opportunity, the plan may pay a loan rebate or similar fee to the Borrower, if such fee is not greater than the plan would pay in a comparable transaction with an unrelated party;

(2) The plan receives the equivalent of all distributions made on or with respect to the loaned securities during the term of the loan;

(G) If the market value of the Collateral at the close of trading on a business day is less than 100% of the market value of the borrowed securities at the close of trading on that day, the Borrower shall deliver, by the close of business on the following business day, an additional amount of Collateral (as described in paragraph C) the market value of which, together with the market value of all previously delivered Collateral, equals at least 100% of the market value of all the borrowed securities as of such preceding day. Notwithstanding the foregoing, part of the Collateral may be returned to the Borrower if the market value of the Collateral exceeds 100% of the market value of the borrowed securities, as long as the market value of the remaining Collateral equals at least 100% of the market value of the borrowed securities;

(H) The loan may be terminated by the lending plan at any time. In the event of termination, the Borrower shall deliver Replacement Securities, as defined below, to the lending plan within 5 business days of notice of termination of the loan. The value of the securities that the Borrower is obligated to deliver upon termination of a loan of Agency Securities will be no less than the value of the loaned Agency Securities at the termination of the loan. For purposes of this exemption, the term "Replacement Securities" means securities that: (a) are issued and/or guaranteed by the same agency as the loaned securities, (b) have the same coupon as the loaned securities, (c) have a principal amount at least equal to but no more than 2% greater than the then current principal amount of the loaned securities, (d) are of the same program or class as the loaned securities, and (e) either (i) have an aggregate weighted average maturity within a 12-month variance of the then current aggregate weighted average maturity of the loaned securities, but in no case will the variance be more than 10% of such aggregate weighted average maturity of the loaned securities, or (ii) meet some other comparable objective standard containing a range of variance that is no greater than that described in (i) above and that assures that the aging of the loaned securities is properly taken into account.

If the Borrower fails to return the Replacement Securities, the lending fiduciary may apply the Collateral to purchase other Replacement Securities, to cover any other obligations of the Borrower under the agreement, or to pay other expenses associated with the sale and/or purchase. In addition, the Borrower is obligated to pay the amount of any remaining obligations and expenses not covered by the Collateral plus interest at a reasonable rate.

Notwithstanding the foregoing, the Borrower may, in the event the Borrower fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided such replacement is approved by the lending fiduciary.

If the Borrower fails to comply with any condition of this exemption in the course of engaging in a securities lending transaction, the plan fiduciary who caused the plan to engage in such transaction shall not be deemed to have caused the plan to engage in a transaction prohibited by section 406(a)(1) (A) through (D) of the Act solely by reason of the Borrower's failure to comply with the conditions of the exemption.

For purposes of this exemption the term "affiliate" of another person shall include: (a) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (b) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (c) Any corporation or partnership of which such other person is an officer, director partner. For purposes of this definition, the term 'control' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

**EFFECTIVE DATE:** This exemption is effective May 27, 1994.

WRITTEN COMMENTS: In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments on the proposed exemption within 45 days from the date of publication of the Notice in the Federal Register. All written comments were to have been received by the Department by December 16, 1994. The Department received one written comment. The comment was submitted on behalf of the Applicants. The issues addressed in the comment and the Department's responses are summarized as follows:

- 1. The Applicants request the following modifications be made in order to make the exemption consistent with the terms and conditions of PTE 81–6:
- (a) Condition (D) of the proposed exemption would require the Borrower to furnish the Applicants with the most recent available audited statements of the Borrower's financial condition and a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition since the date of those statements. The Applicants request that the following language be added at the end of condition (D):

Such representation may be made by the Borrower's agreeing that each such loan shall constitute a representation by the Borrower that there has been no such material adverse change.

The Department has no objection to the proposed modification, and accordingly, has amended the language of condition (D).

(b) Condition (G) of the proposed exemption would require the Collateral received by the lending plan to be equal to at least 102% of the market value of the loaned securities. The Applicants request that this condition be modified to require that the Collateral be equal to 100% of the market value of the loaned securities. According to the Applicants, requiring collateral equal to 102% of the market value of the loaned securities will discourage the lending of securities, thereby defeating the purpose of the exemption, which is to permit lending as a safe and valuable way of increasing the earnings of a portfolio. The Applicants note that the Department originally set the minimum level of collateral at 102% when PTE 81-6 was proposed but was subsequently convinced by commentators that a collateral value of 100% would provide adequate protection to plans. The Department is persuaded by the Applicants' comment that a collateral value of 100% will provide sufficient protection for the participants and beneficiaries of the Plans. Accordingly, the Department has made the requested modification. The Department notes, however that nothing contained in the exemption prohibits a lending plan for negotiating a higher collateral value if it is appropriate under the circumstances. The Applicants also request that the following language be added to the end of condition (G):

Notwithstanding the foregoing, part of the Collateral may be returned to the Borrower if the market value of the Collateral exceeds 100% of the market value of the borrowed securities, as long as the market value of the