

DEPARTMENT OF LABOR**Pension and Welfare Benefits Administration**

[Application No. D-10307, et al.]

Proposed Exemptions; ADP Fluor Daniel, Incorporated Retirement Savings Plan (the Plan)**AGENCY:** Pension and Welfare Benefits Administration, Labor.**ACTION:** Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). 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 requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

ADP Fluor Daniel, Incorporated Retirement Savings Plan (The Plan) Located in Tucson, Arizona

(Application No. D-10307)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of two limited partnership interests (the Units) to ADP Fluor Daniel, Incorporated, a party in interest with respect to the Plan, providing the following conditions are satisfied: (1) the sale is a one-time transaction for cash; (2) the Plan pays no commissions nor other expenses relating to the sale; and (3) the purchase price is the greater of: (a) The fair market value of the Units as determined

by a qualified, independent appraiser, or (b) the original acquisition and holding costs, plus attributable opportunity costs.

Summary of Facts and Representations

1. The Plan is a combination 401(K) and profit sharing plan sponsored by ADP Fluor Daniel, Incorporated (ADP). ADP is an Arizona corporation engaged in the business of international architecture and engineering. As of December 31, 1994, the Plan had 250 participants and assets with a fair market value of approximately \$4,642,585.00.

2. Among the assets of the Plan are the Units, which are two shares of the Central Corridor-Osborn Investors Limited Partnership (the Limited Partnership), an Arizona limited partnership. The Plan's percentage ownership represented by its Units in the Limited Partnership is 3.11%. The Limited Partnership owns a 2.26 acre property located at the southeast corner of Central Avenue and Osborn Road, in Phoenix, Arizona. The Plan acquired the Units directly from the Limited Partnership, an unrelated third party, in 1987. The decision to acquire the Units was made by the Plan trustees; Richard Anderson, Philip Owen, Dale Harman, Solomon Pan, and Michael Stanley (the Trustees).¹ It is represented that the Plan paid a total of \$25,000 to acquire the Units and subsequently made additional cash contributions and various other payments totaling \$34,800 between 1989 and 1996 in connection with the holding of the Units. It is further represented that the Plan never derived any income from the investment in the Units to offset the expenditures made by the Plan related to the acquisition and holding of the Units. In this regard, it is represented that the cumulative costs paid by the Plan in connection with the acquisition and holding of the Units is \$59,800.

3. The Applicant represents that the Plan wishes to sell the Units in order to divest itself of an asset which has and may continue to depreciate in value. It is further represented that the Units which are not publicly traded are incompatible with the Plan's new administrative investment features, which permits participants to access daily valuations and to individually direct the investments of their accounts. Selling the Units to ADP will enable the Plan to convert an illiquid, non-publicly traded real estate investment into cash,

¹ The Department expresses no opinion herein on whether the acquisition and holding of the Units by the Plan violated any of the provisions of Part 4 of Title I of the Act.

which will then be allocated to the accounts of participants and invested pursuant to the direction of those participants.

The Applicant obtained an independent appraisal of the units from Gary Ringel, President of U.S.L. Valuation, Inc., a real estate appraiser and consultant located in Scottsdale, Arizona. After reviewing the pertinent data, Mr. Ringel estimated that the Units' fair market value as of April 30, 1996 was \$20,800.

4. The Applicant proposes to purchase the Units from the Plan for \$85,072, which will be allocated on a pro rate basis among the participants' accounts that are invested in the Units. This amount represents the greater of: (a) The fair market value of the Units as determined by a qualified, independent appraiser, or (b) the Units' original acquisition and holding costs to the Plan plus opportunity costs attributable to the Units. It is represented, that because the fair market value of the Units is less than their acquisition cost, ADP will purchase the units for the latter amount. Taking into account the purchase price of the Units (\$25,000) and the associated holding costs (\$25,272), the Plan will receive a rate of return approximately equal to six percent for each of the eight years that the Plan has held the Units.

The Applicant represents that the subject transaction is in the interest of the Plan because if the Plan sold the Units on the open market, the Plan would receive substantially less than the amount the Applicant is willing to pay. In addition, the Plan could not at this time sell the Units to an unrelated third party at other than a substantial discount.

