(the Ford VEBA Plan) and its associated UAW Retiree Medical Benefits Trust (the VEBA Trust).

(cc) The term "Verification Time Period" means: (1) With respect to each of the Securities other than the payments in respect of the New Notes, the period beginning on the date of publication of the final exemption in the **Federal Register** (or, if later, the date of the transfer of any such Security to the Ford VEBA Plan) and ending 90 calendar days thereafter; (2) with respect to each payment pursuant to the New Notes, the period beginning on the date of the payment and ending 90 calendar days thereafter; and (3) with respect to the TAA, the period beginning on the date of publication of the final exemption in the **Federal Register** (or, if later, the date of the transfer of the assets in the TAA to the Ford VEBA Plan) and ending 180 calendar days thereafter.

(dd) The term "Warrants" means warrants issued by Ford to acquire 362,391,305 shares of Ford Common Stock at a strike price of $9.20 per share, expiring on January 1, 2013. For purposes of this definition, the term "Warrants" includes additional warrants to acquire Ford Common Stock acquired in partial or complete exchange for, or adjustment to, the warrants described in the preceding sentence, at the direction of the Independent Fiduciary or pursuant to a reorganization, restructuring or recapitalization of Ford as well as a merger or similar corporate transaction involving Ford (each, a corporate transaction), provided that, in such corporate transaction, similarly situated warrantholders, if any, will be treated the same to the extent that the terms of such warrants and/or rights of such warrantholders are the same.

SECTION VIII. Effective Date

If granted, this proposed amendment to PTE 2010–08 will be effective as of December 31, 2009, except with respect to Section I(a)(7), which will be effective as of June 25, 2010.

Signed at Washington, DC, this 9th day of March 2011.

Ivan Strasfeld,

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

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

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 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: D–11468 & D–11469 The Krispy Kreme Doughnut Corporation Retirement Savings Plan, The Krispy Kreme Profit-Sharing Stock Ownership Plan; D–11632 Millenium Trust Co. LLC, Custodian FBO William Etherington IRA; D–11642 H–E–B Brand Savings & Retirement Plan and H.E. Butt Grocery Company; and L-11625 The International Union of Painters and Allied Trades Finishing Institute.

DATES: 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.

ADDRESSES: 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.

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–5700, 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.

Warning: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

SUPPLEMENTARY INFORMATION:

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).

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.

The Krispy Kreme Doughnut Corporation Retirement Savings Plan (the Savings Plan) and the Krispy Kreme Profit-Sharing Stock Ownership Plan the KSOP; Together, the Plans or the Applicants)

Located in Winston-Salem, North Carolina

[Application Nos. D–11468 and D–11469, Respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) 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).[1] If the exemption is granted, the restrictions of section 406(a)(1)(A), (D), (E), section 406(a)(2), section 406(b)(2) and section 407(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) and (D) of the Code, shall not apply, effective January 16, 2007, to (1) the release by the Plans of their claims against Krispy Kreme Doughnut Corporation (KKDC), the sponsor of the Plans and a party in interest, in exchange for cash, shares of common stock (the Common Stock) and warrants (the Warrants) issued by Krispy Kreme Doughnuts, Inc. (KKDI), the parent of KKDC and also a party in interest, in settlement of certain litigation (the Securities Litigation) between the Plans and KKDC; and (2) the holding of the Warrants by the Plans.

This proposed exemption is subject to the following conditions:

(a) The receipt and holding of cash, the Common Stock and the Warrants occurred in connection with a genuine controversy in which the Plans were parties.

(b) An independent fiduciary was retained on behalf of the Plans to determine whether or not the Plans should have joined in the Securities Litigation and accept cash, the Common Stock and the Warrants pursuant to a settlement agreement (the Settlement Agreement). Such independent fiduciary—

(1) Had no relationship to, or interest in, any of the parties involved in the Securities Litigation that might affect the exercise of such person's judgment as a fiduciary;

(2) Acknowledged, in writing, that it was a fiduciary for the Plans with respect to the settlement of the Securities Litigation; and

(3) Determined that an all cash settlement was either not feasible or was less beneficial to the participants and beneficiaries of the Plans than accepting all or part of the settlement in non-cash assets.

(4) Thoroughly reviewed and determined whether it would be in the best interests of the Plans and their participants and beneficiaries to engage in the covered transactions.

(5) Determined whether the decision by the Plans' fiduciaries to cause the Plans not to opt out of the Securities Litigation was more beneficial to the Plans than having the Plans file a separate lawsuit against KKDC.

