

Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on April 22, 1999, applicable to workers of Pluma, Inc. located in Rocky Mount, Virginia. The notice was published in the **Federal Register** on May 11, 1999 (64 FR 25373).

At the request of the company, the Department reviewed the determination for workers of the subject firm. New information received from the company shows that worker separations will occur at Plum's Vesta (Meadows of Dan), Virginia facility when it closes in October, 1999. The workers are engaged in the production of knitted activewear for ladies, men and children.

The intent of the Department's certification is to include all workers of Pluma, Inc. who were adversely affected by increased imports from Mexico.

Accordingly, the Department is amending the determination to cover the workers of Pluma, Inc., Vesta (Meadows of Dan), Virginia.

The amended notice applicable to NAFTA-02844 is hereby issued as follows:

All workers of Pluma, Inc., Rocky Mount, Virginia (NAFTA-2844) and Vesta (Meadows of Dan), Virginia (NAFTA-2844F) who became totally or partially separated from employment on or after January 8, 1998 through April 22, 2001 are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of September, 1999.

**Grant D. Beale,**

*Program Manager, Office of Trade Adjustment Assistance.*

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99-36; Exemption Application No. D-10504, et al.]

### Grant of Individual Exemptions; Aetna Inc. (Aetna)

**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, DC. 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.

### Aetna Inc. (Aetna), Located In Hartford, Connecticut

[Prohibited Transaction Exemption 99-36; Application No. D-10504]

#### Exemption

##### I. Transactions

The restrictions of section 406(a)(1)(A) through (D) and 406(b) 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 (F) of the Code shall not apply to the following transactions, if the

conditions set forth in Section II and Section III, below, are satisfied:<sup>1</sup>

(a) The receipt, directly or indirectly, by a sales agent (Sales Agent or Sales Agents), as defined in Section IV(l) below, of a sales commission from Aetna in connection with the purchase, with plan assets, of an insurance contract (the Insurance Contract or Insurance Contracts), as defined in Section IV(h) below;

(b) The receipt of a sales commission by Aetna, as principal underwriter for a mutual fund registered under the Investment Company Act of 1940, in connection with the purchase, with plan assets, of securities issued by such mutual fund (the Aetna Fund or Aetna Funds), as defined in Section IV(c) below;

(c) The effecting by Aetna, as a principal underwriter, of a transaction for the purchase, with plan assets, of securities issued by an Aetna Fund, and the effecting by a Sales Agent of a transaction for the purchase, with plan assets, of an Insurance Contract; and

(d) The purchase, with plan assets, of an Insurance Contract from Aetna.

##### II. General Conditions

(a) The transactions are effected by Aetna in the ordinary course of Aetna's business as an insurance company, or as a principal underwriter to an Aetna Fund, or in the case of a Sales Agent, in the ordinary course of the Sales Agent's business as a Sales Agent.

(b) The transactions are on terms at least as favorable to the plan as an arm's length transaction with an unrelated party would be.

(c) The combined total of all fees, sales commissions, and other consideration received by Aetna or a Sales Agent: (1) For the provision of services to the plan, and (2) in connection with a purchase of an Insurance Contract or securities issued by an Aetna Fund, is not in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and (c)(2) of the Act and section 4975(d)(2) and (d)(10) of the Code. If such total is in excess of "reasonable compensation" the "amount involved" for purposes of the civil penalties of section 502(i) of the Act and excise taxes imposed by section 4975(a) and (b) of the Code is the amount of compensation in excess of "reasonable compensation."

##### III. Specific Conditions

(a) Aetna or the Sales Agent is not—

<sup>1</sup> 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.

(1) A trustee of the plan (other than a non-discretionary trustee who does not render investment advice with respect to any assets of the plan, or a trustee to an investment trust (the Investment Trust), as defined in Section IV(g) below, which will not purchase Insurance Contracts or securities issued by an Aetna Fund pursuant to this exemption);

(2) A plan administrator (within the meaning of section 3(16)(A) of the Act and section 414(g) of the Code);

(3) A fiduciary who is expressly authorized in writing to manage, acquire, or dispose of, on a discretionary basis, those assets of the plan that are or could be invested in Insurance Contracts, securities issued by an Aetna Fund, or an Investment Trust; or

(4) An employer any of whose employees are covered by the plan.

