

Signed at Washington, DC, this 11th day of October, 1996.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.*

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**[Prohibited Transaction Exemption 96-76;
Exemption Application No. D-09915, et al.]**

**Grant of Individual Exemptions;
Teachers Insurance and Annuity**

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon

the entire record, the Department makes the following findings:

- (a) The exemptions are administratively feasible;
- (b) They are in the interests of the plans and their participants and beneficiaries; and
- (c) They are protective of the rights of the participants and beneficiaries of the plans.

Teachers Insurance and Annuity Association of America (TIAA) Located in New York, New York

[Prohibited Transaction Exemption 96-76
Exemption Application No. D-09915]

Exemption

Section I—Exemption for Certain Transactions Involving the Purchase and Sale of Certain Units in a Real Estate Separate Account by TIAA

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, effective October 2, 1995, to the transactions described below, if each of the conditions set forth in Section III have been satisfied:

(a) The purchase by TIAA of certain units (the Liquidity Units), as defined in Section IV(g) below, in a real estate separate account established and operated by TIAA (the Separate Account), as defined in Section IV(l) below, in the event of net withdrawals from the Separate Account; and

(b) The sale of Liquidity Units of the Separate Account by TIAA in the event of net contributions to the Separate Account.

Section II—Exemption for the Purchase of Liquidity Units Owned by TIAA in the Separate Account in Connection With a Decrease in TIAA's Participation in the Separate Account Under Certain Circumstances

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, effective October 2, 1995, to: (a) The use of cash flow from the Separate Account (the Cash Flow), as defined in Section IV(d) below; (b) the use of liquid investments in the Separate Account; or (c) the use of the proceeds from the sale of certain properties (the Properties), as defined in Section IV(i) below, owned by the Separate Account, for the purpose of purchasing Liquidity Units in the Separate Account from TIAA in connection with a decrease in the

participation by TIAA in the Separate Account after the trigger point (the Trigger Point), as defined in Section IV(o) below, has been reached or during the wind down period of the Separate Account (the Wind Down), as defined in Section IV(q) below, provided that the conditions set forth in Section III have been satisfied.*

Section III—General Conditions

This exemption is conditioned upon the adherence by TIAA to the material facts and representations described in the notice of proposed exemption (the Notice) and upon satisfaction of the following requirements:

(a) The decision to elect to add the Separate Account as an additional pension funding option for employee benefit plans (the Plan or Plans), as defined in Section IV(h) below, which invest in the Separate Account has been and is made by the fiduciaries of such Plans (the Fiduciary or Fiduciaries), as defined in Section IV(e) below, or in the case of a TIAA supplemental retirement annuity contract (SRA) or a TIAA individual retirement annuity contract (IRA), the decision to elect to add the Separate Account as an additional pension funding option to a TIAA SRA or a TIAA IRA, has been and is made by the participant in such TIAA SRA or TIAA IRA, if the Fiduciaries of the Plans, and the TIAA SRA and TIAA IRA participants are unrelated to TIAA and its affiliates (the Affiliates or Affiliate), as defined in Section IV(b) below (other than the fiduciaries of any TIAA Pension Plans, as defined in Section IV(n) below);

(b) Each of the Properties in the Separate Account has been and is valued at least annually by an independent, qualified appraiser;

(c) Except as otherwise specified below in paragraph (c)(10) of this Section III, prior to investment of funds in the Separate Account by any participants in a Plan (the Participant or Participants) (and, if applicable, by any of the Plans) which participate in the Separate Account, TIAA has furnished and will furnish to the Fiduciaries of such Plans, to the sponsors of any TIAA SRA, and to the participants in any TIAA IRA, the following information:

(1) A copy of the most recent prospectus for the Separate Account;

(2) Full disclosure concerning the investment guidelines, structure, manner of operation, and administration of the Separate Account; the method of

* For purposes of this exemption references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

valuation applicable to accumulation units (the Accumulation Units), as defined in Section IV(a) below, and the method of valuation of the Properties, and all other assets owned by the Separate Account;

(3) A written description of potential conflicts of interest that may result from TIAA's acquisition, purchase, retention, redemption, or sale of Accumulation Units in the Separate Account;

(4) The rules and procedures for withdrawal, transfer, redemption, distribution, and payout applicable throughout the term of the Separate Account to TIAA, to individual Participants (and, if applicable, to Plans) which participate in the Separate Account;

(5) The expense and fee provisions of the Separate Account (including but not limited to a description of any services rendered by TIAA, a schedule of fees for such services, and an estimate of the amount of fees to be paid by the Separate Account annually);

(6) A list of all assets in the Separate Account, as of the end of the most recent fiscal period of the Separate Account, and a list of the Properties which the Separate Account acquired or sold within twelve months prior to the end of the most recent fiscal period of the Separate Account;

(7) The appropriate financial statements pertaining to the Separate Account (including but not limited to the most recent audited annual report, income statement, and balance sheet on the Separate Account);

(8) The toll-free telephone number by which information relating to the value of the units in the Separate Account (the Units) and information concerning the quarterly return of the Separate Account is made available daily;

(9) Any reasonably available information (including but not limited to, a copy of the most recent quarterly and other financial reports for the Separate Account filed with the Securities and Exchange Commission (SEC), and the most recent copy of any supplemental schedules of information, publications, or ancillary materials which have been made available to the Fiduciaries of the Plans or to the sponsors of the plans (the Plan Sponsor or the Plan Sponsors) or to Participants invested in the Separate Account) which TIAA believes to be necessary, or which any fiduciary of a plan or any sponsor of a plan reasonably requests in order to determine whether such plan should elect to add the Separate Account as an additional pension funding option for the benefit of participants (or, if applicable, for such plan), or, in the case of a TIAA SRA or

a TIAA IRA, which the participant in such TIAA SRA or TIAA IRA reasonably requests in order to determine if he or she should elect to add the Separate Account as an additional pension funding option under such SRA or IRA contract with TIAA; and