5. In summary, the Applicant represents that the subject transaction satisfies the statutory criteria for an exemption under section 408 of the Act for the following reasons: (1) The sale will be a one-time transaction for cash; (2) the Plan will not pay commissions nor other expenses relating to the sale; (3) the sale will enhance the liquidity of the assets of the Plan; and (4) the purchase price will be the greater of: (a) the fair market value of the Units as determined by a qualified, independent appraiser, or (b) the original acquisition and holding costs of the Units plus attributable opportunity costs.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair

market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons by personal delivery and by first-class mail within 10 days of publication of the notice of pendency in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and/or request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 40 days of the date of publication of the notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Schmidt of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

TA Associates, Inc. (TA Associates)
Located in Boston, MA

(Application No. D-10314)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) 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 (D) of the Code shall not apply, effective December 29, 1993, to the making, by an employee benefit plan (the Plan), of capital contributions to any venture capital fund (the TA Fund) that is organized, sponsored and/or managed by TA Associates and/or any of its affiliates (collectively, TA) pursuant to a contractual obligation by a Plan having an interest in the TA Fund.²

This proposed exemption is subject to the following conditions:

(a) At the time the Plan undertakes the obligation to make such capital contributions (the Determination Date), the TA Fund is not a party in interest with respect to the Plan.

(b) The decision to make a capital contribution to a TA Fund is made on behalf of the Plan by a Plan fiduciary which is independent of and unrelated to TA and the portfolio company whose interest is acquired by the TA Fund.

(c) TA does not otherwise provide investment advice to the Plan within the meaning of Regulation section 29 CFR 2510.3-21(c) with respect to such Plan's assets that are invested in the TA Fund.

(d) At the Determination Date, the Plan has aggregate assets that are in excess of \$50 million. In the case of multiple Plans which are invested through a master or group trust in a TA Fund, the assets of which are "plan assets" under 29 CFR 2510.3-101 (the Plan Asset Regulation), the \$50 million threshold applies to the aggregate assets of such trust.

(e) Subsequent to the Determination Date, the TA Fund is a party in interest with respect to the Plan solely by reason of a relationship to a portfolio company which is a service provider to a Plan, as described in section 3(14) (H) or (I) of the Act, including a fiduciary with respect to such Plan.

(f) At the Determination Date, the capital commitment of the Plan (together with the capital commitments of any other Plans maintained by the same employer or employee organization) with respect to the TA Fund, does not exceed 15 percent of the total capital commitments with respect to such TA Fund.

(g) At the Determination Date, the percentage of the Plan's assets committed to be invested in the TA Fund does not exceed 5 percent of the Plan's total assets.

(h) At the Determination Date, a Plan's aggregate capital commitment to all TA Funds does not exceed 25 percent of the Plan's total assets.

(i) The Plan receives the following initial and ongoing disclosures with respect to the TA Fund:

(1) A copy of the private placement memorandum applicable to the TA Fund or another comparable document containing substantially the same information;

(2) A copy of the limited partnership or other agreement establishing the TA Fund;

(3) A copy of the subscription agreement applicable to the TA Fund, if any;

(4) Copies of the proposed exemption and grant notice related to the exemptive relief described herein; and

(5) Periodic, but no less frequently than annually, reports relating to the overall financial position and operational results of the TA Fund

² As discussed herein, TA Funds are expected to be organized as venture capital operating companies that are managed by TA.

including copies of the TA Fund's annual financial statements.

(j) With respect to capital contributions made to a TA Fund by a Plan after the date of issuance of the final exemption, TA maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (k) to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of TA, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than TA, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the 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 (k).

(k)(1) Except as provided in paragraph (k)(2) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (j) are unconditionally available at their customary location for examination during normal business hours by—

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

(B) Any fiduciary of a Plan who has an interest in the TA Fund and has the authority to acquire or dispose of the interest of the Plan in the TA Fund, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of any Plans or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (k)(1)(B) and (k)(1)(C) shall be authorized to examine trade secrets of TA or commercial or financial information which is privileged or confidential.

EFFECTIVE DATE: If granted, this proposed exemption will be effective December 29, 1993.

Summary of Facts and Representations

1. TA is a Delaware corporation involved in the venture capital industry since 1968. TA has organized, sponsored and/or managed 21 venture capital funds, involving total capital commitments of approximately \$1.46 billion. The investors in the TA Funds are primarily wealthy individuals and sophisticated investors, including employee benefit plans that are subject to the Act, private foundations,

government plans, endowments and other tax exempt organizations. The applicant represents that venture capital funds, such as the TA Funds, allow Plans, particularly those having significant asset bases, to achieve greater diversification by asset class. As such, many of the investors in existing TA Funds and many potential investors in future TA Funds will be Plan investors that are covered by the Act.