(b) (1) Prior to the execution of a transaction involving the receipt of sales commissions by a Sales Agent in connection with the plan's purchase of an Insurance Contract, Aetna or the Sales Agent provides to an independent plan fiduciary (the Independent Plan Fiduciary), as defined in Section IV(f) below, disclosures of the following information concerning the Insurance Contract in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) An explanation of: (i) The nature of the affiliation or relationship between Aetna and the Sales Agent recommending the Insurance Contract; and, (ii) the nature of any limitations that such affiliation or relationship, or any agreement between the Sales Agent and Aetna places on the Sales Agent's ability to recommend Insurance Contracts;

(B) The sales commission, expressed as a percentage of gross annual premium payments for the first year and for each of the succeeding renewal years, that will be paid by Aetna to the Sales Agent in connection with the purchase of the recommended Insurance Contract, together with a description of any factors that may affect the commission; and

(C) A full and detailed description of any charges, fees, discounts, penalties, or adjustments which may be paid by the plan under the recommended Insurance Contract in connection with the plan's purchase, holding, exchange, termination, or sale of the Insurance Contract, including a description of any factors that may affect the level of charges, fees, discounts, or penalties paid by the plan.

(2) Following receipt of the information required to be provided to

the Independent Plan Fiduciary, as described in Section III(b)(1) above, and before the execution of the transaction, the Independent Plan Fiduciary acknowledges in writing receipt of such information and approves the transaction on behalf of the plan. The Independent Plan Fiduciary may be an employer of employees covered by the plan but may not be a Sales Agent involved in the transaction. The Independent Plan Fiduciary may not receive, directly or indirectly (e.g. through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(3) With respect to additional purchases of Insurance Contracts, the written disclosure required under Section III(b)(1) need not be repeated, unless—

(A) More than three years have passed since such disclosure was made with respect to the same kind of Insurance Contract, or

(B) The Insurance Contract being recommended for purchase or the commission with respect thereto is materially different from that for which the approval described under Section III(b)(2) was obtained.

(c)(1) With respect to purchases with plan assets of securities issued by an Aetna Fund, or the receipt of sales commissions by Aetna in connection with such purchases, Aetna provides to an Independent Plan Fiduciary prior to the execution of the transaction the following information concerning the Aetna Fund in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) A description of: (i) The investment objectives and policies of the Aetna Fund, (ii) the principal investment strategies that the Aetna Fund may use to obtain its investment objectives, (iii) the principal risk factors associated with investing in the Aetna Fund, (iv) historical investment return information for the Aetna Fund, (v) fees and expenses of the Aetna Fund, including annual operating expenses (e.g., management fees, distribution fees, service fees, and other expenses) and fees paid by shareholders (e.g., sales charges and redemption fees), (vi) the identity of the Aetna Fund adviser, and (vii) the procedures for purchases of securities issued by the Aetna Fund (including any applicable minimum investment requirements and sales charges);

(B) A description of: (i) The expenses of the recommended Aetna Fund, including investment management,

investment advisory, or similar services, any fees for secondary services (e.g., for services other than investment management, investment advisory, or similar services, including but not limited to custodial, administrative, or other services), and (ii) any charges, fees, discounts, penalties, or adjustments that may be paid by the plan in connection with the purchase, holding, exchange, termination, or sale of shares of the recommended Aetna Fund securities, together with a description of any factors that may affect the level of charges, fees, discounts, or penalties paid by the plan or the Aetna Fund;

(C) An explanation of (i) the nature of the affiliation or relationship between Aetna and the Aetna Fund, and (ii) the limitation, if any, that such affiliation, relationship, or any agreement between Aetna and the Aetna Fund places on Aetna's ability to recommend securities issued by other investment companies;

(D) The sales commission, if any, that Aetna will receive in connection with the purchase of securities of the recommended Aetna Fund, expressed as either (i) a percentage of the dollar amount of the plan's gross payments and the amount actually invested, (ii) a percentage of the average daily net assets under investment in securities issued by the Aetna Fund, or (iii) both if applicable, together with a description of any factors that may affect the commission; and

(E) A description of the procedure or procedures for redeeming the Aetna Fund securities.

