

(excluding activation costs) by the number of inmate-days incurred for the preceding fiscal year, and then by multiplying the quotient by 365.

Under § 505.2, the Director of the Bureau of Prisons determined that, based upon fiscal year 2004 data, the fee to cover the average cost of incarceration for Federal inmates in 2004 was \$23,267.

Harley G. Lappin,

Director, Bureau of Prisons.

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D-11328, et al.]

Proposed Exemptions; George N. Newton, Individual Retirement Account (the IRA)

AGENCY: Employee Benefits Security 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 restrictions 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 requests 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 requests 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.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____,

stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or fax. Any such comments or requests should be sent either by e-mail to: "moffitt.betty@dol.gov", or by fax to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 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, 5 U.S.C. App. 1 (1996), 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.

George N. Newton, Individual Retirement Account (the IRA), Located in Waco, Texas, Application No. D-11328

Proposed Exemption

The Department is considering granting an exemption under the authority of 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 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 arrangement involving the in-kind distributions by the IRA to Mr. George N. Newton (Mr. Newton), a disqualified person with respect to the IRA, in two installments of 50 percent (50%) each, of the IRA's ownership interest in an unencumbered, improved parcel of real property (the Property) located in San Antonio, Texas, in connection with the required minimum distributions rules under the Code; provided the following conditions are satisfied:

(1) The two installments of the in-kind distributions by the IRA occur on December 30, 2005, through January 3, 2006;

(2) The terms and conditions of the transactions are at least as favorable to the IRA, as the terms of similar transactions negotiated at arm's length with unrelated third parties;

(3) The fair market value of the IRA's interest in the Property is determined by an independent, qualified appraiser, as of the date the first of the two installments of the in-kind distributions is made to Mr. Newton; and

(4) The IRA does not pay any commissions, costs, charges, fees, or other expenses in connection with the in-kind distributions.

Summary of Facts and Representations

1. The IRA which is the subject of this exemption is an individual retirement account, as described under section 408(a) of the Code.¹ The approximate aggregate fair market value of the total assets of the IRA is \$2,648,113, as of June 30, 2005. The assets of the IRA consist of cash in the amount of \$1,011,113 and two parcels of improved real property worth approximately \$1,637,000. The custodian of the IRA is Sterling Trust Company of Waco, Texas. As custodian, the Sterling Trust Company is a disqualified person with respect to the IRA, pursuant to section 4975(e)(2)(B) of the Code.

2. Mr. Newton is the owner of the IRA and retains discretion with respect to the investment of the assets in the IRA. As such, Mr. Newton is a fiduciary with regard to the IRA and a disqualified person, pursuant to section 4975(e)(2)(A) of the Code. Mr. Newton was born on August 25, 1934, and on February 25, 2005, attained the age of

¹ Pursuant to the provisions contained in 29 CFR 2510.3-2(d), the IRA is not subject to Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, the IRA is subject to Title II of the Act, pursuant to section 4975 of the Code.

70½. The designated beneficiary under the terms of the IRA is Mr. Newton's wife. As such, Mrs. Newton is a disqualified person with respect to the IRA, pursuant to section 4975(e)(2)(F) of the Code.

3. Mr. Newton is the owner of two other rollover individual retirement accounts at Commonwealth Financial Network in Waltham, Massachusetts with assets of \$1,544,401 and \$460,787, respectively. These individual retirement accounts are invested in cash and securities. Neither of these individual retirement accounts owns any real property. The combined value of these individual retirement accounts is approximately \$2 million dollars.

4. Individual retirement accounts must comply with the minimum distribution rules applicable to defined contribution retirement plans under section 408(a)(6) of the Code. In this regard, the required minimum distributions must commence no later than the first of April following the calendar year in which the owner of an individual retirement account attains the age of 70½. A required minimum distribution must be made for each "distribution calendar year." The first "distribution calendar year" is the year such owner of an individual retirement account reaches age 70½. If the owner of an individual retirement account makes the election to receive the first required minimum distribution on the first of April of the year following the year such owner attains the age of 70½, two minimum distributions must be made in that year. If the owner owns two or more individual retirement accounts, the required minimum distributions must be calculated separately for each account. The separately calculated minimum distribution amounts may then be totaled and the total amount may be distributed from any one or more of such individual retirement accounts.