2. Each TA Fund is organized and operated so that the assets of such TA Fund will not be deemed to be plan assets under the Plan Asset Regulation. In most cases, this results from the fact that the TA Fund is operated in a manner which causes such fund to qualify as a venture capital operating company.³ In some cases, it may be the result of the fact that the equity participation in the TA Fund by benefit plan investors is not significant (i.e., more than 75 percent or more of the equity interest in the entity is held by non-benefit plan investors).⁴

3. The TA Funds have typically been structured as limited partnerships with TA serving as general partner and, in some cases, having an interest as limited partner. (TA Funds organized in the future may be organized as limited liability companies.) The TA Funds are managed by TA which receives a pre-specified management fee as well as a pre-specified incentive allocation after investors have received distributions in excess of their capital contributions plus a pre-specified minimum rate of return. Because the TA Funds are expected to be organized as venture capital

³ Regulation section 29 CFR 2510.3-101(c) of the Plan Asset Regulation defines the term "operating company" as an entity that is primarily engaged, directly or through a majority-owned subsidiary or subsidiaries, in the production or sale of a product or service other than the investment of capital. The term "operating company" includes a "venture capital operating company."

Regulation section 29 CFR 2510.3-101(d) provides, in part, that an entity is a "venture capital operating company" if at least 50 percent of its assets are invested in venture capital investments, and the entity, in the ordinary course of its business, actually exercises management rights with respect to one or more operating companies in which it invests. Regulation section 29 CFR 2510.3-101(d)(3) explains that a venture capital investment is an investment in an operating company (other than a venture capital operating company) as to which the investor has or obtains management rights. The term "management rights" is defined under regulation section 29 CFR 2510.3-101(d)(3)(ii) to mean contractual rights directly between the investor and an operating company to substantially participate in, or substantially influence the conduct of, the management of the operating company.

⁴ Regulation section 2510.3-101(f)(1) states, in pertinent part, that equity participation in an entity by benefit plan investors is "significant" on any date, if immediately after the most recent acquisition of any equity interest in the entity, 25 percent or more of the value of any class of equity interests in the entity is held by benefit plan investors.

operating companies, the applicant represents that none of the TA Funds will hold "plan assets" and that the compensation paid to TA by the TA Funds will not be subject to the prohibitions under the Act.⁵

TA's most recent fund, Advent VII, has aggregate capital commitments of approximately \$303 million from 83 individual and institutional investors. Of the institutional investors, 14 investors are Plans that are covered under the provisions of the Act. These Plans have made a total capital commitment to Advent VII of \$95 million.

4. Each investor in a TA Fund, including each Plan investor, enters into a binding commitment to make capital contributions to the TA Fund in an amount specified by the investor. Although an investor's capital commitments are not required to be made at the outset, capital is drawn down over time as the TA Fund identifies and makes its venture capital and other investments. Generally, capital is called down in installments ranging from 5 percent to 10 percent of the total commitment. In most cases, all of the capital commitments will have been drawn down within 3 to 5 years of the establishment of the TA Fund.

5. In recent years, the TA Funds have expanded their focus to include a wide variety of portfolio companies.⁶ Specifically, the TA Funds have acquired, and expect to acquire, interests in portfolio companies which are involved, either directly or through subsidiaries, in various aspects of the financial services industry. TA believes this broader scope is necessary to enable the TA Funds to maximize investment opportunities and investment returns. In TA's view, business opportunities can arise in connection with start-up or later-stage companies (including spin-offs and management buy-outs of existing business operations) in

⁵ The Department is providing no opinion with regard to whether a TA Fund is a venture capital operating company or whether the equity participation by Plans investing in a TA Fund is not significant. In addition, the Department is not expressing any views with respect to the compensation that is paid to TA by a TA Fund.

⁶ According to the applicant, the term "portfolio company" refers to each of the operating companies in which a venture capital fund has made an investment. Thus, for example, when a venture capital fund, such as a TA Fund, makes an investment in a start-up, high tech company, that company becomes one of the venture capital fund's portfolio companies and will remain so as long as the venture capital fund retains its investment in that high tech company. Similarly, if a venture capital fund acquires an interest in an investment management firm, the investment management firm will become a portfolio company of the venture capital fund.

virtually any type of business rather than exclusively in the hi-technology area.

6. As part of this diversification trend, TA Funds have been and will be acquiring interests in portfolio companies that are involved in providing money management services, brokerage services or other types of services which may be utilized by Plans and institutional investors. The portfolio company may be, or may become, a party in interest with respect to one or more Plans which hold an interest in the TA Fund when such portfolio company, or any subsidiary thereof performs services for a Plan. The services may include fiduciary services (e.g., management of assets of the Plan other than those invested in a TA Fund). In no event will the portfolio company or its subsidiary act in a fiduciary capacity with respect to the assets of the Plan that are invested in the TA Fund.

