

Name	Issuance type	Wachovia role	Exemption
Wachovia Bank Commercial Mortgage Trust, Series 2006–C27.	CMBS .....	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C29.	CMBS .....	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C32.	CMBS .....	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series, 2005–C22.	CMBS .....	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C33.	CMBS .....	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C34.	CMBS .....	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
J.P. Morgan Chase Commercial Mortgage Securities Corp., Series 2002–C1.	CMBS .....	Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc. (but note that PTE 96–22 is not relied on in the disclosure document).	2002–19
Wachovia Bank Commercial Mortgage Trust, Series 2006 WHALE 7.	CMBS .....	Servicer: Wachovia Bank, N.A. Special Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–C21.	CMBS .....	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–C19.	CMBS .....	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C26.	CMBS .....	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C28.	CMBS .....	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C30.	CMBS .....	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C31.	CMBS .....	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–ESH.	CMBS .....	Master Servicer: Wachovia Bank, N.A. Special Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–WHALE 6.	CMBS .....	Servicer: Wachovia Bank, N.A. Special Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
First Union–Lehman Brothers Wells Fargo, Series 1998–C2.	CMBS .....	Master Servicer: First Union National Bank Sponsor First Union National Bank Underwriter: First Union Capital Markets.	96–22

Legend: CMBS = Commercial mortgage-backed securitizations

The availability of this amendment, if granted, is subject to the express condition that the material facts and representations contained in the Application are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the Application change, the amendment will cease to apply as of the date of such change. In the event of any such change, an application for a new amendment must be made to the Department.

Signed at Washington, DC, this 24th day of August 2009.

**Ivan L. Strasfeld,**

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

[FR Doc. E9–20736 Filed 8–27–09; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Application No. L–11482]

#### Notice of Proposed Individual Exemption Involving The Alaska Laborers-Construction Industry Apprenticeship Training Trust (the Plan), Located in Seattle, WA

**AGENCY:** Employee Benefits Security Administration, U.S. Department of Labor.

**ACTION:** Notice of proposed individual exemption.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of

a proposed exemption which, if granted, would permit the purchase by the Plan of certain unimproved real property (the Property) from the Alaska Construction & General Laborers 942 Business Association, Inc. (the Building Association), an entity owned by Local 942, Laborers International Union of North America (Local 942), a party in interest with respect to the Plan. If granted, the exemption would affect participants and beneficiaries of and fiduciaries with respect to the Plan.

**DATES:** *Effective Date:* If granted, this proposed exemption will be effective on the date the grant notice is published in the **Federal Register**.

**DATES:** Written comments and requests for a public hearing should be received by the Department on or before October 27, 2009.

**ADDRESSES:** All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, *Attention:* Application No. L-11482. Interested persons are also invited to submit comments and/or hearing requests to the Department by facsimile to (202) 219-0204 or by electronic mail to [Broady.Jan@dol.gov](mailto:Broady.Jan@dol.gov) by the end of the scheduled comment period. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693-8556. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of a proposed exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act or ERISA). If granted, the exemption would permit the Plan to purchase the subject Property from Local 942, a party in interest with respect to the Plan. The proposed exemption has been requested in an application filed on behalf of the Plan pursuant to section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part

2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Accordingly, this proposed exemption is being issued solely by the Department.

#### Summary of Facts and Representations

1. The Plan is an apprenticeship and training plan that is organized as a multi-employer Taft-Hartley Trust Fund. The Plan was established in October 1967, pursuant to an original Agreement and Declaration of Trust (the Trust Agreement), between labor and employer representatives of the construction industry in the State of Alaska. The Plan was created to provide classroom instruction and outside training classes and to simulate work experience needed at construction sites and on-the-job training for members and apprentices of Local 942 and Local 341 of the Laborers International Union of North America (Local 341).<sup>1</sup> Although the Plan has a physical presence in Fairbanks, Alaska and Anchorage, Alaska, it maintains its legal address in Seattle, Washington.

