

group annuity contract (the GAC) issued by Executive Life Insurance Company of California (ELIC), and (2) the Plan's potential repayment of the Loan (the Repayment); provided the following conditions are satisfied:

(A) No interest or expenses are paid by the Plan in connection with the proposed transaction;

(B) The Loan will be repaid only out of amounts paid to the Plan by ELIC, its successors, or any other responsible third party making payment with respect to ELIC's obligations under the GAC (the GAC Proceeds); and

(C) Repayment of the Loan is waived with respect to the amount by which the Loan exceed GAC proceeds.

Summary of Facts and Representations

1. The Employer is a Massachusetts corporation with its principal place of business located in Gardner, Massachusetts. The Plan is a defined contribution plan with approximately 3,500 participants and total assets of approximately \$82.3 million as of December 31, 1994. The Plan provides for individual participant accounts (the Accounts) and participant-directed investment of the Accounts.

2. The terms of the Plan provide that its participants may invest the Accounts among any of several investment funds (the Funds) managed by the Plan's trustee, State Street Bank and Trust Company (the Trustee), including a fixed income fund (the F.I. Fund). The F.I. Fund invests in part in insurance company group annuity contracts under which the issuer guarantees repayment of principal and payment of interest at a fixed annual rate through the date of maturity specified in the contract. Among the contracts held by the Plan in the F.I. Fund is the GAC, identified as follows: Contract number CG0124803A, issued to the Trustee on January 13, 1988 for an initial principal deposit of \$678,987.69, with a principal deposit limit of \$4,440,000. The GAC provides for compound annual interest at the rate of 10 percent (the Contract Rate), and its terms enable withdrawals to fund distributions, participant loans, in-service withdrawals, and participant-directed transfers of Account balances from the F.I. Fund to the other Funds (the Withdrawal Events). The GAC features a maturity date of June 30, 1993, at which time the Plan was due a payment (the Maturity Payment) in the amount of the total principal deposits during the term of the GAC plus interest thereon at the Contract Rate through maturity less previous withdrawals.

3. On April 11, 1991, ELIC was placed into conservatorship (the Conservatorship) by the Insurance

Commissioner of the State of California. The Employer represents that ELIC ceased to honor requests for withdrawals from the GAC upon commencement of the Conservatorship. The effect of the Conservatorship has been to freeze all assets invested in the GAC. This freeze has prevented the Plan from making withdrawals from the GAC to fund Withdrawal Events with respect to Accounts invested in the GAC.⁸

In response to the Conservatorship, the Employer and the Trustee provided for the GAC to be segregated from the other assets in the F.I. Fund and placed in a special fund (the Segregated Fund) on April 30, 1991, in order to confine the risks associated with the GAC to those Accounts which were invested in the F.I. Fund as of the commencement of the Conservatorship. Each Account with an interest in the F.I. Fund as of the date of the Conservatorship obtained a pro-rata interest in the Segregated Fund, from which withdrawals are prohibited for all purposes. As of April 30, 1991, the accumulated book value of the GAC was \$4,173,231, representing total principal deposits plus interest at the Contract Rate less previous withdrawals. This value constituted approximately 10 percent of the assets in the F.I. Fund and approximately 7.6 percent of the Plan's total assets. Upon the maturity of the GAC on June 30, 1993, the Maturity Payment then due was not made. Approximately 2,100 Plan participants have portions of their Accounts invested in the Segregated Fund.

4. A rehabilitation plan for ELIC (the Rehab Plan) was approved in late 1993, which offered to the Plan, as a holder of an ELIC GAC, two options: The Plan could "opt in" to the Rehab Plan by continuing to hold the GAC with modified terms, or the Plan could "opt out" by agreeing to a cancellation of the GAC in exchange for payments (Rehab Payments) over a period of approximately five years. In 1994, the Trustee made the opt-out election on behalf of the Plan. The Trustee represents that under the opt-out election, the exact amount of the Rehab Payments is not determinable. However, the Trustee and the Employer expect a total opt-out recovery of approximately \$3.7 million in Rehab Payments with respect to the GAC. Approximately 65 percent of this total, i.e., \$2.4 million,

⁸The Department notes that the decisions to acquire and hold the GAC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GAC issued by Executive Life.

was received by the Plan shortly after the opt-out election was processed. An additional \$485,000 was received by the Plan in March 1995. The Trustee and the Employer expect approximately \$815,000 more in Rehab Payments over a remaining three-year period.

5. Shortly after the Conservatorship commenced, in order to provide some immediate relief to the Plan with respect to the funding of Withdrawal Events, the Employer structured a loan arrangement (the Initial Agreement) which was intended to utilize Prohibited Transaction Class Exemption 80-26 (PTCE 80-26, 45 FR 35040, May 23, 1980), relating to interest-free loans for, among other things, the funding of plan benefits. In accordance with the terms of the Initial Agreement, the Employer commenced the making of interest-free loans (the Initial Loans) to the Plan solely to fund the cash payment of benefits by the Plan to participants with Account balances in the Segregated Fund, in lieu of the amounts which otherwise would have been withdrawn from the GAC for such payments. The Employer represents that the Initial Loans are exempt from the prohibited transaction provisions of the Act because they satisfy the requirements of PTCE 80-26.⁹ As of December 31, 1994, a total of \$639,967 had been loaned to the Plan by the Employer pursuant to the Initial Agreement.

6. Although the Initial Agreement has enabled former employees to receive full distribution of their Account balances, including portions invested in the Segregated Fund, the Employer represents that the Initial Arrangement is not satisfactory with respect to the participants of the Plan who remain current employees of the Employer. Participants who are current employees remain unable to effect participant loans, in-service withdrawals and transfers with respect to Account balances in the Segregated Fund. Accordingly, the Employer seeks to provide the Plan with the ability to effect the full range of Withdrawal Events with respect to Accounts invested in the Segregated Fund, by lending the Plan an amount of cash equal to the remaining balance of the Segregated Fund. The Employer requests an exemption for such a loan (the Loan), as well as its potential repayment, under the terms and conditions described herein.

⁹The Department expresses no opinion as to whether the loans made pursuant to the Initial Agreement satisfy the requirements of PTCE 80-26, or whether such loans were exempt from the prohibitions of section 406 of the Act.