The disclosures required under Section III(c)(1) above shall be deemed to be completed only if, with respect to fees and expenses of an Aetna Fund, the type of each fee or expense (e.g., management fees, administrative fees, fund operating expenses, and other fees, including but not limited to fees payable for marketing and distribution services pursuant to Rule 12b-1 under the Investment Company Act of 1940 (the 12b-1 Fees) ) and the rate or amount charged for a specified period (e.g., annually) is provided in a written document separate from the prospectus of such Aetna Fund.

(2) Following receipt of the information required to be provided to the Independent Plan Fiduciary, as described in Section III(c)(1) above, and before execution of the transaction, the Independent Plan Fiduciary approves the specific transaction on behalf of the plan. Unless facts and circumstances would indicate the contrary, such approval may be presumed if the Independent Plan Fiduciary directs the transaction to proceed after Aetna has

delivered the written disclosures to the Independent Plan Fiduciary. The Independent Plan Fiduciary may be an employer of employees covered by the plan but may not be Aetna. The Independent Plan Fiduciary may not receive, directly or indirectly (e.g., through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(3) With respect to additional purchases of Aetna Fund securities, Aetna:

(A) Provides reasonable advance notice of any material change with respect to the Aetna Fund securities being purchased or the commission with respect thereto, and

(B) Repeats the written disclosure required under Section III(c)(1)(A), (C), (D) and (E) once every three years.

(d)(1) Aetna shall retain or cause to be retained for a period of six (6) years from the date of any transaction covered by this exemption the following:

(A) The information disclosed with respect to such transaction pursuant to Sections III(b), and (c);

(B) Any additional information or documents provided to the Independent Plan Fiduciary with respect to the transaction; and

(C) Written acknowledgments, as described in Section III(b)(2) above.

(2) A prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the control of Aetna, such records are lost or destroyed before the end of such six-year period.

(3) Notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, such records shall be unconditionally available for examination during normal business hours by duly authorized employees or representatives of the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization any of whose members are covered by the plan.

#### IV. Definitions

For purposes of this exemption—

(a) *Aeltus* means the Aeltus Trust Company, or any other financial institution supervised under state or federal laws and affiliated with Aetna.

(b) *Aetna* means the Aetna Life Insurance Company, the Aetna Life Insurance and Annuity Company, and any of their affiliates, including but not limited to Aeltus;

(c) *Aetna Fund* means any investment company registered under the

Investment Company Act of 1940 for which Aetna serves as investment adviser and as principal underwriter (as that term is defined in section 2(a)(29) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(29)).

(d) *An affiliate* of a person means (1) any person directly or indirectly controlling, controlled by, or under common control with such person, (2) any officer, director, employee, or relative of any such person, or any partner in such person, and (3) Any corporation or partnership of which such person is an officer, director, or employee, or in which such person is a partner. For purposes of this definition, an "employee" includes (A) any registered representative of Aetna, where Aetna or an affiliate is principal underwriter, and (B) any insurance agent or broker or pension consultant acting under a written agreement as Aetna's agent in connection with the sale of an Insurance Contract, whether or not such registered representative or insurance agent or broker or pension consultant is a common law employee of Aetna.

(e) The term, *control*, means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(f) *Independent Plan Fiduciary* means a fiduciary with respect to a plan, which fiduciary has no relationship to, or interest in, Aetna that might affect the exercise of such fiduciary's best judgment as a fiduciary.