(10) A copy of the Notice, as it appeared in the Federal Register, has been provided to the Fiduciaries of the Plans, to the sponsors of the Plans, to the sponsors of any TIAA SRA, and to the participants in any TIAA IRA which prior to or after the publication of the Notice elected to add the Separate Account as an additional pension funding option. In addition, a copy of the granted exemption (the Grant), as it appeared in the Federal Register, is provided to the Fiduciaries of the Plans, to the sponsors of the Plans, to the sponsors of any TIAA SRA, and to the participants in any TIAA IRA which are invested in the Separate Account at the time of the publication of the Grant. If subsequent to the publication of the Grant, any fiduciaries of plans, any sponsors of plans, the sponsors of any SRA, or the participants in any TIAA IRA choose to elect to add the Separate Account as an additional pension funding option to enable such plans to invest in the Separate Account, the fiduciaries of such plans, the sponsors of such plans, the sponsors of such SRA, and the participants in any such IRA shall be provided, prior to investment in the Separate Account, with a copy of both the Notice and the Grant, as such documents appeared upon publication in the Federal Register.

(d) TIAA has made and will make available, within the time periods specified below in subparagraphs (1) through (5) of this paragraph (d), to the Fiduciaries of the Plans, or in the case of a TIAA SRA or a TIAA IRA, to the participant in such SRA or IRA:

(1) Information relating to the value of the Units in the Separate Account to be available daily over a toll-free telephone number and/or to be distributed in writing to Participants (or, if applicable, to the Plans) in the Separate Account in quarterly confirmation statements within five (5) to ten (10) days after the end of each calendar quarter;

(2) Information concerning the quarterly return of the Separate Account to be available daily over a toll-free telephone number and/or to be distributed in writing to Participants (or, if applicable, to the Plans) in the Separate Account in quarterly confirmation statements within five (5) to ten (10) days after the end of each calendar quarter;

(3) A prospectus for the Separate Account to be distributed annually;

(4) Any information or TIAA publication, to be distributed from time to time, which TIAA reasonably believes to be necessary or which the Fiduciaries request, or in the case of a TIAA SRA or a TIAA IRA, which the participant in such SRA or IRA requests (including but not limited to quarterly financial reports filed with the SEC) in order to determine whether any Participant in such Plan, or participant in such SRA or IRA should buy, sell, or continue to hold the Units in the Separate Account, as defined in Section IV(p) below; and

(5) A written notification that quarterly financial reports (including the list of Properties and their current values) are available upon request and a written disclosure of the toll-free telephone number by which Plan Fiduciaries and Plan Sponsors may request delivery of such quarterly financial reports will be provided by TIAA in a publication sent to all Plan Fiduciaries and all Plan Sponsors of the Plans, beginning after the end of the first calendar quarter after the Grant is published in the Federal Register and continuing at least quarterly thereafter.

(e) An independent, qualified fiduciary (the Independent Fiduciary), as defined in Section IV(f) below, has been appointed prior to or coincident with the start of operations of the Separate Account (and is subject to renewal and removal described herein) whose responsibilities include, but are not limited to:

(1) Reviewing and approving the written investment guidelines of the Separate Account as established by TIAA, and approving any changes to such investment guidelines;

(2) Monitoring whether the Properties acquired by the Separate Account conform with the requirements of such investment guidelines;

(3) Reviewing and approving valuation procedures for the Separate Account and approving changes in those procedures;

(4) Reviewing and approving the valuation of Units in the Separate Account and the valuation of Properties held in the Separate Account, as described in the Summary of Facts and Representations in the Notice;

(5) Approving the appointment of all independent, qualified appraisers retained by TIAA to perform periodic valuations of the Properties in the Separate Account;

(6) Requiring appraisals in addition to those normally conducted, whenever, the Independent Fiduciary believes that the characteristics of any of the Properties have changed materially, or with respect to any of the Properties,

whenever the Independent Fiduciary deems an additional appraisal to be necessary or appropriate in order to assure the correct valuation of the Separate Account;

(7) Reviewing the purchases and sales of Units in the Separate Account by TIAA and the Participants (and, if applicable, by the Plans) which participate in the Separate Account to assure that the correct values of the Units and of the Separate Account are applied; reviewing the fixed repayment schedule applicable to the redemption of certain seed money units (the Seed Money Units), as defined in Section IV(k) below, as approved by the State of New York Insurance Department; reviewing any exercise of discretion by TIAA to accelerate the fixed repayment schedule applicable to the redemption of Seed Money Units; and, approving TIAA's exercise of discretion only if such acceleration would benefit the Participants in the Separate Account;

(8) After (and, if necessary, during) the start up period (the Start Up Period), as defined in Section IV(m) below, determining the appropriate Trigger Point, with respect to the ongoing ownership by TIAA of Liquidity Units; establishing a method to implement any changes to the Trigger Point; adjusting the percentage which serves as the Trigger Point; approving or requiring any reduction of TIAA's interest in the Separate Account; and, approving the manner in which such reduction of TIAA's participation in the Separate Account in excess of the Trigger Point is to be effected;

(9) In the event the Trigger Point is reached, participating in and planning any program of sales of the assets of the Separate Account, which would include the selection of the Properties to be sold, the guidelines to be followed in making such sales, and the approval of such sales, if in the opinion of the Independent Fiduciary, such sales are desirable at the Trigger Point in order to reduce the ownership by TIAA of Liquidity Units in the Separate Account or to facilitate the Wind Down;

(10) Supervising the operation of the Separate Account during the Wind Down of such Separate Account;

(11) During the Wind Down, planning any program of sales of the assets of the Separate Account, including the selection of the Properties to be sold, determining the guidelines to be followed in making such sales, and approving the sale of the Properties in the Separate Account, in the event of the termination of the Separate Account, if in the opinion of the Independent Fiduciary, such sales are desirable to facilitate the Wind Down; and

(12) Reviewing any other transactions or matters involving the Separate Account that are submitted to the Independent Fiduciary by TIAA and determining whether such transactions or other matters are fair to the Separate Account and in the best interest of the Separate Account.