2. The Plan is sponsored by the Unions and the Associated General Contractors for the State of Alaska (the AGC), an employer organization representing most of the contributing employers to the Plan. The AGC serves as the collective bargaining agent on behalf of the employers in Alaska. Besides the Unions and the AGC, independent employers contribute to the Plan, though these employers may not be AGC members.

3. The Plan is administered by an eight member Board of Trustees (the Trustees), four of whom are appointed by the AGC and four of whom are appointed by the Unions. The Trustees have ultimate fiduciary, operational and investment discretion over the assets of the Plan. The Trustees appointed by the AGC are Derald Schoon, John Minder, Michael Brady, and Roxanna Horschel. The Trustees appointed by the Unions are Dan Simien and Tim Sharp (who represent Local 942), and Ron McPheters and Joey Merrick (who represent Local 341). The Trustees administer the Plan and certain training facilities described herein with the assistance of Les Lauinger, the Plan's Training Coordinator. As of June 30, 2008, the Plan had total net assets of \$5,742,204. As of October 3, 2008, the Plan had approximately 2,000 participants.

4. The Building Association is an Alaska corporation that was incorporated by and on behalf of Local 942 to hold title to real property solely

on behalf of Local 942. The Building Association is located at 2740 Davis Road, Fairbanks, Alaska. Other than serving as a Plan sponsor, Local 341 has no other relationship to the Building Association or to Local 942.

5. Among the assets of the Building Association is the Property, consisting of approximately .642 acres of undeveloped land. The Property is located at 2740 Davis Road, Fairbanks, Alaska and it is legally described as "the East half of Lot 2, Block 16 [of the Laborers Training Center Subdivision], facing the corner of Ada Street and Twenty-First Avenue." The Property is adjacent to the Fairbanks Training School building (the Training Facility), which is currently owned and operated by the Plan for training purposes. The Property is also adjacent to real property (referred to as "Lots 1A and 1B of Block 16") owned and used exclusively by the Building Association to conduct its business operations.

The Property represents a portion of vacant land that was originally purchased by the Building Association from the Keith Briggs Trust, an unrelated party, on June 20, 1997 for \$112,500 (the Briggs Property). Of the purchase price paid for the Briggs Property, the Building Association made a \$50,000 cash payment and it financed the remaining balance of \$62,500 in two annual installments that occurred on the first and second anniversary dates of the closing date at 8% interest per annum.

6. On January 9, 2003, the Department gave final authorization to the Plan pursuant to the requirements of Prohibited Transaction Exemption 96-62 (61 FR 39988, July 31, 1996, as amended by 67 FR 44622, July 3, 2002), a class exemption permitting certain authorized transactions between plans and parties in interest. The Department's authorization (Final Authorization Number 2003-01E) allowed the Plan to purchase approximately 27,907 square feet of the Briggs Property, including the western half of Lot 2 of Block 16 from the Building Association for \$42,000. The property acquired constitutes the site of the Training Facility and it contains approximately 4,400 square feet of classroom and office space, including vacant land for at least 30 parking spaces next to the building. The Training Facility has been owned and occupied entirely by the Plan since 2003.

7. In 2004 and 2005, the Trustees determined that the Plan needed additional vacant land adjacent to the

<sup>1</sup> Local 942 and Local 341 are collectively referred to herein as the "Unions."

Training Facility.<sup>2</sup> An initial Earnest Money Receipt and Agreement (the Initial Agreement) was executed in December 2005 between Mr. Lauinger, the Plan's Training Coordinator and Mr. Sharp, on behalf of the Building Association. Under the terms of the Initial Agreement, the Plan deposited \$28,000 in the Client Trust Account held on behalf of the Plan by the law firm Jermain, Dunnagan and Owens, P.C. (JDO) of Anchorage, Alaska. JDO, the Plan's legal counsel, is a party in interest with respect to the Plan because it is a service provider. JDO has also submitted this exemption request on behalf of the Plan.