5. The IRA that is the subject of this exemption and the other two individual retirement accounts owned by Mr. Newton must comply with the minimum distribution rules applicable to defined contribution retirement plans under section 408(a)(6) of the Code. As Mr. Newton has attained the age of 70½ in 2005, the first "distribution calendar year" is 2005. If Mr. Newton elects to make the first required minimum distribution before April 1, 2006, then two minimum distributions must be made in 2006. As Mr. Newton has three (3) individual retirement accounts, the required minimum distributions for each of these accounts must be calculated separately, but the total amount that is required to be distributed

may be paid from the IRA which is the subject of this exemption.

6. Mr. Newton proposes to distribute in-kind 50 percent (50%) of the IRA's interest in the Property in each of two (2) installments which will occur on December 30, 2005, through January 3, 2006. These dates were suggested because they are the banking days just before and just after the New Year. Accordingly, Mr. Newton seeks an exemption from section 4975 of the Code for any violations that may arise in connection with the proposed transactions.

7. The Property which is the subject of this proposed exemption is described as a good quality, historic eight-story office building (the Building) constructed in 1902. The Property is located on approximately .132 acres of land at 314 East Commerce Street in San Antonio, Texas. The Building was formerly known as the old Alamo National Bank Building.

It is represented that the Property is unencumbered by debt, and is managed by Cambridge Realty Group, Inc., an unrelated third party management company.

The Building contains 33,233 square feet of net rentable area. The largest tenant in the Building is River Enterprises which occupies the ground floor space. The second largest tenant is Inuit Services, Inc. which occupies space on the second floor of the Building. It is represented that the occupancy rate of the Building is 92.4 percent (92.4%), as of February 17, 2005. It is further represented that none of the tenants in the Building are disqualified persons with respect to the IRA, as defined in section 4975(e)(2) of the Code.

8. Richard L. Dugger (Mr. Dugger), MAI, CRE, State Certified General Real Estate Appraiser, and Cynthia C. Beard (Ms. Beard), State Certified General Real Estate Appraiser, prepared an appraisal report of the Property, dated March 7, 2005. Mr. Dugger and Ms. Beard are associated with Dugger, Canady, Grafe, Inc., real estate consultants and appraisers. Mr. Dugger and Ms. Beard represent that they are qualified real estate appraisers with approximately thirty-six (36) years and twenty-six (26) years of experience, respectively, in preparing real estate appraisals and are familiar with the Property and with similar properties located in the surrounding area. In addition, Mr. Dugger and Ms. Beard represent that they are independent in that they have no present or prospective interest in the Property and have no personal interest or bias with respect to the parties involved.

Mr. Dugger and Ms. Beard's appraisal estimated the value "as is" of a leased fee interest² in the Property, subject to various tenant leases, effective February 17, 2005, the most recent date of inspection. Based on their analysis and their inspection of the Property, Mr. Dugger and Ms. Beard concluded that the value "as is" of a leased fee interest in the Property was \$1,700,000 dollars. It is represented that Mr. Dugger and Ms. Beard will update their appraisal of the value of the leased fee interest in the Property, as of the date the first of the two installments of the in-kind distributions is made to Mr. Newton.

9. The applicant maintains that the proposed transactions are feasible in that the transactions involve a single individual and his IRA and address a need arising because of the minimum distribution provisions, as required by the Code. By making the distributions as close as possible to the end of 2005 and the beginning of 2006, the period of time when Mr. Newton and the IRA share an ownership interest in the Property will be less than five (5) days of which only portions of two (2) days will be business days. In the opinion of the applicant, the risk of a conflict of interest developing between Mr. Newton and the IRA in this short a period of time is curtailed, if not eliminated entirely.

10. The transactions are in the interest of the IRA, in that the IRA will be able to distribute the Property which is an illiquid asset and will avoid a forced sale of the Property. The IRA will not pay any commissions, costs, fees, or other expenses in connection with the subject transactions. Further, Mr. Newton is personally bearing the cost of filing the exemption application and paying the cost of the appraisal of the Property.