(f) The exemption is also subject to the condition that the following transactions involving the Separate Account have not occurred and will not occur:

(1) Participation by the Independent Fiduciary, TIAA, any Affiliate of TIAA, TIAA's general account (the General Account), or any other separate account over which TIAA or its Affiliates has any investment control in any joint venture with the Separate Account, or in the ownership of the Properties of the Separate Account either alone or together with a joint venture partner;

(2) The borrowing of funds from the Separate Account by the Independent Fiduciary, TIAA, any Affiliate of TIAA, TIAA's General Account, or any other separate account over which TIAA or its Affiliates has investment control, or the lending of funds to the Separate Account by the Independent Fiduciary, TIAA, any Affiliate of TIAA, TIAA's General Account, or any other separate account over which TIAA or its Affiliates has investment control in order to leverage any purchase by the Separate Account of any of the Properties, or otherwise; and

(3) The acquisition by the Separate Account of any Properties from or the sale by the Separate Account of any Properties to the Independent Fiduciary, TIAA, any Affiliate of TIAA, TIAA's General Account, or any other separate account over which TIAA or its Affiliates has investment control.

(g) The liquidation of any Accumulation Units held by a Participant or participating Plan, for which a withdrawal request is pending, has not been and will not be delayed by reason of the redemption of Seed Money Units held by TIAA, and TIAA will always advance funds by purchasing Liquidity Units to fund the withdrawal requests of Participants or Plans on a timely basis;

(h) TIAA must maintain for a period of six (6) years from the date of any transaction, the records necessary to enable the persons described in paragraph (i) of this Section III to determine whether the conditions of this exemption have been met. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of TIAA and its Affiliates, the records are lost or destroyed prior to the end of

the six-year period, and no parties in interest, other than TIAA or its Affiliates, shall be subject to a civil penalty that may be assessed under section 502(i) of the Act, or to taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (i) below.

(i)(1) Except as provided in subparagraph (2) of this paragraph (i) and notwithstanding any provision of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (h) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor (The Department) or the Internal Revenue Service;

(B) Any Fiduciary of a Plan which participates in the Separate Account, or in the case of a TIAA SRA or a TIAA IRA, any participant in such SRA or IRA, who has authority to acquire or dispose of the interests of such SRA or IRA contract, or any duly authorized employee or representative of such Fiduciary of a Plan or participant in such SRA or IRA;

(C) Any contributing employer to any Plan participating in the Separate Account, or any duly authorized employee or representative of such employer; and

(D) Any Participant or beneficiary of any Plan participating in the Separate Account, or any duly authorized employee or representative of such Participant or beneficiary.

(2) None of the persons described in subparagraphs (1) (B) through (D) of this paragraph (i) shall be authorized to examine the trade secrets of TIAA or any of its Affiliates, or any of its commercial or financial information which is privileged or confidential.

Section IV—Definitions

For the purpose of this exemption:

(a) "Accumulation Units" mean the units of interest into which equity participation in the Separate Account is divided during the accumulation phase of the annuity contracts prior to retirement by a Participant. Seed Money Units, as defined in Section IV(k) below, and Liquidity Units, as defined in Section IV(g) below, are Accumulation Units.

(b) "Affiliate" or "Affiliates" of TIAA include(s):

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with TIAA.

(2) Any officer, director, or employee of TIAA, or of a person described in paragraph (b)(1) of Section IV, and

(3) Any partnership in which TIAA is a partner.

(c) "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) "Cash Flow" means: (1) The sum of: (a) Income received by the Separate Account from investments (including dividends and/or interest from non-real estate investments, and net operating income, less payment of capital expenditures and changes in reserves for capital expenditures, from equity real estate investments); and (b) Participant and Plan contributions (including transfers to the Separate Account) MINUS (2) the sum of: (a) Separate Account expense charges (including investment and administrative expenses for mortality and expense guarantees); and (b) any redemption of Seed Money Units at fair market value.

(e) "Fiduciary" or "Fiduciaries" mean(s) the individual fiduciary or fiduciaries acting on behalf of each of the Plans that invest in the Separate Account.

(f) "Independent Fiduciary"—

(1) For purposes of this definition, an Independent Fiduciary means a person who:

(A) Is not an Affiliate of TIAA;

(B) Does not have an ownership interest in TIAA or its Affiliates;

(C) Is not a corporation or partnership in which TIAA or any of its Affiliates has an ownership interest;

(D) Is not a Fiduciary with respect to any Plan which participates in the Separate Account;

(E) Has acknowledged in writing acceptance of fiduciary responsibility; and

(F) Is either:

(i) A business organization which has at least five (5) years of experience with respect to commercial real estate investments or other appropriate experience;

(ii) A committee comprised of three to five individuals who each have had at least five (5) years of experience with respect to commercial real estate investments or other appropriate experience; or

(iii) A committee comprised both of a business organization or organizations and individuals having the qualifications described in paragraphs (f)(1) (A) through (E) of Section IV above.

(2) For the purposes of the definition of Independent Fiduciary, no organization or individual may serve as

Independent Fiduciary for the Separate Account for any fiscal year, if the gross income received from TIAA or its Affiliates by such organization or individual (or by any partnership or corporation of which such organization or individual is an officer, director, or 10 percent (10%) or more partner or shareholder) for that fiscal year exceeds 5 percent (5%) of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the 5 percent (5%) limitation is applied with reference to the fiscal year in which such organization or individual serves as an Independent Fiduciary. The income limitation includes services rendered to the Separate Account as Independent Fiduciary, as described in this exemption.