Under the terms of the Initial Agreement, the eastern one-half portion of Lot 1 of Block 16, which faces the corner of Ada and Davis Streets and consists of approximately 67,000 square feet of space, would be acquired by the Plan from the Building Association. Therefore, it was understood that the Plan would need to obtain an administrative exemption from the Department in order for this transaction to proceed. The Building Association was also willing to refrain from selling or marketing this tract of property until the Plan had received an administrative exemption from the Department. If the proposed exemption was not approved by the Department, the Initial Agreement would terminate and no sale would be consummated. Although the Initial Agreement required that the exemption be obtained within a reasonable period of time, no specific date was indicated.

8. Subsequently, the Trustees determined that it would not be prudent for the Plan to purchase the entire eastern half of Lot 1 of Block 16. Instead, the Plan would purchase only half of the parcel or approximately 27,907 square feet of land. As a result, and at full cost to Local 942 and the Building Association, the land and lots were replatted to show the Property as the "East half of Lot 2 as an extension of Lot 2 of Block 16, of the Laborers Training Trust Subdivision."

In November 2007, a Revised and Final Earnest Money Receipt and

Agreement (the Revised Agreement) was executed between Mr. Sharp for the Building Association and Mr. Lauinger on behalf of the Plan. Under the Revised Agreement, the amount of the Plan's earnest money was reduced to \$26,500. In addition, the parties executed an addendum to allow the Building Association and Local 942 a right of first refusal if the Plan decided to resell the vacant lot. As with the Initial Agreement, the primary condition of the Revised Agreement required the Department's approval of both transactions.<sup>3</sup> The Plan has received no interest on its earnest money under either the Initial Agreement or the Revised Agreement, nor has it paid any servicing or administrative fees to JDO.<sup>4</sup> Nevertheless, given the amount of time that has elapsed since such funds have been held in the Client Trust Account, JDO has agreed to compensate the Plan for all back interest at the time the proposed transaction is consummated.<sup>5</sup> Such interest amount will be determined by the independent fiduciary for the Plan, as discussed in Representation 12.

9. The Plan proposes to purchase the Property from the Building Association. The Plan will acquire the Property for the lesser of \$62,791 or the fair market value of such Property at the time of the transaction, as determined by a qualified, independent appraiser. The Plan will pay the consideration in cash and it will not be required to pay any real estate commissions, fees or other

expenses in connection with the transaction. Accordingly, an administrative exemption is requested from the Department.

Further, the proposed transaction will be consummated only after a qualified, independent fiduciary, acting on behalf of the Plan, negotiates the relevant terms and conditions of such transaction and determines that proceeding with the transaction is in the best interests of the Plan and its participants and beneficiaries. The independent fiduciary will monitor the proposed transaction on behalf of the Plan to ensure compliance with the agreed upon terms.

10. The Trustees seek this exemption so that the Plan will own real property that is adjacent to the Training Facility and it will give the Plan more direct road access. The Property will be used by the Plan to store training equipment and provide a place to conduct outdoor training classes. Also, due to the distances involved, it is represented that the Training Facility needs to operate independently from an Anchorage training facility and have sufficient physical space and training capabilities to hold classes for members and apprentices living in Northern Alaska. In the past, large and specialized classes needed for certification required that residents from Fairbanks fly to Anchorage and find temporary housing to take training classes, at considerable expense.

11. The Property has been appraised by Chris Guinn, MAI, SRA, SR/WA, a qualified, independent appraiser affiliated with the real appraisal firm of Street, Guinn & Associates, located in Fairbanks, Alaska. Mr. Guinn certifies in an appraisal report dated September 23, 2008 that he has no present or prospective interest in the Property nor any personal interest or bias with respect to the parties involved and that he has received no income, at any time, from the Building Association or from any other parties in interest.

