

employment related to the production of color television components and subassemblies who became separated on or after December 4, 1981 and before October 3, 1982.

TA-W-13,327; *Arvin Industries, Inc., Princeton, KY*

A certification was issued in response to a petition received on February 24, 1982 covering all workers separated on or after December 1, 1981.

TA-W-13,336; *Missouri Resource Service, Mineral Point, MO*

A certification was issued in response to a petition received on February 23, 1982 covering all workers separated on or after December 1, 1981.

TA-W-13,362; *DeSoto Mining Co., Inc., Richwood, MO*

A certification was issued in response to a petition received on March 15, 1982 covering all workers engaged in employment related to production of drilling mud grade barite who became separated on or after November 1, 1981.

TA-W-13,363; *DeSoto Mining Co., Inc., Kingston, MO*

A certification was issued in response to a petition received on March 15, 1982 covering all workers engaged in employment related to production of drilling mud grade barite who became separated on or after November 1, 1981.

TA-W-13,026; *Act III Distribution Center, Spartanburg, SC*

A certification was issued in response to a petition received on October 5, 1981 covering all workers producing jackets and blouses separated on or after October 18, 1981.

TA-W-13,027; *Andrew Knit, Tuscaloosa, AL*

A certification was issued in response to a petition received on October 5, 1981 covering all workers producing jackets and blouses separated on or after October 18, 1981.

TA-W-13,031; *Debra Knit, Northport, AL*

A certification was issued in response to a petition received on October 5, 1981 covering all workers producing jackets and blouses separated on or after October 18, 1981.

TA-W-13,032; *Eufaula Fashions, Eufaula, AL*

A certification was issued in response to a petition received on October 5, 1981 covering all workers producing jackets and blouses separated on or after October 18, 1981.

TA-W-13,036; *Livingston Fashions, Livingston, AL*

A certification was issued in response to a petition received on October 5, 1981

covering all workers producing jackets and blouses separated on or after October 18, 1981.

TA-W-13,039; *Oxford Fashions, Oxford, AL*

A certification was issued in response to a petition received on October 5, 1981 covering all workers producing jackets and blouses separated on or after October 18, 1981.

TA-W-13,041; *Roanoke Fashions, Roanoke, AL*

A certification was issued in response to a petition received on October 5, 1981 covering all workers producing jackets and blouses separated on or after October 18, 1981.

TA-W-13,044; *Stevens Fashions, Carrollton, AL*

A certification was issued in response to a petition received on October 5, 1981 covering all workers producing jackets and blouses separated on or after October 18, 1981.

I hereby certify that the aforementioned determinations were issued during the period December 6, 1982-December 10, 1982. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street, NW, Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 14, 1982.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-34470 Filed 12-20-82; 8:45 am]

BILLING CODE 4510-30-M

## Occupational Safety and Health Administration

### Federal Advisory Council on Occupational Safety and Health; Meeting

Notice is hereby given that the Federal Advisory Council on Occupational Safety and Health, established under Section 1-5 of Executive Order 12196 of February 26, 1980, published in the Federal Register February 27, 1980 (45 FR 12769), will meet on January 12, 1983 starting at 10:00 a.m. in Rooms N5437 A,B,C, of the Frances Perkins Department of Labor Building, 200 Constitution Avenue N.W., Washington, D.C. The meeting will be open to the public.

The agenda provides for:

- I. Call to Order.
- II. Announcement of Appointments.
- III. Approval of Minutes of October 6, 1982 Meeting.
- IV. Election of Vice Chairman.

V. Presidential Safety and Health Policy Statement.

VI. Reports.

A. Activities of Standing Committee on Federal Occupational Safety and Health.

B. Proposed FACOSH Action Plans.

C. Criteria for President's Safety and Health Awards.

D. Consideration of the FARS Report.

VII. New Business.

VIII. Adjournment.

The Council welcomes written data, views or comments concerning safety and health programs for Federal employees, including comments on the agenda items. All such submissions received by close of business January 7, 1983, will be provided to the members of the Council and included in the record of the meeting.

The Council will consider oral presentations relating to agenda items. Persons wishing to orally address the Council at the meeting should submit a written request to be heard by close of business January 7, 1983. The request must include the name and address of the person wishing to appear, the capacity in which appearance will be made a short summary of the intended presentation and an estimate of the amount of time needed.

All communications regarding this Advisory Council should be addressed to John E. Plummer, Director, Office of Federal Agency Programs, Department of Labor, OSHA, Frances Perkins Building, 200 Constitution Avenue, N.W., Room N3613, Washington, D.C., 20210, telephone (202)523-8081.

Signed at Washington, D.C. this 15th day of December 1982.

Thorne G. Auchter,

Assistant Secretary.

[FR Doc. 82-34473 Filed 12-20-82; 8:45 am]

BILLING CODE 4510-26-M

## Office of Pension and Welfare Benefit Programs

### Proposed Exemptions

**AGENCY:** Office of Pension and Welfare Benefit Programs, 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 restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).



**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption, unless otherwise stated in the Notice of Pendency, or before February 4, 1983. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

**Notice to 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 pendency of the 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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). 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 pendency 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.

[Application Nos. D-3599 and L-3600]

**The Northern Minnesota-Wisconsin Area Retail Clerks Pension Plan (the Pension Plan) and the Northern Minnesota-Wisconsin Area Retail Food Health and Welfare Plan (the H/W Plan); Collectively, the Plans) Located in Duluth, Minnesota**

**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 ERISA Procedure 75.1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 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 to the sublease of office space by the Plans to Plan Administrators, Inc. (the Administrator), a fiduciary with respect to the Plans, provided the terms of the sublease are no less favorable to the Plans than the terms obtainable in an arm's length lease with an unrelated party.

**EFFECTIVE DATE:** If the proposed exemption is granted, the exemption will be effective on October 1, 1982.

**Summary of Facts and Representations**

1. The Plans are multiemployer, jointly trustee plans, each covering approximately 2,700 employees in the retail grocery business. Each Plan is funded by a separate trust. As of December 31, 1981, the H/W Plan's assets totalled \$1,448,918, and the Pension Plan's assets totalled \$7,017,813. The applicant represents that the Administrator provides contract administration services to the Plans and is, accordingly, a fiduciary with respect to the Plans. The trustees of the H/W Plan—William D. Watters, Robert C. Hall, Dick Walsh, Virgil Dock, James J. Bouley, and Daniel H. Mundt—are responsible for investing the H/W Plan's assets. The trustees of the Pension Plan—William D. Watters, Jerry Miner, James J. Bouley, Bert Harstad, Vern D. Bates, Al Scott, and Daniel H. Mundt—have employed a registered investment consulting firm, Loomis Sayles, to invest the Pension Plan's assets. It is represented that neither Loomis Sayles nor the trustees of the Plans have any relationship to the Administrator aside from their working relationship as Plan fiduciaries.

2. The Administrator requires more office space than is currently available to it to process claims and to organize its whole operations more efficiently to

ultimately benefit the Plans' participants and beneficiaries. Therefore, the Administrator wishes to sublease from the Plans all of the space leased to the Plans by the Duluth Labor Temple Association (the Association). The applicant represents that the Association is not a party in interest with respect to the Plans and that the Administrator will use the subleased space exclusively to conduct its administrative services to the Plans.

3. The sublease agreement (the Sublease) between the Plans and the Administrator states that the terms and conditions of the Sublease shall be identical to those in the lease agreement between the Association and the Plans (the Lease). The Lease provides, among other things, for a yearly rental of \$6.00 per square foot per year for 3,100 feet of rental space, payable in equal monthly installments, for a five-year term beginning October 1, 1982, on Business Office No. 300, located on the third floor of the Duluth Labor Center, at 2002 London Road, Duluth, Minnesota. The rental shall be adjusted on a yearly basis for any increased operational costs incurred by the Association and attributable to the premises (on a square footage basis). The Lease may be renewed for an additional five years, at the Plans' option, on the same terms and condition, except that the yearly rental may be increased to a maximum of \$6.60 per square foot. If the proposed exemption is granted, the Sublease shall be effective as of October 1, 1982. The Plans will not be required to pay any commissions in connection with the Sublease. The applicant represents that the terms of the Sublease are the same as those that would be available to any other disinterested tenant.

4. The decision to sublease office space to the Administrator was a joint majority decision of the trustees of the Plans, after considering the specific terms of the Sublease and whether the Sublease would be in the best interests of the participants and beneficiaries of the Plans. The applicant states that the Administrator has no investment authority or discretion with respect to the decision of the Plans to sublease the office space in question and that throughout the trustees' discussions concerning the possibility of a sublease arrangement, the Administrator has been a totally neutral party with respect to that decision. Mr. Daniel H. Mundt, who serves as a trustee for both Plans, states that the Sublease will assure the Administrator's continued involvement and participation in the administration of the Plans, will be on a strictly arm's-length basis, and will automatically



terminate if the Administrator is no longer the administrator of the Plans. Mr. Mundt also states that he is personally acquainted with other plan administrators in surrounding localities and believes that the services, information, and background provided by the Administrator is of unique and particular value. He believes that the Administrator provides services at the lowest possible cost and in the most effective manner to the participants of the Plans. He explains that the reason the Plans have entered into the Lease and the Sublease, rather than have the Association lease directly to the Administrator, is that under the Lease and Sublease arrangement the Plans will control the space. Thus, in the event of any problem with the Administrator, whether because of inability to perform, incapacity, or otherwise, the Plans will still have the right to occupy the space. For all of the foregoing reasons, Mr. Mundt believes that the Sublease will be in the best interests of the Plans and their participants and beneficiaries.

The trustees of the Plans will be solely responsible for monitoring the Sublease during its term, will act to protect the rights and interests of the Plans under the Sublease, and will ensure throughout its term that the terms and conditions of the Sublease are being complied with.

