

# **federal register**

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**PART III**



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## **DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

## **DEPARTMENT OF LABOR**

**Pension and Welfare  
Benefit Programs**



## **EMPLOYEE BENEFIT PLANS**

**Transfer of Individual Life Insurance  
Contracts**

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

## DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

## EMPLOYEE BENEFIT PLANS

## Pendency of Proposed Class Exemption Involving the Transfer of Individual Life Insurance Contracts to Employee Benefit Plans

Notice is hereby given of the pendency before the Department of Labor and the Internal Revenue Service (hereinafter collectively referred to as the Agencies) of a proposed class exemption from the restrictions of sections 406(a) and 406(b) (1) and (2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code), by reason of section 4975(c) (1) (A) through (E) of the Code, for the sale, transfer, or exchange of individual life insurance contracts for their cash surrender value to a defined contribution plan as defined in section 3(34) of the Act and section 414 (1) of the Code or to an employee welfare benefit plan as defined in section 3 (1) of the Act by plan participants or by an employer any of whose employees participate in the plan (the employer). This exemption is proposed pursuant to section 408(a) of the Act and section 4975(c) (2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722.

The Agencies have on file the following applications which request individual exemptions for the sale of individual life insurance contracts to a plan from its participants or from an employer:

Name	Number
Hunton, Williams, Gay & Gibson	D-056
St. John's Anesthesia Associates, P.C., Pension Plan and Trust	D-213
Crosby & Henry, Inc. Profit Sharing Plan	D-331
Southwest Factories, Inc. Profit Sharing Plan	D-351
Martin W. Dann, M.D., P.A.	D-361
Norcliffe E. Brown	D-379
Hawkins, Brydon and Swearer, P.C. Pension Plan and Trust	D-420
R. L. Falender, D.D.S., Inc. Profit Sharing Plan and Trust	D-427
St. Louis-Clayton Orthopaedic Group, Inc. Profit Sharing Plan & Trust	D-449
William T. Adams, A Medical Corporation Profit Sharing Plan & Trust	D-467
Quinn, Gent, Buseck & Leemhuis, Inc. Profit Sharing Trust	D-493
M & W Tool Co.	D-510
National Heat & Power Co., Inc.	D-511
Taylor, Knudson & Lum	D-512
Gordon G. Bennett, DMD, M.D., Inc.	D-522
Donald A. Gragen, M.D.	D-539
Rosenthal & Herman, P.C. Employees' Retirement Plan	D-559
Shrewsbury Pizzeria, Inc. Pension Plan and Trust	D-567
Gary Levinson, M.D., A Professional Corporation, Profit Sharing Retirement Plan	D-575

Name	Number
Paniaqua Medical Ltd. Pension Plan and Trust	D-561
Northeast Missouri Assoc., Inc.	D-597
Dr. Carreno Associated	D-623

The applications for individual exemption contain common representations, which are summarized below, with regard to the transaction described in the proposed class exemption. All transactions referred to in the individual exemption applications will be exempted if they satisfy the terms and conditions of the class exemption. Interested persons are referred to the applications on file with the Agencies for the complete representations of the applicants.

Under the provisions of section 3.04 of ERISA Proc. 75-1 and Rev. Proc. 75-26, an application for an individual exemption would not ordinarily be considered separately if a class exemption which would encompass the transaction described in the application for an individual exemption is under consideration by the Agencies. Accordingly, the Agencies are notifying directly each applicant for an individual exemption listed below of the fact that such applicant's application is not being considered separately from this class exemption and that, following the disposition of this proposed class exemption such application would ordinarily be closed and, therefore, such applicant's comments with respect to this class exemption are sought by the Agencies.

**Summary of Representations.** 1. Plan participants would incur hardship or economic loss if the exemption is not granted because they may be denied the increased insured death benefits that may have been available in the life insurance contracts transferred to the plan. In addition, the plan would incur the increased costs involved in purchasing new life insurance policies. These costs may include substantial initial sales commissions and higher premium payment rates than those paid personally by participants or employers on previously purchased policies. If new policies are purchased, minimal cash values will accrue to the benefit of participants in the early years of such policies. This may, in certain types of plans, ultimately result in a smaller amount of plan assets being available for retirement benefits, or retirement benefits being set at a lower level.

2. The rights of the plan participants and beneficiaries will be protected because the death benefits provided by the life insurance policies will be payable to the beneficiaries designated by the plan participants.