(3) No organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent (10%) or more partner or shareholder, during the period that such organization or individual serves as an Independent Fiduciary and continuing for a period of six (6) months after such organization or individual ceases to be an Independent Fiduciary, may

(A) Acquire any property from or sell any property to TIAA, its Affiliates, TIAA's General Account, or any separate account maintained by TIAA or its Affiliates, including the Separate Account;

(B) Borrow any funds from, or lend any funds to TIAA, its Affiliates, TIAA's General Account, or any separate account maintained by TIAA or its Affiliates, including the Separate Account;

(C) Participate in any joint venture with TIAA, its Affiliates, TIAA's General Account, or any separate account maintained by TIAA or its Affiliates, including the Separate Account, or participate, either alone or together with a joint venture partner, in the ownership of the Properties with TIAA, its Affiliates, TIAA's General Account, or any separate account maintained by TIAA or its Affiliates, including the Separate Account; or

(D) Negotiate any such transactions, described above in paragraph (f)(3) (A) through (C) of Section IV.

(4) No Fiduciary of a Plan or Plan Sponsor which participates in the Separate Account or a designee of such Fiduciary, Plan Sponsor, or Plan may serve as the Independent Fiduciary with respect to the Separate Account.

(g) "Liquidity Units" mean Accumulation Units, as defined in

Section IV(a) above, that are purchased from Participants (or, if applicable, from the Plans) who participate in the Separate Account by TIAA's General Account, when the Cash Flow of the Separate Account, as defined above in Section IV(d), and liquid investments of the Separate Account are insufficient, in order to guarantee liquidity for such Participants (or, if applicable, for such Plans) who wish to withdraw or transfer funds from the Separate Account.

(h) "Plan or Plans" mean(s) an employee benefit plan or employee benefit plans (primarily participant-directed defined contribution plans, but also some defined benefit plans), qualified pursuant to sections 401(a), 403(a), 403(b), 414(d) and 457(b) of the Code, as well as any TIAA IRA and TIAA SRA, as described, respectively, under section 408 and section 403(b) of the Code, which may participate in ownerships of Units in the Separate Account and which are subject to section 406 of the Act and/or section 4975 of the Code.

(i) "Properties" mean the geographically dispersed retail and office buildings, light industrial facilities, and residential apartment space with good operating income (and such other Properties that may be acquired pursuant to changes in the investment guidelines for the Separate Account that are approved by the Independent Fiduciary) which TIAA has acquired on behalf of the Participants (and, if applicable, the Plans) that invest in the Separate Account.

(j) "Seed Money" means the total amount (not to exceed \$100 million) actually contributed by TIAA's General Account to the Separate Account for the purpose of acquiring Properties for the Separate Account. Seed Money will be applied to purchase Accumulation Units at the fair market value of those Units at the time of purchase.

(k) "Seed Money Units" mean the Accumulation Units, as defined in Section IV(a) above, that are issued by the Separate Account to TIAA's General Account in exchange for Seed Money, as defined above in Section IV(j), during the Start Up Period of the Separate Account.

(l) "Separate Account" means the real estate equity pooled separate account invested in by Participants (and, if applicable by Plans), as described herein.

(m) "Start Up Period" means the period during which repayment of TIAA's General Account of Seed Money, as defined in Section IV(j) above, must be made on a fixed repayment schedule as approved by the State of New York

Insurance Department (NYID). In this regard, the redemption of Seed Money Units by TIAA will begin on the earlier to occur of:

(1) Two (2) years from the date on which TIAA first opened the Separate Account to Participants (and, if applicable, to Plans) for paying premiums to the Separate Account, or

(2) The date on which the value of the Separate Account first reaches \$200 million. Thereafter, at least 20 percent (20%) of the original number of Seed Money Units acquired by TIAA's General Account from the contribution of Seed Money to the Separate Account are to be redeemed on predetermined dates in each year, as established by TIAA, for a period of five (5) years (at fair market value based on the value of Accumulation Units on the date of each redemption). The exercise of any discretion by TIAA to accelerate the fixed repayment schedule applicable to the redemption of Seed Money Units is subject to the advance review and approval of the Independent Fiduciary, and any such acceleration will not be applied so as to prevent a redemption of Seed Money Units scheduled to occur on any of the predetermined dates during any year. The Start Up Period will expire when all the Seed Money Units originally acquired by TIAA's General Account from the contribution of Seed Money to the Separate Account have been redeemed by TIAA.

(n) "TIAA Pension Plans" mean certain defined benefit and certain defined contribution plans maintained by TIAA. Among the defined contribution plans maintained by TIAA are the TIAA Retirement Plan, which is tax-qualified under the Code, and the TIAA Tax-Deferred Annuity Plan, which is a salary reduction annuity plan, pursuant to section 403(b) of the Code. Participants in the TIAA Retirement Plan and the TIAA Tax-Deferred Annuity Plan are permitted to invest in the Separate Account.

(o) "Trigger Point" means the point, as established by the Independent Fiduciary, at which TIAA's participation in the Separate Account through the ownership of Liquidity Units is decreased with the approval of or as required by the Independent Fiduciary, acting on behalf of the Participants (and, if applicable, the Plans).

(p) "Units" mean the units of interest into which equity participation in the Separate Account is divided.

(q) "Wind Down" means the period which begins on the date on which TIAA notifies all Participants (and, if applicable, all Plans invested in the Separate Account) that TIAA has

decided to terminate the Separate Account and concludes on the date on which no Accumulation Units are held by Participants (or, if applicable, by Plans).

EFFECTIVE DATE: The exemption is effective, as of October 2, 1995, the date the Separate Account was first opened to Participants and Plans for investment.

Written Comments

In the Notice, the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within 45 days of the date of the publication of the Notice in the Federal Register on April 4, 1996. All comments and requests for hearing were due by May 20, 1996.