5. In summary, the applicant represents that the Sublease meets the exemptive criteria provided by section 408(a) of the Act because (a) the terms of the Sublease are the same as those that would be available to any other disinterested tenant, (b) the additional space to be made available to the Administrator under the Sublease will enable the Administrator to process claims and to organize its entire operations more efficiently to ultimately benefit Plan participants and beneficiaries, (c) the trustees of both Plans have initially decided that the Plans should enter into the Sublease, will monitor the Sublease, and will take any action necessary to protect the rights of the Plans thereunder, (d) the trustees of the Plans believe that the Sublease is in the best interests of the participants and beneficiaries of the Plans, and (e) the Plans will not be required to pay any commissions in connection with the Sublease.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Miriam Freund, of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

[Application No. D-3623]

**The Annuity Trust Fund of Exxon Corporation (the Fund) Located in Houston, Texas**

*Proposed Exemption*

The Department is considering granting an exemption for the following transactions 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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

*Section I.* The restrictions of section 406(a), 406(b)(1) and (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:

(A) The contribution of certain improved real property (the Property) to the Fund by Exxon Company, U.S.A. (EUSA), a contributing employer to the Fund, provided that EUSA's Federal tax deduction for the contribution does not exceed the fair market value of the Property as of the date it is contributed to the Fund;

(B) The lease (the Lease) of office space by the Fund to Friendswood Development Company (Friendswood), a contributing employer to the Fund, entered into pursuant to the property management agreement (the Management Agreement) between the Fund and Friendswood;

(C) The grant and exchange of certain interests in the Property between Friendswood and the Fund pursuant to an easement agreement (the Easement Agreement); and

(D) The joint use of certain portions of the Property by Friendswood and the Fund pursuant to a joint operating agreement (the Joint Operating Agreement).

*Section II.* The restrictions of section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the provision of certain real property management services to the Fund by Friendswood pursuant to the Management Agreement and the Joint Operating Agreement, provided that Friendswood receives no more than reasonable compensation for such services, pursuant to section 408(b)(2) of the Act and section 4975(d)(2) of the Code.

<sup>1</sup> No exemption from section 406(a) of the Act or section 4975(c)(1)(A) through (D) of the Code is being granted for the transactions discussed in this section beyond that which is provided by the statutory exemption provided by section 408(b)(2) of the Act or section 4975(d)(2) of the Code.

Code and the regulations promulgated thereunder.

*Section III.* The restrictions of section 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 to the lease of space by the Fund to certain parties in interest with respect to the Fund, provided that no space is leased (other than pursuant to the Lease) to:

(A) A subsidiary, division or affiliate (as defined in section 407(d)(7) of the Act) of Exxon Corporation (Exxon), the Fund sponsor, or

(B) A person who exercises discretionary authority, responsibility or control, or who provides investment advice, either with respect to the investment of any assets of the Fund or with respect to the management or disposition of the Property.

The proposed exemption is subject to the condition that the terms and conditions of each of the above-described transactions are at least as favorable to the Fund as those that could be obtained from an unrelated party.

**EFFECTIVE DATE:** The effective date of the proposed exemption, if granted, will be December 15, 1982.

*Summary of Facts and Representations*

1. The Fund is composed of a number of participating defined benefit plans of affiliates and divisions of Exxon. Both EUSA and Friendswood are wholly owned subsidiaries of Exxon. As of December 31, 1981, the Fund had net assets of \$3,426,000,000 and approximately 85,853 participants in the various plans comprising the Fund. The named fiduciary of the Fund is the Administrator-Finance who is the treasurer of Exxon, currently Mr. A. C. Hamilton.

2. EUSA proposes to purchase the Property from Friendswood and contribute the Property in partial satisfaction of EUSA's 1982 plan contribution. It was decided that EUSA would make the contribution of the Property, since the value of the Property would greatly exceed Friendswood's current plan funding obligation. According to an appraisal by Mr. James A. Britton, Jr., Britton Appraisal Associates, Inc., 444 Madison Avenue, New York, New York, an appraisal service company neither directly nor indirectly affiliated with Exxon or EUSA or with any other affiliate or division of Exxon, the estimated fair market value of the Property, as currently leased, is \$53,630,000.00 as of July 1, 1982. Mr. Britton will reappraise the Property



upon the granting of the exemption and EUSA will purchase the Property from Friendswood for an amount equal to this final appraisal value. EUSA will then contribute the Property to the Fund and take a Federal tax deduction in the amount of the final appraisal value. The Property is totally free of debt and encumbrance, and will represent approximately 1.6% of the Fund's current net assets.

3. The Property consists of approximately 15.1 acres of land, various office buildings and retail facilities located on the land, a 68% undivided interest in a central plant and a 41% undivided interest in a parking garage. The remaining interests in the central plant and parking garage will be held by Friendswood, in order to service a building owned by Friendswood which is adjacent to the Property. In each instance of joint ownership, the allocation of each party's interest was based upon the specific requirements and needs of each party, based upon the property serviced. The Property is located in the Greenspoint project, a 220 acre mixed-use land development project in North Houston. Friendswood acquired the Greenspoint project property in 1976 and subsequently developed the project pursuant to a controlled master plan. Friendswood currently manages the Property. Friendswood has been engaged in the business of real estate development in the Houston, Texas area since 1962, and has managed, developed or sold over 80,000 acres of land.

4. The "North Belt" market area, within which Greenspoint is located, has undergone substantial growth in the past six years. In 1976, the area had fewer than 200,000 square feet of office space and currently there are approximately 4,600,000 square feet of office space in the area. Current projections indicate the number will grow to 7,800,000 square feet by 1983. This growth is primarily attributable to the area's proximity to excellent residential areas, the Houston Intercontinental Airport, the presence of the successful Greenspoint Regional Shopping Mall and its location at the intersection of two primary Houston traffic arteries, Interstate 45 North Beltway 8. The area is now established as the commercial center of North Houston.

5. The facilities located on the Property are and will continue to be leased to a variety of business firms. The applicant represents that no portion of the Property (other than the office space reserved for Friendswood discussed below), will be leased to: (a) a

subsidiary, division or affiliate (as defined in section 407(d)(7) of the Act) of Exxon; or (b) a person who exercises discretionary authority, responsibility, or control, or who provides investment advice, either with respect to the investment of any assets of the Fund or with respect to the management or disposition of the Property. However, because of the size of the Fund and the large number of service providers who would be parties in interest with respect to the Fund, the applicant represents that it would be extremely difficult to ascertain in all instances whether a Property tenant was a party in interest with respect to the Fund. Therefore, the applicant requests an exemption to permit leasing of space in the Property to parties other than those specified in subparts (a) and (b) above.

6. In May 1982, a total of 4,343 square feet of space in the buildings located on the Property was vacant out of a total of 546,241 square feet, for a vacancy rate of 0.8%. The credit capability of all tenants is evaluated by Friendswood and when deemed appropriate, security deposits are required. The net cash flow to the Fund from rentals in the first year of the Fund's ownership of the Property would be \$4,727,607, representing an annual return of 8.8% of the appraised fair market value of the Property.

7. At the time EUSA contributes the Property to the Fund, the parties propose to enter into the Management Agreement, whereby Friendswood would agree to manage the Property on the Fund's behalf. The Management Agreement may be cancelled by the Fund upon 30 days advance notice. Friendswood's services would cover all aspects of financial and physical management, operation, maintenance and leasing of the Property. Pursuant to the Management Agreement, Friendswood is required to maintain detailed records and books of account concerning the operation of the Property, which are to be available to the Fund for examination at all reasonable times. In addition, detailed monthly reports on the operation of the Property will be prepared by Friendswood and sent to the Fund.

8. Friendswood's compensation under the Management Agreement will consist of reimbursement of costs for direct on-site management plus a management fee of 3% of all receipts collected and remitted from Property tenants on a monthly basis, or \$14,000 per month, whichever is greater. Additionally, pursuant to the Management Agreement, 3,781 square feet of space in Two Greenspoint Plaza (0.7% of the Property) would be reserved as office space for

Friendswood to provide the above-described services. It is represented that such arrangements are customary in the real property management industry and that the Lease is considered to be a portion of Friendswood's compensation. The applicant states that the Lease of office space would facilitate Friendswood's execution of its duties as the Property manager. This reservation of office space would terminate with the termination of the Management Agreement.

9. Upon the contribution of the Property, the Fund and Friendswood would also enter into the Joint Operating Agreement, whereby Friendswood would agree to maintain and operate the jointly owned central plant and parking garage. Friendswood would be reimbursed by the Fund for the Fund's share of direct and indirect expenses properly and actually incurred, pursuant to the terms of the Joint Operating Agreement. Friendswood would be required to furnish the Fund with reports on a monthly basis, detailing all such expenses for which reimbursement is sought.

10. The third agreement to be entered into between the Fund and Friendswood upon the contribution of the Property, would be the Easement Agreement, whereby the Fund and Friendswood, as owners of adjacent properties in the Greenspoint project, will grant to each other reciprocal easements regarding the use of the common access areas of such properties. Friendswood will receive no consideration under the terms of the Easement Agreement.

11. InterFirst Bank Dallas, N.A., Trust Division (the Bank, formerly First National Bank in Dallas) has agreed to serve as an independent fiduciary on behalf of the Fund for the transactions described herein. The Bank would decide whether to enter into the proposed transactions and would monitor the Agreements to ensure Friendswood's compliance therewith. The Bank and Exxon have a number of business relationships, however, these relationships constitute less than 1% of the Bank's commercial credit and deposit business. Furthermore, although the Bank serves as an investment manager for the Fund, the amount of Fund assets currently managed by the Bank constitutes less than 1% of the Bank's trust division business.

12. The Bank has reviewed the terms and conditions of the contribution of the Property, the Management Agreement, the Joint Operating Agreement and the Easement Agreement (collectively, the Agreements). The Bank has stated that the contribution of the Property, taking



into consideration the cash flow and net rate of return, would be in the interests of the Fund participants and beneficiaries and would be an appropriate investment for the Fund. The Bank further stated that the terms and conditions of the Agreements are standard, reasonable and customary in the real property management industry and are appropriate for the management and operation of the Property.

13. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria of section 408(a) due to the following: (a) the Bank has reviewed the terms and conditions of the transactions and believes they are customary and reasonable and are in the interests of the Fund and its participants and beneficiaries; (b) the Bank will make all decisions on the Fund's behalf regarding the transactions proposed herein, will monitor the transactions to ensure Friendswood's compliance therewith, and will have the authority to terminate the Management Agreement upon 30 days advance notice; (c) the Property will be contributed at its fair market value as determined by an appraiser independent of Exxon and its affiliates and divisions; (d) the Property would represent approximately 1.6% of Fund assets; (e) the Property vacancy rate is currently 0.8%; and (f) no portion of the Property (other than the office space reserved for Friendswood) would be leased to Exxon or to any of its subsidiaries, affiliates, or divisions.

**FOR FURTHER INFORMATION CONTACT:** Robert Sandler of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

[Application No. D-3700]

**Quain and Ramstad Clinic, P.C.  
Employees' Retirement Plan (the Plan)  
Located in Bismarck, North Dakota**

#### *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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 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 the loan of \$2 million (the Loan) by the Plan to Quain and Ramstad Clinic, P.C. (the Employer), the sponsor of the Plan, provided the terms of the transaction are at least as favorable to the Plan as those

obtainable in an arm's length transaction with an unrelated party.

#### *Summary of Facts and Representations*

1. The Plan is a defined benefit plan with 270 participants. As of May 31, 1982, the Plan had total assets of approximately \$5.7 million. The Northwestern National Bank of Minneapolis (the Bank) serves as the trustee of the Plan and is responsible for Plan investment decisions. Neither the Bank, nor any affiliate thereof, maintains any commercial or banking relationship with the Employer.

2. The Employer is a multispecialty medical clinic providing medical services. The Employer leases the space it utilizes from a partnership (the Partnership) whose partners are shareholders and employees of the Employer.

3. The applicant is requesting an exemption to allow the Plan to engage in the Loan with the Employer. The Loan proceeds will be subsequently loaned to the Partnership to provide a minor portion of the permanent financing for an expansion of the building currently used by the Employer. The major portion of the financing of the expansion of the building will be through a \$9.3 million loan from the First National Bank and Trust Company of Bismarck.

The Loan will be for a ten year term and will provide for equal monthly payments of principal. The Loan's interest rate will be equal to the prime rate of interest as daily quoted by the First National Bank of Minneapolis. Interest on the unpaid balance of the Loan will be payable monthly.

4. The Loan will be secured by a perfected first security interest in all of the accounts receivable of the Employer. As of August, 1982, the Employer had 23,579 receivables totalling \$4,677,000. The average amount of a receivable is \$198. The largest single receivable is \$362,098 which is due from the Bismarck Hospital for x-ray and laboratory services. The receivables have normally been collected within 109 days from the date the medical services are rendered. A large portion (approximately 79%) of the receivables represent insurance claims that require processing by insurance carriers.

5. The Employer will enter into a loan agreement with the Plan which will provide, inter alia, that certain conditions are imposed on the Employer. Among the conditions are that the Employer will maintain a ratio of debt to total assets of not more than .9 to 1; will maintain a ratio of current assets to current liabilities of not less than 1.25 to 1; and will maintain a tangible net worth of not less than \$500,000. Additional

conditions include prohibitions on the Employer from incurring debt or guarantees of debt, limitations on the types and amounts of investments that it may hold, prohibitions on the payment of dividends, prohibitions with respect to the sale of its assets, prohibitions pertaining to corporate reorganizations, prohibitions on expenditures for capital expenses, and prohibitions on certain lease transactions.

6. The Bank has examined the terms and conditions of the proposed Loan. After examining the overall investment portfolio of the Plan and the diversification of Plan assets in light of the proposed Loan investment, with consideration given to the cash flow needs of the Plan and the necessity of a sale of any Plan assets, the Bank has determined that the Loan is an appropriate and suitable investment for the Plan and its participants and beneficiaries. The Bank will render the same determination immediately prior to the consummation of the transaction.

7. The Bank will completely monitor the terms and conditions of the Loan. The Bank will require the Employer to reduce the outstanding balance of the Loan if at any time the value of the collateral falls below 150% of the outstanding Loan balance. The applicant represents that in the event of any default on the Loan the Bank would be able to effectively take over receivable collections which would be adequate to pay off the Loan within 60 days. The Loan agreement provides that the Bank will be provided (1) on an annual basis with financial statements of the Employer, an unqualified audit letter of a certified public accountant, and a certification by such certified public accountant that he or she knows of no event that would constitute an event of default under the Loan agreement; (2) quarterly, with unaudited financial statements of the Employer and a certification from the chief financial officer of the Employer that he or she knows of no event of default under the Loan agreement; and (3) monthly, with schedules of the accounts receivable of the Employer.

8. In summary, the applicant represents that the proposed Loan will satisfy the statutory criteria of section 408(a) of the Act because (a) the Loan will be secured by a perfected first security interest in collateral which will, at all times throughout the term of the Loan, have a value not less than 150% of the outstanding Loan balance, (b) the Bank, an independent, qualified party will serve as the fiduciary of the Plan with regard to the Loan, and has determined that the Loan is an



appropriate and suitable investment for the Plan; and (c) the Bank will completely monitor the Loan and enforce the performance of the Employer's obligations under the applicable Loan documents.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

[Application No. D-3708]

**Profit Sharing Plan for Employees of Gonzalez, Lupo, Walker, Webb & Arthur, M.D.s, P.A. (the Plan) Located in Tampa, Florida**

#### *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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 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 the proposed sale of the land described below by the Plan to Buffalo Avenue Associations (the Partnership), a party in interest with respect to the Plan, provided the sales price is no less than the fair market value of land on the date of the sale.

#### *Summary of Facts and Representations*

1. The Plan covered ten participants as of August 17, 1982, and had total assets of \$242,701 as of December 31, 1981. The Plan trustees—Drs. Arturo G. Gonzalez, Joseph F. Lupo, Charles G. Walker, Gilson S. Webb, and Gary K. Arthur—make investment decisions on behalf of the Plan.

2. Eighty percent of the profits interest in the Partnership, a Florida general partnership, is owned by the Plan trustees and administrators who are also officers, directors, and employees of the Plan sponsor and who collectively own over 50% of the stock of the Plan sponsor. The parties in interest with respect to the Plan who own interests in the Partnership are Arturo G. Gonzalez, M.D., Joseph F. Lupo, M.D., Charles G. Walker, M.D., Gilson S. Webb, M.D., Gary K. Arthur, M.D. and Espy D. Ball, Ph.D.

3. The land in question is two non-contiguous lots of vacant land, #19 of Block 1 and #1 of Block 9 totalling 19,720 square feet in the Northdale subdivision of Tampa, Florida. The lots are zoned for single-family residences only and are encumbered by a purchase

money mortgage. The two lots are not located proximate to any property owned by the Partnership, the Plan sponsor, or any other party in interest. They are located in a rapidly developing residential neighborhood close to schools and numerous recently completed shopping centers. The Plan acquired these lots as an investment on November 20, 1980, from Criterion Corporation, which, according to the applicants, is not a party in interest with respect to the Plan. The purchase price paid by the Plan for the lots was \$51,400.00, 10% of which was paid on the purchase date, the balance payable within five years at 10% interest with a balloon payment due at the end of the fifth year. The Plan made some principal payments under the mortgage (see 5, below). As of October 25, 1982, the Plan had paid \$10,585.69 in interest under the mortgage, \$974.32 in taxes on the lots, \$360.88 for signs and advertisements, \$100.00 for mowing, and \$150.00 for appraisals of the lots on March 3, 1982.<sup>2</sup> The lots do not produce any income for the Plan. During 1981, the Plan attempted unsuccessfully to sell the lots.

4. The appraisals mentioned above were made by Charles K. Evanich and were reviewed by Diane G. Bussman, a member of the American Institute of Real Estate Appraisers. It is represented that neither appraiser is related to the Partnership. Both appraisers have experience appraising vacant land, among other types of real property, for savings and loan institutions and mortgage lenders, among other clients. The appraisals show that the highest and best use of each lot would be to improve it with a single family residence and estimate that Lot 19 of Block 1 had a fair market value of \$27,000 on March 3, 1982, and that Lot 1 of Block 9 had a fair market value of \$26,000 on that date.

5. The Plan proposes to sell both lots to the Partnership at a price equal to the fair market value of the lots as established in the appraisals described above (\$53,000 total) or in another appraisal made by a qualified independent appraiser on a later date closer to the proposed sale date. The Partnership will assume the balance due under the existing mortgage and will pay cash to the Plan in the amount of the difference between the proposed sales price and such balance due. The principal balance due under this mortgage as of December 31, 1981 was \$44,080.93, according to the Plan's financial statements of that date. The

<sup>2</sup> In this proposed exemption the Department expresses no opinion regarding whether the acquisition and holding of the lots violates any provision of Part 4 of Title I of the Act.

Plan trustees have reviewed the situation and determined that a sale of the lots, as soon as possible, for their fair market value is in the best interests of the Plan and its participants in order to eliminate the necessity of continuing to pay substantial interest expenses.

6. In summary, the applicants represent that the proposed sale meets the exemptive criteria provided by section 408(a) of the Act because (a) the proposed sale will involve the Plan in a one-time transaction in which the Plan will receive cash for its equity interest in the lots, (b) the proposed sale will relieve the Plan of both a non-income producing asset that is not readily saleable and also a mortgage obligation requiring large cash payments of interest and principal, (c) the proposed sales price will equal the fair market value of the two lots as appraised by a qualified independent appraiser, and (d) the Plan trustees believe the proposed sale is in the best interests of the Plan and its participants.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Miriam Freund, of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

[Application No. D-3725]

**H. A. Berkheimer, Inc. Profit Sharing Plan (the Plan Located in Bangor, Pennsylvania)**

#### *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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 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 the proposed loan of \$100,000 by the Plan to H. A. Berkheimer, Inc., a party in interest with respect to the Plan, provided that the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time of consummation of the transaction.

#### *Summary of Facts and Representations*

1. The Plan, which was established in 1969, is a profit sharing plan with 81 participants and total assets as of May 31, 1982 of \$322,757. First Valley Bank of Bethlehem, Pennsylvania (the Bank) is the Plan trustee and is solely responsible for the investment of Plan



assets. H. A. Berkheimer, Inc. (the Employer) is a tax collection agency for municipalities and other local government agencies in Pennsylvania.<sup>3</sup>

2. On November 18, 1981, the Employer purchased data processing equipment from National Cash Register Corporation (NCR). The data processing equipment is known as the NCR Criterion Group V-8550 Data Processing System (the Equipment) and cost \$112,512.<sup>4</sup> The Employer obtained interim financing for the Equipment from the bank in the form of a demand loan calling for monthly payments of interest based on the prime rate of interest.