3. The individual life insurance contracts shall be transferred for their cash surrender value which is easily determinable at any time during the life of the policy.

4. Prior to the enactment of the Act, the sale, transfer or exchange of individual life insurance contracts from participants and employers to plans was a common practice.

Section 3.01 of ERISA Procedure 75-1 and Rev. Proc. 75-26 provide that the

Agencies may initiate an exemption proceeding on their own motion. Section 408(a) of the Act and section 4975(c) (2) of the Code provide that the Agencies may not grant an exemption unless they find that such exemption is, inter alia, administratively feasible. There have been a substantial number of applications filed seeking individual exemptions for transactions of the subject type, but no individual applicant or association or organization representing parties in interest or disqualified persons with respect to such transactions has requested a class exemption. However, due to the apparent lack of potential for abuse in such transactions and because it appears to be administratively feasible to do so, the Agencies on their own motion have determined to group such applications in a class and to publish notice of an appropriate proposed class exemption for comment.

In making their determination to propose the subject class exemption on their own motion, the Agencies have assumed the existence of certain facts and situations. These assumptions, summarized below, are based in part on representations contained in applications for individual and class exemptions relating to similar, but not identical transactions<sup>1</sup> and on knowledge acquired by the Agencies in the course of their administration of the Act and the Code. The Agencies, however, request the comments of interested persons with respect to the correctness of these assumptions.

<sup>1</sup>See, American Council on Life Insurance (0-231) class exemption application and the following individual applications:

Name	Number
McElhinney & Kirk, Inc. Pension Plan	D-157
Provident Life and Accident Insurance Company	D-167
Office Systems, Inc. Pension Trust	D-179
The Bishopric Products Company Pension Plan #1	D-212
WIPO, Inc. Pension Plan	D-219
Maher Terminals Pension Plan	D-254
B & L Disposal Pension Plan, Trust	D-285
Reno Disposal Pension Plan Trust	D-286
First National Bank, Evergreen, Employees' Pension Trust	D-337
Security Life Prototype Retirement Plan C (as adopted by Golden State Bank)	D-338
Pension Plan and Trust of Art Theater Guild, Inc. and Affiliates	D-357
Rinaldi Press Inc. Employees Pension Plan	D-388
Data-Design Laboratories Retirement Pension Plan	D-398
Lee Air Conditioners, Inc., Thrift and Profit Sharing Plan	D-403
Gibson Employees Pension Plan	D-413
Blackhawk Foundation Company, Inc. Pension Plan	D-425
Retirement Plan for the Employees of West Texas Equipment Company	D-428
Cory's Gasoline Stations, Inc. Pension Plan and Pension Trust Agreement	D-438
International Travel Brokers Inc. Employees' Pension Plan	D-514

Many pension and profit-sharing plans, particularly those of small employers, provide a pre-retirement death benefit through the purchase of individual life insurance contracts issued on the lives of plan participants. On retirement, the cash surrender value of the policies may be supplemented by monies accumulated on the participants' behalf in a side or auxiliary fund maintained under the plan.

Often, plan participants already own individual life insurance contracts on their own lives when they become plan participants or when the trustees determine to fund benefits, in whole or in part, through individual life insurance contracts. In addition, it is not uncommon for employers to maintain individual life insurance contracts on the lives of employees who are participants in the employer's retirement plan.

Prior to the enactment of the Act, it was common for participants and employers to sell or otherwise transfer such contracts to their defined contribution plans. This does not appear to have been a common practice for defined benefit plans. Accordingly, the proposed exemption, if granted, would be limited to cases where the policies are sold or otherwise transferred to defined contribution plans by parties in interest or disqualified persons for the cash surrender value of the policy (the amount the owner would receive if the owner surrendered the policy to the issuing insurance company). The Agencies request the comments of interested persons as to the unavailability of the proposed class exemption with respect to defined benefit plans; whether there is a need for an exemption for transactions involving defined benefit plans; and the conditions and safeguards under which such an exemption would be appropriate.

The proposed exemption relates not only to the prohibitions contained in section 406(a) of the Act and sections 4975(c)(1)(A) through (D) of the Code, but also to the prohibitions contained in section 406(b)(1) and (2) of the Act and section 4975(c)(1)(E) of the Code inasmuch as some of the parties who might be transferring such insurance contracts may be fiduciaries with respect to the plans. The proposed exemption, if granted, will be effective January 1, 1975.