During the comment period, the Department received no requests for hearing. However, the Department did receive a comment letter from the applicant, TIAA, dated May 17, 1996. The comments from TIAA requested certain changes and clarifications to the conditions of the exemption as proposed in the Notice, and certain amendments which, according to TIAA, should have been reflected in the SFR, as published in the Notice in the Federal Register. TIAA's comments on the conditions of the exemption and the SFR are discussed below in an order that corresponds to the appearance of the relevant language in the Notice.

1. In its comment TIAA points out that throughout the Notice the phrase, "in the case of a contract between TIAA and a supplemental retirement account (SRA) or an individual retirement account (IRA)," is used to describe the relationship between TIAA and any SRA or IRA. To reflect the fact that TIAA provides annuity products to contractholders who are participants in such an SRA or an IRA, TIAA requests that the phrase, "in the case of a TIAA supplemental retirement annuity contract (SRA) or TIAA individual retirement annuity contract (IRA)," be substituted for all references throughout the final exemption to the phrase quoted above which appeared throughout the Notice.

The Department concurs with TIAA's requested change. Accordingly, the Department has modified the final exemption to reflect the change in the first instance where the phrase occurred in the operant language of the exemption; but, in order to avoid repeating the entire phrase, the Department has instead substituted the following abbreviated phrase, "in the case of a TIAA SRA or a TIAA IRA," subsequently. In addition, the Department has made changes in the language of the conditions of the

exemption in order to be consistent, so that any reference therein to an SRA or an IRA will now be to a TIAA SRA or a TIAA IRA.

2. TIAA believes that a modification to Section III(a) of the exemption is necessary to take into account the fact that TIAA's own plans have been and will be invested in the Separate Account. TIAA appears to be concerned that the obligation of TIAA to purchase Liquidity Units may amount to an extension of credit between TIAA and its own plans and that such transaction would not be permitted under the terms of condition III(a), as it appeared in the Notice. As a result, TIAA requests that at the end of Section III(a) on page 15128 of the Notice, the parenthetical phrase, "(other than the fiduciaries of any TIAA Pension Plans, as defined in Section IV(n) below)," be inserted before the semi-colon. TIAA also requests that a similar change should have been made to the SFR at the end of the second sentence of the first paragraph of representation 14 on page 15138 of the Notice.

The Department concurs with TIAA's request for changes in the language of the conditions of Section III(a) of the exemption. Accordingly, the language of Section III(a) has been amended to read as follows:

The decision to elect to add the Separate Account as an additional pension funding option for employee benefit plans (the Plan or Plans), as defined in Section IV(h) below, which invest in the Separate Account has been and is made by the fiduciaries of such Plans (the Fiduciary or Fiduciaries), as defined in Section IV(e) below, or in the case of a contract between TIAA and a supplemental retirement annuity contract (SRA) or an individual retirement annuity contract (IRA), the decision to elect to add the Separate Account as an additional pension funding option to a TIAA SRA or a TIAA IRA has been and is made by the participant in such TIAA SRA or TIAA IRA, if the Fiduciaries of the Plans and the TIAA IRA and TIAA SRA participants are unrelated to TIAA and its affiliates (the Affiliates or Affiliate), as defined in Section IV(b) below, (other than the fiduciaries of any TIAA Pension Plans, as defined in Section IV(n) below).

However, the Department wishes to note that as indicated in footnote 9 on page 15132 of the Notice, TIAA represented in its application for exemption that any acquisition of Units in the Separate Account by employee benefit plans sponsored by TIAA would not violate section 406(a) or 406(b) of the Act by reason of the statutory exemption contained in section 408(b)(5) of the Act. To the extent that the acquisition of Units in the Separate Account by plans sponsored by TIAA

does not satisfy the requirements of section 408(b)(5) of the Act, no relief has been provided by the exemption for the participation by such plans in the Separate Account.

3. TIAA has requested a modification to the language of Section III(c) of the exemption. In this regard, Section III(c), as set forth on page 15128, column 2 of the Notice read, in part,

Except as otherwise specified below in paragraph (c)(10) of this Section III, prior to investment of funds in the Separate Account by any participant in a Plan (the Participant or Participants) (and, if applicable, by any of the Plans) which participate in the Separate Account, TIAA has furnished and will furnish to the Fiduciaries of such Plans and, in the case of a contract between TIAA and a SRA or an IRA, to the participant in such SRA or IRA, the following information.

TIAA requests that the phrase, "or immediately following," be inserted after the words, "prior to," and before the word, "investment," in the language of Section III(c) above. TIAA asserts that, as it has 1.8 million existing contractholders, it cannot provide the information required in Section III(c), prior to a participant's decision to invest in the Separate Account. In this regard, TIAA states that, with some exceptions, the information the Department requires TIAA to disclose, pursuant to Section III(c), is included in the prospectus for the Separate Account. In the event the prospectus is not provided prior to investment of funds in the Separate Account, TIAA represents that it will provide this information immediately following such investment in accordance with the Federal securities rules governing prospectus delivery. However, in the event this proposal was not satisfactory to the Department, TIAA suggested as an alternative that the introductory language of Section III(c) be amended to conform to the language, as set forth in Section III(c)(10). As such, the introductory language of Section III(c), as proposed in the alternative by TIAA, would read as follows:

Except as otherwise specified below in paragraph (c)(10) of this Section III, prior to investment of funds in the Separate Account by any participant in a Plan (the Participant or Participants) (and, if applicable, by any of the Plans) which participate in the Separate Account, TIAA has furnished and will furnish to the Fiduciaries of such Plans to the sponsors of any TIAA SRA, and to the participants in any TIAA IRA, the following information:

With respect to the timing of disclosures, the Department believes that the information required to be provided by TIAA, pursuant to Section III(c) of the exemption, is fundamental to the making of informed investment

decisions and should be furnished to certain parties by TIAA *prior to* investment of funds in the Separate Account by investors. In this regard, the Department points out that TIAA on page 30 of its application for exemption and again on page 2 of Exhibit A to such application, represented that the timing of disclosures to Fiduciaries of the Plans, Plan Sponsors, and in the case of a TIAA SRA or TIAA IRA to the Participants of such TIAA SRA and TIAA IRA would occur prior to the investment of funds in the Separate Account by any participants (and, if applicable, by any plans).

