

401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of plans and of their participants and beneficiaries and protective of the rights of the participants and beneficiaries;

(3) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

Exemption

Accordingly, the following exemption is granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B [55 FR 32836, August 10, 1990].

Section I—Basic Exemption. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the transactions described below if the applicable conditions set forth in section IV are met.

(a) General Exemption. Any transaction between a party in interest with respect to a plan and an insurance company general account in which the plan has an interest either as a contractholder or as the beneficial owner of a contract, or any acquisition, or holding by the general account of employer securities or employer real property, if at the time of the transaction, acquisition, or holding, the amount of reserves and liabilities for the general account contract(s) held by or on behalf of the plan, as defined by the annual statement for life insurance companies approved by the National Association of Insurance Commissioners (NAIC Annual Statement) together with the amount of the reserves and liabilities for the general account contracts held by or on behalf of any other plans maintained by the same employer (or affiliate thereof as defined in section V(a)(1)) or by the same

employee organization, as defined by the NAIC Annual Statement in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with the state of domicile of the insurer. For purposes of determining the percentage limitation, the amount of reserves and liabilities for the general account contract(s) held by or on behalf of a plan shall be determined before reduction for credits on account of any reinsurance ceded on a coinsurance basis. Notwithstanding the foregoing, the 10% limitation is only applicable to transactions occurring on or after [insert date of publication of this exemption].

(b) Excess Holdings Exemption for Employee Benefit Plans. Any acquisition or holding of qualifying employer securities or qualifying employer real property by a plan (other than through an insurance company general account), if:

(1) The acquisition or holding contravenes the restrictions of section 406(a)(1)(E), 406(a)(2), and 407(a) of the Act solely by reason of being aggregated with employer securities or employer real property held by an insurance company general account in which the plan has an interest; and

(2) The percentage limitation of paragraph (a) of this section is met.

Section II—Specific Exemptions (a) Transactions with persons who are parties in interest to the plan solely by reason of being certain service providers or certain affiliates of service providers. The restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any transaction to which the above restrictions or taxes would otherwise apply solely because a person is deemed to be a party in interest (including a fiduciary) with respect to a plan as a result of providing services to an insurance company general account in which the plan has an interest either as a contractholder or as the beneficial owner of a contract (or as a result of a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), if the applicable conditions set forth in section IV are met.

(b) Transactions involving place of public accommodation. The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code

shall not apply to 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 a party in interest with respect to a plan that has an interest as a contractholder or beneficial owner of a contract in the insurance company general account, if the services, facilities, and incidental goods are furnished on a comparable basis to the general public.

Section III—Specific Exemption for Operation of Asset Pool Investment Trusts. (a) The restrictions of sections 406(a), 406(b), and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code shall not apply to transactions in connection with the servicing, management, and operation of a trust in which an insurance company general account has an interest as a result of its acquisition of certificates issued by the trust, provided:

(1) The trust is described in Prohibited Transaction Exemption 83-1 (48 FR 895, January 7, 1983) or in one of the Underwriter Exemptions (as defined in section V(h) below);

(2) The conditions of either PTE 83-1 or the relevant Underwriter Exemption are met, except for the requirements that:

(A) the rights and interests evidenced by the certificates acquired by the general account are not subordinated to the rights and interests evidenced by other certificates of the same trust; and

(B) the certificates acquired by the general account have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P), Moody's Investor's Service, Inc. (Moody's), Duff & Phelps, Inc. (D&P), or Fitch Investors Service, Inc. (Fitch).

Notwithstanding the foregoing, the exemption shall apply to a transaction described in this section III if: (i) A plan acquired certificates in a transaction that was not prohibited, or otherwise satisfied the conditions of Part II or Part III of PTE 75-1 (40 FR 50845, October 31, 1975); (ii) 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 any class of certificates; and (iii) the requirements of this section III(a)(1) and (2) are met, except that the words "acquired by the general account" in section III(a)(2)(A) and (B) should be construed to mean "acquired by the plan."