

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.

PACCAR Inc Savings Investment Plan (the Plan) Located in Bellevue, Washington

[Application No. D-09855]

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 C.F.R. Part 2570, Subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted 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 (1) the proposed guarantee (the Guarantee) by PACCAR Inc (the Employer), the sponsor of the Plan, of the Plan's investment in a guaranteed investment contract (the GIC) issued by Confederation Life Insurance Company (Confederation Life), including the potential extensions of credit to the Plan by the Employer (the Advances) pursuant to the Guarantee; and (2) the potential repayment of the Advances (the Repayments); provided that the following conditions are satisfied:

(A) All terms and conditions of the transactions are no less favorable to the Plan than those which the Plan could obtain in an arm's length transaction with an unrelated party;

(B) The Repayments are made only from GIC Proceeds, defined as the amounts actually received by the Plan (1) from Confederation Life or any other entity making payment with respect to Confederation Life's obligations under the terms of the GIC, or (2) from the sale or transfer of the GIC to unrelated third parties;

(C) The Repayments will be made only after the Plan has recovered, through the Advances plus GIC

Proceeds, the amount guaranteed by the Employer with respect to the GIC; and (D) To the extent the Advances exceed GIC Proceeds, Repayment of the difference will be waived.

Summary of Facts and Representations

Introduction

Confederation Life was recently placed in a receivership. As a result, the Confederation Life GIC owned by the Plan is frozen, and the future of Confederation Life is uncertain. The Employer, PACCAR Inc, proposes to protect the Plan from loss on its investment in the GIC, by guaranteeing the value of the GIC as of the commencement of the receivership, as described below.

1. The Employer is a publicly-owned Delaware corporation engaged in the production of class 8 trucks, winches, oil drilling equipment and retail auto parts. Its principal place of business is Bellevue, Washington. The Employer sponsors the Plan, which is a defined contribution 401(k) plan, providing for individually-directed participant accounts (the Accounts). As of September 21, 1994, the Plan had 4,816 participants and, as of July 31, 1994, total assets of approximately \$211,979,510. The trustee of the Plan is Fidelity Management Trust Company of Boston, Massachusetts (the Trustee). Plan participants may invest their accounts in and among six investment funds, including an income fund (the I Fund) which consists of guaranteed investment contracts issued by insurance companies, a cash short-term investment fund, and units in a group trust maintained by the Trustee and designated as the Fidelity Managed Income Portfolio II of the Fidelity Group Trust for Employee Benefit Plans (the MI Portfolio).

2. Among the assets of the I Fund is the GIC, which is identified as Confederation Life Guaranteed Investment Contract No. 62185, issued to the Plan by Confederation Life on July 10, 1990 for a principal deposit of \$6 million. The GIC is a single-deposit, non-benefit-responsive contract, with interest on principal at the annual rate of 9.67 percent, requiring payment to the Plan of \$9.49 million on the maturity date of June 30, 1995 (the Maturity Date). On August 12, 1994 (the Receivership Date), Confederation Life was placed in receivership (the Receivership) pursuant to rehabilitation proceedings by the State of Michigan.¹

¹The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this proposed

Consequently, Confederation Life's assets and operations were frozen, and payments on all its guaranteed investment contracts, including the GIC held by the Plan, were suspended effective as of the Receivership Date. As of the Receivership Date, the total GIC principal and accumulated interest was \$8.752 million (the Receivership Value), representing 17.92 percent of the assets of the I Fund.

3. In order to avoid liquidity problems in the I Fund, after the Receivership was announced, the Employer and the Trustee froze the I Fund assets invested in the GIC. The Employer represents that it appears unlikely that Confederation Life will make timely payment to the Plan upon the Maturity Date of the GIC. The Employer has notified Plan participants that it will undertake measures to protect the Accounts from adverse effects of any nonpayment of the GIC or from the effects of a lengthy rehabilitation of Confederation Life. Accordingly, the Employer proposes to guarantee the Plan's investment in the GIC plus interest, by means of potential extensions of credit to the Plan, and is requesting an exemption for these transactions under the terms and conditions described herein.

4. The terms of the Employer's guarantee (the Guarantee) of the Plan's investment in the GIC and the Employer's potential cash advances (the Advances) pursuant to the Guarantee will be evidenced in a written agreement between the Plan and the Employer.²

The Guarantee

In making the Guarantee, the Employer is undertaking to ensure that in the eventual resolution of the Receivership the Plan receives a total amount with respect to the GIC which is no less than its investment in the GIC as of the Receivership Date plus interest thereafter at a market rate. In accordance with this undertaking, the amount which the Employer proposes to guarantee (the Guarantee Amount) is the Receivership Value of the GIC, which is \$8.752 million, less GIC Proceeds (defined as the amounts actually received by the Plan from Confederation Life or any other entity making payment with respect to Confederation Life's obligations under the terms of the GIC,

exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC.

²The Department notes that this exemption, if granted, will not affect the rights of any participant or beneficiary with respect to claims under section 404 of the Act in connection with any aspect of the GIC transactions.