

WV960006 (March 15, 1996)

Volume III

Alabama

AL960008 (March 15, 1996)

Florida

FL960015 (March 15, 1996)

FL960017 (March 15, 1996)

FL960049 (March 15, 1996)

FL960053 (March 15, 1996)

FL960055 (March 15, 1996)

Volume IV

Illinois

IL960001 (March 15, 1996)

IL960002 (March 15, 1996)

IL960016 (March 15, 1996)

Indiana

IN960001 (May 17, 1996)

IN960002 (March 15, 1996)

IN960003 (March 15, 1996)

IN960004 (March 15, 1996)

IN960005 (March 15, 1996)

IN960006 (March 15, 1996)

IN960016 (March 15, 1996)

IN960017 (March 15, 1996)

IN960020 (March 15, 1996)

IN960039 (March 15, 1996)

IN960059 (May 24, 1996)

IN960060 (August 2, 1996)

IN960061 (August 2, 1996)

Volume V

Iowa

IA960003 (March 15, 1996)

IA960019 (March 15, 1996)

IA960038 (March 15, 1996)

Kansas

KS960008 (March 15, 1996)

KS960012 (March 15, 1996)

KS960016 (March 15, 1996)

KS960018 (March 15, 1996)

KS960019 (March 15, 1996)

KS960020 (March 15, 1996)

KS960021 (March 15, 1996)

KS960022 (March 15, 1996)

KS960023 (March 15, 1996)

Volume VI

California

CA960035 (March 15, 1996)

Nevada

NV960001 (March 15, 1996)

NV960005 (March 15, 1996)

Washington

WA960002 (March 15, 1996)

Wyoming

WY960004 (March 15, 1996)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and

related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487-4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 18th day of October 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96-27153 Filed 10-24-96; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefits Administration

[Application No. D-10240, et al.]

Proposed Exemptions; Beall Corporation

AGENCY: Pension and Welfare Benefits Administration, 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 restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must

also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

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 proposed 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 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Beall Corporation 401(k) Profit Sharing Plan (the Plan) Located in Portland, OR

[Application No. D-10240]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 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 sections 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) by the Plan of four acres of unimproved real property (the Land) to the Diamond Beall Development Corporation, an Oregon general partnership and party in interest with respect to the Plan, provided that the following conditions are satisfied: (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no losses nor incurs any expenses as a result of the Sale; (3) the Plan receives in cash the greater of \$479,160, or the fair market value of the Land as determined at the time of the Sale; and (4) the terms of the Sale are no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan which is intended to satisfy the qualification requirements of sections 401(a) and 401(k) of the Code. The Employer may make discretionary matching contributions and/or profit sharing contributions. The Plan has approximately 136 participants and beneficiaries who would be affected by the transaction. As of October 31, 1995, the fair market value of the net assets of the Plan was \$6,457,677.

2. St. Johns Corporation (SJC) is a holding company and the sole owner of Beall Corporation (the Employer), employer of a portion of Plan participants. Beall Corporation is the sole owner of several subsidiaries that employ the balance of Plan participants.

The applicant is Jerry E. Beall, acting as General Partner of the Diamond Beall Development Company. Mr. Beall is the principal owner of SJC, which owns property adjacent to the Land. Mr. Beall is also a trustee of the Plan.

3. On February 10, 1975, the Land was purchased for the Plan as a long-term real estate investment for \$92,000 from the Port of Portland, an unrelated third party.¹ The property is located in

the Rivergate Industrial District in Portland, Oregon. The Land consists of 4 acres of vacant land and is located adjacent to property where SJC conducts its operations. Mr. Beall represents that the Land has not been leased or used by any parties since the time of the purchase.

The aggregate real estate taxes and maintenance fees for 1975 through 1996 were \$90,284.09. The applicant further represents that these were the only costs incurred by the Plan in carrying the property.