Mr. Guinn represents that he has been a real estate professional in interior Alaska for over 25 years and has a Master's degree in business administration. He states that he maintains several professional affiliations as a member of the Appraisal Institute and the Greater Fairbanks Board of Realtors, among other things. He explains that he has owned Street Guinn & Associates since 1986, and during this time he has acted as an independent professional fee appraiser specializing in condemnation, rural and commercial income property. Further, Mr. Guinn states that he has participated in numerous arbitration

<sup>2</sup> According to the Trust Agreement, any action taken by the Trustees must be performed by "unit" vote. As a result of this procedure, any decision to purchase the Property was made by such unit or group vote, which consisted of one vote by the Union Trustees and one vote by the Employer Trustees. Although Trustees Tim Sharp and Dan Simien, who are Union Trustees representing Local 942, "voted" within their Trustee group for purposes of obtaining a majority, their individual votes did not matter because the Union Trustees were only entitled to exercise one vote. Similarly, the Trustees for Local 341 voted within their Trustee group.

<sup>3</sup> The right of first refusal has not been included in the scope of this exemption request. If the Plan ever decides to resell the Property to the Building Association and Local 942, the applicants will request an administrative exemption from the Department.

<sup>4</sup> According to JDO, the Client Trust Account is an "Interest On Lawyer Trust Account" or "IOLTA" that is established by a law firm to hold funds for a client that is separate from the firm's other accounts or any other client accounts. The Professional Rules of Responsibility and the Alaska Bar Association rules, require for an IOLTA that all interest payments earned by the firm accounts or the Client Trust Accounts be turned over to the state Bar Association.

<sup>5</sup> The Department is expressing no opinion herein on whether the decision by JDO to recommend that the Plan deposit its earnest money in a non-interest bearing account, has violated the provisions of section 404(a) of the Act. In pertinent part, section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

In addition, the Department wishes to point out that to the extent JDO has received any direct or indirect benefit by recommending that the Plan's earnest money be placed in a Client Trust Account rather than in an interest-bearing escrow account with an unrelated party, such action would violate section 406(a)(1)(D) and section 406(b)(1) and (b)(2) of the Act.

issues, not only as the appraiser of record, but also as a chairman of a panel charged with the resolution of such matters.

Using the Sales Comparison Approach to valuation, Mr. Guinn has placed the fair market value of a fee simple interest in the Property at \$70,000, as of September 10, 2008. Thus, the Property represents less than 1.3% of the Plan's assets. Mr. Guinn also physically inspected the Property. He explains that his estimate of the fair market value of the Property is as a "stand-alone property" and he concludes that the Plan will be engaging in an arm's length transaction. Mr. Guinn will update his appraisal on the date the purchase transaction is consummated.

12. Washington Capital Management, Inc. (WCM) of Seattle, Washington will serve as the independent fiduciary for the Plan with respect to the proposed transaction. Specifically, Cory Carlson, Director of Equity Real Estate of WCM and Mel Morgan, MAI and Vice President of WCM have prepared the representations required of the independent fiduciary. WCM has been a registered investment adviser for over 31 years. As a real estate investment manager, WCM has handled real estate investments for many Taft-Hartley multiemployer plans, including the Alaska Laborers-Employers Retirement Trust. As of September 30, 2008, WCM had \$3.3 billion under management, in both separate accounts and commingled open ended portfolio strategies for stocks, bonds, mortgages or real estate equity. WCM is also a "Qualified Professional Asset Manager" and it has six offices, including an office in Anchorage, Alaska and a staff of 55 employees. WCM states that it has received no income, at any time, from the parties in interest involved in the proposed transaction and has no other relationships with these parties.

WCM represents that it understands and accepts the duties, responsibilities and liabilities in acting as a fiduciary with respect to the Plan. In this regard, WCM states that it has a compliance department which reviews all ongoing actions for compliance with ERISA duties and responsibilities. In addition, WCM states that it has a "corporate culture" and an "individual value system" which is attentive to the intent and obligations of ERISA and the resulting rules.