Name	Number
Profit Sharing Trust of Hynson, Wescott & Dunning Inc. Employees	D-518
James P. Gills, M.D., P.A. Pension Trust	D-540
Pension Plan and Trust of Family Dollar Stores, Inc.	D-552
Short-Orlando & Associates Pension Plan	D-564
George A. Dean, M.D., Howard B. Schwartz, M.D., P.C. Pension Trust	D-565
Boston Precision Parts Co., Inc. Employees' Pension Trust	D-588
The Nielsen Lithographing Company Employees' Profit-Sharing Retirement Plan	D-589
Myers Group, Inc. Retirement Plan	D-591

A question has been raised under section 406(a)(1) of the Act and section 4975(c)(1) of the Code as to whether a participant or an employer may contribute an individual life insurance contract to a plan in lieu of or in conjunction with its normal cash contribution. The class exemption set forth below is not intended to reflect a decision on this question by the Agencies. Rather the class exemption is proposed, in part, to eliminate the uncertainty that may exist in this area and the adverse effects to plans and their participants and beneficiaries that may be caused by such uncertainty. Thus, to the extent that such a contribution is a prohibited transaction, the exemption sets forth certain conditions under which individual life insurance contracts may be contributed to a plan.

It should be noted that the proposed exemption does not provide any relief from or relaxation of the requirements set forth in section 401(a)(4) of the Code. In order for a plan to qualify under section 401(a) of the Code, section 401(a)(4) of the Code provides that the contributions or benefits provided under such plan must not discriminate either in form or in operation in favor of employees who are officers, shareholders, or highly compensated. A condition has been included in the proposed exemption imposing a similar non-discrimination requirement for employee welfare benefit plans which desire to purchase life insurance contracts from plan participants.

Further, it should be noted that under section 408(d) of the Act no exemption may be granted under section 408(a) of the Act for transactions of the type described herein between a plan and certain persons such as an owner-employee as defined in section 401(c)(3) of the Code, or a shareholder employee as defined in section 1379 of the Code. This pending class exemption is intended, however, to be applicable to such persons for purposes of section 4975 of the Code.

The individual applicants propose that notice of the exemption requests be provided to all present participants in their individual plans in the form of a written summary and description of the transaction. However, because all participants under defined contribution plans could conceivably be considered interested persons, the only practical form of notice is publication in the FEDERAL REGISTER.

**Income Tax Consequences.** For Federal income tax purposes, the value of an insurance policy is not the same as, and may exceed, its cash surrender value. See Rev. Rul. 59-195, 1959-1 C.B. 18. The Federal income tax consequences of such a transfer must be determined in accordance with generally applicable rules.

**General information.** The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or

disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The pending exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Agencies must find that the exemption is administratively feasible, in the interest of the plan or plans and of their participants and beneficiaries, and protective of the rights of participants and beneficiaries of such plan or plans.

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

(5) If granted, the pending class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

(6) The applications for exemption referred to herein are available for public inspection at the Freedom of Information Reading Room, Internal Revenue Service, Room 1565, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, and at the Public Documents Room of the Pension and Welfare Benefit Programs, Room N-4677, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

All interested persons are invited to submit written comments on the pending class exemption set forth herein. In order to receive consideration, such comments should be received by the Internal Revenue Service on or before February 22, 1977. In addition, any interested person may submit a written request that a hearing be held relating to the pending class exemption. Such written request must be received by the Internal Revenue Service on or before February 22, 1977, and should state the reasons for such person's request for a hearing and the nature of such person's interest in the pending class exemption.

All written comments and all requests for a hearing (preferably six copies) should be addressed to Internal Revenue Service, Employee Plans Division, Pro-

## EMPLOYEE BENEFIT PLANS

**Pendency of Proposed Class Exemption Involving the Transfer of Individual Life Insurance Contracts and Annuities From Employee Benefit Plans to Plan Participants (Application No. D-281)**

hibited Transactions Staff, Washington, D.C. 20224, Attention: E:EP:PT. All such comments will be made part of the record, and will be available for public inspection at the Freedom of Information Reading Room, Internal Revenue Service, Room 1565, 1111 Constitution Avenue N.W., Washington, D.C. 20224 and at the Public Documents Room of the Pension and Welfare Benefit Programs, Room N-4677, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**Pending Exemption.** Based on the applications and assumptions hereinabove described the Agencies have under consideration the granting of the following class exemption, 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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722 so that, effective January 1, 1975, the restrictions of sections 406(a) and 406(b)(1) and (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 transfer of an individual life insurance contract to a plan from a plan participant on whose life the contract was issued or to the transfer of an individual life insurance contract to a plan from an employer of plan participants who contributes an individual life insurance contract with respect to such participant's life to the plan, provided that:

1. The plan is a defined contribution plan within the meaning of section 3(34) of the Act and section 414(i) of the Code or is an employee welfare benefit plan within the meaning of section 3(1) of the Act.

