one minor modification. The modification and the comments are discussed below.

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

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy,

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

² Section 102 of the Reorganization Plan No. 4 of 1978 (5 U.S.C. App. at 214 (2000 ed.)) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Code to the Secretary of Labor.

productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This amendment has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this amendment is not a "significant regulatory action" under Executive Order 12866, section 3(f). Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the public can provide the requested data in the desired format and clearly understand the Department's collection instruction; and that the Department properly assesses the impact of its collection requirements on respondents and minimizes the reporting burden (time and financial resources) imposed on the public.

Currently, EBSA is soliciting comments concerning the information collection request (ICR) included in this Notice of Adoption of Amendment to PTE 80-26 (for certain interest-free loans to employee benefit plans). A copy of the ICR may be obtained by contacting Susan G. Lahne, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N-5618, Washington, DC are not toll-free numbers. Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security

Administration. Although comments may be submitted through June 6, 2006 OMB requests that comments be received within 30 days of publication of the Notice of Amendment to PTE 80–26 to ensure their consideration. The Department and OMB are particularly interested in comments that:

- 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 collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of 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 appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, by permitting electronic submission of responses.

As proposed on December 15, 2004, the amendment to PTE 80–26 did not contain any information collection as defined under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA). Therefore, the Department did not submit an information collection request (ICR) to the Office of Management and Budget (OMB) in connection with the proposal. In response to public comments on the proposal, the final amendment to PTE 80–26 adopted by this notice adds a condition to availability of the exemption that requires any loan with a duration of more than sixty days to be made pursuant to a written loan agreement that contains all of the material terms applicable to such loan.

The Department believes that it is a usual and customary business practice, generally within the business community and especially with respect to employee benefit plans, to evidence the creation of a loan agreement that involves an employee benefit plan as a party through a written document that sets forth the terms of the loan. Therefore the Department believes that the addition of this condition to the exemption does not impose any appreciable additional paperwork burden under the PRA. However, the Department has submitted an ICR for OMB control number 1210–0091 to OMB in connection with the adoption of the amendment to the PTE because the condition newly added to the

exemption constitutes an information collection within the meaning of the PRA.

Discussion of the Proposed Exemption and the Comments Received

On December 15, 2004, the Department proposed to remove the three-day duration limit that applied to loans engaged in under PTE 80–26 for a purpose incidental to the ordinary operation of a plan. The Department recognizes that broadening the scope of the exemption in this manner would greatly benefit plans facing liquidity problems. The Department believes that plans will be adequately protected regarding such loans, *i.e.*, loans for a purpose incidental to the ordinary operation of a plan where such loans have durations that exceed three days, to the extent the conditions of the class exemption, as amended herein, have been met. Accordingly, the Department has determined that the effective date of the amendment will be December 15, 2004; the date the proposed amendment was published in the **Federal Register**.

One of the commenters recommended that the class exemption expressly require that loans with durations that exceed a certain number of days be in writing. This commenter expressed concern that the removal of the three-day limit without additional conditions will raise the potential for abuse of a plan's assets.

For example, the commenter describes a scenario in which a plan sponsor pays certain expenses on behalf of a plan without intending to be repaid. Years later, the plan sponsor seeks to re-characterize such payment as a "loan" covered by PTE 80–26, and, thereafter, causes the plan to "repay" the plan sponsor in reliance on the relief provided by the class exemption. The commenter states that the situation described above may arise where a plan sponsor experiences a change in personnel, including the plan's fiduciaries, and the "new" plan fiduciaries are unsure whether the payment by the plan sponsor was originally intended to be a loan covered by PTE 80–26. According to the commenter, it is also possible that a plan sponsor may seek to re-characterize a payment the sponsor previously made on behalf of a plan, notwithstanding the sponsor's full awareness that such payment was not intended to be repaid by the plan.

The commenter states that, in the above situations, the Department may have difficulty demonstrating that the payments by the plan sponsor are not loans covered by PTE 80–26. The commenter recommends that the class

exemption contain a condition expressly requiring that all loans of extended durations be made in writing, and that such written loan agreements exist at the time the plan enters into the loans.

As noted in the preamble to the proposed class exemption, section 404 of ERISA requires, among other things, that a fiduciary act prudently and discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan. Accordingly, a plan fiduciary would violate section 404 of ERISA if such fiduciary transferred plan assets to the plan sponsor in the absence of specific written proof or other objective evidence demonstrating that the plan originally intended to enter into a loan transaction with the plan sponsor. In this regard, a written loan agreement executed at the time of the loan transaction and demonstrable evidence that the plan was experiencing liquidity problems, would alleviate the uncertainty regarding whether the parties actually entered into a loan or other extension of credit. Of course, any attempt to re-characterize past payments as loans after the fact would be outside the scope of relief provided by the exemption.

With regards to the commenter's suggestion that the Department may have difficulty demonstrating that certain payments by a plan sponsor are not "loans" covered by PTE 80–26, the Department notes that the party seeking to take advantage of an administrative exemption, and not the Department, has the burden of demonstrating that the conditions of the exemption have been met. However, in light of the commenter's concern, the Department has determined to require that loans with durations that exceed sixty days be made pursuant to a written loan agreement that contains all of the material terms that are applicable to such loan. This requirement will apply prospectively to loans with durations of 60 days or longer where such loans involve the payment of a plan's ordinary operating expenses. Loans with durations of 60 days or longer that are engaged in for a purpose incidental to the ordinary operation of the plan will be subject to the requirement effective December 15, 2004.