Based on Mr. Guinn's appraisal of the Property, WCM concludes that the purchase price of \$62,791 is acceptable and it does not exceed the \$70,000 fair market value price that would be expected in an arm's length transaction.

WCM also states that the acquisition of the Property would provide certain non-monetary benefits to the Plan because it would allow the Plan to expand its training operations. Since the purchase price is so low, WCM does not believe the acquisition of the Property would affect the Plan's liquidity needs. WCM notes that two of the biggest risks to the Plan in acquiring a vacant parcel of industrial land, such as the Property, are environmental liability and depreciation. However, it states that it has been informed that there are no environmental concerns with the Property and that it has held value. Therefore, the proposed purchase transaction, according to WCM, would be in the best interests of the Plan and its participants and beneficiaries.

In addition, WCM has addressed the amount of the earnest money given by the Plan to secure the Property and the appropriateness of JDO's placing such funds in the law firm's Client Trust Account instead of in an interest-bearing account maintained on behalf of the Plan by an unrelated party. With respect to the amount of the earnest money, WCM states that the \$26,500 deposit, though substantial, is not unusual considering the \$62,791 purchase price for the Property. WCM explains that earnest money deposits are negotiated to encourage the timely completion of a transaction and to provide sufficient funds to cover damages if a dispute arises. When the total price is small, WCM further explains that the deposits tend to be a larger percentage. Thus, the deposit amount is within a market standard range, according to WCM.

With respect to the issue of whether the earnest money was appropriately deposited, WCM states that although the earning of interest varies according to regional and local practices, it would recommend that the Plan's earnest money be placed in an interest-bearing escrow account, particularly for future long-term transactions involving the Plan. WCM also notes that the amount of potential interest earned by the Plan would have been relatively small. Using one month CD rates published by the Federal Reserve, WCM has initially determined that the Plan's earnest money deposit of \$26,500 would have earned \$3,840 between December 2004 and April 2009. WCM will update this calculation on the date the proposed transaction is consummated.

In addition to the foregoing duties, WCM will monitor the purchase transaction on behalf of the Plan. Further, WCM will ensure compliance with all agreed upon terms and conditions.

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

(a) The terms and conditions of the proposed transaction will be no less favorable to the Plan than those which the Plan would receive in an arm's length transaction with an unrelated party.

(b) The purchase of the Property will be a one-time transaction for cash.

(c) The Plan will not pay any real estate commissions, fees, or other similar expenses to any party as a result of the proposed transaction.

(d) The Plan will purchase the Property from the Building Association for the lesser of (1) \$62,791 or (2) the fair market value of the Property as determined on the date of such transaction by a qualified, independent appraiser.

(e) The proposed transaction will be consummated only after an independent fiduciary (1) determines that proceeding with the transaction is in the best interests of the Plan and its participants and beneficiaries and (2) negotiates the relevant terms and conditions of such transaction.

(f) The independent fiduciary has calculated and will calculate to the date of sale, using the applicable certificate of deposit rate in effect, the amount of interest owed to the Plan based upon its earnest money deposit for the Property.

(g) On the date of the transaction, the Plan's legal counsel will pay all interest owed the Plan resulting from counsel's placement of the Plan's earnest money deposit for the Property in a non-interest bearing account.

(h) The independent fiduciary will monitor the proposed transaction on behalf of the Plan to ensure compliance with the agreed upon terms.