4. The Land was appraised as of January 1, 1996 (the Appraisal) by Karl L. Lucke (Mr. Lucke), an independent real estate appraiser certified in the State of Oregon. Mr. Lucke relied on the Direct Sales Comparison (Market) Approach exclusively and estimated that as of January 1, 1996, the fair market value of the Land was \$2.50 per square foot, for a total of \$436,000. The Appraisal includes the following description of the Land and its surrounding neighborhood: “* * * the streets and railroad system are being expanded and construction activity has increased lately. The Rivergate Industrial District is a growing industrial area * * * the location and available land make this a desirable place for industrial development and demand is growing for sites * * * the subject property lies in the path of growth.” The Appraisal also states that the Rivergate District has experienced significant recent activity, and that prices for Rivergate sites have increased over the last few years.

Because the Land is located on the lot adjacent to SJC's business facilities, Mr. Lucke was asked to determine whether there should be any premium value associated with the Land. In this regard, Mr. Lucke states that there was insufficient market data to support a premium for an adjacent landowner or related company with respect to the proposed transaction.

5. The applicant provided information received from the Port of Portland in August, 1996, regarding the Port's recent list prices for the remainder of the undeveloped Rivergate Industrial District. Current list prices, and the prices of sales closing subsequent to the January 1996 Appraisal, reflect that prices for parcels similar to the Land have increased 20 to 25% within the past year, after several years of nominal appreciation.

In addition, the Port's information shows that the three sales of comparable

parcels that have closed subsequent to the Appraisal were for \$2.75 to \$2.86 per square foot. Accordingly, the applicant proposes to pay \$2.75 per square foot for the Land, for a total of \$479,160.

The applicant represents that the Land will be revalued at the time of the proposed transaction, in order to establish its fair market value.

7. Mr. Beall, as General Partner of Diamond Beall Development Corporation, proposes to purchase the Land from the Plan in a one-time cash transaction. The Plan will pay no real estate commissions or other costs associated with the sale of the Land. As of October 31, 1995, the Land represented 6.7% of the Plan's total assets. The applicant represents that considering the cost basis of the property, the investment has not performed well in that the Plan has received an annual return of approximately 4.3%, based on its initial purchase price, subsequent annual cash outlays, and appraised value of \$436,000. Carrying costs have recently totalled \$5,000 to \$7,000 per year. The Plan has actively attempted to lease the property in the past but has been unable to do so.

It is represented by the applicant that the proposed transaction is in the best interest and protective of the Plan because it will allow the Plan to increase its liquidity and diversify its assets.

8. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act because: (1) the proposed sale will be a one-time cash transaction; (2) the Plan will experience no losses nor incur any expenses from the Sale; (3) the Plan will receive in cash as consideration for the Sale the greater of \$479,160, or the fair market value of the Land as determined at the time of the Sale; and (4) the terms of the Sale are no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's-length with unrelated third parties.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Wayne Obstetrical Group, P.A. Money Purchase Retirement Plan (the Wayne Plan); Pediatric Professional Associates, P.A. Profit Sharing Plan (the Pediatric Plan); Physicians for Women, P.A. Profit-Sharing Plan and Trust (the Physicians Plan; collectively, the Plans) Located in Wayne, New Jersey

[Application Nos. D-10262, D-10263, and D-10264]

¹ The Department expresses no opinion as to whether the Plan's acquisition and holding of the

Land violated any relevant provision of Part 4, Subtitle B, of Title 1 of the Act, and no exemption from such provisions is proposed herein.

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loans totalling \$530,000 by the Plans to S & D Associates (S & D), provided that the following conditions are satisfied:

(a) The terms and conditions of the loans are at least as favorable to the Plans as those the Plans could obtain in comparable arm's length transactions with unrelated parties;

(b) At all times, the loans are secured by a first mortgage on certain real property (the Property), which is duly recorded under New Jersey State law;

(c) At all times, the fair market value of the Property, as established by a qualified, independent appraiser, equals at least 150% of the total outstanding balances of the loans;

(d) At all times, no more than 25% of the assets of each lending Plan are invested in the loans;

(e) A qualified, independent fiduciary has determined that the loans are in the best interests of the Plans; and

(f) At all times, the independent fiduciary enforces compliance with the terms and conditions of the loans and of the exemption, including foreclosure on the Property in the event of default.

Summary of Facts and Representations

1. Wayne Obstetrical Group, P.A. is a New Jersey corporation owned by Seymour Eisner, Bernard Simon, Barry Cohen, and Steven Domnitz (each a 25% shareholder). As of December 31, 1994, the Wayne Plan, a money purchase pension plan, had approximately nine participants and total assets of \$2,975,100. The trustees of the Wayne Plan are Seymour Eisner, Bernard Simon, and Barry Cohen.