2. The plan pays or exchanges no more than the cash surrender value for the contract.

3. Such transfer does not involve any contract which is subject to a mortgage or similar lien which the plan assumes.

4. Such transfer does not contravene any provision of the plan or trust document.

5. With regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholders, or highly compensated employees.

Signed at Washington, D.C., this 14th day of January, 1977.

DONALD C. ALEXANDER,  
Commissioner of Internal Revenue.

WILLIAM J. CHADWICK,  
Administrator of Pension and  
Welfare Benefit Programs,  
U.S. Department of Labor.

[FR Doc. 77-1709 Filed 1-19-77; 8:45 am]

Notice is hereby given of the pendency before the Department of Labor and the Internal Revenue Service (hereinafter collectively referred to as the agencies) of a proposed class exemption from the restrictions of sections 406(a) and 406(b)(1) and (2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code), by reason of section 4975(c)(1)(A) through (E) of the Code, for the sale of individual life insurance contracts and annuities by employee benefit plans to plan participants insured under such policies for the cash surrender value of such policies. No exemption is being proposed for the sale of such contracts or annuities by plans to employers. The Agencies request the comments of interested persons as to the unavailability of the proposed class exemption with respect to the sale of insurance contracts or annuities by plans to employers; whether there is a need for an exemption for such transactions; and the conditions and safeguards, under which an exemption for such transactions would be appropriate.

This exemption is proposed pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722. It is based upon the representations contained in the application for class exemption filed by the American Council of Life Insurance (Application No. D-281). Numerous applications have also been received for individual exemptions covering transactions of the type described in this proposed class exemption.<sup>1</sup>

<sup>1</sup> Applications have been received from: McElhinney & Kirk, Inc. Pension Plan, D-187; Provident Life and Accident Insurance Company, D-187; Office Systems, Inc. Pension Trust, D-179; The Bishopric Products Company Pension Plan No. 1, D-212; WIPO, Inc. Pension Plan, D-219; Maher Terminals Pension Plan, D-254; B & L Disposal Pension Plan Trust, D-285; Reno Disposal Pension Plan Trust, D-286; First National Bank, Evergreen, Employees' Pension Trust, D-337; Security Life Prototype Retirement Plan C (as adopted by Golden State Bank), D-338; Pension Plan and Trust of Art Theater Guild, Inc. and Affiliates, D-357; Rinaldi Press Inc. Employees Pension Plan, D-388; Data-Design Laboratories Retirement Pension Plan, D-398; Lee Air Conditioners, Inc., Thrift and Profit Sharing Plan, D-403; Gibson Employees Pension Plan, D-413; Blackhawk Foundation Company, Inc. Pension Plan, D-425; Retirement Plan for the Employees of West Texas

All such transactions will be exempted if they satisfy the terms and conditions of the proposed class exemption. Under the provisions of section 3.04 of ERISA Proc. 75-1 and Rev. Proc. 75-26, an application for an individual exemption would not ordinarily be considered separately if a class exemption which would encompass the transaction described in the application for an individual exemption is under consideration by the Agencies. Accordingly, the Agencies are notifying directly each applicant for an individual exemption listed in footnote 1 of this proposed class exemption of the fact that such applicant's application is not being considered separately from this class exemption, and that, following the disposition of this proposed class exemption, such application would ordinarily be closed, and, therefore, such applicant's comments with respect to this class exemption are sought by the Agencies.