Another commenter sought clarification regarding section IV(e) of the proposed amendment.³ This condition provides that loans described

³ Section IV(e) of the proposed amendment was incorrectly identified therein as section IV(3). This error has been corrected in this adopted amendment.

in section 408(b)(3) of ERISA or section 4975(d)(3) of the Code are not covered by the class exemption.⁴ The commenter states that, since section IV(e) only references sections 408(b)(3) of ERISA and 4975(d)(3) of the Code which generally refer to exemptive relief for loans involving ESOPs, but not the regulations promulgated under those exemptions which more narrowly define the types of ESOP loans that are eligible for exemptive relief under those exemptions, section IV(e) may be interpreted as precluding relief for any loan from a party in interest to an ESOP.⁵

In response to the comment, the Department has revised section IV(e) of the proposed amendment to more accurately reflect the Department's intent. In this regard, the Department intended that section IV(e) of PTE 80-26 would preclude relief for loans involving ESOPs to the extent that such loans relate to the acquisition by the ESOP of employer securities. The Department is therefore revising section IV(e) of PTE 80-26 to provide that loans described in section 408(b)(3) of ERISA and the regulations promulgated thereunder, or section 4975(d)(3) of the Code and the regulations promulgated thereunder, are not covered by the class exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary, or other party in interest or disqualified person with respect to a plan, from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary act prudently and discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan. Additionally, the fact that a transaction is the subject of an exemption does not

affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption does not extend to transactions prohibited under section 406(b)(1) and (3) of the Act or section 4975(c)(1)(E) or (F) of the Code;

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

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

(ii) The amendment set forth herein is in the interests of the plan and its participants and beneficiaries,

(iii) The amendment set forth herein is protective of the rights of participants and beneficiaries of the plan;

(4) The amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(5) The amendment will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Amendment

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, 32847, August 10, 1990), the Department amends PTE 80-26 as set forth below:

Section I. Retroactive General Exemption

Effective January 1, 1975 until December 14, 2004 the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

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

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

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

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

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

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

Section II: Temporary Exemption

Effective November 1, 1999 through December 31, 2000, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

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

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

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

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

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

Section III. September 11, 2001 Market Disruption Exemption

Effective September 11, 2001 through January 9, 2002, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section

4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the

⁴ Section 408(b)(3) of ERISA provides a statutory exemption from the prohibitions set forth in section 406 of ERISA for "a loan to an employee stock ownership plan." Section 4975(d)(3) provides a statutory exemption from the prohibitions set forth in section 4975 of the Code for "any loan to a leveraged employee stock ownership plan" if certain conditions are met.

⁵ See 29 CFR 2550.408b-3 and 26 CFR 54.4975-7(b). Among other things, the regulations limit relief under the statutory exemptions to loans that relate to the acquisition of qualifying employer securities by an ESOP.

repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

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

(b) The proceeds of the loan or extension of credit are used only for a purpose incidental to the ordinary operation of the plan which arises in connection with difficulties encountered by the plan in liquidating, or otherwise accessing its assets, or accessing its data in a timely manner as a direct or indirect result of the September 11, 2001 disruption;

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

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

(e) The loan or extension of credit begins on or after September 11, 2001, and is repaid or terminated no later than January 9, 2002.

Section IV. Prospective General Exemption

Effective as of December 15, 2004, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

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

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

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

(2) for a purpose incidental to the ordinary operation of the plan;

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

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

(e) The loan is not described in section 408(b)(3) of ERISA and the regulations promulgated thereunder (29 CFR 2550.408b-3) or section 4975(d)(3)

of the Code and the regulations promulgated thereunder (26 CFR 54.4975-7(b)); and

(f)(1) Any loan described in section IV(b)(1) that is entered into on or after April 7, 2006 and that has a term of 60 days or longer must be made pursuant to a written loan agreement that contains all of the material terms of such loan.

(2) Any loan described in (b)(2) of this paragraph that is entered into for a term of 60 days or longer must be made pursuant to a written loan agreement that contains all of the material terms of such loan.

Section V: Definitions

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

(b) For purposes of section III, the “September 11, 2001 disruption” is the disruption to the United States financial and securities markets and/or the operation of persons providing administrative services to employee benefit plans, resulting from the acts of terrorism that occurred on September 11, 2001.

(c) For purposes of this exemption, the terms “employee benefit plan” and “plan” refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

Signed at Washington, DC, this 3rd day of April, 2006.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E6-5075 Filed 4-6-06; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a “Certification of Non-Relocation and Market and Capacity Information

Report” (Form 4279-2) for the following:

Applicant/Location: Dyna Harvest, LLC, Morgantown, Kentucky.

Principal Product: Dyna Harvest, LLC is a real estate holding company co-owned by Dynastrosi Laboratories, LLC and Harvest Wind Energy Corporation (HWECC), who plan to jointly establish a vertically integrated wind turbine generator systems manufacturing facility in Morgantown, KY. Dyna Harvest will own the fixed assets (facilities) that will be acquired, financed, and leased to Dynastrosi Laboratories and HWECC. The NAICS industry codes for this enterprise are 531120 (Lessors of Nonresidential Buildings (except Mini warehouses), and 532490 (Other Commercial and Industrial Machinery and Equipment Rental and Leasing).

DATES: All interested parties may submit comments in writing no later than April 21, 2006. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N-4514, Washington, DC 20210; or transmit via fax 202-693-3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693-2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture (USDA) to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant’s business operation; or (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration (ETA) within the Department of Labor is responsible for the review and certification process. Comments should address the two bases