Pediatric Professional Associates, P.A. is a New Jersey corporation owned by Alvin Edelstein, Abraham H. Topchik, Herbert L. Cole, Israel I. Rayman, and Geraldine Nelson (each a 20% shareholder). As of July 31, 1995, the Pediatric Plan, a profit sharing plan, had approximately 18 participants and total assets of \$4,934,064. The trustees of the Pediatric Plan are the five owners, above.

Physicians for Women, P.A. is a New Jersey corporation owned by Les A.

Burns, Kenneth Garrett, Leonard T. Nicosia, and Arthur Suffin (each a 25% shareholder). As of December 31, 1994, the Physicians Plan, a profit sharing plan, had approximately 15 participants and total assets of \$3,384,784. The trustees of the Pediatric Plan are the four owners, above, and Edwin J. Pear.

2. An administrative exemption is requested to permit the Plans to make loans totalling \$530,000 to S & D, a New Jersey partnership. The partners of S & D are as follows: Bernard Simon (a 19% partner), Seymour J. Eisner (19%), Barry Cohen (19%), Robert Natusch (12.5%), Lawrence May (12.5%) and a partnership known as 7 Oak Ridge Partners (18%). The partners of 7 Oak Ridge Partners are as follows: Les Burns, Kenneth Garrett, Leonard Nicosia, Edward Pear, Alvin Edelstein, Herbert Cole, Geraldine Nelson, Ian Rayman, and Abraham Topchik (all equal partners).

Specifically, the Wayne Plan will lend \$230,000, the Pediatric Plan will lend \$100,000, and the Physicians Plan will lend \$200,000. At all times, no more than 25% of the assets of each lending Plan may be invested in the loans. It is intended that S & D use the proceeds of the proposed loans to retire an outstanding first mortgage held by Lakeland State Bank (Lakeland) on the Property, which S & D owns and which S & D currently leases to the sponsors of the aforementioned Plans, among other tenants. As of November 30, 1995, the outstanding balance on this mortgage was approximately \$536,000, which amount becomes due and payable on January 1, 1997.

3. The loans will be secured by a first mortgage on the Property, to be duly recorded under New Jersey State law. The Property, which consists of a two-story mixed-use building of 9936 sq. ft. on 1.34 acres, is located at 7 Oak Ridge Road, West Milford, New Jersey. The Property has office space on the first floor that is currently being leased to the Plans' sponsors and to other professionals, as well as eight one-bedroom residential apartments on the second floor. S & D will assign these leases and the excess net rentals collectible thereunder to the Plans as additional collateral for the loans.

The Property was appraised by Mr. Robert D. Clifford, MAI, RM of Value Analysis Incorporated, an independent general real estate appraiser certified in the State of New Jersey. Relying on the income approach to valuation, Mr. Clifford concluded that the fair market value of the leased fee interest of the Property was \$800,000, as of December 11, 1995. Thus the fair market value of the Property equals at least 150% of the

total outstanding balances of the loans, which will be a continuing requirement for the duration of the loans. The Property will also be insured against casualty loss in an amount not less than the total principal amounts of the loans (plus accrued but unpaid interest), with the Plans as the named beneficiaries of the policy.

4. The loans will each provide for an interest rate of 11% per annum and a term of 10 years, as evidenced by a promissory note. The notes will require S & D to make monthly payments of principal and interest on the loans, to be fully amortized over the 10-year term. The Plans will pay no fees nor other expenses relating to the loans.

Lakeland, an unrelated lender, has held the current mortgage on the Property for almost 10 years. The mortgage has a balloon every five years, which requires renegotiation. The last mortgage extension and modification agreement will expire on January 1, 1997. In keeping with the commercial practices of other area banks, Lakeland will not grant a "permanent mortgage" on such commercial property. In a letter dated November 30, 1995, Lakeland states that if it were their policy to grant S & D a permanent mortgage, they would, under the then current financial conditions, seek an interest rate of 11%.

