

Part IV. Items of General Interest

Relief With Respect to IRAs Whose Owners Have Entered Into Certain Agreements With Brokers or Other Financial Institutions

Announcement 2011-81

This announcement provides temporary relief with respect to Individual Retirement Accounts (IRAs) in circumstances in which the IRAs' owners have signed certain indemnification agreements or granted certain security interests in accounts that may have an effect on their IRAs.

On October 20, 2011, the Department of Labor (DOL) issued Advisory Opinion 2011-09A regarding circumstances under which an individual IRA owner's agreement to indemnify a broker in order to cover indebtedness of, or arising from, the individual's IRA with the broker would be an impermissible "extension of credit," as described in § 4975(c)(1)(B) of the Code and whether, in such cases, any prohibited transaction would be covered by DOL class exemption PTE 80-26. Subsequent to the issuance of Advisory Opinion 2011-09A, similar issues have been raised regarding the IRA owner's grant of a security interest among the non-IRA accounts and the IRA (referred to collectively as cross-collateralization agreements) with a broker or other financial institution. Previously, on October 27, 2009, the DOL issued Advisory Opinion 2009-03A, holding that the grant by an individual to a broker of a security interest in the individual's non-IRA accounts with the broker would be an impermissible extension of credit to the individual's IRA, as described in § 4975(c)(1)(B) of the Code. Advisory Opinion 2011-09A concludes that PTE 80-26 does not provide relief for such extensions of credit.¹

The DOL has advised the Internal Revenue Service (IRS) that DOL is considering further action with respect to the issues described above, including consideration of a class exemption request expected to be submitted to the DOL. Pending further action by the DOL and until issuance of further guidance from the IRS superseding this announcement, the IRS will determine the tax consequences relating to an IRA without taking into account the consequences that might otherwise result from a prohibited transaction under § 4975 resulting from entering into any indemnification agreement or any cross-collateralization agreement similar to the agreements described in DOL Advisory Opinions 2009-03A and 2011-09A, provided there has been no execution or other enforcement pursuant to the agreement against the assets of an IRA account of the individual granting the security interest or entering into the cross-collateralization agreement. No inference with respect to the application of any Code section other than § 4975 should be drawn from this announcement.

¹ Under Reorganization Plan No. 4 of 1978, effective December 31, 1978, the authority of the Secretary of the Treasury to issue interpretations with respect to § 4975 of the Code was transferred, with certain exceptions not here relevant, to the Secretary of Labor.