(g) *Investment Trust* means (1) any collective investment fund or group trust qualifying for tax-exempt status under the provisions of the Internal Revenue Code of 1986 and regulations and rulings thereunder, of which Aeltus, as defined in Section IV(a) above, or its successor or affiliate serves as trustee, or (2) any single-customer trust account for which Aeltus serves as trustee, provided that Aeltus has no discretionary authority or responsibility with respect to the management or administration of, and does not provide any investment advice with respect to, any plan assets not invested in such single-customer trust account or another Investment Trust.

(h) *Insurance Contract or Insurance Contracts* means an insurance or annuity contract issued by Aetna.<sup>2</sup>

<sup>2</sup>The Department expresses no opinion as to whether any so-called "synthetic guaranteed insurance contracts" offered by Aetna constitutes an Insurance Contract within the meaning of this exemption. The Department further notes that this exemption provides relief from the self-dealing and conflict of interest provisions of the Act in connection with the sale of Insurance Contracts to

(i) *A nondiscretionary trustee* of a plan is a trustee whose powers and duties with respect to any assets of the plan are limited to: (1) the provision of nondiscretionary trust services, as defined in Section IV(j) below, to such plan, and (2) the duties imposed on the trustee by any provision or provisions of the Act or the Code.

(j) *Nondiscretionary trust services* means custodial services and services ancillary to custodial services, none of which services are discretionary.

(k) *A relative* means a *relative* as that term is defined in section 3(15) of the Act (or a *member of the family* as that term is defined in Code section 4975(e)(6)), or a brother, a sister, or a spouse of a brother or a sister;

(l) *Sales Agent* means any insurance agent, broker, or pension consultant or any affiliate thereof that is affiliated with Aetna.

(m) *Principal underwriter* is defined in the same manner as that term is defined in section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 8a-2(a)(29)).

*Effective Date:* This exemption will be effective as of August 28, 1997, the date of the filing of the application for exemption.

#### Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on May 13, 1999. All comments and requests for a hearing were due by June 28, 1999.

During the comment period, the Department received no requests for a hearing. However, the Department did receive two (2) comment letters from Aetna, the applicant, dated June 28, and August 10, 1999, respectively. In the comment letters, the applicant requested certain modifications and clarifications to the language of the exemption, as proposed, and informed the Department of certain changes, as described in the Summary of Facts and Representations (the SFR) in the Notice. Specifically, the issues raised in the applicant's comment letters fall into seven (7) categories: (1) *Clarification* regarding the transactions exempted by

plans by fiduciaries. It does not provide relief from any acts of self-dealing that do not arise directly in connection with the purchase of specific insurance products. Thus, for example, no relief is provided under this exemption for any act of self-dealing that may arise in connection with the ongoing operation or administration of an Insurance Contract.

Section I(c) and Section I(d); (2) an issue relating to reliance on other applicable exemptions; (3) an alternative method of disclosing sales commissions; (4) clarification of the scope of the exemption; (5) interpretation of the definition of Sales Agent, as set forth in Section IV(l); (6) certain corrections to the facts, as set forth in the SFR in the Notice, and (7) a modification of the language of the definition of Aetna, as set forth in Section IV(a). A discussion of each of the applicant's comments and the Department's responses, thereto, are set forth in the numbered paragraphs below.

1. The applicant seeks clarification from the Department of the transactions exempted by Section I(c) and Section I(d), as published in the Notice (64 FR at 25917, column 1, lines 26-34). In this regard, Section I(c) provides relief for:

The effecting by Aetna, as a principal underwriter, of a transaction for the purchase, with plan assets, of securities issued by an Aetna Fund, and the effecting by a Sales Agent of a transaction for the purchase, with plan assets, of an Insurance Contract.

Further, Section I(d) provides relief for, "The purchase, with plan assets, of an Insurance Contract from Aetna."

