

PTE 83-1

Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts

I. Transactions

A. Effective January 1, 1975, the restrictions of sections 406(a) and 407 of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving mortgage pool investment trusts (mortgage pools) and pass-through certificates evidencing interests therein (certificates):

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor of a mortgage pool and an employee benefit plan when the sponsor, trustee or insurer of such pool is a party in interest with respect to such plan, provided that the plan pays no more than fair market value for such certificates, and provided further that the rights and interests evidenced by such certificates are not subordinated to the rights and interests evidenced by other certificates of the same mortgage pool:

(2) The continued holding of certificates acquired pursuant to subparagraph (1), above, by an employee benefit plan.

B. Effective January 1, 1975, the restrictions of sections 406(b)(1) and (2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to the following transactions involving mortgage pools and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor of a mortgage pool and an employee benefit plan when the sponsor, trustee or insurer of such pool is a fiduciary with respect to the plan assets invested in such certificates provided:

(a) Such sale, exchange or transfer is expressly approved by a fiduciary independent of the pool sponsor, trustee or insurer who has authority to manage and control those plan assets being invested in such certificates;

(b) The plan pays no more for certificates than would be paid in an arm's length transaction with an unrelated party;

(c) No investment management, advisory, or underwriting fee or sales commission or similar compensation is paid to the pool sponsor with regard to such sale, exchange or transfer;

(d) The total value of certificates purchased by a plan does not exceed 25% of the amount of the issue; and

(e) At least 50% of the aggregate amount of the issue is acquired by persons independent of the pool sponsor, trustee or insurer.

C. Effective January 1, 1975, the restrictions of section 406(a) and (b) of the Act and the Taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code shall not apply to transactions in connection with the servicing and operation of the mortgage pool provided that:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement; and

(2) such pooling and servicing agreement is made available to investors before they purchase certificates issued by the pool.

D. Effective January 1, 1975, the restrictions or sections 406(a) and 407 of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or who has a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act), solely because of the ownership of a certificate evidencing an interest in a mortgage pool by such plan.

E. *Exception.* No relief from the restrictions of [ERISA](#) 406(b) and the taxes imposed by ~~section~~[Code sections](#) 4975(a) and (b) by reason of [Code](#) sections 4975(c)(1)(E) and (F) is available for ~~fiduciaries providing the receipt of compensation as a result of the provision of~~ investment advice within the meaning of [ERISA](#) section 3(21)(A)(ii) ~~of ERISA or~~ [Code section](#) 4975(e)(3)(B) ~~of the Code~~ and regulations thereunder.

II. General Conditions

A. The relief provided under section I, above, is available only if the following conditions are met:

(1) The sponsor and trustee for each mortgage pool must maintain a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificate-holders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all covered pooled mortgage, or the principal balance of the largest covered mortgage;

(2) Except in the case of a governmental or quasi-governmental entity such as the Federal National Mortgage Association, the trustee for each mortgage pool must not be an affiliate of the sponsor of such pool, provided, however, that the trustees shall not be considered to be an affiliate of the pool sponsor solely because the trustee has succeeded to the rights and responsibilities of the pool sponsor pursuant to the terms of the pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the pool sponsor; and

(3) The sum of all payments made to and retained by the pool sponsor in connection with a mortgage pool, and all funds inuring to the benefit of the pool sponsor as a result of the administration of the mortgage pool, must represent not more than adequate consideration for selling the mortgage loans plus reasonable compensation for services provided by the pool sponsor to the pool.

III. Definitions

A. For the purpose of this exemption the term “sponsor” or “pool sponsor” means:

- (1) the entity which organizes, and either continues to service or supervises the provision of services to, a mortgage pool comprised of mortgage loans either made or purchased by such entity; and
- (2) any successor thereto.

B. For the purposes of this exemption, the term “mortgage pool” means an investment pool the corpus of which:

- (1) Is held in trust; and
- (2) Consists solely of
 - (a) Interest bearing obligations secured by either first or second mortgages or deeds of trust on single-family, residential property;
 - (b) Property which had secured such obligations and which has been acquired by foreclosure; and (c) Undistributed cash.

C. For the purpose of this exemption, the terms “mortgage pool pass-through certificate” or “certificate” mean a certificate representing a beneficial undivided fractional interest in a mortgage pool and entitling the holder of such certificate to pass-through payment of principal and interest from the pooled mortgage loans, less any fees retained by the pool sponsor. Also for the purposes of this exemption, these terms shall include certificates guaranteed by the Government National Mortgage Association.

D. For the purposes of this exemption, the term “affiliate” of another person means:

- (i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such other person;
- (ii) Any officer, director, partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and
- (iii) Any corporation or partnership of which such other person is an officer, director or partner.

For purposes of this paragraph, the term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual.

E. For the purposes of this exemption, the term “single-family, residential property” means non- farm property comprising one to four dwelling units, and also includes condominiums.

F. For the purposes of this exemption, a person will be “independent of the pool sponsor, trustee, or insurer” only if:

- (1) Such person is not an affiliate (as defined in paragraph III(D) of this exemption) of the pool sponsor, trustee, or insurer; and
- (2) neither the pool sponsor, trustee, insurer, nor any affiliate thereof, is a fiduciary who has investment management authority or renders investment advice with respect to any of the assets of such person.

G. For the purposes of this exemption, the term “sale” includes a forward delivery commitment (as defined in paragraph H, below) by an investing plan, provided:

(1) For the purposes of section I(A), the terms of the forward delivery commitment contract are no less favorable to the plan than they would be in an arm’s length transaction with an unrelated party; and

(2) For the purpose of section I(B)

(a) The forward delivery commitment has been expressly approved by a fiduciary independent of the pool sponsor, trustee or insurer who has authority to manage and control those plan assets being committed for investment in such certificates;

(b) The terms of the forward delivery commitment contract (including any fee paid to the investing plan) are no less favorable to the plan than they would in an arm’s length transaction with an unrelated party; and

(c) At the time of the delivery, all of the conditions of section I(B) of this exemption are met.

H. For the purposes of this exemption, the terms “forward delivery commitment” and “forward delivery commitment contract” means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date, which is more than thirty calendar days after the contract’s trade date. The terms include both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

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