11. The transactions are structured to include certain safeguards for the protection of the participant and the designated beneficiary of the IRA. In this regard, the terms of the transactions will be at least as favorable as arm's length terms negotiated with unrelated parties. Further, the fair market value of the Property has been determined by independent, qualified appraisers, and such value will be updated, as of the date the first of the two (2) installments of the in-kind distributions is made to Mr. Newton.

² A "leased fee interest" is an ownership interest held by a landlord with the rights of use and occupancy conveyed by lease to others. In this regard, the appraisers valued the "leased fee interest" in the Property "as is" by taking into account the various existing leases on space in the Building.

12. In summary, the applicant represents that the proposed transactions will meet the statutory criteria of section 4975(c)(2) of the Code because: (a) The transactions involve a single individual and his IRA and address a need arising because of the minimum distribution provisions, as required by the Code; (b) there is minimal risk of a conflict of interest developing between Mr. Newton and the IRA in the short period of time that they will share ownership of the Property; (c) the terms and conditions of the transactions are at least as favorable to the IRA as similar terms negotiated at arm's length with unrelated parties; (d) the fair market value of the Property will be determined by independent, qualified appraisers, as of the date the first of the two installments of the in-kind distributions is made to Mr. Newton; and (e) the IRA will not pay any commissions, costs, fees, or other expenses in connection with the transactions.

Notice to Interested Persons

Because Mr. Newton is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing must be received by the Department within thirty (30) days of the date of publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

Anchorage Area Pipe Trades 367 Joint Apprenticeship Committee (the Plan), Located in Anchorage, Alaska, [Application No. L-11293]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(2) of the Act, shall not apply to a proposed loan (the Loan) to the Plan, to finance a training facility (the Training Facility) constructed by the Plan, in the amount of \$750,000, by the Local No. 367 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Local No. 367), a party in interest with respect to Plan. This proposed exemption is subject to the following conditions:

(a) The Plan does not pay any commissions, fees or other expenses with respect to this transaction, except certain specified third party closing costs;

(b) An independent qualified fiduciary (the I/F), after analyzing the relevant terms of the Loan, determines whether such Loan is in the best interest of the Plan and its participants and beneficiaries;

(c) In determining the fair market value of the Training Facility, the I/F obtains a current written appraisal report (the Appraisal) from an independent qualified appraiser at the time of the transaction, and ensures that such Appraisal is consistent with sound principles of valuation;

(d) The Loan is for the duration of 15 years at the prime rate (the Prime Rate) as listed in the Wall Street Journal;

(e) Under the terms of the Loan agreement, the Loan is secured by the Training Facility and in the event of default by the Plan, Local No. 367 has recourse only against such facility and not against the general assets of the Plan;

(f) The terms and conditions of the Loan are at least as favorable to the Plan as those which the Plan could have obtained in an arm's length transaction with an unrelated third party; and

(g) The Loan is repaid by the Plan with the funds the Plan retains after paying all of its operational expenses.

Summary of Facts and Representations

1. The Plan is a collectively bargained, joint labor-management apprenticeship and training trust fund which qualifies as an "employee welfare benefit plan" under section 3(1) of ERISA. Currently, there are approximately 481 participants covered by the Plan. As of August 31, 2005, the approximate value of the Plan's assets totaled \$2,799,491 and its current liabilities totaled \$798,257. The Plan owns an outdated training facility which did not meet the training standards of the Plan. To better address the training needs of the journeymen and apprentices, the Plan constructed the new Training Facility in place of the outdated training facility. To finance this construction, the Plan borrowed funds from a third party bank. In anticipation of the new Training Facility's completion, the Plan was offered permanent financing by Local No. 367 in the amount of \$750,000 (*i.e.*, the Loan), which is the remaining balance of the outstanding construction loan with the bank. The Loan from Local No. 367 to the Plan is approximately 44 percent of the Plan's assets. The loan to value ratio equals

approximately 0.75 (*i.e.* 75% of the Training Facility's appraised fair market value).