3. The Employer proposes to pay off its loan to the Bank by borrowing \$100,000 from the Plan. Under the terms of the proposed loan, the Plan would receive a security agreement collateralized by a first lien on the Equipment (evidenced by a promissory note) plus a pledge agreement on a \$100,000 Bank 26-week time deposit (the Deposit).<sup>5</sup> The loan will be repaid in 36 equal monthly principal installments of \$2,777.78 plus an interest rate of the Bank's prime rate plus 1 percent. This rate will be adjusted monthly to reflect changes in the prime rate, but in no event will be less than 10 percent per annum. Further, in the event the value of the equipment and the Deposit should ever fall to less than 150 percent of the outstanding loan balance, the Employer shall within 30 days of such a determination provide additional collateral so that the fair market value of the collateral securing the loan will always represent at least 150 percent of the outstanding loan balance. The Employer will maintain insurance on the Equipment in an amount equal to or greater than the unpaid loan balance, with the Plan being named the loss payee of the insurance policy. All costs and expenses relating to the transaction will be paid by the Employer.

4. On July 19, 1982, Mr. J. P. Rowan, an account manager of major systems for NCR Corporation issued a letter to the Employer in which he valued the Equipment at \$112,512.

(5) The Northeastern Bank of Pennsylvania located in Scranton, Pennsylvania (Fiduciary Bank), has been engaged to serve as an independent fiduciary with respect to the above described transaction. The Fiduciary

Bank invests approximately \$60,000,000 in employee benefit plan assets. The Fiduciary Bank has no other relationship with the Employer or the Plan.

The Fiduciary Bank represents that the proposed loan is appropriate for the Plan and is in the best interests of its participants and beneficiaries. In making these determinations, the Fiduciary Bank has examined the overall portfolio of the Plan, considered the Plan's cash flow needs, considered the assets that might have to be sold in order to meet the liquidity and diversification requirements of the Plan in light of the proposed loan and reviewed the proposed loan in terms of how it fits within the Plan's funding policy.

The Fiduciary Bank has agreed to undertake the following actions as part of its responsibilities: (a) monitor the loan to insure that payments under the promissory note are made in accordance with its terms and to demand timely payment, if necessary; (b) adjust the interest rate for the loan monthly; (c) keep adequate records; (d) report at least annually to the Bank on the performance of the loan, specifically including an annual appraisal by an independent appraiser indicating that the fair market value of the collateral is never less than 150 percent of the outstanding balance of the loan; (e) demand additional collateral be pledged if necessary; (f) make certain the collateral is always insured with the Plan being named as beneficiary of the insurance policy; and (g) in the event of a default on the loan, take steps necessary to insure the collateral is repossessed, sold in conformity with Pennsylvania law and that any deficiency is collected from the Employer.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) the Employer will insure the collateral and add additional collateral so that the value of the collateral securing the loan is always at least 150% of the outstanding balance of the loan;

(b) the loan will be administered by the Fiduciary Bank; and

(c) the Fiduciary Bank has determined that the transaction is appropriate for the Plan and is in the best interests of the Plan's participants and beneficiaries.

**FOR FURTHER INFORMATION CONTACT:**  
Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

[Application No. D-3731]

**The Orloff, Lowenbach, Stifelman and Siegel, P.A. Employees' Profit Sharing Plan (the Plan) Located in Roseland, New Jersey**

#### *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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 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) a loan of \$300,000 (the Loan) by the Plan to Orloff, Lowenbach, Stifelman and Siegel, P.A. (the Employer), provided the terms and conditions of the Loan are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; and (2) the guarantee of repayment of the Loan by the principals of the Employer.

#### *Summary of Facts and Representations*

1. The Plan is a profit sharing plan with 16 participants and total assets of \$820,795 as of June 30, 1982. The trustees of the Plan are the six principal shareholders of the Employer. These individuals make investment decisions for the Plan. The Employer is a law firm presently located in Roseland, New Jersey.

2. The Employer proposes to borrow \$300,000 from the Plan<sup>6</sup> to finance certain expenses associated with its recent move from Newark, New Jersey to a larger office facility located in Roseland, New Jersey. The Loan, which will be evidenced by a promissory note, will be amortized in equal monthly installments of principal and interest over an 84 month period. The Loan will carry interest at one percent over the prime rate of First National State Bank of New Jersey (First National). The interest rate will have a floor of 12 percent per annum and it will be adjusted monthly by an independent fiduciary designated to oversee the proposed transactions.

<sup>6</sup> Financial statements accompanying the exemption application show that the Plan had made loans to three participants as of June 30, 1981. On that date, the loans had a total outstanding principal balance of \$51,237. The application states that the participant loans satisfy the conditions of section 408(b)(1) of the Act. The Department expresses no opinion as to whether or not these conditions have been met.

<sup>3</sup> The applicant represents that the Employer is not an instrumentality of any state or local government.

<sup>4</sup> The total sales price for the equipment was \$121,388.60, however, this included taxes and distribution charges of \$8,876.60.

<sup>5</sup> The Deposit, including all interest earned, will be held by the Bank and will be rolled-over each 26 weeks until the loan has been repaid.



3. The Loan will be secured by an assignment of the Employer's accounts receivable (the Receivables). The Employer will execute and file UCC financing statements giving the Plan a perfected first security interest in the Receivables. The Employer has represented that the Receivables will at all times be equal to a minimum of 150 percent of the outstanding Loan balance. If the value of the Receivables falls below 150 percent of the outstanding loan balance, the Employer will be required to pledge additional security. As further collateral for the Loan, the six principal shareholders of the Employer will give their personal guarantees. As of October 14, 1982, the shareholders had a combined net worth in excess of \$3 million.

4. The Receivables represent amounts due the Employer from clients for the Employer's rendition of legal services. Between June 30, 1981 and August 31, 1982, the Receivables ranged between \$630,470 and \$841,358 in value. During the fourteen month period, 78 percent of the Receivables were collected, 7 percent were written off as uncollectible and 15 percent remain outstanding. Of the \$244,406 in Receivables which were more than 120 days old as of June 30, 1981, 68 percent were collected during the fourteen month period, 11 percent were written off as uncollectible and 15 percent remain outstanding.

5. By letter dated July 19, 1982, First National committed itself to lend \$300,000 to the Employer. The bank loan would have carried a floating interest rate of one percent over the prime rate with quarterly payments of principal and interest over a five year period. There would have been no prepayment penalty. The loan would have been secured by the personal guarantees of the principals of the Employer.

6. Mr. Irwin Gedinsky (Mr. Gedinsky), a certified public accountant and a senior tax partner with the accounting firm Granet and Granet of Union, New Jersey, has agreed to serve as the independent fiduciary for the Loan. Mr. Gedinsky has no other relationship with the Plan or the Employer. Mr. Gedinsky represents he has served as an executor and trustee of many estates and trusts in the past as well as at present. He also states that in his role as senior tax partner for his firm, he has advised the firm's clients with respect to the design of pension and profit sharing plans, the administration of such plans (including the investment of plan assets) and compliance with provisions of the Act.

With respect to the Loan, Mr. Gedinsky indicates he has examined its specific terms and he believes the Loan is in the best interests of the Plan and its

participants and beneficiaries because of the substantially higher interest rate than the Plan would otherwise earn, the fair and reasonable Loan duration, and the adequate collateral provided. Mr. Gedinsky also represents he has examined the overall Plan portfolio, considered the Plan's cash flow needs, considered the assets that might have to be sold to meet the Plan's liquidity requirements, examined the diversification of the Plan's assets in light of the proposed investment, and examined the Loan in terms of the manner in which it fits into the Plan's investment scheme.

As the independent fiduciary, Mr. Gedinsky will monitor the Loan to ensure repayment on a monthly basis. Mr. Gedinsky will also verify that the interest rate is adjusted monthly. He will further verify that the Receivables will at all times represent 150 percent of the outstanding Loan balance and if they ever fall below this level, he will demand additional collateral from the Employer. In addition, Mr. Gedinsky will take all necessary and appropriate actions to protect the interests of the plan.

7. In summary, it is represented that the proposed transactions will satisfy the requirements of section 408(a) of the Act because: (a) the Loan will be monitored by Mr. Gedinsky who believes the Loan is in the best interests of the Plan and protective of the Plan's participants and beneficiaries; (b) the Loan will be secured by the Employer's Receivables and the personal guarantees of the Employer's principals; and (c) the Receivables will at all times throughout the duration of the Loan represent 150 percent of the outstanding Loan balance and if the value of the Receivables falls below this level, Mr. Gedinsky will demand that the Employer pledge additional collateral.

#### FOR FURTHER INFORMATION CONTACT:

Ms. Jan Broady of the Department, telephone (202) 523-8971. (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 relieve a fiduciary or other party in interest or 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 and protective of the rights of participants and beneficiaries of the plan; and

(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.

(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 that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 16th day of December, 1982.

Alan D. Lebowitz,

*Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.*

(FR Doc. 82-34564 Filed 12-20-82; 8:45 am)

BILLING CODE 4510-29-M

#### Grant of Individual Exemptions

**AGENCY:** Office of Pension and Welfare Benefit Programs, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the *Federal Register* of the pendency before the Department of proposals to grant such



exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, 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 proposed to the Secretary of Labor.

#### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

- (a) The exemptions are administratively feasible;
- (b) They are in the interests of the plans and their participants and beneficiaries; and
- (c) They are protective of the rights of the participants and beneficiaries of the plans.

