

however, also raise questions under section 406 of the Act. See Section II(d).

*(e) Transactions With Partnership Party in Interest.*

36. The Applicant represents that when the General Account holds a 50 percent or more interest in a partnership, the partnership itself may be deemed to be a party in interest under section 3(14)(G) of the Act. Thus, any subsequent transaction involving the partnership and an ERISA-Covered Account that is also participating in the partnership (e.g., an additional contribution of capital) may be deemed to be a transaction between the plans participating in such ERISA-Covered Account and a party in interest (the partnership itself) in violation of section 406. Also, as a result of the partnership becoming a party in interest under section 3(14)(G) of the Act, other partners in the partnership having a ten percent or more interest may be parties in interest under section 3(14)(I). Therefore, transactions such as buy-outs, sales of property, leases, etc., may occur that involve possible violations of section 406. Accordingly, the Applicant is requesting exemptive relief from the restrictions of section 406(a) of the Act, only, which would permit: (1) Any additional equity or debt capital contributions to a partnership by an ERISA-Covered Account that is participating in an interest in the partnership, where the partnership is a party in interest solely by reason of the General Account's ownership of a 50 percent or more interest in such partnership; (2) any material modification in the terms of, or action taken upon default with respect to, a loan to the partnership in which the ERISA-Covered Account has an interest as a lender; or (3) other transactions with the co-partners that arise in connection with the operation of the partnership. Any such action would be conditioned upon the approval of the independent fiduciary for the ERISA-Covered Account. In addition, the transactions would be conducted on a totally arm's-length basis, and the party in interest involved would have no power or authority to influence any of the transactions engaged in by the Applicant on behalf of any of the Accounts managed by the Applicant. See Section III.

**Approvals and Disclosures Pursuant to PTE 91-10**

1. Because the proposed exemption in this notice is a modification and replacement of an existing exemption (PTE 91-10), any approvals, appointments, disclosures and decisions

made or given pursuant to PTE 91-10 shall remain in full force and effect with respect to this replacement exemption. Accordingly, the Applicant is not required to seek or request any such additional approvals, appointments or decisions or make any additional disclosures (except as provided in paragraphs 12 and 13 hereof) by virtue of this proposed exemption. See Section IV(j).

**Initial Proportionate Allocations**

The Applicant has not requested exemptive relief for the initial allocation of shared real estate investments by Aetna among two or more Accounts, at least one of which is an ERISA-Covered Account, where each of the Accounts participating in a real estate investment participates in the debt and equity interests in the same relative proportions.

Accordingly, since it appears that the method by which the interests in the real estate investments are allocated to the Accounts does not result in per se prohibited transactions under the Act, the Department has not proposed exemptive relief with respect to the initial sharing of these investments.<sup>14</sup>

**Notice to Interested Persons**

Those persons who may be interested in the pendency of the requested exemption include fiduciaries of employee benefit plans investing in ERISA-Covered Accounts that would be affected by the transition of Accounts from Aetna to UBS Realty. Because of the number of affected persons, the Department has determined that the only practical form of providing notice to interested persons is the distribution, by Aetna or UBS Realty, of the notice of proposed exemption, as published in the **Federal Register**, to the appropriate fiduciaries of each plan described above. The distribution will occur within 30 days of the publication of the notice of proposed exemption in the **Federal Register**. The information provided will include a notice to interested persons of their right to comment or request a public hearing, as described in 29 CFR 2570.43(b).

In addition, Aetna or UBS Realty will provide copies of the proposed exemption, upon request, to other interested persons, including plan fiduciaries that may invest in ERISA-Covered Accounts in the future during this period.

Written comments and/or requests of a hearing must be made within sixty

(60) days of the date of publication of this notice in the **Federal Register**.

**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 Code does not relieve a fiduciary or other party in interest or disqualified person 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 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) The proposed 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/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

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

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

<sup>14</sup> See preamble to the Proposed Exemption for Aetna, 55 FR 45671, at 45678 (October 30, 1990).