(c) The terms of the Settlement Agreement, including the scope of the release of claims, the amount of cash and the value of any non-cash assets received by the Plans, and the amount of any attorney's fee award or any other sums to be paid from the recovery were reasonable in light of the Plans' likelihood of receiving full recovery, the risks and costs of litigation, and the value of claims foregone.

(d) The terms and conditions of the transactions were no less favorable to the Plans than comparable arm's length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.

(e) The transactions were not part of an agreement, arrangement, or understanding designed to benefit a party in interest.

(f) All terms of the Settlement Agreement were specifically described in a written document approved by the United States District Court for the Middle District of North Carolina (the District Court).

(g) Non-cash assets, which included the Common Stock and Warrants received by the Plans from KKDC under the Settlement Agreement, were specifically described in the Settlement Agreement and valued as determined in accordance with a court-approved objective methodology;

(h) The Plans did not pay any fees or commissions in connection with the receipt or holding of the Common Stock and the Warrants.

(i) KKDC maintains, or causes to be maintained, for a period of six years such records as are necessary to enable the persons described in paragraph (j)(1) below to determine whether the conditions of this exemption have been met, except that—

(1) If the records necessary to enable the persons described in paragraph (j)(1) to determine whether the conditions of this exemption have been met are lost, or destroyed, due to circumstances beyond the control of KKDC, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest with respect to the Plans other than KKDC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if such records are not maintained or are not available for examination as required by paragraph (i).

(j)(1) Except as provided in this paragraph (j) and notwithstanding any provision of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (i) above are unconditionally available at their customary locations for examination during normal business hours by:

(A) Any duly authorized employee, agent or representative of the Department or the Internal Revenue Service, or the Securities and Exchange Commission (SEC);

(B) Any fiduciary of the Plans or any duly authorized representative of such participant or beneficiary;

(C) Any participant or beneficiary of the Plans or duly authorized representative of such participant or beneficiary;

(D) Any employer whose employees are covered by the Plans; or

(E) Any employee organization whose members are covered by such Plans.

(2) None of the persons described in paragraph (j)(1)(B) through (E) shall be authorized to examine trade secrets of KKDC or commercial or financial information which is privileged or confidential.

(3) Should KKDC refuse to disclose information on the basis that such information is exempt from disclosure, KKDC shall, by the close of the thirtieth (30th) day following the request, provide written notice advising that person of the reason for the refusal and that the Department may request such information.

Effective Date: If granted, this proposed exemption will be effective as of January 16, 2007.

Summary of Facts and Representations

KKDI and KKDC

1. KKDI is a branded retailer and wholesaler of doughnuts. KKDI's principal business, which began in 1937, is franchising and owning Krispy Kreme doughnut stores. KKDI's principal, wholly-owned operating subsidiary is KKDC. KKDI Common Stock is publicly traded on the New

[1] For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

York Stock Exchange under the ticker symbol "KKD". Both KKDI and KKDC are located in Winston-Salem, North Carolina.

The Plans

2. Effective February 1, 1999, KKDC established the KSOP, a defined contribution employee stock ownership plan. Under the terms of this qualified plan, KKDC could contribute a discretionary percentage of each employee's compensation, subject to Code limits, to each eligible employee's account under the KSOP. The contribution could be made in the form of cash or newly-issued shares of the Common Stock. If cash was contributed, the KSOP could acquire the Common Stock on the open market. As of December 31, 2006, the KSOP had total assets, consisting primarily of the Common Stock and having a fair market value of $4,705,581, and 1,471 participants. The trustee of the KSOP was Branch Banking and Trust Company of Winston-Salem, North Carolina (BB&T).

3. On February 1, 1982, KKDC established the Savings Plan, which is subject to the provisions of section 401(k) of the Code.[2] Under the Savings Plan, employees may contribute up to 100% of their salary and bonus to this plan on a tax-deferred basis, subject to statutory limitations. Effective August 1, 2004, KKDC began matching employee contributions to the Savings Plan in cash. KKDC matches 50% of the first 6% of compensation contributed by each employee. Participants in the Savings Plan are permitted to self-direct the investment of their account balances (including matching account balances) among a number of investment options, including the Krispy Kreme Stock Fund (the Stock Fund) (whose assets consist of the Common Stock and cash). As of December 31, 2006, the Savings Plan had total assets of $24,529,174 and 4,188 participants. Of the Saving Plan's assets, approximately 3.5% was invested in shares of the Common Stock. The trustee of the Savings Plan was also BB&T.

