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**Internal Revenue Service**

Department of the Treasury

Washington, DC 20224

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Contact Person:

Telephone Number:

In Reference to: OP:E:EP:T:4

Date: APR 28 1999

Legend:

Company A

Company B

Company C

Limited Partnership D

Company E

Company F

Company G

Plan X

Dear

This is in response to a ruling request submitted on your behalf by your authorized representative in a letter dated July 2, 1998 and supplemented by additional correspondence dated September 29 and October 12, 1998, and November 13, 1998 concerning the Federal income tax consequences of a proposed transaction under section 401(k)(10)(A)(i) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted on your behalf.

Company A is a wholly owned second-tier subsidiary of Company B. Company B is primarily engaged in the insurance business. Company A substantially ceased its

257

business operations as of May 7, 1996. Prior to May 7, 1996, Company A was engaged in the business of providing residential home mortgage services. Company A ceased its primary business activities as of May 7, 1996 and from May 8, 1996 to December 31, 1997, a residual of approximately 20 employees was retained to wind up its business.

Plan X covered employees of three employers within Company A's controlled group: (1) Company A; (2) Company C, a wholly owned subsidiary of Company A; and (3) Limited Partnership D, in which Company A held a controlling interest.

Due to two asset sales and a stock sale, almost all of the participants in Plan X became inactive participants in 1996. As of January 1, 1996, approximately 2,900 employees participated in Plan X and as of January 1, 1998, no employees actively participated in Plan X. The following is a brief description of the asset sale and stock sale.

On March 31, 1996, a substantial amount of the assets of Limited Partnership D were sold to an unrelated purchaser, Company E. In connection with this asset sale, approximately 175 participants terminated employment and 145 participants were hired by Company E to perform substantially the same services as they had performed for the seller.

On May 7, 1996, a substantial amount of the assets of Company A were sold to an unrelated purchaser, Company F. In connection with this asset sale, approximately 1,400 participants terminated employment, 20 participants remained employed by Company A until December 31, 1997, 20 participants were hired by other entities of Company B, and 1,520 participants were hired by Company F. The employees hired by Company F perform substantially the same services as they had performed for the seller before the asset sale. The Plan X accounts for the participants who accepted employment with Company F were transferred to a qualified plan maintained by Company F.

On June 30, 1996, all of the stock of Company C was sold to an unrelated purchaser, Company G. The approximately 500 employees of Company C did not experience any change in employment as a result of the stock sale.

Except in the case of three participants, Plan X made distributions to participants who were former employees of Company C by December 31, 1998. In addition, distributions were made to participants who experienced a bona fide separation from service, within the meanining of section 401(k)(2) of the Code, due to their termination of employment with both Company A and the acquiring entity. Furthermore, a direct plan-to-plan transfer of assets to a qualified retirement plan maintained by Company F was made for the Plan X participants who were hired by Company F.

In connection with the substantial winding up of Company A's business, Plan X was terminated as of December 31, 1997. Plan X permits distributions upon the termination of the Plan X in accordance with Plan X's distribution provisions.

Plan X intends to make distributions to all former Plan X participants who still have account balances. This includes (1) the three participants who were former employees of Company C, (2) approximately 145 participants connected with the sale of Limited Partnership D who were hired by the purchaser Company E and (3) the 20 participants connected with the sale of Company A who were hired by entities related to Company B. Pursuant to the terms of Plan X, such distributions will be made as a lump sum distribution of the account balance due to the participant, which, for some participants may include distributions of annuity contracts. As part of the lump sum distribution, Plan X also intends to distribute all outstanding Plan X loans to participants. It is represented that such distributions will comply with all applicable Code requirements at the time they are made.

Your authorized representative further represents: (1) that Plan X meets the requirements set forth under section 401(a) of the Code; (2) that the Trust is a qualified trust under section 401(a) and is exempt from taxation under section 501(a) of the Code: (3) that a determination letter on the termination of Plan X is pending with the Internal Revenue Service; (4) that none of the 20 employees hired by entities within Company B's controlled group are currently eligible to participate in any defined contribution plans maintained by any members of Company B's controlled group and will not be eligible to so participate before January 1, 1999; and (5) that all consents required under section 1.401(k)-1(d)(6)(v) of the Income Tax Regulations have been obtained.

Based on the foregoing facts and representations, your authorized representative has requested a ruling that the distribution of assets upon termination of Plan X to (1) the 145 participants who were hired by Company E following the acquisition of Limited Partnership D and, (2) the 20 participants who were hired by other entities of Company B after the sale of Company A will satisfy the requirements of section 401(k)(10)(A)(i) of the Code.

Section 401(k)(2)(B)(i) of the Code provides, in relevant part, that distributions from a qualified cash or deferred arrangement may not be made earlier than the occurrence of certain stated events. Section 401(k)(2)(B)(i)(II) of the Code, when read together with section 401(k)(10)(A)(i) and section 1.401(k)-1(d)(1)(iii) of the regulations, further provides that one of these stated events is the termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7) of the Code).

Section 1.401(k)-1(d)(3) of the regulations further provides that a distribution may not be made under section 1.401(k)-1(d)(1)(iii) of the regulations if the employer establishes or maintains a successor plan. For purposes of this rule, the definition of the term "employer" means, in relevant part, the employer maintaining the plan and those employers required to be aggregated with the employer under sections 414(b), (c), (m) or (o) of the Code.

Section 1.401(k)-1(d)(3) of the regulations further provides that the definition of the term "employer" is applied as of the date of plan termination, and a successor plan is any other defined contribution plan (other than a stock ownership plan defined in section 4975(e) or 409(a) or a simplified employee pension as defined in section 408(k) of the Code). However, if at all times during the 24-month period beginning 12 months before the termination, fewer than two percent of the employees who were eligible under the defined contribution plan that includes the cash or deferred arrangement as of the date of plan termination are eligible under the other defined contribution plan, the other plan is not a successor plan. A plan is a successor plan only if it exists at any time during the period beginning on the date of plan termination and ending 12 months after distribution of all assets from the terminated plan.

It has been represented that distribution of assets on account of the termination of Plan X will be made to 145 participants who were hired by Company E, an entity not related to Company A or Company B. It has been represented that distributions of assets on account of termination of Plan X will be made to 20 participants who were hired by other entities of Company B but that none of the 20 participants are currently eligible to participate in any defined contribution plans maintained by any members of Company B's controlled group and will not be eligible to so participate before January 1, 1999. Further, it has been represented that any distributions made under section 1.401(k)-1(d)(3) of the regulations will be in compliance with the required consent requirement of section 1.401(k)-1(d)(6)(v) of the regulations.

Accordingly, based on the above facts and representations, we conclude that the distribution of assets upon termination of Plan X to the 145 participants who were hired by Company E and to the 20 participants who were hired by other entities of Company B constitutes a distribution upon plan termination within the meaning of section 401(k)(10)(A)(i) of the Code.

This ruling is based on the assumption that Plan X is qualified under section 401(a) of the Code at the time of the transaction.

A copy of this ruling has been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours,

John G. Riddle, Jr.

John G. Riddle, Jr.
Chief, Employee Plans
Technical Branch 4

Enclosures:
Deleted copy of letter
Notice of Intention to Disclose