Specifically, Aetna requests that the Department confirm that Section I(c) and Section I(d) would be available for the effecting by Aetna of a transaction for the purchase of an Insurance Contract, as defined in Section IV(h), where the sale is effected through an employee of Aetna or through one of Aetna's affiliates. The concern is that Aetna itself would require relief if either: (a) A plan's purchase of an Insurance Contract from Aetna is deemed to be a prohibited sale between a plan and a party in interest; or (b) Aetna is deemed to be a fiduciary because its employee/agent provided investment advice and, as a result, Aetna is deemed to have committed a prohibited transaction by effecting the sale of an Insurance Contract.

Aetna believes that, as an affiliate of a Sales Agent, as defined in Section IV(d), it should be able to rely on the relief provided by Section I(c), because the definition of Sales Agent, as set forth in Section IV(l), includes any "affiliate" of such Sales Agent. In addition, Aetna believes that the purchase from Aetna of an Insurance Contract should be exempted under Section I(d), even if Aetna may be a fiduciary as a result of investment advice provided by an Aetna employee/agent. The Department concurs.

2. The applicant seeks clarification from the Department of the interpretation of Section III(a)(1), as

published in the Notice (64 FR at 25917, column 1, lines 66-67 and column 2, lines 1-10). In this regard, Section III(a)(1) provides that Aetna or a Sales Agent may not rely on the exemption, if Aetna or the Sales Agent is:

A trustee of the plan (other than a non-discretionary trustee who does not render investment advice with respect to any assets of the plan, or a trustee to an investment trust (the Investment Trust), as defined in Section IV(g) below, *which will not purchase Insurance Contracts or securities issued by an Aetna Fund pursuant to this proposed exemption*) (*emphasis added*).

Specifically, Aetna seeks confirmation that the phrase underlined in the quotation above does not preclude its reliance on other exemptions. In this regard, Aetna represents that while it will not rely on the subject exemption for a purchase of Aetna Funds or an Insurance Contract by an Investment Trust, such a transaction might be covered by an applicable class exemption.

It is not the intention of the Department to preclude Aetna from taking advantage of any other available exemption, provided that Aetna has met the conditions for relief, as set forth in such exemption. Accordingly, the Department has decided to retain the language of Section III(a)(1), as set forth in the Notice, except that the word, "proposed," before the word, "exemption," has been deleted.

3. Section III(c)(1)(D), as set forth in the Notice (64 FR at 25918, column 1, lines 26-34), requires the disclosure to an Independent Plan Fiduciary prior to execution of the transaction of:

The sales commission, if any, that Aetna will receive in connection with the purchase of securities of the recommended Aetna Fund, expressed as a percentage of the dollar amount of the plan's gross payments and the amount actually invested, together with a description of any factors that may affect the commission.

In footnote 4 of the Notice (64 FR at 25919), the Department noted that the relief provided by the subject exemption does not preclude the receipt by Aetna or its affiliates of 12b-1 Fees to the extent that the payment of such 12b-1 Fees cannot be functionally distinguished from the payment of a sales commission in connection with the purchase with plan assets, of securities issued by an Aetna Fund. In this regard, Aetna notes that such 12b-1 Fees are calculated as a percentage of assets under management in Aetna Fund securities and that disclosure of 12b-1 Fees could not be easily expressed as, "a percentage of the dollar amount

of the plan's gross payments and the amount actually invested," as required by Section III(c)(1)(D). Further, Aetna is not aware that 12b-1 Fees are disclosed in such a format by any mutual fund provider or broker. Accordingly, Aetna has proposed an additional method for the disclosure of 12b-1 Fees, or both methods, if applicable, pursuant to this exemption. In this regard, Aetna requests that the Department substitute the following text for the language of Section III(c)(1)(D), as it appeared in the Notice:

The sales commission, if any, that Aetna will receive in connection with the purchase of securities of the recommended Aetna Fund, expressed as either (i) a percentage of the dollar amount of the plan's gross payments and the amount actually invested, (ii) a percentage of assets invested in securities issued by the Aetna Fund, or (iii) both if applicable, together with a description of any factors that may affect the commission.

