

October 31, 2011

DOL Updates ERISA PTE Procedures

On October 27, 2011, the Department of Labor (DOL) published [updated procedures for filing and processing ERISA prohibited transaction exemption \(PTE\) applications](#), applicable to all applications filed on or after December 27, 2011. The update primarily:

- Consolidates in a single regulation guidance on the exemption procedure previously published in a 1988 technical release, a regulation adopted in 1990, and a 1995 publication;
- Permits greater use of electronic means for submitting information and comments on pending PTE applications; and
- Authorizes DOL to require an applicant to include in its “notice to interested parties” a summary of an individual PTE tentatively approved by DOL.

DOL received only six comments on its August 2010 proposed update, and the procedure as adopted closely follows the proposal. Among other things, in the final PTE procedure, DOL:

- Sharpened the “affiliate” definition;
- Clarified the flexibility in, but did not fundamentally modify, its proposed definition of the “independent” appraiser or fiduciary on which many exemptions rely;
- Declined to provide confidentiality for information submitted in support of a prohibited transaction exemption; and
- Reverted to its 1990 rule for disclosing the concentration of plan investments and transactions with parties in interest.



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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