The Plan provides training to journeymen and apprentices represented by Local No. 367 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, which has its offices at 610 West 54th Avenue in Anchorage, Alaska 99518. The Plan is administered by the Joint Apprenticeship and Training Committee (the Trustees) which consists of eight trustees. Four represent the Union, and the remaining four represent the contributing employers. The Trustees are responsible for negotiating the collective bargaining agreement and managing the Plan assets and the Training Facility.

2. The subject property, on which the Training Facility is constructed, is located at 617 West Potter Drive, Anchorage, Alaska. The Plan has access to the Training Facility via a public road. The subject property is a 40,471 square foot land site, zoned I1-Light Industrial and fronting on a medium volume road. The subject property has a 30-year old 3,200 square foot steel frame building on site. The Training Facility is a new recently constructed and completed building, consisting of a two story steel frame structure, with 4,800 square feet per floor, for a total of 9,600 square feet. The first floor will be shop/warehouse type space; the second floor will be partially finished with classroom and office space that will be used as a training center.

The Plan intends to demolish the 30-year old 3,200 square foot building in the near future. The Trustees determined that the old structure could not be renovated or adapted to serve the Plan's training needs. According to the applicant, the old structure is at the end of its useful life, and the usable space is too small to accommodate the number of apprentices and journeymen who will be using the Training Facility. There will be 39 parking spaces on the subject property which will be adequate to satisfy the needs of the Plan.

Approximately 15 to 20 apprentices and 2 instructors will be using the facility at any one time. Though the project is planned as a training center, the Training Facility's layout could be easily converted to a number of alternative light industrial uses.

3. According to the submission dated September 13, 2005, by the counsel to the Plan, the actual and final cost of construction, which includes contract change orders, architectural and attorney fees, is \$1,755,000. The Plan had a process in place to protect itself

from cost over-runs. Cost over-runs incurred during the project for unforeseen building code enforcement were analyzed by the Plan's Building Committee (the Committee) for proper interpretation of the building codes, discussion of alternatives, and then a vote by the Committee for the change order directive. The Plan had some construction change directives that were not foreseen at the time of the construction bid. The total cost of the construction change directives was \$76,953.14, which according to the Plan's counsel is well within the usual range for similar types of construction contracts.

4. One of the subcontractors who worked on the Training Facility is a contributing employer to the Plan and was selected by the general contractor, who is not a party in interest, based on competitive bids.³ Furthermore, Local No. 367 did not lease space in the old facility and will not lease space in the new facility.

5. The original structure (*i.e.*, the old facility) was built in 1971 by the Plan for \$38,405. The land, on which the old facility was constructed, was owned by the local union and transferred to the Plan in 1970 (prior to the enactment of ERISA). In July 2001, the Plan purchased two additional adjoining lots for \$92,318. The Plan is exempt from paying State property taxes.

6. The Appraisal of the Training Facility was conducted by Mr. Stanley D. Dunagan of Affiliated Appraisers of Alaska (the Appraiser), and is dated March 22, 2004. The Appraiser has been a licensed General Real Estate Appraiser in the State of Alaska since September 23, 1991. The Appraiser prepared his appraisal while the Training Facility was under construction. The Appraiser noted that the estimated replacement value for a new facility that combines warehouse storage space and office space would be approximately \$981,000. The Appraiser also opined

that the market value of the Training Facility, prospective upon completion, would be \$1,000,000. The I/F will obtain a current written appraisal of the Training Facility as of the date of the transaction. The applicant represented that the Appraisal will be sent to the Department soon after its completion but in no event later than 90 days after the transaction is consummated.

7. The I/F, described in section 10 of this summary of facts and representation, requested an analysis of the construction costs of the Training Facility. This analysis was prepared by Mel Morgan, Jr., who is a Member of the Appraisal Institute (MAI) and an employee of the I/F, and it is included in the I/F's report. The I/F stated in its report that the Appraiser based his cost estimate on storage warehouse costs for the first floor and office costs for the second floor. The I/F further stated that it was more appropriate to use cost estimates based on a vocational school category because the occupancy's emphasis is on trade and technical skills with a greater proportion of shops and laboratories.