If the TA Fund owns, directly or indirectly, a 10 percent or more interest in a service provider, TA notes that the Fund will become a party in interest with respect to such Plan under section 3(14) (H) and (I) of the Act.⁷ Since a TA Fund frequently purchases a 10 percent or more interest in a portfolio company, TA represents that it is possible that a TA Fund could become a 10 percent or more owner of a service provider and a party in interest with respect to each Plan as to which the portfolio company (or one of its subsidiaries) is a service provider. Once a TA Fund becomes a party in interest with respect to a Plan, TA states that the Plan would be prohibited from engaging in any transaction with that TA Fund.

If a TA Fund were to become a party in interest with respect to a Plan, TA is concerned that a capital contribution made by the Plan subsequent to the TA Fund's becoming a party in interest would violate section 406(a)(1)(D) of the Act notwithstanding the fact that the capital contribution is being made pursuant to a pre-existing binding contractual commitment made by the Plan at a time when the TA Fund was not a party in interest. Therefore, to resolve these potential technical violations of the Act, TA has requested

an administrative exemption from the Department.

7. If granted, the proposed exemption will be effective December 29, 1993. On that date, one of the TA Funds acquired 100 percent of the interest in a portfolio company which owned or subsequently acquired several investment managers. At least one of the investment managers provided services to a Plan that was also an investor in the TA Fund. As a result, TA believes that prohibited transactions may have occurred when the Plan subsequently funded its remaining capital contributions to the TA Fund.

It is represented that the discovery of the prohibited transactions was made by TA and not by the investment manager. The only role that the investment manager played in these determinations was its provision to TA of a list of clients which enabled TA to compare the investment manager's clients with the list of investors in the affected TA Fund. It is represented that the investment manager did not have any responsibility with respect to the assets of the Plan that were invested in the TA Fund.

8. The requested exemption is subject to a number of conditions that will apply both retroactively and prospectively. First, the TA Fund's party in interest status will, in all cases, arise on the Determination Date, i.e., after the Plan has made a binding commitment to invest in the TA Fund, including its commitment to make future capital contributions to the TA Fund. Second, the decision to undertake the obligation to make a binding commitment must be made on behalf of the Plan by a Plan fiduciary which is independent of and unrelated to TA and the portfolio company. Third, TA must not otherwise provide investment advice to the Plan within the meaning of Regulation section 29 CFR 2510.3-21(c) with respect to such Plan's assets that are invested in the TA Fund. Fourth, at the Determination Date, the Plan must have aggregate assets that are in excess of \$50 million. In the case of multiple Plans which are invested through a master or group trust in an entity, the \$50 million threshold will apply to the aggregate assets of such trust or entity. Fifth, as of the Determination Date, the capital commitment of the Plan (together with the capital commitments of any other Plans maintained by the same employer or employee organization) with respect to the TA Fund, must not exceed 15 percent of the total capital commitments with respect to such TA Fund. Sixth, at the Determination Date, the percentage of the Plan's assets committed to be invested in the TA Fund must not

exceed 5 percent of the Plan's total assets. Seventh, at the Determination Date, a Plan's aggregate capital commitment with respect to all TA Funds must not exceed 25 percent of such Plan's total assets. TA represents that the transaction which occurred on December 29, 1993 met all of the foregoing substantive conditions.

9. The conditions of the exemption also require that each Plan receive the following initial and ongoing written disclosures from TA: (a) A copy of the private placement memorandum applicable to the TA Fund or another comparable document containing substantially the same information; (b) a copy of the limited partnership or other agreement establishing the TA Fund; (c) a copy of the subscription agreement applicable to the TA Fund, if any; (d) copies of the proposed exemption and grant notice related to the exemptive relief described herein; and (e) periodic, but no less frequently than annually, reports relating to the overall financial position and operational results of the TA Fund including copies of the TA Fund's annual financial statements. In addition, with respect to capital contributions made to a TA Fund by a Plan after the date of issuance of the final exemption, TA will maintain or cause to be maintained for a period of six years from the date of each transaction, records of each Plan investing in a TA Fund and each portfolio company comprising a TA Fund. Such records will enable the Department and other persons to determine whether the terms and conditions of the exemption are being met.