5. Naskret, Selzer & Associates, P.A., Certified Public Accountants (Naskret, Selzer) represents in a letter from Harold S. Selzer dated August 14, 1996 that they will serve as an independent fiduciary to represent the interests of the Plans with respect to the proposed loans. Naskret, Selzer represents that it is unrelated to and independent of S & D and the Plans' sponsors and derives less than 1% of its annual income from S & D. Naskret, Selzer represents that it has extensive experience as a fiduciary under the Act, that it is knowledgeable as to the subject loan transactions, and that it acknowledges and accepts its duties, responsibilities, and liabilities in acting as a fiduciary with respect to the Plans.

6. Naskret, Selzer has reviewed the terms and conditions of the loans and determined that such terms and conditions are at least as favorable to the Plans as those the Plans could obtain in comparable arm's length transactions with unrelated parties, as evidenced by the terms required by Lakeland in their letter dated November 30, 1995. The loans will be secured by a first mortgage on the Property, which has been independently appraised to insure that its fair market value equals at least 150% of the total outstanding balances of the loans. The leases of office and apartment units in the Property and the

excess net rentals collectible thereunder will serve as additional collateral for the loans.

Naskret, Selzer represents that it believes the proposed loans are in the best interest of the Plans and their respective participants and beneficiaries. Naskret, Selzer has determined that the proposed loans are appropriate for the Plans in light of the Plans' overall investment portfolios because the loans will add a degree of stability and liquidity to the Plans. Naskret, Selzer has also examined the financial viability of S & D, based upon S & D's tax returns for years 1994 and 1995, and concluded that S & D has the ability to repay the loans. S & D has timely made all monthly payments during the approximately 10 years Lakeland has held the current mortgage on the Property.

Finally, Naskret, Selzer will, at all times, monitor and enforce S & D's compliance with the terms and conditions of the loans and of the exemption, including foreclosure on the Property in the event of default.

7. In summary, the applicants represent that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) the terms and conditions of the loans will be at least as favorable to the Plans as those the Plans could obtain in comparable arm's length transactions with unrelated parties; (b) at all times, the loans will be secured by a first mortgage on the Property, which is duly recorded under New Jersey State law; (c) at all times, the fair market value of the Property, as established by a qualified, independent appraiser, will equal at least 150% of the total outstanding balances of the loans; (d) at all times, no more than 25% of the assets of each lending Plan will be invested in the loans; (e) Naskret, Selzer, acting as an independent fiduciary for the Plans, has determined that the loans are in the best interests of the Plans; and (f) at all times, the independent fiduciary will enforce compliance with the terms and conditions of the loans and of the exemption, including foreclosure on the Property in the event of default.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons by personal delivery or first-class mail within 10 days of the date of publication of the notice of pendency in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and/

or to request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 40 days of the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

National Baptist Publishing Board Pension Plan (the Plan) Located in Nashville, TN

[Application No. D-10283]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 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 sections 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) of common stock of Citizens Savings Bank and Trust Company (the Stock) located in Nashville, Tennessee, by the Plan to AmeriStar Investments and Trust, a division of First American National Bank (AmeriStar Investments), Trustee of the Plan and party in interest with respect to the Plan; provided that: (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expenses from the Sale; and (3) the Plan receives as consideration from the Sale the greater of the following amounts: (a) the fair market value of the Stock as of the date of the Sale plus interest at 6% for the period March 31, 1993 through the date the Stock is sold by the Plan; or (b) the total cost of the investment, \$100,000, plus interest at 6% for the period March 31, 1993 through the date the Stock is sold by the Plan.

Summary of Facts and Representations

1. The Plan is a defined benefit plan sponsored by the National Baptist Publishing Board (the Sponsor). As of March 31, 1996, the estimated number of Plan participants and beneficiaries was 93. As of July 31, 1995, total assets of the Plan equaled \$1,387,496, with approximately .35% of total Plan assets as of that date invested in the Stock, based on the fair market value conclusion of an appraisal conducted as of July 21, 1994.

2. On or about May 27, 1986, Dr. T.B. Boyd III, President and CEO of the

Sponsor, used his authority to act on behalf of the Sponsor and directed AmeriStar Investments, a division of First American National Bank (the Bank), to purchase a seven year, six percent convertible subordinated debenture issued by Citizens Bank for \$100,000 (the Debenture). At the time Dr. Boyd was also the Chairman of the Board of Citizens Bank. AmeriStar Investments, as applicant for this exemption, represents that at that time, Dr. Boyd owned approximately 42 percent of the outstanding common stock of Citizens Bank. Various family members owned an additional 11 percent of Citizens Bank's outstanding common stock.