[Prohibited Transaction Exemption 82-217; Exemption Application No. D-2794]

#### The Deferred Benefits Corporation Pension Plan (the Plan) Located in Atlanta, Georgia

##### Exemption

The restrictions of section 406(a)(1) (A) through (D) and 406(b) 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 (F) of the Code, shall not apply to the receipt of brokerage commissions by the Deferred Benefits Corporation (the Employer) and certain of its employees (the Employees) incidental to the purchase of investment media by the

Employees through their individual accounts in the Plan provided:

- (a) The terms of the sales will be at least as favorable to the Plan as the terms offered for similar purchases by unrelated third parties in the normal course of the Employees' business;
- (b) The purchases by the Employees will only be made for the respective Employee's individual account in the Plan;
- (c) During no plan year will the commissions paid by the Plan as a result of purchases by the Employees for their respective individual account exceed five percent (5%) of the commissions earned by such Employee during the plan year in similar purchases by unrelated third parties; and
- (d) Payment of commissions by the Plan in connection with such purchases will be treated under the Employer's fee sharing agreement in the same manner as all other commissions earned by the Employees in sales of investment media by unrelated third parties in the ordinary course of business.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 19, 1982 at 47 FR 46599.

**FOR FURTHER INFORMATION CONTACT:** Paul R. Antsen of the Department, telephone (202) 523-6915. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-218; Exemption Application No. D-3076]

#### The Tenneco Inc. Thrift Plan (the Plan) Located in Houston, Texas

##### Exemption

The restrictions of section 406 (a) and (b) 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 (F) of the Code, shall not apply, effective January 1, 1982, to the sale of individual life insurance contracts by Philadelphia Life Insurance Co. (PLI) to the Plan, and the payment of commissions to agents of PLI, provided the following conditions are met:

- (a) PLI—(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with Tenneco Inc. that is described in section 3(14) (E) or (G) of the Act,
- (2) Is licensed to sell insurance in at least one of the United States or in the District of Columbia,
- (3) Has obtained a Certificate of Compliance from the Insurance Commissioner of its domiciliary state, Pennsylvania, within the 18 months prior to the date when the transaction is entered into or when such certificates

were last made available by the domiciliary state, if earlier, and (4) (i) Has undergone a financial examination (within the meaning of the law of its domiciliary state, Pennsylvania) by the Insurance Commissioner of the State of Pennsylvania within 5 years prior to the end of the year preceding the year in which the sale occurred, or

(ii) Has undergone an examination by an independent certified public accountant for its last completed taxable year.

(b) The Plan pays no more than adequate consideration for the insurance contracts.

(c) The commission paid to an agent by PLI in connection with the sale of a policy to the Plan does not exceed the commission paid to the agent by reason of placing the same policy with a person who is not a Plan participant.

(d) For taxable years of PLI beginning after December 31, 1981, the gross premiums and annuity considerations received in that taxable year by PLI for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which PLI is a party in interest or disqualified person by reason of a relationship to such employers described in section 3(14) (E) or (G) of the Act and section 4975(e)(2) (E) or (G) of the Code do not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance in that taxable year by PLI. For purposes of this condition (d):

(1) The term "gross premiums and annuity considerations received" means the total of premiums and annuity considerations received, reduced (in both the numerator and denominator of the fraction) by experience refunds paid or credited in that taxable year by PLI.

(2) All premiums and annuity considerations written by PLI for plans which it alone maintains are to be excluded from both the numerator and the denominator of the fraction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 15, 1982 at 47 FR 46181.

**EFFECTIVE DATE:** This exemption is effective January 1, 1982.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)



[Prohibited Transaction Exemption 82-219; Exemption Application No. D-3203]

**Design Master Homes, Inc. Profit Sharing Plan and Trust (the Plan) Located in Phoenix, Arizona**

**Exemption**

The restrictions of section 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 a loan (the Loan) by the Plan of \$350,000 to Design Master Homes, Inc., provided the terms and conditions of the Loan are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 19, 1982 at 47 FR 46597.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

[Prohibited Transaction Exemption 821-220; Exemption Application No. D-3325]

**Starr-Wood-Chapman-Ahmad, P.C. Retirement Trust (the Plan) Located in Portland, Oregon**

**Exemption**

The restrictions of section 406(a), 406(b)(1) and (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 (F) of the Code, shall not apply to: (1) the proposed assignment by Dr. Albert Starr to the Plan of his interest in a real estate sales contract (the Contract) for \$51,200, minus the amount of any principal payments received by Dr. Starr prior to the assignment, provided that this price is not more than the fair market value of Dr. Starr's interest in the Contract on the date it is assigned to the Plan; and (2) Dr. Starr's agreement to indemnify the Plan in the event of any loss suffered as a result of default by Adams Street Investors under the Contract.

For more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 3, 1982 at 47 FR 39020.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Sandler of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-221; Exemption Application No. L-3350]

**National Production Workers Insurance Fund (the Fund) Located in Chicago, Illinois**

**Exemption**

The restrictions of section 406(a) of the Act shall not apply to the purchase of certain computer and office equipment by the Fund from Labor Benefit Services, a party in interest with respect to the Fund, for the cash amount of \$125,000, so long as the amount does not exceed the fair market value of the items purchased on the date the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 15, 1982 at 47 FR 46174.

**EFFECTIVE DATE:** This exemption is effective April 16, 1982.

**FOR FURTHER INFORMATION CONTACT:** Linda M. Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-222; Exemption Application Nos. L-3537 and L-3538]

**Painters District Council No. 3 Vacation Fund (the Vacation Fund) and Painters District Council No. 3, Health and Welfare Fund (the Welfare Fund), Located in Kansas City Missouri**

**Exemption**

The restrictions of section 406(b)(2) of the Act shall not apply to the transfer of unclaimed funds from the Vacation Fund to the Welfare Fund, provided that the Welfare Fund agrees to pay any future claims for benefits due former Vacation Fund participants.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 21, 1982 at 47 FR 41661.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Sandler of the Department, telephone (202) 523-8195. (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 relieve a fiduciary or other party in interest or 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) These exemptions are 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.

(3) The availability of these exemptions is subject to the express conditions that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 16th day of December, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standard, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-34562 Filed 12-20-82; 8:45 am]

BILLING CODE 4510-29-M

**Proposed Class Exemption for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers; Hearing**

**AGENCY:** Department of Labor.

**ACTION:** Notice of Proposed Class Exemption and Notice of Hearing.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain prohibited transactions restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would permit various parties who are related to employee benefit plans to engage in transactions involving plan assets if, among other conditions, the assets are



managed by qualified professional asset managers (QPAMs) which are independent of the parties in interest and which meet specified financial standards. Additional exemptive relief is proposed for employers which provide limited amounts of goods and services in the ordinary course of business. Limited relief is also provided for leases of office space between managed funds and QPAMs or contributing employers. The proposed exemption, if granted, would affect participants and beneficiaries of employee benefit plans, the sponsoring employers of such plans, QPAM's and other persons engaging in the described transactions.

**DATES:** Written comments and requests for time to present oral comments at the public hearing must be received by the Department on or before February 18, 1983. The hearing will be held on March 10, 1983 beginning at 10 a.m. The exemption would be effective as of the date of publication of the final grant notice.

**ADDRESSES:** Written comments and requests for time to present oral comments (preferably at least three copies) should be sent to: Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20216. Attention: Professional Asset Manager Exemption. All communications received in response to this notice will be available for public inspection in the Public Documents Room, Pension and Welfare Benefit Programs, Room N-4677 at the above address. The hearing will be held in the Department of Labor Auditorium, 200 Constitution Avenue, N.W., Washington, D.C. Hearing procedure: Any interested person who wishes to be assured of the opportunity to present oral comments at the hearing should submit by March 1, 1983: (1) A written request to be heard, and (2) an outline (preferably 5 copies) of the topics to be discussed, indicating the time to be allocated to each topic. The request to be heard and accompanying outline should be submitted to the address mentioned above.

The Department will prepare an agenda indicating the order of presentation of oral comments and the time allotted to each person making oral comments. In the absence of special circumstances, each commentator will be allotted 10 minutes in which to complete his or her presentation. Information about the agenda may be obtained on or after March 8, 1983, by telephoning Mr. Paul Antsen at (202) 523-6915. This is not a toll-free number. Individuals not listed in the agenda will

be allowed to make oral comments at the hearing to the extent time permits. Those individuals who make oral comments should be prepared to answer questions regarding their comments.

A written record of the hearing will be made.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Ivan L. Strasfeld or Mr. Paul R. Antsen, Office of Fiduciary Standards, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, telephone (202) 523-7901 or 523-6915. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of a proposed class exemption from certain of the restrictions of section 406 of ERISA, and from certain taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. The Department is proposing the class exemption on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code,<sup>1</sup> and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), specifically section 3.01 of that Procedure.

**I. Background**

The Department is proposing the class exemption contained in this notice as part of a continuing effort to improve the administration of the prohibited transaction rules of ERISA. The rules set forth in section 406 of ERISA prohibit various transactions between plans and certain related parties. Those parties in interest described in section 3(14) of ERISA, such as plan fiduciaries, sponsoring employers, unions, service providers and their affiliates, may not engage in a transaction described in ERISA section 406 with a plan (or an entity whose assets are plan assets). Specifically, section 406 prohibits sales, leases, loans or the provision of services between a party in interest and a plan, as well as a use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest, unless a

<sup>1</sup> Section 408(a) of ERISA provides, among other things, that the Department may grant an exemption from the prohibited transaction rules only if it finds that the exemption is administratively feasible; in the interests of the plan, and of its participants and beneficiaries; and protective of the rights of participants and beneficiaries of such plan. See also section 4975(c)(2) of the Code.

Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor.

In the discussion of the exemption, references to the various provisions of section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

statutory or administrative exemption applies to the transaction. In addition, unless exempted, parties in interest who are fiduciaries of plans are not permitted to engage in acts of self-dealing or make decisions on behalf of a plan if they are in a conflict of interest situation.

The Department has in the past frequently exercised its statutory authority under section 408(a) of ERISA to grant both individual and class exemptions where it has been able to find that the criteria for granting such exemptions have been met. In general, it has responded to applications for exemption submitted by members of the public. This process has been helpful in providing relief for transactions which would otherwise have been prohibited, without impairing the interests of plans, participants and beneficiaries.

