MEMO# 25102

April 14, 2011

DOL Seeks Comments on PTE 77-4

ACTION REQUESTED

[25102]

April 14, 2011

TO: PENSION COMMITTEE No. 11-11
PENSION OPERATIONS ADVISORY COMMITTEE No. 7-11 RE: DOL SEEKS COMMENTS ON PTE 77-4

The Department of Labor issued a notice seeking comments under the Paperwork Reduction Act on the information collection required by prohibited transaction class exemption 77-4, [1] as part of the process of renewing OMB approval of the information collection.

PTE 77-4 provides an exemption if a fiduciary to an employee benefit plan or IRA invests plan or IRA assets in a mutual fund for which fiduciary or affiliate is the adviser. The exemption requires that the plan not pay sales commissions in connection with the investment and not "double pay" the advisory fee. In addition, certain paperwork is required:

- An independent fiduciary receives a current prospectus.
- An independent fiduciary receives a full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the mutual fund, including the nature and extent of any differential between the rates of the fees, the reasons why the investment adviser may consider the purchases to be appropriate for the plan, and whether there are any limitations on the investment adviser with respect to which plan assets may be invested in shares of the mutual fund and, if so, the nature of the limitations.
- The independent fiduciary approves the practice of investing in the mutual fund in writing.
- The independent fiduciary is notified of any changes in the fees and re-approves the practice in writing.

The notice asks for comments on enhancing the quality, utility, and clarity of the information collection required by PTE 77-4.

Comments are due to the Office of Management and Budget by May 9, 2011. The Institute is considering filing a comment letter that would point out that the fee disclosures required by PTE 77-4 may not longer be necessary after the new disclosure regulations under ERISA section 408(b)(2) go into effect. Please let Mike Hadley (mhadley@ici.org or 202-326-5810) by Monday, April 25 know if you have comments on whether the Institute should file a letter or suggestions the Institute should make.

Michael L. Hadley
Associate Counsel

endnotes

[1] A copy of the notice is available here: http://www.gpo.gov/fdsys/pkg/FR-2011-04-08/pdf/2011-8363.pdf.