Therefore, based in part on statistical information, the I/F concluded that regardless of quality considerations, the vocational school costs demonstrate that the Appraiser's cost estimates were low, and the contractor's costs were within a reasonable range. The I/F believes that the \$1,000,000 fair market value for the Training Facility is a reasonable and very conservative value for the project due to recent rising valuations in the local real estate market. The I/F also stated that the higher actual costs for construction (compared to the Appraiser's estimated replacement value) reflect specialized tenant improvements (*i.e.*, specialized equipment, work stations and ventilation for various types of training involving medical and other gases, refrigeration systems and a variety of welding techniques and applications) in the building and a more accurate accounting of costs to build such a building. Because construction of the Training Facility is complete, the Plan has no plans for any additional construction and no plans to incur additional construction costs.

8. The Loan amount is \$750,000. The Loan is a non-recourse loan amortized over 15 years (180 monthly payments), at the Prime Rate as published in the Wall Street Journal under the section of "Interest Rates and Bonds." The Plan's annual obligation on the Loan totals \$77,168.06, which includes principal and interest (the monthly payment is \$6,430.67). According to the I/F's report, the current annual market rental rate for

leasing a facility similar to the Training Facility, taking into account information from the Appraiser's report, would be approximately \$109,440. According to a report submitted to the I/F by Mr. Morgan, the Appraiser's estimate of market rent was based on the assumption that the owner would not be able to find a tenant who would pay for the improvements to the building. According to Mr. Morgan, basing market rent on this scenario results in a more conservative estimate of income and value than basing market rent for a "build-to-suit" tenant. The I/F also concluded that, with a 45-year estimated economic life for the Training Facility, the cost of ownership is significantly better than would be the cost of renting such a facility.

Furthermore, there are no prepayment penalties, so the Loan may be pre-paid at anytime. The lender's only recourse, in the case of default, is the Training Facility. All closing costs will be paid by the Plan, and are estimated at \$30.

9. The I/F also has represented that the Plan currently has adequate excess cash-flow to service the annual loan payment of \$77,186.06. The Plan's income exceeded its expenses by \$193,780 in 2002, \$323,919 in 2003 and \$367,439 in 2004. Although, the Plan's income from January through July, 2005 was 6% less than its income for the same period in 2004, the Trustees expect to have a total income of \$801,064 for 2005. The Plan's expenses after completion of the Training Facility are expected to be approximately the same as 2004, \$484,757. The Plan expects to have a net operating income of \$259,139 even with the additional \$77,168 per year in payments to service the Loan. Therefore, the I/F stated that the Plan has adequate and available liquid net worth to service the Loan without creating hardship to the Plan.

10. Washington Capital Management, Inc. (*i.e.* the I/F) confirms that it is an independent third party fiduciary and Qualified Professional Asset Manager ("QPAM"), as defined in PTE 84-14 (49 FR 9494, 9506, March 13, 1984). The I/F has been hired as an independent fiduciary to evaluate the Loan provisions and its prudence. The I/F confirms that: (i) It is a registered investment adviser under the Investment Advisers Act of 1940; (ii) It has total client assets in excess of \$50.0 million under its management and control; and (iii) The firm has shareholders' equity in excess of \$750,000.

The I/F has been providing private pension funds with investment management services in real estate lending since 1988 and in real estate

³ The provision of services to a plan by a party in interest with respect to the plan is a separate prohibited transaction under section 406(a)(1)(C) of the Act. However, the provision of services to a plan by a party in interest, which are necessary for the operation of the plan, are statutorily exempt under section 408(b)(2) of the Act, if the conditions required therein are met. The Department is expressing no opinion, and is providing no relief beyond that provided by section 408(b)(2) of the Act, for the provision of such services by a subcontractor, who is a contributing employer to the Plan. The regulation promulgated by the Department which defines the scope of the statutory exemption contained in section 408(b)(2) of the Act also states that no relief is provided for any arrangement for services which would violate section 406(b) of the Act (see 29 CFR section 2550.408b-2). Interested persons should review DOL Adv. Op. 99-09A (May 21, 1999) for a discussion of these issues.

equity investing since 1995. It currently manages mortgage portfolios with aggregate assets in excess of \$700 million and equity real estate investment portfolios with aggregate assets in excess of \$550 million. The I/F currently manages and monitors approximately 50 real estate loans and 36 real estate equity type investments. The I/F and its professionals have experience in underwriting, closing, and monitoring diversified classes of investments.