The Department recognizes the general perception that in many instances the prohibited transaction rules continue to present complex problems of compliance for fiduciaries charged with responsibility for employee benefit plan assets. Nevertheless, based on its experience in considering applications for individual and class exemptions, and in dealing with instances of abusive violations of the fiduciary responsibility rules of ERISA, the Department believes that, as a general matter, transactions entered into on behalf of plans with parties in interest are most likely to conform to ERISA's general fiduciary standards where the decision to enter into the transaction is made by an independent fiduciary.

Prohibited Transaction Exemption 78-19 (PTE 78-19) (43 FR 59915, December 22, 1978) and Prohibited Transaction Exemption 80-51 (PTE 80-51) (45 FR 49709, July 25, 1980) generally provide relief from the restrictions of section 406(a) of ERISA for transactions between parties in interest of plans and pooled separate accounts and collective investment funds maintained by insurance companies and banks, respectively, if, among other conditions, the plan has a five percent or less interest in the account or fund. Additional broad exemptive coverage is provided by PTEs 78-19 and 80-51, for parties in interest who are service providers of participating plans.

Established financial institutions, such as banks, insurance companies and registered investment advisers, must maintain current rosters or parties in interest with respect to plans that commit assets to single customer accounts, trust funds and those pooled accounts and collective funds which fail



to qualify for the relief provided by PTEs 78-19 and 80-51. These fiduciaries are required to undertake time consuming ERISA compliance checks for the numerous investment transactions under consideration each year to ascertain whether a party in interest of a plan, any of whose assets are subject to the fiduciary's management, would cause the transaction to be prohibited. In the case of a large plan, there may be thousands of parties in interest. Where a potentially prohibited party in interest transaction is identified and is not covered by an existing class exemption, the asset manager may have to choose between applying for an individual administrative exemption or foregoing the investment opportunity entirely. The Department believes that further actions would be appropriate in order to eliminate the need for individual exemptions wherever feasible, and that substantial deregulation in this area can be accomplished by administrative means without sacrificing the interests of plan participants and beneficiaries.

The exemption proposed in this document would be available for transactions that may involve assets of single customer accounts and funds managed by insurance companies, banks and registered investment advisers, as well as pooled separate accounts and collective trust funds maintained for a number of plans. Transactions involving assets of pooled separate accounts and collective investment funds that qualify for the relief contained in PTEs 78-19 and 80-51 may be entered into pursuant to those class exemptions or, in the alternative, may be covered by the exemption for qualified professional asset managers, when granted. However, the proposed exemption would not supersede three class exemptions identified in section I(b) of the proposal. The transactions described in, and the protective conditions adopted for, those exemptions were developed with regard to highly standardized industry practices and the generally accepted regulation that surrounds residential mortgage financing, mortgage pool and securities lending arrangements.

## II. Description of the Proposed Exemption

**A. The QPAM Concept:** As proposed, the class exemption would be available for various party in interest transactions that involve those assets of plans that are transferred for discretionary management to qualified professional asset managers (QPAMs). A QPAM is defined as a bank, insurance company or registered investment adviser that meets certain financial conditions. In

following the general pattern of the definition of "investment manager" in ERISA section 3(38), the Department recognizes that each of these categories of asset manager is subject to regulation by Federal or State agencies. The minimum capital and funds-under-management standards of the proposed exemption are intended to assure that the eligible fiduciaries managing the accounts or funds ("investment funds"), consisting of the assets of one or more plans, are established institutions which are large enough to discourage the exercise of undue influence upon their decision-making processes by parties in interest.

A financial entity would not achieve QPAM status with regard to a plan unless it enters into a written management agreement or issues a contract that delineates its management authority over investment fund assets and contains a statement acknowledging that it is a fiduciary.<sup>2</sup> As is made explicit in a general condition of the proposed exemption, the Department is prepared to grant broad exemptive relief only where an independent asset manager has, and in fact exercises, discretionary authority to cause an investment fund to enter into a transaction which is otherwise prohibited. Party in interest transactions that are negotiated by, e.g., an employer which sponsors a plan, and are then presented to a QPAM for approval would not qualify for the class exemption as proposed. However, the exemption, as proposed, would be available even though the transfer of assets by a plan to a QPAM is subject to general investment guidelines, so long as there is no arrangement, direct or indirect, for the QPAM to negotiate, or engage in, any specific transaction or to benefit any specific person.

A QPAM, and those who may be in a position to influence its policies, are expected to maintain a high standard of

integrity. Accordingly, the proposed exemption does not cover transactions if the QPAM or various "affiliates" have been convicted of various crimes (outlined in section I(g) of the proposal), that involve abuse or misuse of a position of trust, or felonies generally described in ERISA section 411.

**B. General Exemption:** The proposed exemption consists of four separate parts. The general exemption, set forth in Part I, would allow an investment fund managed by a QPAM to engage in all transactions described in ERISA section 406(a)(1) (A) through (D) with virtually all parties in interest except the QPAM which manages the assets involved in the transaction, and those parties most likely to have the power to influence the QPAM. In this latter regard, under section I(a), a QPAM would not be permitted to cause the investment fund to enter into a transaction if the party in interest dealing with the fund, or its "affiliate", (1) has the authority to appoint or terminate the QPAM as a manager of any of the plan's assets, (2) has the authority to negotiate the terms of the management agreement with the QPAM, or (3) has exercised such powers in the two years immediately preceding the date of the proposed transaction. Under this functional approach, the presence or absence of these disqualifying powers would be determined by the QPAM on a plan-by-plan basis; none of the parties in interest listed in section 3(14) of ERISA would be categorically excluded from the purview of the proposed relief. The principles of this paragraph may be illustrated by the following examples:

**Example (1).** Plan P establishes a trust fund for a portion of its assets with Bank B. Assume that B meets the criteria for a QPAM that are proposed. B uses Plan P assets to buy a building whose elevators are serviced by Company X under a maintenance contract. Under current law, an investment of Plan P assets to purchase a modern elevator from X, a party in interest described in ERISA section 3(14)(B), would violate the restrictions contained in section 406(a)(1)(A), and the transaction could not proceed until exempted by the Department. The general exemption set forth in Part I of the proposal would allow such a transaction.

**Example (2).** Corporation C is the named fiduciary of Plan P. C chooses Bank B to manage the portion of P's assets allocated for real estate investments. Bank B uses these assets to purchase a commercial building in New York City from Corporation Z. Z is a wholly-owned subsidiary of C. No part of the exemption would be available for

<sup>2</sup>Section 403(a) provides, in pertinent part, that, generally, all assets of a plan shall be held in trust by one or more trustees. Such trustee or trustees shall have exclusive authority and discretion to manage and control the assets of the plan, except to the extent that (1) the plan expressly provides that the trustee or trustees are subject to the direction of a named fiduciary who is not a trustee, or (2) authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 402(c)(3). Section 402(c)(3) of ERISA provides that a person who is a named fiduciary with respect to control or management of the assets of the plan may appoint an investment manager or managers to manage (including the power to acquire or dispose of) any assets of a plan.

It is the view of the Department that a delegation of authority to manage plan assets must describe with specificity the scope of the delegation and the duties to be undertaken by the investment manager. See section 404(a)(1) of ERISA.



the purchase of the building because Z is an affiliate (as defined in section V(c) of the proposed exemption) of a party in interest (C) which has the authority to appoint or terminate the QPAM.

*Example (3).* Plan M is a collectively bargained multiemployer pension plan administered by a joint board of union and employer trustees. The board of trustees chooses Insurance Company Y to manage a portion of its assets in a pooled separate account. The Insurance Company uses a portion of the pooled separate account assets to purchase computers from corporation Z, a contributing employer to Plan M. These computers will be leased to the general public. Neither Z nor any of its affiliates is a member of the board of trustees. Although Z is a party in interest, as an employer any of whose employees are covered by the plan, the general exemption of Part I is available for the purchase of the computers. In this regard, neither Z nor an affiliate has the authority with respect to the plan described in section I(a) of the exemption.

*Example (4).* Assume the same facts as in Example (3) except that an officer of Corporation Z was a member of the board of trustees of Plan M for the year ending December 31, 1984. Insurance Company Y is chosen on January 1, 1986 to manage plan assets as a successor to Investment Adviser A whose 3 year management contract expired on March 15, 1985. Although the officer had the authority to participate in the appointment of the QPAM and to negotiate the terms of the management contract, this authority was never exercised. Corporation Z can engage in transactions under Part I of the proposed exemption because its affiliate, the officer, did not, at the time of the transaction have the authority, and during the immediately preceding two years (when it had the authority) did not exercise it to appoint the QPAM or negotiate a management agreement with the QPAM with regard to the Plan's assets.

*Example (5).* QPAM X invests part of a pension fund's managed account to acquire a parcel of unimproved real property from its president Y. QPAM X has engaged in an act of self-dealing described in section 406(b)(1) of ERISA because it has caused the fund's assets to be used in a transaction which benefits a person in whom QPAM X has an interest which may affect the exercise of its best judgment as a fiduciary. Although Part I of the proposal provides an exemption for the purchase of property from Y, it does not

provide relief from acts described in section 406(b) of ERISA.

*Example (6).* Plan P chooses a registered investment adviser, QPAM I, to manage 40 percent of its assets. The Plan allocates an additional 30 percent of its assets to a single customer separate account maintained by QPAM II. QPAM II uses a portion of the separate account's assets to purchase U.S. Government securities directly from Broker-Dealer B, a wholly-owned subsidiary of QPAM I. Assuming that the QPAMs are unrelated entities, the general exemption of Part I is available for this transaction because neither QPAM I nor its affiliate, Broker-Dealer B has, or exercised during the preceding two years, the authority to appoint or terminate QPAM II (or negotiate the QPAM's contract) as a manager of the Plan's assets involved in the transaction. In this regard, a person who is a plan fiduciary, as defined in section 3(21)(A) of ERISA, is deemed to be a fiduciary only with respect to those plan assets over which it exercises, or has responsibility to exercise, those functions which make it a fiduciary (See 29 CFR 2510.3-21(d)(2)). Thus, a fiduciary will be treated as a party in interest other than a fiduciary (i.e., a service provider) when it engages in a transaction involving plan assets with respect to which it is not a fiduciary. Accordingly, no additional relief under the self-dealing provisions of ERISA section 406(b) is required for this transaction which would be covered by Part I of the proposal.