**Summary of Representations.** The American Council of Life Insurance (the "applicant") requested a class exemption with respect to all sales of individual life insurance policies or annuity policies (or portions thereof) by employee pension benefit plans to participants who are insured under the policies in situations where the policies would otherwise be surrendered by the plan. The exemption would be limited to cases in which a policy is sold to a participant party-in-interest or disqualified person for the cash surrender value of the policy (the amount the plan would receive if it surrendered the policy to the insurance company) and would cover not only the prohibitions contained in section 406(a) of the Act and 4975(c)(1)(A) through (D) of the Code but also the prohibition contained in sections 406(b)(1) and (2) of the Act and 4975(c)(1)(E) of the Code, inasmuch as some of the participants who might purchase such insurance contracts or annuities may be fiduciaries with respect to the plan involved. The cash position of the plan would not be affected in any manner by whether the policy would be sold to the participant or surrendered to the insurance company. The requested exemption would be effective January 1, 1975.

Equipment Company, D-429; Cory's Gasoline Stations, Inc. Pension Plan and Pension Trust Agreement, D-438; International Travel Brokers Inc. Employees' Pension Plan, D-514; Profit Sharing Trust of Hynson, Westcott & Dunning D-518; James P. Gills, M.D., P.A. Pension Trust, D-540; Pension Plan and Trust of Family Dollar Stores, Inc., D-552; Short-Orlando & Associates Pension Plan, D-564; George A. Dean, M.D., Howard B. Schwartz, M.D., P.C. Pension Trust, D-565; Boston Precision Parts Co., Inc. Employees' Pension Trust, D-588; The Nielsen Lithographing Company Employees' Profit-Sharing Retirement Plan, D-589; and Myers Group, Inc. Retirement Plan, D-591.

The applicant, which states that it is a trade association with a membership of 378 life insurance companies which, in the aggregate, account for 90 percent of the life insurance force in the United States and hold 99 percent of the assets of insured pension plans, has made the following representations in support of its application for exemption:

Many pension and profit sharing plans, particularly those of small employers, are funded in whole or in part by the purchase of individual life insurance or annuity policies on the lives of the plan's participants.<sup>2</sup> For example, one very common method of funding a defined benefit pension plan which includes a pre-retirement death benefit is for the plan to purchase a life insurance policy, providing the prescribed level of death benefits, on the life of each participant. On retirement, the cash value of the policy, supplemented, if necessary, by monies from a side or auxiliary fund maintained under the plan, is used to provide the retirement benefits called for under the plan.

However, there are various situations under which the plan will not continue the policy in effect until retirement. Historically, many plans have, in these situations, permitted the insured participant to purchase the policy (or a portion thereof) instead of the plan surrendering it.

A common reason why a participant may want to purchase a policy from a plan and keep it in force on his own is to preserve any life insurance protection provided by the policy in a case where he has a medical impairment and may be currently uninsurable or would be otherwise unable to replace that insurance in the open market at standard rates. In the case of annuity contracts with no life insurance protection, a purchase may be desirable from the participant's standpoint in order, for example, to preserve a valuable contract option that may no longer be available or to avoid a higher first year expense loading that would be payable if he purchased a new policy.

Two examples of situations where plans commonly permit participants to purchase policies on their lives are:

Example 1. A participant terminates service without vested rights or with only partially vested rights. He may be permitted to purchase the policy for its cash value or, if he is partially vested, for the portion of the cash value in which he has no vested rights. If he does not purchase the policy, the plan will surrender it and apply the proceeds (in excess of those in which the participant is vested) under the forfeiture provisions of the plan.

Example 2. A plan decides to convert its funding method from individual policies to a group contract. Participants may be permitted to purchase the individual policies on their lives for the cash value. Otherwise,

<sup>2</sup> It is noted that life insurance contracts may be purchased by a plan qualified under section 401(a) of the Code only to the extent that the pre-retirement death benefit provided by the plan is incidental to its primary benefit. See § 1.401-1(b)(1)(i) of the Income Tax Regulations.

the plan will surrender the policies. In either event, the monies derived from the surrender or sale of the individual contracts will be transferred to the group contract.<sup>3</sup>

Because such sales of policies by plans to participants recur on a continuous basis, there have undoubtedly been sales of the type described prior to the date of the application.

If the exemption is not granted, certain plan participants will lose valuable life insurance protection or other benefits which cannot be replaced in the open market either because the participant is medically impaired or the options are no longer available. Because a policy sale subject to the exemption may be made only in a situation where the plan would otherwise surrender the policy and the measure of the required consideration is based on an objective standard—the cash surrender value which is stated in the policy—the plan will be in precisely the same financial position whether the sale is made or the policy is surrendered by the plan.