The Department concurs with the alternative language proposed by TIAA. Accordingly, the language of Section III(c) has been amended to read as above.

4. As discussed in paragraph three (3) above, pursuant to Section III(c), TIAA must provide certain disclosures about the Separate Account to certain investors prior to their investing in the Separate Account. In this regard, the Department required in Section III(c)(1), as set forth on page 15128, column 2 of the Notice, that TIAA provide to such parties, among other information, the following items:

a copy of the most recent prospectus for the Separate Account, the most recent quarterly and other financial reports for the Separate Account filed with the Securities and Exchange Commission (SEC), and the most recent copy of any supplemental schedule of information, publications, or ancillary materials which have been made available to Plan Sponsors or Participants invested in the Separate Account.

Further, pursuant to Section III(c)(8), as set forth on page 15128, column 2 of the Notice, the Department required TIAA to provide such parties with:

copies of the most recent reports on the Separate Account, including but not limited to information relating [*sic.*] the value of units in the Separate Account (the Units), as defined in Section IV(p) below; and the quarterly return for the Separate Account, and the most recent quarterly updates of the valuation of the Separate Account (including a list of the holdings of the Separate Account during the period).

TIAA requests that Section III(c)(1) be amended such that only a copy of the most recent prospectus for the Separate Account be required to be disclosed. In this regard, TIAA represents that, as required by the amended introductory language in Section III(c), it has provided and will continue to provide a copy of the prospectus for the Separate Account to the Fiduciaries of Plans, to the sponsors of any TIAA SRA, and to the participants in any TIAA IRA which invest in the Separate Account. TIAA

represents that the prospectus is updated annually and contains detailed audited financial information concerning the Separate Account and detailed disclosure concerning its operations and investment objectives. Further, TIAA represents that it has made and will make available unit value information and quarterly return information for the Separate Account via a toll-free telephone number that can be accessed at any time. In addition, TIAA represents that, upon request, it has provided and will provide copies of quarterly and other financial reports filed with the SEC. TIAA believes that its approach provides superior disclosure at a substantial cost savings which benefits the Participants (and, if applicable, the Plans) which participate in the Separate Account, and is essential for the Separate Account to be cost-effective.

The Department concurs, in part, with TIAA's requested modifications to the disclosure requirements of Section III(c)(1) and (c)(8), as set forth in the Notice. However, the Department believes that, any prospective investor who wishes to receive the information which was described in the deleted portion of Section III(c)(1) should be able to request that TIAA provide such information, pursuant to Section III(c)(9) of the exemption. Further, the Department believes that any investor interested in investing in the Separate Account should be able to request additional information from TIAA which is reasonably available. This is consistent with the provisions of Section III(d)(4) which permit a Fiduciary of a Plan which is invested in the Separate Account and a participant in a TIAA SRA or an TIAA IRA which is invested in the Separate Account to request similar information from TIAA. In this regard, the Department wishes to make clear that the phrase, "any other reasonably available information," as set forth in Section III(c)(9), includes, but is not limited to, copies of the most recent quarterly and other financial reports for the Separate Account filed with the SEC, or the supplemental schedules of information, publications, or ancillary materials which have been made available to Fiduciaries of the Plan, to Plan Sponsors, or to Participants who are invested in the Separate Account. Accordingly, the Department has modified the language in Section III(c)(9) by inserting between the word, "information," and the word, "which," the following parenthetical phrase,

(including but not limited to, a copy of the most recent quarterly and other financial reports for the Separate Account filed with

the Securities and Exchange Commission (SEC), and the most recent copy of any supplemental schedules of information, publications, or ancillary materials which have been made available to Fiduciaries of the Plan or to the sponsors of the plans (the Plan Sponsor or the Plan Sponsors) or to Participants invested in the Separate Account).

With respect to Section III(c)(8), the Department concurs with TIAA's request to delete Section III(c)(8), as set forth on page 15128, column 2 of the Notice. However, the Department notes that TIAA has already agreed to make such information available daily via a toll-free telephone number to any Fiduciary of a Plan and to any participant in a TIAA SRA or a TIAA IRA who is already invested in the Separate Account, pursuant to Section III(d)(1) and (d)(2), as set forth in the Notice on page 15129, columns 1-2. Accordingly, the Department has modified Section III(c)(8) to read as follows, "the toll-free telephone number by which information relating to the value of the units in the Separate Account (the Units) and information concerning the quarterly return of the Separate Account is made available daily."

5. TIAA submitted comments with respect to Section III(c)(10). Section III(c)(10) requires that TIAA provide copies of the Notice and copies of the granted final exemption (the Grant) to certain parties within a prescribed period of time. TIAA requested modification of the requirements of Section III(c)(10), such that the Notice and Grant need not be supplied to prospective investors in the Separate Account 30 days prior to their investment. TIAA believes that requiring the prospective investors to wait 30 days after receiving a copy of the Notice and Grant would unduly interrupt investment in the Separate Account. Further, TIAA maintains that it would be impractical and costly for TIAA to administer a 30 day waiting period, particularly with respect to participants in TIAA IRAs who are allowed to select other allocation options immediately upon enrollment.

Although the Department notes that TIAA on page 31 of its application for exemption, represented that it would provide a copy of the Notice and a copy of the Grant to Plan Fiduciaries and Plan Sponsors, at least 30 days prior to investment in the Separate Account, the Department concurs with TIAA's request, and accordingly, has deleted the 30 day requirement from Section III(c)(10) for those investors who invest in the Separate Account after the date of the Grant.