10. If the exemption is not granted, TA represents that it and the TA Funds would be required to make one of several adjustments designed to avoid the prohibited transaction concern that is the subject of this request. However, TA states that it does not believe these adjustments would be in the best interest of existing or prospective Plan investors. In this regard, TA represents that it might attempt to avoid the problem by not acquiring any portfolio companies which are, directly or indirectly, service providers to any of a TA Fund's Plan investors. However, TA does not consider this alternative satisfactory because it would limit the TA Fund's potential range of investments and diminish the expected investment return of such Fund. Moreover, TA points out that a portfolio company which is not a service provider at the time of the TA Fund's investment might become a service provider at some time in the future. Under these circumstances, TA

⁷In this regard, it is noted that the corresponding section of the Code relating to disqualified persons (see section 4975(e)(2) (H) and (I) does not contain a similar provision which would make the owner of 10 percent or more of a service provider a disqualified person with respect to a Plan. Nevertheless, because the service provider is a disqualified person under section 4975(e)(2)(B) of the Code, TA has requested that the exemption extend to both the Code and the Act in order to avoid any potential concerns regarding the possibility of indirect prohibited transactions.

represents that it would be impractical to restrict the activities of all portfolio companies in which the TA Fund invests to assure that no such portfolio company would ever become a service provider to any TA Fund's Plan investors. According to TA, such restriction would be contrary to the best interest of the TA Funds and their investors, particularly, their Plan investors.

As another alternative, TA represents that it could limit the offering of interests in the TA Funds to those Plans which could take advantage of Prohibited Transaction Exemption (PTE) 84-14 (49 FR 9494 March 13, 1984), the Class Exemption for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers (QPAMs) or PTE 96-23 (61 FR 15975, April 10, 1996), the Class Exemption for Plan Asset Transactions Determined by In-House Asset Managers (INHAMs).⁸ However, TA believes that such an approach would be unduly restrictive and not in the best interest of the Plans since relatively few Plans could take advantage of PTE 96-23. Also Plans would be forced to hire a QPAM and incur an additional expense in order to invest in a TA Fund if the Plan's named fiduciary would otherwise make that decision itself.

11. In summary, it is represented that the proposed exemption has satisfied or will satisfy the statutory conditions for an exemption under section 408(a) of the Act because: (a) At the Determination Date, the TA Fund's party in interest status has or will, in all cases, arise after the Plan has made its binding commitment to invest in the TA Fund, including its commitment to make future capital contributions to the TA Fund; (b) the decision by a Plan to make capital contributions to the TA Fund has been and will be made on behalf of the Plan by a Plan fiduciary which is independent of and unrelated to TA and the portfolio company that is acquired by the TA Fund; (c) TA will not otherwise provide investment advice to the Plan within the meaning of 29 CFR 2510.3-21(c) of the Act with respect to such Plan's assets that are invested in the TA Fund; (d) as of the Determination Date, the capital

⁸PTE 84-14 permits various parties which are related to employee benefit plans to engage in transactions involving plan assets, if among other conditions, the assets are managed by QPAMs (i.e., banks, savings and loan associations, insurance companies or investment advisers registered under the Investment Advisers Act of 1940), which are independent of the parties in interest and meet certain financial standards. PTE 96-23 permits various transactions involving employee benefit plans whose assets are managed by INHAMs and party in interest service providers.

commitment of the Plan (together with the capital commitment of any other related Plans maintained by the same employer or employee organization) has not and will not exceed more than 15 percent of the total outstanding capital commitments with respect to the TA Fund; (d) at the Determination Date, the percentage of the Plan's assets committed to be invested in the TA Fund does not and will not exceed 5 percent of the Plan's total assets and the Plan's aggregate commitment to all TA Funds has not and will not exceed 25 percent of the Plan's total assets; (e) a Plan investing in a TA Fund has or will have assets that are in excess of \$50 million; and (f) TA has or will make written disclosures to the Plan regarding the TA Fund both at the time of the initial commitment to invest in such Fund as well as on an ongoing basis.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include fiduciaries of Plans whose assets are currently invested in a TA Fund. Accordingly, the Department has determined that the only practical form of providing notice to such Plan fiduciaries is the distribution, by TA, of a copy of the proposed exemption by first class mail within 30 days of the date of publication of the pendency notice in the Federal Register. The notice will include a copy of the notice of proposed exemption, as published in the Federal Register, as well as a supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on the pending exemption. Comments with respect to the proposed exemption are due 60 days after the date of publication of the proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady 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 believe a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or 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) 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 of the plan;

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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 28th day of February 1997.

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

[FR Doc. 97-5430 Filed 3-4-97; 8:45 am]

BILLING CODE 4510-29-M

**[Prohibited Transaction Exemption 97-15;
Exemption Application No. D-10172, et al.]**

Grant of Individual Exemptions; The Chicago Corporation (TCC), et al.

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