4. The documents for each Plan provided that KKDC would be the "named fiduciary" for investment purposes, except with respect to the Stock Fund for which U.S Trust Company, N.A. (U.S. Trust) would serve as the independent fiduciary.[3] KKDC's responsibilities included broad oversight of and ultimate decision-making authority over the management and administration of the Plans' assets, as well as the appointment, removal and monitoring of other fiduciaries of the Plans. KKDC could also exercise its authority as named fiduciary through an eight-member Investment Committee established for the Plans. The Investment Committee selected investment alternatives into which participants in the KSOP and participants in the Savings Plan could diversify their interests in their Participant accounts.

Merger of the Plans and the ERISA Litigation

5. Effective June 1, 2007, KKDC merged the KSOP into the Savings Plan. The merger occurred due to separate litigation commenced by different plaintiffs on March 3, 2005. The plaintiffs alleged violations of the Act in a class action lawsuit captioned as *Smith* v. *Krispy Kreme Doughnut Corporation,* M.D.N.C. No. 1:05CV00187 (*i.e.,* the ERISA Litigation), that was brought in the District Court. The plaintiffs' complaint alleged the defendant, KKDC, had breached its fiduciary duty with respect to investment in KKDI stock within the Plans and had caused the Plans to suffer losses. The parties litigated for over two years and ultimately reached a settlement (the ERISA Settlement), which was reviewed and approved by the Department's Atlanta Regional Office and by Independent Fiduciary Services, Inc. (IFS), a qualified independent fiduciary. The ERISA Settlement, which received the District Court's approval on January 10, 2007, required both a monetary recovery of $4.75 million and structural relief valued at approximately $3.82 million for the class.[4] Finally, the ERISA Settlement stipulated the merger of the Plans. As of December 31, 2009, the Savings Plan had $26,986,884 in total assets and 2,491 participants. (Notwithstanding the merger, for convenience of reference, this proposed exemption is meant to cover both the post-merger KSOP and the Savings Plan which are treated as separate plans).

The Securities Litigation

6. On May 12, 2004, certain plaintiff investors filed another class action lawsuit in the District Court on behalf of all persons who had purchased securities issued by KKDI between August 21, 2003 and May 7, 2004 (a timeframe that was later extended from March 8, 2001 to April 18, 2005 and referred to herein as the "Class Period"). The class members included the Savings Plan and the KSOP. On October 6, 2004, the District Court appointed the Pompano Beach Police & Firefighters Retirement Systems, the Alaska Electrical Pension Fund, the City of St. Clair Shores Police and Fire Retirement System, the City of Sterling Heights General Employees Retirement System and James Hennessey as the lead plaintiffs (the Class Lead Plaintiffs) to represent the class plaintiffs (the Class Plaintiffs). None of the Class Plaintiffs were parties in interest with respect to the Plans. The District Court also appointed Coughlin Stoia Gellar Rudman & Robbins, LLP as lead counsel (the Class Lead Counsel) for the Class Plaintiffs. The class action defendants (the Class Defendants) included KKDC, PriceWaterhouseCoopers (PwC) and Michael Phalen, who served as the Chief Financial Officer of KKDI and a member of each Plan's committee.

The complaint alleged that the Class Defendants had violated Federal securities laws by issuing materially false and misleading statements throughout the Class Period that had the effect of artificially inflating the market price of KKDI's securities. On June 14, 2004, the class action lawsuit and other related cases were consolidated by the District Court into the Securities Litigation. Newer cases were later consolidated by the District Court in an order dated June 25, 2004.

Settlement Fund Consideration

7. The Securities Litigation was eventually settled. Pursuant to the Settlement Agreement signed on October 30, 2006, a $75 million Settlement Fund (the Settlement Fund) comprised of $39,167,000 in cash, $17,916,500 in shares of the Common Stock, and $17,916,500 in KKDI freely tradable Warrants was established for the benefit of the settlement class (the Settlement Class), which included all persons, including the Plans, who had purchased the Common Stock during the Class Period. The District Court designated Class Lead Counsel to manage the Settlement Fund.[5]

[2] The Savings Plan and the KSOP were not parties in interest with respect to each other.