The applicant further represents that a representative of the Bank initially advised against the investment, but indicated that the Sponsor could direct the Bank in writing to make the investment on behalf of the Plan.

Pursuant to Dr. Boyd's written instructions, AmeriStar Investments purchased the Debenture on behalf of the Plan in June of 1986. In 1991, the Bank discovered that Dr. Boyd had a significant ownership interest in Citizens Bank at the time of the Plan's purchase of the Debenture, and consequently that the purchase of the Debenture may have been a prohibited transaction.² As of 1991, the Debenture's market value was approximately \$37,000, and AmeriStar Investments determined it was in the Plan's best interest to hold the Debenture until its value increased, rather than sell the Debenture immediately for a loss.

The Debenture paid interest at six percent in accordance with its terms until March 31, 1993 when it was converted into Citizens Bank common stock. Under its original terms, the Debenture was to be converted into 1,100 shares of stock in June, 1993. Citizens Bank offered to convert the Debenture earlier than June, with a conversion bonus of 110 shares. Accordingly, as of March 31, 1993, the Debenture was converted into 1,210 shares of Stock.

3. The applicant represents that an active market does not currently exist for the Stock and no dividends have been paid on the Stock. According to a valuation as of December 31, 1993, prepared on July 21, 1994, by Mercer Capital, an independent valuation firm,

² The Department notes that the decision to purchase the Debenture is governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. The Department is not proposing relief herein for any violations of Part 4 of Title I of the Act which may have arisen as a result of the acquisition and holding by the Plan of the Debenture, and subsequently, the Stock.

the fair market value of the Stock was \$5.60 per share. Based on that valuation, the Plan's total investment in the Stock was worth \$6,776.

4. The Bank desires to enter into the proposed transaction in order to protect the participants in the Plan from the risks of investment loss associated with the Stock. The applicant represents that the best interest of the plan and its participants and beneficiaries are protected by disposing of the Stock for a sales price in excess of its fair market value and by restoring certain lost earnings to the Plan. In this regard, AmeriStar proposes to purchase the Stock³ for the greater of the following amounts: (a) the fair market value of the Stock as of the date of the Sale, plus interest at 6% for the period March 31, 1993 through the date the Stock is sold by the Plan; or (b) the total cost of the investment, \$100,000, plus interest at 6% for the period March 31, 1993 through the date the Stock is sold by the Plan.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria for an exemption under section 408(a) of the Act for the following reasons: (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expenses from the Sale; and (3) the Plan receives as consideration from the Sale the greater of the fair market value of the Stock as of the date of the Sale, plus interest at 6% for the period March 31, 1993 through the date the Stock is sold by the Plan; or the total cost of the investment, \$100,000, plus interest at 6% for the period March 31, 1993 through the date the Stock is sold by the Plan.

NOTICE TO INTERESTED PERSONS: Notice will be distributed to interested persons within 30 days of the date of publication of this Notice in the Federal Register. Comments and requests for a hearing are due within 60 days of the publication date of this Notice.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (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 of 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;

(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; and

(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, DC, this 22nd day of October, 1996.

Ivan Strassfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
Department of Labor.*

[FR Doc. 96-27441 Filed 10-24-96; 8:45 am]

BILLING CODE 4510-29-P

[Prohibited Transaction Exemption 96-80; Exemption Application No. D-10255, et al.]

Grant of Individual Exemptions; Lehman Brothers, Inc.

AGENCY: Pension and Welfare Benefits Administration, 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 1986 (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 proposed exemption 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 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) 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.

Lehman Brothers, Inc. (Lehman)
Located in New York, New York

[Prohibited Transaction Exemption 96-80;
Exemption Application No. D-10255]

Exemption

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)

³ AmeriStar is also attempting to sell the Stock to an unrelated third party. If the sales price is less than \$100,000 plus interest at 6% from March 31, 1993 to the date of the Sale, AmeriStar will make up the difference to the Plan.