In addition, with respect to the requirements imposed by Section III(c)(10), TIAA was concerned that investors who invested after publication of the Notice but before publication of the Grant received inconsistent treatment with respect to the receipt of a copy of the Notice. In this regard, Section III(c)(10), as proposed, required delivery of a copy of the Notice, upon publication of the Notice, to certain parties who were at that time invested in the Separate Account; but, did not specify, when or if, those parties who invested in the Separate Account subsequent to the publication of the Notice had to receive a copy of the Notice. TIAA requested that the Department modify Section III(c)(10), such that investors who invested after the publication of the Notice but before the publication of the Grant, receive a copy of the Notice immediately following their investment, and receive a copy of the Grant, upon publication of the Grant in the Federal Register. The Department concurs and has modified the language of Section III(c)(10) accordingly.

6. In Section III(d)(1) on page 15129 of the Notice, in the line 5, after the word, "Participants," TIAA suggests that the parenthetical phrase, "(or, if applicable, to the Plans)," be added to the sentence which should read, as follows:

information relating to the value of the Units in the Separate Account to be available daily over a toll-free telephone number and/or to be distributed in writing to Participants (or, if applicable, to the Plans) in the Separate Account in quarterly confirmation statements within five (5) to ten (10) days after the end of each calendar quarter.

Further, TIAA suggests that the same parenthetical phrase should be inserted after the word, "Participants," in line 5, in Section III(d)(2) on page 15129 of the Notice, such that the sentence should read as follows:

information concerning the quarterly return of the Separate Account to be available daily over a toll-free telephone number and/or to be distributed in writing to Participants (or, if applicable, to the Plans) in the Separate Account in quarterly confirmation statements within five (5) to ten (10) days after the end of each calendar quarter.

The Department concurs.

7. In Section III(g), as set forth in the Notice on page 15130, column 1, lines 7 and 8, TIAA requests that the Department delete the italicized phrase "has advanced and" from the following sentence:

The liquidation of any Accumulation Units held by a Participant or participating Plan, for which a withdrawal request is pending, has not been and will not be delayed by

reason of the redemption of Seed Money Units held by TIAA, and TIAA *has advanced and* [emphasis added] will always advance funds by purchasing Liquidity Units to fund the withdrawal requests of Participants or Plans on a timely basis.

TIAA believes that this change is necessary, because to date TIAA has not had to advance funds by purchasing Liquidity Units. The Department concurs.

8. TIAA requests that representation 12, as it appeared in the SFR, should have been stated differently. In this regard, in representation 12, as set forth on page 15137 of the Notice, column 3, the first sentence of the last full paragraph, reads as follows:

Prior to investing in the Separate Account, it is represented that each prospective participant (and, if applicable, each fiduciary of prospective participating plans) has been and will be provided with information regarding the role of the Independent Fiduciary with respect to the Separate Account and has been and will be advised of the identity of the party appointed to serve as the Independent Fiduciary.

TIAA requests that the phrase, "[P]rior to investing in the Separate Account," at the beginning of this paragraph should have been deleted, and the word, "it," should have been capitalized as the beginning of the sentence. In addition, TIAA requests that on line 5 and on line 9 of the same paragraph, the word, "and" should have been deleted, and the word, "or," should have been substituted following the words, "has been."

The Department does not concur with TIAA in the changes that have been requested to representation 12 of the SFR. In the opinion of the Department, investors who are interested in investing in the Separate Account must be provided, prior to investing in such account, with disclosure of the identity of the Independent Fiduciary and the role of such fiduciary with respect to the Separate Account. In this regard, the Department notes that on page 15 of its application for exemption TIAA made the following representation:

Each Participant (and, as applicable, each Participating Plan) will be informed of the appointment of the Independent Fiduciary. A decision by a Plan fiduciary or a Plan Sponsor on behalf of a Plan to elect to add the Real Estate Separate Account as an additional pension funding option, and to participate in the Account, after full disclosure by TIAA, will constitute approval and acceptance by the Plan fiduciary or Plan sponsor of the Independent Fiduciary. Similarly, a decision by a TIAA SRA contractholder or by a TIAA IRA contractholder to elect to add the Real Estate Separate Account as an additional pension funding option, after full disclosure by TIAA,

will constitute approval and acceptance by such a contractholder of the Independent Fiduciary. (A decision by a Participant in such a Plan to invest in the Account, after full disclosure by TIAA, will constitute approval and acceptance by the Participant of the Independent Fiduciary.)

Accordingly, the Department does not agree that changes to the SFR, as requested by TIAA are merited.

9. TIAA has requested that representation 14, as set forth in the SFR at page 15138, column 3 of the Notice, should have been stated differently. In this regard, TIAA requests that the italicized phrase in the quotation below should have been deleted from representation 14. The language of the first paragraph of representation 14 reads as follows:

It is represented that during the operation of the Separate Account, no member of the Board of Trustees of TIAA or of CREF has had or will have a role in the selection of the Separate Account as a funding vehicle for any of the Plans *or has served or will serve as a Fiduciary to any Plan participating in TIAA investment funding options [emphasis added]*. In this regard, Fiduciaries of the Plans unrelated to TIAA, or in the case of an SRA or an IRA, participants unrelated to TIAA who participate in such SRA or IRA, have made and will make the decision to invest in the Separate Account.

Specifically, TIAA does not wish any member of the Board of Trustees of TIAA or of CREF to be prohibited, either currently or in the future, from serving as a fiduciary to any of the Plans. The Department concurs.

In the event a member of the Board of Trustees of TIAA or of CREF does serve as a fiduciary to a Plan, TIAA represented in its comment that such member will not play a role in such Plan's consideration and selection of the Separate Account as a funding vehicle for the Plan. In this regard, TIAA stated, on page 10 of Exhibit A of its application for exemption, that:

In the event that any member of the TIAA Board or the CREF Board also serves in a fiduciary capacity to an ERISA-covered plan, such person will recuse himself or herself from any and all fiduciary decisions related to the Real Estate Separate Account, including the decision to add the Real Estate Separate Account as a funding option to his or her plan.