[3] In such capacity, U.S Trust was given specific authority and responsibility to: (a) Impose any restriction on the investment of participant accounts in the Stock Fund; (b) eliminate the Stock Fund as an investment option under the Savings Plan and to sell or to otherwise dispose of all of any portion of the Common Stock held in the Stock Fund; (c) designate an alternate investment fund under the Plans for the investment of any proceeds from any sale or other disposition of the Common Stock; and (d) instruct the Trustees of the Plans with respect to the foregoing matters.

[4] The ERISA Settlement is not the subject of this proposed exemption. It is discussed here as part of the historic background of this proposed exemption.

[5] The Applicants represent that the Settlement Fund was managed by the Class Lead Counsel for

Continued

8. Under the District Court-ordered formula, the number of shares of the Common Stock issued to the Settlement Fund was determined by dividing $17,916,500 by the "Measurement Price." The "Measurement Price" was defined in the Settlement Agreement as "the average of the daily closing prices for each trading day of Common Stock for the ten trading day period commencing on the fifth trading day next preceding the date KKDI filed its Form 10–K" (Annual Report Pursuant to Section 13 or 15(d) of the Securities and Exchange Act of 1934) with the SEC for Fiscal Year 2006 (Ten Day Method). The Settlement Agreement defined the "Closing Price" for each day as the last reported sales price for the Common Stock on the New York Stock Exchange.

Thus, the Measurement Price was established on a ten-day Closing Price average ending November 7, 2006. This date represented five days before and five days after the filing of the KKDI's Form 10–K with the SEC. As a result, a Measurement Price of $9.77 was selected. The dollar amount of $17,916,500 was divided by the Measurement Price which yielded 1,833,828 shares of the Common Stock for the Settlement Fund.

9. Pursuant to the Settlement Agreement, the number of Warrants issued to the Settlement Fund was determined by dividing $17,916,500 by the fair market value of one Warrant, based on an independent valuation analysis as of the last day of the ten-trading day period referred to in Representation 8. This valuation was also based on the Black-Scholes Model [6] and certain assumptions [7] specified in the Settlement Agreement. Under the terms of the Settlement Agreement, the Warrants were required to be listed on the New York Stock Exchange within ten days of their distribution to the Class Lead Plaintiffs. Thus, a generally recognized market for the Warrants would have existed upon distribution to the Plans.

Appraisal of the Warrants

10. KKDI retained Huron Consulting Group of Chicago, Illinois (Huron), on behalf of all Class Plaintiffs, to provide the fair market value of the Warrants in order to determine how many Warrants to issue the Settlement Fund. Huron represented that its appraisal report, dated for March 12, 2007, which "looked back" to November 7, 2006 (the Huron Appraisal), was made in conformance with the Uniform Standards of Professional Appraisal Practice of The Appraisal Foundation. Huron Managing Director James Dondero, Huron Director John Sawtell CPA, ASA, and Huron Manager Derick Champagne, CPA certified the Huron Appraisal. The Applicants represented that Mr. Dondero has 20 years of experience in financial and economic analysis, corporate finance, valuation and operations. Mr. Dondero also serves on the Appraisal Issues Task Force advising both the Financial Accounting Standards Board and the SEC on valuation-related issues.

Furthermore, in the Huron Appraisal, Huron represented that it had no present or prospective interest in the Warrants that were the subject of its appraisal and no personal interest with respect to the parties involved. Huron also stated that it had no bias with respect to the Warrants or to the parties involved and that its engagement was not contingent upon developing or reporting predetermined results.

Using the Black-Scholes Model and the assumptions described in the footnote references in Representation 9, the Huron Appraisal placed the fair market value of a single Warrant at $4.17 per share as of November 7, 2006. Based on the settlement amount of $17,916,500, Huron stated that KKDC could issue 4,296,523 Warrants.

Notice and Effect of the Settlement

11. A Notice of Pendency and Proposed Settlement of Class Action (the Settlement Notice) was mailed to class members (including the Plans) on November 15, 2006. The Settlement Notice gave class members until January 16, 2007 to exclude themselves from the class and preserve their right to file an individual action. The Plans did not exclude themselves as class members by the January 16, 2007 deadline.

By operation of the Settlement Agreement, all class members were deemed to fully, finally and forever release all known or unknown claims, demands, rights, liabilities and causes of action, arising out of, relating to, or in connection with the acquisition of KKDI Common Stock and Warrants during the Class Period. Thus, in effect, by failing to exclude themselves from the class, the Plans (like all other class members) were bound by the release contained in the Settlement Agreement. After a hearing, the District Court approved the Settlement Agreement and entered final judgment on February 15, 2007.