If the Department does not accept the proposed substitution, Aetna has suggested a second alternative. In this regard, Aetna notes that asset-based 12b-1 Fees are required to be disclosed under Sections III(c)(1)(A) and (B) of the exemption. Accordingly, in the alternative, Aetna requests the Department confirm that to the extent 12b-1 Fees are paid from the assets of an Aetna Fund, all of the disclosure conditions under the exemption would be satisfied by disclosure of 12b-1 Fees under Sections III(c)(1)(A) and (B), and additional disclosure regarding 12b-1 Fees would not be required under Section III(c)(1)(D).

The Department has decided not to accept Aetna's second alternative, which is described in the paragraph above. Instead, with certain revisions to the language of sub-paragraph (ii), the Department has decided to adopt the substitute language for Section III(c)(1)(D) suggested by Aetna. In this regard, as amended, Section III(c)(1)(D) of the exemption reads as follows:

The sales commission, if any, that Aetna will receive in connection with the purchase of securities of the recommended Aetna Fund, expressed as either (i) a percentage of the dollar amount of the plan's gross payments and the amount actually invested, (ii) a percentage of the average daily net assets under investment in securities issued by the Aetna Fund, or (iii) both if applicable, together with a description of any factors that may affect the commission.

4. Aetna requests that footnote 2, as it appeared in the Notice (64 FR at 25918), should be amended to read, as follows:

The Department expresses no opinion as to whether any so-called "synthetic guaranteed insurance contracts" offered by Aetna

constitutes an Insurance Contract within the meaning of this proposed exemption. The Department further notes that this proposed exemption provides relief from the self-dealing and conflict of interest provisions of the Act in connection with the sale of Insurance Contracts and Aetna Funds to plans by fiduciaries. It does not provide relief from any acts of self-dealing that do not arise directly in connection with the purchase of specific insurance products. Thus, for example, no relief is provided under this proposal for any act of self-dealing that may arise in connection with the ongoing operation or administration of an Insurance Contract.

The Department has decided to delete the contents of footnote 2, as it appeared in the Notice, and, with certain revisions, has adopted the language suggested by Aetna as the text for footnote 2 in the exemption. With regard to revisions of the language suggested by Aetna, the Department has:

(a) Deleted the word, "proposed," before the word, "exemption," in the first and second sentences of the quotation above;

(b) Deleted the phrase, "and Aetna Funds" after the words, "Insurance Contracts," in the second sentence of the quotation above; and

(c) Substituted the word, "exemption," for the word, "proposal," in the fourth sentence of the quotation above. Accordingly, the revised language of footnote 2 into this exemption reads as follows:

The Department expresses no opinion as to whether any so-called "synthetic guaranteed insurance contracts" offered by Aetna constitutes an Insurance Contract within the meaning of this exemption. The Department further notes that this exemption provides relief from the self-dealing and conflict of interest provisions of the Act in connection with the sale of Insurance Contracts to plans by fiduciaries. It does not provide relief from any acts of self-dealing that do not arise directly in connection with the purchase of specific insurance products. Thus, for example, no relief is provided under this exemption for any act of self-dealing that may arise in connection with the ongoing operation or administration of an Insurance Contract.

In addition, Aetna has requested that the Department confirm that the last sentence of the quotation above does not refer to routine transactions such as asset valuation and rate setting, but only to extraneous transactions such as asset transfer and loan advances. Although the Department is unable to provide the requested confirmation regarding the application of the footnote to routine transactions, it is our view that transactions, such as asset transfers and loan advances made to parties in interest in connection with the operation of the Insurance Contract,

would be beyond the scope of this exemption.

5. Aetna requests that the Department amend the definition of Sales Agent, as set forth in Section IV(l). In this regard, Section IV(l), as it appeared in the Notice (64 FR at 25919, column 1, lines 20–24), provides that:

"Sales Agent" means any insurance agent, broker, or pension consultant or any affiliate thereof that is affiliated with Aetna *either through ownership or by contractual arrangement (emphasis added)*.