Section I(c) of the proposal requires that the QPAM function as the decision maker of the investment fund for all covered transactions. In general, the terms of the transactions are also to be negotiated by the QPAM. However, specific transactions may be effected by a person or entity that acts under the authority and general direction of the QPAM.

*Example (7).* A collective fund for plans managed by a bank that is a QPAM invests assets to acquire a large office building. Under section I(c), the QPAM could contract with an unrelated property manager or leasing agent which would operate the property on a day to day basis, under the authority and general direction of the QPAM, for the purpose of making it a productive investment. So long as the transactional criteria are generally established and monitored by the QPAM, and the QPAM approves each transaction, the property manager could negotiate lease, etc., arrangements with parties in interest eligible for the exemption.

Except as permitted in a limited special exemption for leases of office space (proposed in Part III), a QPAM or its affiliate may not enter into transactions with an investment fund which it manages. Moreover, under section I(d), the general exemption would not be available if the QPAM and the party in interest dealing with the fund are related parties. Section V(h) general provides that a party in interest and a QPAM would be "related" if either entity owns a five percent or more interest, directly or indirectly, in the other entity.

The rule proposed in section I(e) makes explicit the Department's view that a plan (and its sponsor) which provides a significant portion of the QPAM's business as a manager of plan funds would, in many cases, be in a position to improperly influence investment decisions of the QPAM. Accordingly, transactions with parties in interest of a plan would not be covered if the amount of the plan's assets that are managed by a QPAM together with the assets managed by the same QPAM that are attributable to other plans maintained by a common sponsor (or its affiliate) represent more than 10 percent of all employee benefit plan assets under the management of the QPAM.

*Example (8).* A QPAM is organized to manage the assets of only three plans, Plans X, Y and Z delegate responsibility for the management of \$3,000,000, \$6,000,000 and \$1,000,000, of their respective assets to the QPAM. The proposed exemption would be available for transactions involving the parties in interest of Plan Z, only.

*Example (9).* Corporation X and its wholly owned subsidiary, Corporation Y, maintain separate pension plans for their employees. The assets of Corporation X's plan and Corporation Y's plan are managed by Investment Adviser Z (a QPAM) and comprise 7 percent and 6 percent, respectively, of the total employee benefit assets managed by the Investment Adviser. The Investment Adviser uses plan assets of Corporation X to purchase a shopping center. The Investment Adviser proposes to purchase landscaping shrubbery from any party in interest of either plan. The proposed exemption would not be available for this transaction because the assets of Corporation X's plan (7 percent) when aggregated with the assets of the plan maintained by its affiliate, Corporation Y (6 percent), represent more than 10 percent of the total employee benefit assets managed by the QPAM. However, as proposed, the exemption would be available for transactions



involving parties in interest with respect to other plans managed by the QPAM if the conditions of the exemption are met.

**C. Special Exemptions for Employers:** Part II of the proposed exemption provides limited relief under section 406 (a) and (b) of ERISA for certain transactions involving those employers and their affiliates who cannot qualify for the general exemption provided by Part I.

Part II is divided into two subparts. Section II(a) would permit transactions involving the furnishing of goods and services to an investment fund managed by a QPAM by a party in interest if certain requirements are met. Transactions must be necessary for the administration or management of the investment fund and must take place in the ordinary course of a business engaged in by the party in interest with the general public. As a limitation, the proposal requires that no more than one percent of the party in interest's annual gross receipts from all business sources may be attributable to transactions engaged in under this special exemption. The application of section II(a) may be illustrated by the following two examples.

**Example (10).** Pursuant to a proper plan provision, Corporation X, a pension consulting firm which provides actuarial services in the ordinary course of its business, enters into an agreement with a QPAM for the management by the QPAM of the assets of the X-sponsored plan. The QPAM wishes to retain X to provide actuarial services with regard to the trust fund established for the plan. Although the relief afforded by Part I of the proposed exemption would not be available to Corporation X because it has the authority to hire and fire the QPAM, Part II of the exemption would permit Corporation X to provide the type of services that it normally furnishes to the public and that are necessary for the plan, if the remaining conditions of Part II are met.

**Example (11).** The Board of Directors of Corporation X allocates a portion of Plan P's assets to Investment Adviser I for management. I uses these assets to purchase a shopping center. I contracts with X, a lighting fixtures wholesaler, to purchase and install new fluorescent fixtures throughout the shopping center. The contract sales price for the fixtures and installation amounted to .05 percent of the total gross receipts received by X during its taxable year. The special exemption for employers contained in section II(a) is available for the purchase of fixtures and the accompanying services because the total cost of these goods and services is less than one percent of X's total annual

gross receipts and such goods and services are provided in the ordinary course of X's business.

Section II(b) would permit the leasing of office or commercial space by an investment fund to a party in interest if the unit of space under the lease is suitable for use by different tenants and does not exceed 15 percent of the rentable space of the office building or commercial space. The Department notes that the general exemption provided by Part I of the proposal would not provide relief from the limitations with respect to holdings by certain plans of employer securities and employer real property contained in section 407(a) of ERISA (even in the case of employers who contribute to multiple employer plans and do not hold the power of appointment over a QPAM). Section II(b), however, proposes an exemption from the restrictions of ERISA section 407(a) for transactions involving the leasing of office space to employers even where such leases might not otherwise qualify under the employer real property rules by reason of the definition of "qualifying employer real property" contained in ERISA section 407(d)(4).<sup>3</sup> However, in the case of a plan that is not an eligible individual account plan, immediately after the lease transaction, the aggregate fair market value of employer real property and employer securities held by the investment funds of the QPAM in which the plan has an interest may not exceed ten percent of the fair market value of the assets of the plan held in these investment funds. The application of section II(b) may be illustrated by the following example.

**Example (12).** Corporation X chooses Insurance Company I to manage Profit-Sharing Plan P's assets in a single customer separate account. I uses plan assets to purchase a fifty-story office building. I proposes to lease one floor of the building to Corporation Z, a wholly owned subsidiary of X. Real estate agent A will receive a commission from Z for locating the rental space. The special exemption provided by section II(b) is available for this transaction because the amount of space to be leased to Z is less than 15 percent of the rentable space of the office building and no commission will be paid by the separate account in connection with the transaction.

The availability of the relief provided by sections II(a) and II(b) of the proposal is further conditioned by the

<sup>3</sup> For example, a lease of an office by the investment fund to the employer may not meet the requirement of ERISA section 407(d)(4)(A) that a substantial number of leased parcels be dispersed geographically.

requirement that the transactions satisfy the provisions of sections I(c) through (g) of the proposed exemption.

**D. Specific Lease Exemption for QPAMs:** Part III of the proposed exemption provides limited relief under section 406 (a) and (b) of ERISA for the leasing of office space by an investment fund to the QPAM, an affiliate of the QPAM, or a person who cannot qualify for the general exemption provided by Part I because it holds (or has held) the power of appointment described in section I(a). For this exemption to be available, the unit of space under the lease must be suitable for use by different tenants and cannot exceed one percent of the rentable space in the office building.

The Department recognizes that a QPAM or its affiliate often needs to occupy space in close proximity to those assets managed by the QPAM on behalf of plans. The one percent limitation on the amount of space leased in an office building is designed to ensure that the terms of the lease are no more favorable to the QPAM or its affiliate than are available to other occupants of the building in which the investment fund has an investment.

**E. Places of Public Accommodation:** In the regular operations of places of public accommodation, such as hotels and motels, that may be purchased by a QPAM on behalf of an investment fund, many people, including parties in interest with respect to a plan managed by the QPAM, may receive the use of rooms, services, food, etc. Such hotels and motels will typically be managed by hotel management companies who probably would not be aware of the relationships of the hotel and motel guests to the QPAM and the plans whose assets are managed by the QPAM. Accordingly, based on precedents established in several class and individual exemptions, the Department is proposing a special exemption, set forth in Part IV, that would provide relief from sections 406(a)(1) (A) through (D) and 406(b) (1) and (2) of ERISA for the furnishing of services and facilities by a place of public accommodation owned by an investment fund managed by a QPAM to all parties in interest if the services and facilities are furnished on a comparable basis to the general public.

#### Notice to Interested Persons

Because all plan participants and beneficiaries whose plans participate in investment funds managed by QPAMs could conceivably be interested persons, the Department has determined that the



only practical form of notice is by publication in the *Federal Register*.

#### 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 ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA, 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 ERISA; 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 ERISA and 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 and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and 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.

#### Proposed Exemption

The Department has under consideration the granting of the following exemption under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

**Part I. General Exemption.** Effective [date of grant of this exemption], the restrictions of ERISA section 406(a)(1) (A) through (D) and the taxes imposed by Code section 4975 (a) and (b), by reason of Code section 4975(c)(1) (A) through (D), shall not apply to a transaction between a party in interest with respect to an employee benefit plan and an investment fund (as defined in

section V(b)) in which the plan has an interest, and which is managed by a qualified professional asset manager (QPAM) (as defined in section V(a)), if the following conditions are satisfied:

(a) At the time of the transaction the party in interest, or its affiliate (as defined in section V(c)), does not have, and during the immediately preceding two years has not exercised, the authority to—

(1) Appoint or terminate the QPAM as a manager of any of the plan's assets, or

(2) Negotiate the terms of the management agreement with the QPAM (including renewals or modifications thereof) on behalf of the plan;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 81-6 (46 FR 7527; 1/23/81) (relating to securities lending arrangements),

(2) Prohibited Transaction Exemption 81-7 (46 FR 7520; 1/23/81) (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaction Exemption 82-87 (47 FR 21331; 5/18/82) (relating to certain mortgage financing arrangements);

(c) The terms of the transaction are negotiated on behalf of the investment fund by, or under the authority and general direction of, the QPAM, and the QPAM makes the decision on behalf of the investment fund to enter into the transaction;

(d) The party in interest dealing with the investment fund is neither the QPAM nor a person related to the QPAM (within the meaning of section V(h));

(e) The transaction is not entered into with a party in interest with respect to any plan whose assets managed by the QPAM, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof described in section V(c)(1) of this exemption) or by the same employee organization, and managed by the QPAM, represent more than 10 percent of the total employee benefit plan assets (as defined in section V(i)) managed by the QPAM;

(f) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof, the terms of the transaction are at least as favorable to the investment fund as the terms generally available in arm's length transactions between unrelated parties;

(g) Neither the QPAM nor any affiliate thereof (as defined in section V(d)), nor any other, direct or indirect, of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction

has been either convicted or released from imprisonment, whichever is later, as a result of: any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or any other crime described in section 411 of ERISA. For purposes of this section (g), a person shall be deemed to have been "convicted" from the date of the judgement of the trial court, regardless of whether that judgement remains under appeal.