Appointment of an Independent Fiduciary

12. On April 5, 2007, KKDC formally retained IFS, a Delaware corporation based in Washington, DC, and a registered investment adviser under the Investment Advisers Act of 1940, to serve as independent fiduciary to the Plans with respect to the Plans' interest in the Settlement Agreement. In an agreement entitled "Independent Fiduciary Engagement Between Krispy Kreme Doughnut Corporation and Independent Fiduciary Services, Inc." (the IFS Agreement), IFS accepted its independent fiduciary duties and responsibilities as an fiduciary under the Act on behalf of the Plans.

IFS provides fiduciary decision-making and advisory services to institutional investors, including employee benefit plans subject to ERISA. In this capacity, IFS has evaluated potential claims for investment losses suffered by such plans, including claims arising from State and Federal securities laws. More particularly, IFS has served as independent fiduciary under the "Class Exemption for the Release of Claims and Extensions of Credit in Connection with Litigation," (PTE 2003–39, 68 FR 75632, December 31, 2003),[8] to decide whether to grant a release in favor of the plans' parties in interest of securities law claims similar to the claims asserted above in the Securities Litigation. IFS

the benefit of the Settlement Class and ultimately under the direction of the District Court as the entire Settlement Fund was deemed to be in *custodia legis* of the District Court. As approved by the Court, some of the cash portion of the Settlement Fund was used to pay costs and expenses including taxes actually incurred in distributing the Settlement Notice to the Settlement Class members and the administration and distribution of the Settlement Fund.

[6] The Black-Scholes Model is an option pricing model developed by Fischer Black and Myron Scholes using the research of Robert Merton. The Black-Scholes Model assumes that there is a continuum of stock prices, and therefore to replicate an option, an investor must continuously adjust their holding in the stock. The formula also makes several simplifying assumptions including that the risk-free rate of return and the stock price volatility are constant over time and that the stock will not pay dividends during the life of the option.

[7] These assumptions included basing (a) the volatility of the Common Stock on the historical and implied volatilities of the Common Stock and the common stock of companies similar to KKDC; (b) basing the risk free rate of interest on the Treasury bill rate most closely corresponding to the 5-year term of the Warrants; and (c) the dividend yield at 0%. The price per share of the Common Stock utilized in the Black-Scholes Model would be equal to the Measurement Price.

[8] On June 15, 2010, the Department published an amendment (the Amendment) to PTE 2003–39 at 75 FR 33830. The Amendment modifies PTE 2003–39 and it expands the categories of assets that plans may accept in the settlement of litigation, subject to certain conditions. Among other things, the Amendment permits the receipt by a plan of non-cash assets in settlement of a legal claim (including the promise of future employer contributions) but only in instances where the consideration can be objectively valued. The Amendment is prospectively effective June 15, 2010 and it does not cover the transactions described herein due to the retroactive nature of the submission.

has had no business relationship with KKDC or the Plans other than its service under the IFS Agreement and its service in 2006 pursuant to a separate agreement as independent fiduciary to the Plans pursuant to PTE 2003–39 claims arising under ERISA that were related to the allegations made in the ERISA Litigation. In this regard, the fees IFS derived from KKDC and its affiliates represented less than 1% of IFS' gross revenue for 2006 and less than 1.5% of IFS' gross revenue for 2007.

13. As stated in the IFS Agreement, IFS proposed to attempt, on behalf of the Plans, to obtain an agreement from KKDC, which provided that, in the event IFS should determine that a claim in the class action suit should not be filed on behalf of the Plans, KKDC would waive and forego benefits of any release it had obtained from each of the Plans by virtue of the fact that the Plans did not timely seek exclusion from the settlement class. Moreover, KKDC would support all efforts by the Plans to obtain a reasonable extension of time to file claims on their behalf, including if necessary, an application to the District Court. Thus, IFS had an opportunity to pursue either a class action lawsuit or an individual lawsuit on behalf of the Plans.