Aetna is concerned that the phrase underlined in the quotation of Section IV(l) above imposes a limitation on the definition of Sales Agent. Specifically, Aetna believes that such language may exclude Aetna from being considered an affiliate of a Sales Agent where an individual who is a broker or pension consultant is affiliated with Aetna by being Aetna's employee, rather than through a contractual or ownership arrangement. In addition, Aetna is concerned that the language of Section IV(1) does not make it clear that the term, "Sales Agent" would include any affiliate of a Sales Agent. Accordingly, Aetna requests that the Department clarify the definition of Sales Agent. Further, Aetna suggests that the Department substitute for the text of Section IV(1), as it appeared in the Notice, the following language:

"Sales Agent" means any insurance agent, broker, or pension consultant that is an employee of Aetna or is affiliated with Aetna either through ownership or by contractual arrangement, or any affiliate thereof.

The Department has decided not to adopt the language in the quotation above which was suggested by Aetna. Instead, the Department has decided to modify the definition of a Sales Agent to clarify the term. Accordingly, as amended, Section IV(l) of the exemption reads as follows:

"Sales Agent" means any insurance agent, broker, or pension consultant or any affiliate thereof that is affiliated with Aetna.

Further, it is the view of the Department that Aetna would not be excluded from being considered an affiliate of a Sales Agent where an individual who is a broker or pension consultant is affiliated with Aetna by being Aetna's employee. In this regard, the Department notes that for purposes of the definition of affiliate, as set forth in Section IV(d) of the exemption, an "employee" includes:

Any registered representative of Aetna, where Aetna or an affiliate is principal underwriter, and (B) any insurance agent or broker or pension consultant acting under a written agreement as Aetna's agent in connection with the sale of an Insurance Contract, whether or not such registered

representative or insurance agent or broker or pension consultant is a common law employee of Aetna.

In this regard, the Department notes that the general and specific conditions, as set forth in the exemption, however, must be satisfied. Specifically, Section II(a) provides that the transactions must be:

Effected by Aetna in the ordinary course of Aetna's business as an insurance company, or as a principal underwriter to an Aetna Fund, or in the case of a Sales Agent, in the ordinary course of the Sales Agent's business as a Sales Agent.

Accordingly, the Department notes that in order for Aetna, a Sales Agent, or a principal underwriter to rely upon relief for the transactions described in the exemption, each such person must satisfy Section II(a), among other conditions set forth in the exemption.

6. Aetna has informed the Department of certain changes in the services arrangements among Aetna and its affiliates. Because these changes occurred after Aetna filed its application for exemption with the Department, some of the facts and representations that appeared in the SFR are no longer completely accurate. For this reason, Aetna has suggested certain deletions and additions to the language, as published in the Notice and requests that the Department substitute the text which is quoted below for the language that appeared in the SFR. Aetna represents that none of the changes involve a material change in any facts or representations made by Aetna in its application for exemption. The Department concurs and has made the requested deletions and additions in the language of the SFR. Aetna's deletions to the language that appeared in the SFR are noted below by the words in brackets, and Aetna's additions have been underlined in the text below.

The text of paragraph 6, as published in the Notice (64 FR at 25919, column 2, lines 59–68 and column 3, lines 1–2), should have read as follows:

Aetna Investment Services, Inc. (AIS), Aetna Financial Services, Inc. (AFSI), Aetna Capital, Inc. (Aetna Capital), and Financial Network Investment Corporation (FNIC) are each registered broker-dealers with the SEC and are [wholly-owned] affiliates of ALIC and ALIAC. [ALIC ] ALIAC, AISI, [AFSI] Aetna Capital, and FNIC and their successors (*together with ALIC, the Aetna Companies*) have provided and will provide a variety of services to the Aetna Funds *or in connection with the distribution of Aetna Funds*.