Its real estate division has fifteen professionals, the majority of whom have over 20 years of real estate lending and investing experience. This assignment is managed by Cory A. Carlson, Director of Equity Real Estate, who has over 25 years of real estate underwriting experience. Additional review and underwriting expertise was provided by Jan Sieberts, Senior Loan Officer and Anchorage Area Manager, with over 30 years of Real Estate Lending experience in Anchorage, Alaska. The I/F estimates gross annual revenues for 2005 to be approximately \$12 million. Its fees, for this transaction, are estimated to be 0.0002% of its 2005 revenues.

11. The I/F represents that it has been advised of its duties and obligations under Title I of ERISA as an independent fiduciary. The I/F acknowledges its understanding of Title I of ERISA, and accepts the duties and obligations as an independent fiduciary; Furthermore, the I/F understands and accepts the potential liability of the independent fiduciary role. The I/F represents that it will exercise whatever actions are reasonable and necessary to safeguard the interests of the Plan and its participants and beneficiaries. The I/F will protect the rights of the Plan with respect to the Loan. In this transaction, the I/F's role is limited to evaluating the risks, benefits and terms of the Loan, and confirming that the Loan is funded in accordance with terms disclosed in the application. Upon funding of the Loan, the I/F's task will be completed. Once the Loan is funded, the Plan's legal counsel will advise the Plan in regards to the operation and enforcement of the Loan, as may be necessary.

The I/F represents that it toured the Training Facility, reviewed the Appraisal, read each of the proposed loan documents, evaluated the Plan's financial statements, and interviewed its legal counsel and project manager. According to the I/F, all of the terms of the Loan are prudent, reasonable and consistent with market standards; Furthermore, the I/F states the Loan is in the best interest of the Plan. The

I/F also certified that it has no pre-existing relationship with Local 367 or the Plan, and based upon the information provided by the Plan, to the best of its knowledge, it is not a party in interest with respect to the Plan. Upon the publication of this exemption in the **Federal Register**, the I/F will confirm that the Loan has been funded in accordance with the terms set forth in the application.

12. The employer contributions to the Plan required by the current collective bargaining agreement have increased from \$1.15 per hour to \$1.25 per hour effective July 1, 2004 and to \$1.35 per hour effective July 1, 2005. Even though the current collective bargaining agreement expires on June 30, 2006, Trustees of the Plan, who also represent the bargaining parties, anticipate that future collective bargaining agreements will continue to provide sufficient funds to meet the training needs of the Plan, including the financing of the new facility.

13. In summary, it is represented that the transaction will satisfy the statutory requirements for an exemption under section 408(a) of the Act because:

(a) The Plan will not pay any commissions, fees or other expenses with respect to this transaction, except certain specified third party closing costs;

(b) The I/F, after analyzing the relevant terms of the Loan, will determine whether such Loan is in the best interest of the Plan and its participants and beneficiaries;

(c) In determining the fair market value of the Training Facility, the I/F will obtain a current written Appraisal report from an independent qualified appraiser at the time of the transaction, and will ensure that such Appraisal is consistent with sound principles of valuation;

(d) The Loan will be for the duration of 15 years at the Prime Rate as listed in the Wall Street Journal;

(e) Under the terms of the Loan agreement, the Loan will be secured by the Training Facility and in the event of default by the Plan, Local No. 367 will have recourse only against such facility and not against the general assets of the Plan;

(f) The terms and conditions of the Loan will be at least as favorable to the Plan as those which the Plan could have obtained in an arm's length transaction with an unrelated third party; and

(g) The Loan will be repaid by the Plan with the funds the Plan retains after paying all of its operational expenses.

FOR FURTHER INFORMATION CONTACT: Mr. Arjumand A. Ansari of the Department

at (202) 693-8566. (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;

(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 31st day of October, 2005.

Ivan Strasfeld,

*Director of Exemption Determinations,
Employee Benefits Security Administration,
U.S. Department of Labor.*

[FR Doc. 05-21964 Filed 11-2-05; 8:45 am]

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