#### Notice to Interested Persons

The Trustees will provide notice of the proposed exemption to interested persons within 30 days of the publication of the notice of proposed exemption in the **Federal Register**. The interested persons to whom the Trustees would provide notice would include, but would not be limited to, Plan participants, Union members, and all active laborers reported to the Plan on contribution remittance reports filed with the Plan's Trust Administration Office. Such notice will be provided to interested persons by first-class mail and will include a copy of the notice of proposed exemption as published in the **Federal Register** as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform

interested persons of their right to comment on and/or to request a hearing. Comments and requests for a hearing with respect to the proposed exemption are due within 60 days of the publication of this pendency notice 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 the Act does not relieve a fiduciary or other party in interest from certain other provisions of the Act, 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 require, among other things, a fiduciary to discharge his or her 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;

(2) The proposed exemption, if granted, will not extend to any transaction prohibited under section 406(b)(3);

(3) Before an exemption can be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions. 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

(5) This proposed exemption, if granted, is subject to the express condition that the facts and representations set forth in the notice of proposed exemption accurately describe, where relevant, the material terms of the transaction that will be consummated if this exemption is granted.

#### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record.

Comments received will be available for public inspection with the referenced applications at the address set forth above.

#### Proposed Exemption

Based on the facts and representations set forth in the application, 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, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the purchase by the Plan of certain unimproved real property (the Property) from the Alaska Construction & General Laborers 942 Building Association, Inc. (the Building Association), an entity owned by Local 942, Laborers International Union of North America, a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The terms and conditions of the proposed transaction are no less favorable to the Plan than those which the Plan would receive in an arm's length transaction with an unrelated party.

(b) The purchase of the Property is a one-time transaction for cash.

(c) The Plan does not pay any real estate commissions, fees, or other similar expenses to any party as a result of the proposed transaction.

(d) The Plan purchases the Property from the Building Association for the lesser of (1) \$62,791 or (2) the fair market value of the Property as determined on the date of such transaction by a qualified, independent appraiser.

(e) The proposed transaction is consummated only after an independent fiduciary (1) determines that proceeding with the transaction is in the best interests of the Plan and its participants and beneficiaries and (2) negotiates the relevant terms and conditions of such transaction.

(f) The independent fiduciary calculates, on the date of the transaction (using the applicable certificate of deposit rate in effect), the amount of interest owed to the Plan based upon its earnest money deposit for the Property.

(g) On the date of the transaction, the Plan's legal counsel pays all interest owed the Plan resulting from counsel's placement of the Plan's earnest money deposit for the Property in a non-interest bearing account.

(h) The independent fiduciary monitors the proposed transaction on

behalf of the Plan to ensure compliance with the agreed upon terms.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the Covered Transactions.

Signed at Washington, DC, this 24th day of August 2009.

**Ivan L. Strasfeld,**

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

[FR Doc. E9-20737 Filed 8-27-09; 8:45 am]

**BILLING CODE 4510-29-P**

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#### MILLENNIUM CHALLENGE CORPORATION

[MCC FR 09-15]

#### Notice of the September 9, 2009 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

**AGENCY:** Millennium Challenge Corporation.

**TIME AND DATE:** 3 p.m. to 5 p.m.,  
Wednesday, September 9, 2009.

**PLACE:** Department of State, 2201 C  
Street, NW., Washington, DC 20520.

**FOR FURTHER INFORMATION CONTACT:**  
Information on the meeting may be  
obtained from Romell Cummings via e-  
mail at [Board@mcc.gov](mailto:Board@mcc.gov) or by telephone  
at (202) 521-3600.

**STATUS:** Meeting will be closed to the  
public.

**MATTERS TO BE CONSIDERED:** The Board of Directors (the "Board") of the Millennium Challenge Corporation ("MCC") will hold a meeting to initiate the Fiscal Year 2010 country selection process by identifying countries that will be candidates for Millennium Challenge Account ("MCA") assistance in Fiscal Year 2010 based on the per capita income and other requirements of 606(a) of the Millennium Challenge Act of 2003 (Pub. L. 108-199 (Division D)) (the "Act") and to discuss other Compact development efforts with MCA-eligible countries; the MCC's Threshold Program; and consider certain administrative matters. The agenda items are expected to involve the consideration of classified information and the meeting will be closed to the public.