The text of paragraph 7, as published in the Notice (64 FR at 25919, column 3, lines 3–36), should have read as follows:

[In this regard] [A]s disclosed in the prospectus materials for each of the Aetna Funds, ALIAC is the investment adviser to [all of the Aetna Funds] *Aetna's Portfolio Partners Funds and Aeltus Investment Management, Inc. (AIM) is the investment adviser to the Aetna Series Funds and the Aetna Variable Funds*. In addition, both ALIAC and AIM provide other services (the Secondary Services) to Aetna Funds for which they are the investment adviser, including accounting, shareholder administration, [sub-accounting,] and other administrative services. ALIAC also provides sub-accounting services in connection with Aetna Funds offered through its variable annuity contract. Further ALIAC is the principal underwriter to the Aetna Variable Funds and Portfolio Partners, Inc., and [AIS] *Aeltus Capital* is the principal underwriter to the Aetna Series Funds. In this regard, it is represented that as principal underwriters, ALIAC and [AIS] *Aeltus Capital* distribute Aetna Fund shares on an agency basis. It is further represented that ALIAC and AIM may engage affiliated or unaffiliated sub-advisers to the Aetna Funds from time to time.

Under the terms of services agreements between ALIAC or AIM and an Aetna Fund, ALIAC or AIM may receive management fees and fees for Secondary Services. In addition, ALIAC or [AIS] *Aeltus Capital* may receive sales commissions and distribution fees, including for some classes of shares issued by certain Aetna Funds 12b-1 Fees. It is represented that the prospectus materials including the *Statement of Additional Information*, for each of the Aetna Funds disclose whether such fees are paid and the basis under which such fees are paid.

7. Aetna informed the Department that it has applied for and is in the process of obtaining authority to establish and operate a federally chartered savings bank (the Savings Bank). If approved, the Savings Bank may establish and operate certain collective investment funds or group trusts or single customer trust accounts on behalf of plans covered by the Act. Aetna would like to ensure that relief provided by the exemption will extend to plans that invest in a trust maintained by the Savings Bank on the same terms and conditions that would apply, if the plan had invested in a trust maintained by Aeltus. Accordingly, Aetna proposes that the Department revise Section IV(a), as published in the Notice (64 FR 25918, column 2, line 55-56), to read as follows:

*Aeltus* means the Aeltus Trust Company, or any other financial institution supervised under state or federal laws and affiliated with Aetna.

The Department concurs and has incorporated the requested language into Section IV(a) of the exemption.

After giving full consideration to the entire record, including the written comments from the applicant, the Department has decided to grant the

exemption, as described, amended, and concurred in above. In this regard, the comment letters submitted by the applicant to the Department has 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 made 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, NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on May 13, 1999, at 64 FR 25916.

**For Further Information Contact:** Angelena C. Le Blanc of the Department, telephone (202) 219-8883 (This is not a toll-free number.)

**Modern Woodmen of America Employees' Savings Plan (the Plan), Located in Rock Island, Illinois**

[Prohibited Transaction Exemption 99-37; Exemption Application No. D-10518]

**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 sale, on March 23, 1998, by the Plan of certain commercial mortgages and bonds (the Securities) to Modern Woodmen of America (the Employer), a party in interest with respect to the Plan, provided that the following conditions were satisfied: (1) The sale was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sale; (3) for each Security, the Plan received an amount equal to the highest, as of the date of the sale, of (a) the par value, (b) the book value, or (c) the fair market value of the Security, as determined by a qualified, independent appraiser; and (4) the Plan received the accrued but unpaid interest that was due on each Security at the time of the transaction.

**Effective Date:** The exemption is effective as of March 23, 1998.

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 11, 1999 at 64 FR 43740.

**For Further Information Contact:** Ms. Karin Weng 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 21st day of September, 1999.

**Ivan Strasfeld,**

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

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BILLING CODE 4510-29-P

**LEGAL SERVICES CORPORATION**

**Intent To Award—Grants Awards to Applicants for Funds To Provide Civil Legal Services to Eligible Low-Income Clients Beginning January 1, 2000**

**AGENCY:** Legal Services Corporation.

**ACTION:** Announcement of intention to make FY 2000 Competitive Grant Awards.

**SUMMARY:** The Legal Services Corporation (LSC or Corporation) hereby announces its intention to award grants and contracts to provide