Because all participants under individual policy pension and profit sharing plans conceivably could be considered interested persons, the only practical form of notice is publication in the FEDERAL REGISTER.

It should be noted that the proposed exemption does not provide any relief from or relaxation of the requirements set forth in section 401(a)(4) of the Code. In order for a plan to qualify under section 401(a) of the Code, section 401(a)(4) of the Code provides that the contributions or benefits provided under such plan must not discriminate either in form or in operation in favor of employees who are officers, shareholders, or highly compensated. A condition has been included in the proposed exemption imposing a similar non-discrimination requirement for employee welfare benefit plans which desire to make sales of life insurance contracts or annuities to plan participants.

Further, it should be noted that under section 408(d) of the Act no exemption may be granted under section 408(a) of the Act for a transaction of the type described herein between a plan and certain persons, such as an owner-employee as defined in section 401(c)(3) of the Code, or a shareholder employee, as defined in section 1379 of the Code. This pending class exemption is intended, however, to be applicable to such persons for purposes of section 4975 of the Code.

**Income Tax Consequences.** For Federal income tax purposes, the value of an insurance policy is not the same as, and may exceed, its cash surrender value. See Rev. Rul. 59-195, 1959-1 C.B. 18.

<sup>3</sup> Other examples of situations where plans commonly permit participants to purchase policies on their lives, which were set forth in other applications for exemption, and which would be covered by the terms of the proposed exemption if the conditions set forth therein are met, are conversion of the funding medium of a plan from insurance to another funding medium and the termination of a plan.

Therefore, for Federal income tax purposes, a purchase of an insurance policy at its cash surrender value by a participant may be a purchase of property for less than its fair market value. The Federal income tax consequences to participants of such a bargain purchase must be determined in accordance with generally applicable rules. Any income realized by a participant upon such a purchase under the conditions of this pending class exemption, however, will not be deemed a distribution of benefits from the plan to such participant for purposes of subchapter D of Chapter I of the Internal Revenue Code of 1954, relating to qualified pension, profit-sharing, and stock bonus plans.

**General Information.** The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of Section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The pending exemption, if granted, will not extend to transactions prohibited under sections 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department and the Service must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan.

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

(5) If granted, the pending class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

(6) The applications for exemption referred to herein are available for public inspection at the Freedom of Infor-

mation Reading Room, Internal Revenue Service, Room 1565, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 and the Public Documents Room of Pension and Welfare Benefit Programs, Room N-4677, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

All interested persons are invited to submit written comments on the pending class exemption set forth herein. In order to receive consideration, such comments must be received by the Department on or before February 22, 1977. In addition, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, the Department and the Service are required to offer an opportunity for a public hearing where a pending exemption relates to section 406(b) of the Act and section 4975(c)(1)(E) or (F) of the Code. Any interested person may submit a written request that a hearing be held relating to the pending class exemption. Such written request must be received by the Department on or before February 22, 1977 and should state the reasons for such person's request for a hearing and the nature of such person's interest in the pending class exemption.

All written comments and all requests for a hearing (preferably six copies) should be addressed to Pension and Wel-

fare Benefit Programs, Room C-4526, U.S. Department of Labor, Washington, D.C. 20216, Attention: Application No. D-281. All such comments and all requests for hearing will be made part of the record and will be available for public inspection at the Public Documents Room of Pension and Welfare Benefit Programs, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20210, and the Freedom of Information Reading Room, Internal Revenue Service, Room 1565, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

**Pending Exemption.** Based on the application herein before described, the Service and the Department have under consideration the granting of the requested exemption, 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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722, so that, effective January 1, 1975, the restrictions of sections 406(a) and (b)(1) and (2) of the Act and the taxes imposed under sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of an individual life insurance or annuity con-

tract by an employee benefit plan to a participant under such plan, if

(1) Such participant is the insured under the contract;

(2) The contract would, but for the sales, be surrendered by the plan; and

(3) The amount received by the plan as consideration for the sale is at least equal to the amount necessary to put the plan in the same cash position as it would have been in if it had retained the contract, surrendered it, and made any distribution owing to the participant of his vested interest under the plan.

(4) With regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholders, or highly compensated employees.

Signed at Washington, D.C., this 14th day of January, 1977.

WILLIAM J. CHADWICK,  
Administrator of Pension and  
Welfare Benefit Programs,  
U.S. Department of Labor.

DONALD C. ALEXANDER,  
Commissioner of Internal Revenue.

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