14. By letter dated July 25, 2007, (the IFS Letter), IFS stated that it had reviewed the Settlement Agreement and determined, consistent with PTE 2003–39, that the terms and conditions were in substance essentially fair and reasonable from the perspective of the settlement class members, including the Plans. As stated briefly above, PTE 2003–39 provides, in part, exemptive relief for the release by a plan or a plan fiduciary, of a legal or equitable claim against a party in interest in exchange for consideration, given by, or on behalf of, a party in interest to the plan in partial or complete settlement of the plan's or the fiduciary's claim. The relevant conditions of PTE 2003–39 require among other things, that (a) there be a genuine controversy involving the plan, (b) an independent fiduciary authorize the terms of the settlement; (c) the settlement is reasonable and no less favorable to the plan than the terms offered to similarly-situated unrelated parties on an arm's length basis; (d) the settlement is set forth in a written agreement or consent decree; (e) the transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest; and (f) the transaction is not described in Section A.I. of PTE 76–1 (relating to delinquent employer contributions to multiemployer and multiple employer collectively-bargained plans).

In the IFS letter, IFS identified two instances by which the Settlement Agreement's terms would not allow the Plan to take advantage of PTE 2003–39. First, IFS noted that under PTE 2003–39, Section III(c) states that assets other than cash may only be received by a plan from a party in interest in connection with a settlement if: (a) It is necessary to rescind a transaction that is the subject of the litigation; or (b) such assets are securities for which there is a generally recognized market, as defined in section 3(18)(A) of the Act, and which can be objectively valued. IFS stated that the receipt of the Warrants by the Plans did not necessarily comply with Section III(c) of PTE 2003–39, because such receipt was not necessary to rescind any transaction that was the subject of litigation and the Warrants would not become subject to a generally recognized market until after their distribution to the Plans. Additionally, IFS determined that the Warrants were not qualifying employer securities under section 407(d)(5) of the Act.

Secondly, IFS noted that under Section III(d) of PTE 2003–39, to the extent assets, other than cash, are received by a plan in exchange for the release of the plan's or the plan fiduciary's claims, such assets must be specifically described in the written settlement agreement and valued at their fair market value, as determined in accordance with section 5 of the Voluntary Fiduciary Correction (VFC) Program, 67 FR 15062 (March 28, 2002).[9] According to PTE 2003–39, the methodology for determining fair market value, including the appropriate date for such determination, must be set forth in the written settlement agreement. For example, under Section 5 of the VFC Program, the valuation must meet either of the following conditions: (a) If there is a generally recognized market for the property (*e.g.,* the New York Stock Exchange), the fair market value of the asset is the average value of the asset on such market on the applicable date, unless the plan document specifies another objectively determined value (*e.g.* closing price); or (b) if there is no generally recognized market for the asset, the fair market value of the asset must be determined in accordance with generally accepted appraisal standards by a qualified, independent appraiser and reflected in a written appraisal report signed by the appraiser.

IFS stated that it was not satisfied that the terms of Section III(d) of PTE 2003–39 were met because the terms of the Settlement Agreement provided for a payment to the members of the class consisting of cash, the Common Stock and the Warrants.[10] Moreover, IFS noted that the Settlement Agreement valued the Common Stock over a 10-day period rather than at the closing or average price on a specific day. Also, the documents for each Plan did not specify another objectively determined value for the Common Stock. Accordingly, because the terms of the Settlement Agreement did not meet all of the requirements of PTE 2003–39, IFS could not conclude that the Plans should file claims with respect to the Settlement Notice.

15. Despite the foregoing, IFS represented that the terms of the Settlement Agreement were in substance essentially fair and reasonable and that it would be in the interest of the Plans to obtain consideration equal to their proportionate share of the value of the Settlement Fund in exchange for granting a release to the Class Defendants, including KKDC and Mr. Phalen, and that it would likely not be practical for the Plans to pursue separate litigation against the KKDC and Mr. Phalen to obtain that result.

IFS also suggested three options designed to enable the Plans to receive the appropriate amounts of recovery from the Settlement Fund. The first option involved having the Plans obtain from KKDC, Mr. Phalen, and PwC an agreement to forego the benefits of the release which the Plans could provide by filing a claim with the Settlement Funds, so that the Plans would not be releasing a party in interest to the Plans and therefore the Plans could file such claims, accordingly.

The second option suggested by IFS would be for the Plans to enter into a separate agreement with KKDC, PwC and Mr. Phalen under which KKDC would agree to provide a payment to the Plans equal to the Plans' proportionate share of the Settlement Fund calculated

[9] By amendment, the Department revised and updated the VFC Program at 71 FR 20262 (April 19, 2006).