**Part II. Specific Exemptions for Employers.** Effective [date of grant of this exemption], the restrictions of sections 406(a), 406(b)(1) and 407(a) of ERISA and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of Code section 4975(c)(1) (A) and (E), shall not apply to:

(a) The sale, leasing, or servicing of goods, or to the furnishing of services, to an investment fund managed by a QPAM by a party in interest with respect to a plan having an interest in the fund, if—

(1) The party in interest is an employer any of whose employees are covered by the plan or is a person who is a party in interest by virtue of a relationship to such an employer described in subparagraphs (E), (G), (H) or (I) of ERISA section 3(14),

(2) The transaction is necessary for the administration or management of the investment fund,

(3) The transaction takes place in the ordinary course of a business engaged in by the party in interest with the general public,

(4) Effective for taxable years of the party in interest furnishing goods and services after the date this exemption is granted, no more than one (1) percent of gross receipts derived from all sources may be attributable in any taxable year of the party in interest to transactions engaged in with an investment fund pursuant to section II(a) of this exemption, and

(5) The requirements of sections I (c) through (g) are satisfied with respect to the transaction;



(b) The leasing of office or commercial space by an investment fund managed by a QPAM to a party in interest with respect to a plan having an interest in the investment fund, if—

(1) The party in interest is an employer any of whose employees are covered by the plan or is a person who is a party in interest by virtue of a relationship to such an employer described in subparagraphs (E), (G), (H), or (I) of ERISA section 3(14),

(2) No commission is paid by the investment fund in connection with the transaction,

(3) Any unit of space leased to the party in interest by the investment fund is suitable (or adaptable without excessive cost) for use by different tenants.

(4) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building or the commercial center (if the lease does not pertain to office space),

(5) In the case of a plan that is not an eligible individual account plan (as defined in section 407(a)(3) of ERISA), immediately after the transaction is entered into, the aggregate fair market value of employer real property and employer securities held by investment funds of the QPAM in which the plan has an interest does not exceed 10 percent of the fair market value of the assets of the plan held in these investment funds. For purposes of this requirement, the term "employer real property" means real property leased to, and the term "employer securities" means securities issued by, an employer any of whose employees are covered by the plan or a party in interest of the plan by reasons of a relationship to the employer described in subparagraphs (E), (G), (H), or (I) of ERISA section 3(14), and

(6) The requirements of sections I(c) through (g) are satisfied with respect to the transaction.

**Part III. Specific Lease Exemption for QPAMs.** Effective [date of grant of this exemption], the restrictions of section 406(a)(1) (A) through (D) and 406(b) (1) and (2) of ERISA and the taxes imposed by Code section 4975 (a) and (b), by reason of Code section 4975(c)(1) (A) through (E), shall not apply to the leasing of office space by an investment fund managed by a QPAM to the QPAM, a person who is a party in interest of a plan by virtue of a relationship to such QPAM described in subparagraphs (G), (H), or (I) of ERISA section 3(14) or a person not eligible for the General Exemption of Part I by reason of section I(a), if—

(a) The amount of space covered by the lease does not exceed one (1) percent of the rentable space of the office building in which the investment fund has the investment,

(b) The unit of space subject to the lease is suitable (or adaptable without excessive cost) for use by different tenants,

(c) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof, the terms of the transaction are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties, and

(d) No commission is paid by the investment fund in connection with the transaction.

**Part IV. Transactions Involving Places of Public Accommodation.** Effective [date of grant of this exemption], the restrictions of section 406(a)(1)(A) through (D) and 406(b) (1) and (2) of ERISA and the taxes imposed by Code section 4975 (a) and (b), by reason of Code section 4975(c)(1) (A) through (E), shall not apply to the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by an investment fund managed by a QPAM to a party in interest with respect to a plan having an interest in the investment fund, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

**Part V. Definitions and General Rules.**

For the purposes of this exemption:

(a) The term "qualified professional asset manager" or "QPAM" means—

(1) A bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 that has the power to manage, acquire or dispose of assets of a plan, which bank has, as of the last day of its most recent fiscal year, equity capital (as defined in section V(j)) in excess of \$1,000,000, or

(2) An insurance company which is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan, which company has, as of the last day of its most recent fiscal year, net worth (as defined in section V(k)) in excess of \$1,000,000 and which is subject to supervision and examination by a State authority having supervision over insurance companies, or

(3) An investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess of \$50,000,000 and either (A) shareholders' or partners' equity (as defined in section V(1)) in

excess of \$750,000 or (B) all of its obligations and liabilities assumed or guaranteed by a person described in (a)(1) or (a)(2) of section V above or by a broker-dealer registered under the Securities Exchange Act of 1934 that has, as of the last day of its most recent fiscal year, net worth in excess of \$750,000, that has acknowledged in a written management agreement that it is a fiduciary with respect to the plan.

(b) An "investment fund" includes single customer and pooled separate accounts maintained by an insurance company, individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or nor in the custody of the QPAM) is subject to the discretionary authority of the QPAM.

(c) For purposes of section I(a), an "affiliate" of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, partner or employee (but only if the employer of such employee is the plan sponsor); and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.

(d) For purposes of section I(g) an "affiliate" of a person means—

(1) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, relative of, or partner in, any such person;

(3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, partner, or owner; and

(4) Any employee of the person who—  
(A) is a highly compensated employee, defined in section 4975(e)(2)(H) of the Code, or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.

(e) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term "party in interest" means a person described in ERISA section 3(14) and includes a "disqualified



person," as defined in Code section 4975(e)(2).

(g) The term "relative" means a relative as that term is defined in ERISA section 3(15), or a brother, a sister, or a spouse of a brother or sister.

(h) A QPAM is "related" to a party in interest for purposes of section I(d) of this exemption if the party in interest (or a person controlling, or controlled by, the party in interest) owns, directly or indirectly, a five percent or more interest in the QPAM or if the QPAM (or a person controlling, or controlled by, the QPAM) owns, directly or indirectly, a five percent or more interest in the party in interest. For purposes of this definition, the term "interest" means with respect to ownership of an entity—

(1) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(2) The capital interest or the profits interest of the entity if the entity is a partnership, or

(3) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise.

(i) For purposes of section I(e), the term "employee benefit plan assets" includes assets attributable to plans described in section 3(3) of ERISA and section 4975(e)(1) of the Code, with respect to which assets the QPAM is a fiduciary as defined in section 3(21)(A) of ERISA.

(j) For purposes of section V(a)(1), the term "equity capital" includes stock (common and preferred), surplus, undivided profits, contingency reserves and other capital reserves.

(k) For purposes of section V(a)(2), the term "net worth" includes capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves.

(l) For purposes of section V(a)(3), the term "shareholders' or partners' equity" is the equity shown in the most recent balance sheet prepared within the two years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

Signed at Washington, D.C. this 14 day of December.

Jeffrey N. Clayton,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-34563 Filed 12-20-82; 8:45 am]

BILLING CODE 4510-29-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (82-68)]

### NASA Advisory Council (NAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Informal Task Force for the Study of Effective Shuttle Utilization.

**DATES:** January 5, 1983, 9 a.m. to 5 p.m.; January 6, 1983, 8:30 a.m. to 4 p.m.

**ADDRESS:** Nasa Headquarters, Room 7002, 400 Maryland Avenue SW, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. Carl R. Praktish, Code LB-4, National Aeronautics and Space Administration, Washington, DC 20546 (202/755-8380).

**SUPPLEMENTARY INFORMATION:** The NASA Advisory Council Informal Task Force for Effective Shuttle Utilization was established under the NASA Advisory Council to conduct a study of the directions NASA should take to ensure the most effective use of the Shuttle capability and to report its findings and recommendations to the Council. The Task Force is chaired by Edgar M. Cortright, and has a total of 11 members.

The meeting will be closed to the public from 8:30 a.m. to 4 p.m. on January 6, 1983, because the members will consider the qualifications of candidates to participate in the study either as additional Task Force members or as other contributors. Because this session will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that this session should be closed to the public.

For the open sessions, visitors will be admitted to the meeting room up to its capacity, which is approximately 60 persons including Task Force members and other participants. Visitors will be requested to sign a visitor's register.

**TYPE OF MEETING:** Open—except for the closed session as noted in the following agenda.

#### AGENDA:

January 5, 1983

9 a.m.—Introduction

9:10 a.m.—Policy and Operations

10:45 a.m.—Marketing and Pricing

3:15 p.m.—Future Launch Vehicles

5 p.m.—Adjourn

January 6, 1983

8:30 a.m.—Planning Session (closed)

4 p.m.—Adjourn

Richard L. Daniels,

Director, Management Support Office, Office of Management.

December 15, 1982.

[FR Doc. 82-34478 Filed 12-20-82; 8:45 am]

BILLING CODE 7510-01-M

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Agency Report Forms Under OMB Review

**AGENCY:** Overseas Private Investment Corporation.

**ACTION:** Request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

**DATE:** Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer and the Agency Submitting Officer of your intent as early as possible.

**ADDRESS:** Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB reviewer.

#### FOR FURTHER INFORMATION CONTACT:

**OPIC Agency Submitting Officer:** L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, Room 405, 1129 20th Street, NW., Washington, D.C. 20527; Telephone (202) 653-2818.

**OMB Reviewer:** Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; Telephone (202) 395-7231.

#### SUPPLEMENTARY INFORMATION:

*Summary of Form Under Review*

*Type of Request:* Reinstatement.

*Title:* Project Information Report.

*Form Number:* OPIC 71.

*Frequency of Use:* Annually.