

company general accounts. In this regard, the Department notes that section IV(b) of the proposal provides that no relief is available under the exemption if the transaction is part of an agreement, arrangement, or understanding designed to benefit a party in interest. Therefore, the Department has determined not to accept this suggestion.

B. Specific Exemptions

Section II of the proposed exemption is divided into two subparts. Section II(a) would permit transactions involving persons who are parties in interest to a plan solely by reason of providing services to an insurance company general account in which the plan has an interest as a contractholder. Section II(b) would permit the furnishing of services, facilities, and any goods incidental to such services and facilities by a place of public accommodation owned by an insurance company general account to parties in interest if the services, facilities, and incidental goods are furnished on a comparable basis to the general public.

One commenter requested that the Department expand section II(a) to include persons who are parties in interest by reason of a relationship to a service provider described in section 3(14)(E) of ERISA. Another commenter suggested that broad relief be provided for transactions between a general account and persons who are parties in interest to a plan by reason of providing services to the plan.

Section 3(14)(E) of ERISA describes the circumstances under which a person will be a party in interest with respect to a plan by reason of a relationship to a sponsoring employer or an employee organization whose members are covered by a plan. The definition of party in interest under section 3(14)(E) does not involve a relationship to a service provider. Since the commenter provided no rationale as to why the relief should be extended to parties in interest by virtue of a relationship to the plan sponsor or participating employee organization, the Department has determined not to modify the exemption based on this comment.

The Department notes that section II(a) of the proposed exemption was intended to provide broad relief only for those service providers whose relationship to a plan arises as a result of providing services to an insurance company general account in which the plan has an interest as a contractholder. In response to the comment requesting broad relief for general account transactions with service providers to plans, the Department continues to

believe that compliance with the prospective percentage limitation will not be difficult in light of the size of most general accounts. Accordingly, the Department is of the view that section I(a) of the exemption provides appropriate relief for any transaction involving a party in interest who is a service provider to a plan. Therefore, the Department cannot conclude that further relief is warranted.

C. Asset Pool Investment Trusts

Section III of the proposed exemption provided relief from sections 406(a), 406(b), and 407(a) of ERISA for the operation of asset pool investment trusts in which the insurance general account has an interest as a result of the acquisition of subordinated certificates. The proposal requires that the conditions of either PTE 83-1 (48 FR 895, January 7, 1983) or an applicable Underwriter Exemption be met other than the requirements that the certificates acquired by the general account not be subordinated and receive a rating that is in one of the three highest generic rating categories from an independent rating agency. In addition, the Department proposed relief for the operation of such trusts where a plan acquired subordinated certificates in a transaction that was not prohibited or otherwise satisfied the conditions of PTE 75-1.

A commenter urged the Department to clarify the condition under section III of the exemption which requires that the underlying assets of a trust include plan assets under section 2510.3-101(f) of the plan assets regulation with respect to the class of certificates acquired by the plan as a result of an insurance company general account investment in such class of certificates. According to the commenter, this exemption is of limited value because it only provides relief to the extent that a plan invests in the same class of securities as an insurance company general account. The commenter was concerned that the exemption would not be available for the operation of an asset pool investment trust where a general account investment results in benefit plan investors owning 25% or more of a different class of securities backed by the same pool of assets as the class of securities owned by a plan.

The Department did not intend to exclude the situation described by the commenter from the scope of relief provided by section III of the exemption. The Department has accepted this comment and modified the final exemption.

Several commenters requested that the Department expand the relief

provided in section III of the proposed exemption to include other fixed investments and entities not covered by PTE 83-1 or the "Underwriter Exemptions". According to the commenters, other types of passive investment trusts that hold assets not specified in PTE 83-1 or the Underwriter Exemptions have been developed by the financial community to facilitate the provision of credit. General accounts have invested in every type of securities product collateralized by assets, including credit card receivables, trade receivables, accounts receivables, "repackaged" securities and other unsecured consumer and commercial loans, as well as swap contracts, foreign securities, and notional principal contracts.

The commenters represent that insurance company general accounts have comprised a significant and growing portion of the market for asset backed securities with current estimates indicating that life insurance companies comprise over 8% of the investors in collateralized asset pools. The commenters further assert that it is unfair to condition retroactive relief under section III of the proposed exemption upon compliance with the conditions set forth in PTE 83-1 or the Underwriter Exemptions due to the financial community's reliance on IB 75-2 prior to the *Harris Trust* decision.

One of the commenters argued that trusts which are non-qualifying trusts by reason of holding non-qualifying assets or by failing to satisfy other requirements of PTE 83-1 or the Underwriter Exemptions, but that are substantially similar to the fixed investment vehicles described in these exemptions, should be entitled to exemptive relief. The commenter suggests that section III of the exemption be modified as follows:

1. For Qualifying and Non-Qualifying Trusts and other fixed investment vehicles that were formed prior to a specified date (e.g., 30 days after the publication date of the Proposed Exemption in final form in the **Federal Register**), the Department should reaffirm that IB 75-2 provides unconditional relief from the provisions of sections 406 and 407 of ERISA and section 4975 of the Code for transactions in connection with the servicing, management and operation of the entity. This relief would apply to investments made by General Accounts or plans in such investment vehicles before or after such effective date.

2. For investments in passive investment vehicles formed after such date, the Department should add as a condition of section III(2), a new