The Department concurs.

10. TIAA has requested that representation 14, as set forth in the SFR at the bottom of page 15139, column 1 in the Notice, should have been stated differently. Specifically, TIAA requests that the underlined phrase in the sentence quoted below should have been deleted from the SFR. In this regard, the fourth line of representation 14, reads as follows:

Further, TIAA *has published and [emphasis added]* will publish in a TIAA publication, which is provided at least quarterly to all Plan Sponsors and Fiduciaries of the Plans, a written notice that the quarterly financial reports (including the list of Properties and their current values) are available on request.

The Department concurs that TIAA's requested change should have been reflected in the SFR. Further, in a letter dated October 5, 1995, TIAA represented that it would also publish a toll-free telephone number, which would enable Plan Sponsors and Fiduciaries of the Plans to easily get prompt delivery of such quarterly financial reports. The Department believes that it is necessary for Plan Sponsors and Fiduciaries of the Plans to receive such periodic notification of the availability of quarterly financial reports and to be reminded of the toll-free telephone number, in order to request and receive copies of such financial reports from TIAA. Accordingly, the Department has added a new subparagraph five (5) to Section III(d). In this regard, Section III(d)(5) reads, as follows,

a written notification that quarterly financial reports (including the list of Properties and their current values) are available upon request and a written disclosure of the toll-free telephone number by which Plan Fiduciaries and Plan Sponsors may request delivery of such quarterly financial reports will be provided by TIAA in a publication sent to all Plan Fiduciaries and all Plan Sponsors of the Plans, beginning after the end of the first calendar quarter after the Grant is published in the Federal Register and continuing at least quarterly thereafter.

In order to integrate this new Section III(d)(5) into the numbering system of the exemption, the Department has deleted the word, "and," after the semi-colon in Section III(d)(3) and has added the word, "and," after the semi-colon at the end of Section III(d)(4).

11. The Department acknowledges and incorporates by reference such other clarifications requested by the applicant to the information contained in the SFR. For further discussion regarding the applicant's comments, interested persons are encouraged to obtain a copy of the exemption application file (D-9915) which is available in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

After full consideration and review of the entire record, including the written comments filed by the applicant, the Department has determined to grant the exemption, as modified and clarified above. Comments submitted by the

applicant to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N-5638, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on Thursday, April 4, 1996, 60 FR 15128.

FOR FURTHER INFORMATION CONTACT:

Angelena C. Le Blanc of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

Mewbourne Oil Company, Inc. Plan (the Plan) Located in Tyler, TX

[Prohibited Transaction Exemption 96-77; Exemption Application No. D-10173]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past contribution by Mewbourne Oil Company (the Employer) to the Plan of a U.S. Treasury Strip Bond (the Bond) and the subsequent exchange by the Employer of the Bond for cash provided that: (a) The contribution was a one-time transaction; (b) the Bond was valued at fair market value as of the date of the contribution; (c) no commissions were paid in connection with the transaction; (d) the Bond represented less than 25% of the fair market value of the Plan's assets at the time of the contribution; and (e) the Bond was returned to the Employer in exchange for cash in the amount of \$173,759 plus interest.

EFFECTIVE DATE: This exemption is effective February 11, 1994.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 22, 1996 at 61 FR 37925.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Zerhusen and Ghazi, M.D. Inc. Profit Sharing Plan (the Plan) Located in Cincinnati, Ohio

[Prohibited Transaction Exemption 96-78 Exemption Application No. D-10224]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) by Dr. J. Robert Zerhusen's individual, self-directed account within the Plan (the Account) of a parcel of real property (the Property) to his spouse, Marilyn E. Zerhusen (Mrs. Zerhusen), a participant in the Plan and a party in interest with respect to the Plan, provided that the following conditions are satisfied: (a) The Sale is a one time transaction for a lump sum cash payment; (b) the purchase price is the fair market value of the Property as of the date of the Sale; (c) the Property has been appraised by a qualified, independent real estate appraiser; and (d) the Account will pay no commissions or other expenses relating to the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 27, 1996 at 61 FR 44085.

FOR FURTHER INFORMATION CONTACT: Wendy McColough of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

Huggler & Silverang Profit Sharing Plan (the Plan) Located In Philadelphia, Pennsylvania

[Prohibited Transaction Exemption 96-79; Exemption Application No. D-10238]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of two 5 percent limited partnership interests (collectively, the Interests) in Rosemont Square Associates, L.P. (the Partnership), one to Mr. David H. Huggler and the second to Mr. Kevin J. Silverang, respectively, parties in interest with respect to the Plan; provided (1) the Sale is a one-time transaction for cash, (2) the Plan pays no commissions nor incurs any expenses in connection with the transaction, and (3) the Plan receives as consideration for

the Sale no less than the fair market value of the Interests as of the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 6, 1996, at 61 FR 47203.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions 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 participants and beneficiaries of the plan 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 the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of October, 1996.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.*

[FR Doc. 96-26601 Filed 10-16-96; 8:45 am]

BILLING CODE 4510-29-P

Full Council Meeting; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a full council meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Nov. 13, 1996, in Room S-3215 A&B, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

The purpose of the meeting, which will be from 1:00 to 2:00 p.m., is to brief the Department on the Working Groups' final reports of the year. The Council will also be briefed by Assistant Secretary Berg on the activities and accomplishments of the agency and the department. The current Council year concludes on Nov. 14, and the five departing members will be cited for their contributions by the Secretary of Labor.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before Nov. 4, 1996, to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their request to the Acting Executive Secretary or telephone (202) 219-8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by Nov. 4 at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before Nov. 4, 1996.

Signed at Washington, DC this 9th day of October, 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 96-26481 Filed 10-16-96; 8:45 am]

BILLING CODE 4510-29-M