[10] KKDC represents the noncompliance with Sections III(c) and (d) of PTE 2003–39 did not result in harm to the Plans. Instead of using a measurement "such of a single date" as specified by PTE 2003–39, KKDC used the Ten Day Method. In contrast, had the parties used the January 16, 2007 (*i.e.,* the last day for claimants to exclude themselves from the Securities Litigation) to calculate the Common Stock's share price, the Common Stock's share price of $11.42 would have been used as the Measurement Price. Consequently, the Settlement Fund would have received 1,568,870 shares of the Common Stock or 250,000 fewer shares. Accordingly, the Ten Day Method did not result in harm to the Plans.

as though the entire settlement payment of $75 million had been made in cash, rather than a combination of cash, the Common Stock and the Warrants. In consideration of that payment, the Plans could assign/offset to KKDC the value of their respective claims, and the Settling Defendants would receive the releases that would otherwise be associated with the filing of the Plans' claims. Such separate agreement would need to be approved by IFS and otherwise structured to meet the requirements of PTE 2003–39. IFS recommended that under this second option, the separate agreement should be executed and become effective before the Plans filed their claims.

The third option suggested by IFS, would be for KKDC to apply to the Department for an individual exemption to allow the Plans to file a claim with the Settlement Fund and accept cash and non-cash assets as a settling class member, notwithstanding the lack of compliance with Section III(c) and Section III(d) of PTE 2003–39.

16. In an addendum to the IFS letter, IFS explained, that it reached its recommendation for KKDC to exercise the third option based upon a thorough review of the available facts. IFS retained legal assistance from outside counsel. With assistance from outside counsel, IFS reviewed the operative complaint as well as a number of documents, which included motions to dismiss the Securities Litigation, the Class Defendant's mediation statements and damage analysis, the Class Plaintiffs' application for attorneys' fees and the Settlement Agreement. IFS also reviewed records of the Plans' holdings and transactions in the Common Stock, KKDC's insurance policies and it interviewed attorneys for the parties to the Securities Litigation. IFS stated that it took into account the recovery the Plans received from the ERISA Litigation.

Based on its investigation and supported by analysis by outside counsel, IFS concluded that the Settlement Agreement's terms and conditions were in substance essentially fair and reasonable from the perspective of the Plans. IFS also concluded, based on its investigation and analysis, that pursing separate litigation in lieu of accepting consideration equal to the Plan's proportionate share of the value of the Settlement Agreement "would likely not be practical."

IFS stated that it reached its conclusion in light of the following factors:

• *The Plans Would Receive Small Recoverable Damages as a Result of Their De Minimus Holdings of the Common Stock.* IFS noted that the Plans' relatively small holdings of the Common Stock and in particular the KSOP's de minimus purchases of the Common Stock rendered the Plans' potentially recoverable damages in a separate action relatively small. IFS also represented that even if the Class Plantiffs' most optimistic projections for the damages totaled $800 million, the Plans' share would have come to some $4.8 million, a figure that assumes no offset for the Plans' net cash recovery (*i.e.,* less attorneys' and other fees) from the ERISA Settlement. Significantly, IFS noted that the Settlement Agreement did not require that the Plans reduce their claims based on the proceeds from the ERISA Settlement.

• *KKDC Had Limited Financial Resources to Satisfy a Separate Claim by the Plans.* IFS noted that KKDC had limited financial resources available to satisfy a separate claim by the Plans had such a claim been substantial. Pursuant to the Settlement Agreement, KKDC had released all claims under its applicable insurance policies for payments in excess of what the carriers, who had disputed coverage for the claims in the Securities Litigation. IFS represented that, at the time of its determination, KKDC's most recent SEC Form 10–Q showed that KKDC's total cash assets as of April 29, 2007 were less than $31 million, down from $36 million three months earlier.

• *The Plans Would Incur Great Costs in Proving Complex Allegations Against KKDC.* IFS explained that the allegations asserted against KKDC in the Securities Litigation raised complex issues regarding the proper accounting treatment of a series of intricate franchising, financing, leasing and derivative transactions. IFS represented that proving such allegations would have required extensive discovery and costly retention of accounting and other experts. IFS noted that the potential defendants also had significant defenses available to the claims that would have been asserted by the Plans. The Fourth Circuit, where such action would have been brought, would not favor an allegation that the misapplication of accounting principles established the state of mind to support a claim of fraud under Federal securities laws.

• *No Opt Outs or Separate Lawsuits Were Filed by Securities Litigation Class Members.* At the time of its determination in the IFS Letter, IFS stated that it knew of no material opt outs from the Securities Litigation by class members. Moreover, IFS asserted that there were no separate lawsuits outside of the Securities Litigation brought by any party to recover damages based on the allegations. The only objection, according to IFS, by an institutional investor to the Settlement Agreement addressed the plaintiff's attorney fees which the District Court rejected. The only individual investor who objected to the settlement asserted that investors should not receive anything because equity investors take risks. Thus, IFS stated no party with a financial stake in the matter had asserted that class members would have been better off with more litigation as opposed to the Settlement Agreement.

In light of these factors, IFS represented that pursuing separate litigation in lieu of participating in the Settlement Agreement would have entailed significant expense for the Plans. There would also have been a substantial risk that the Plans would recover little or nothing. In light of the relatively small size of the Plans' potential claims, the fact the Plans had already achieved a material recovery through the ERISA Settlement, and the complexity of the case, IFS concluded that the claims would not be attractive to law firms that litigate securities fraud cases on a contingency fee basis. Finally, IFS stated that the reasonableness of these conclusions is further evidenced by the fact that as of July 2010, no cases had been brought against KKDC outside the Securities Litigation that asserted the claims that were settled.

Request for Exemptive Relief

17. The Applicants represent that the Plans' decision to grant the release was primarily based on the advice of IFS. Instead of filing by the January 16, 2007 deadline, stipulated in the Settlement Notice, the Plans filed their Proof of Claim and Release with the District Court on August 8, 2007, and subsequently applied for an administrative exemption from the Department.

If granted, the exemption would apply effective January 16, 2007, to (a) the release by the Plans of their claims against KKDC in exchange for cash, the Common Stock and the Warrants in settlement of the Securities Litigation; and (b) the holding of the Warrants by the Plans.[11]

[11] The Department is expressing no opinion herein on whether the cash, the Common Stock and the Warrants that were being held on behalf of the Plans in the Settlement Fund would constitute "plan assets" within the meaning of 29 CFR 2510.3–101. Nevertheless, the Department is providing exemptive relief with respect to the release, by the Plans, of their claims against KKDC in settlement of the Securities Litigation, in exchange for the consideration allocated to the Plans in the Settlement Fund. The Department is also proposing

Section 407(a)(1) of the Act states that a plan may not acquire or hold any "employer security" which is not a "qualifying employer security." Both the Common Stock and the Warrants are "employer securities" within the meaning of section 407(d)(1) of the Act in that they are "securities issued by an employer of employees covered by the plan, or by an affiliate of such employer." The Common Stock, but not the Warrants, is also a "qualifying employer security." Section 407(d)(5) of the Act defines a "qualifying employer security," as stock, a marketable obligation, or an interest in a publicly-traded partnership (provided that such partnership is an existing partnership as defined in the Code). Moreover, section 406(a)(1)(E) of the Act prohibits the acquisition, on behalf of a plan, of any "employer security" in violation of section 407(a) of the Act. Finally, section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of a plan to permit the plan to hold any "employer security" that violates section 407(a) of the Act.

Section 408(e) of the Act provides, in part, a statutory exemption from the provisions of sections 406 and 407 of the Act with respect to the acquisition by a plan of "qualifying employer securities" (1) if such acquisition is for adequate consideration, (2) if no commission is charged with respect thereto, and (3) if the plan is an "eligible individual account plan" (as defined in section 407(d)(3) of the Act, *e.g.,* a profit sharing, stock bonus, thrift, savings plan, an employee stock ownership plan, or a money purchase plan).

It appears that the Plans' acquisition of the Common Stock from KKDC through the Settlement Fund would not be covered by section 408(e) of the Act because this provision does not cover the acquisition of qualifying employer securities by a plan in exchange for such plan's release of claims against a party in interest. Additionally, an issue remains as to whether the "adequate consideration" requirement of section 408(e)(1) of the Act was satisfied insomuch as the Measurement Price for the Common Stock of $9.77 per share was calculated on the basis of the Ten Day Method. Therefore, the Department has decided to provide exemptive relief with respect to the Plans' acquisition of such stock from KKDC in connection with the Plans' release of claims against KKDC.

Furthermore, the Department has decided to propose exemptive relief for the Plans' acquisition of the Warrants from KKDC through the Settlement Fund because the Warrants are not "qualifying employer securities" and the statutory exemption under section 408(e) of the Act would not be available.

Finally, the Department is providing exemptive relief with respect to the Plans' holding of the Warrants in the Settlement Fund to the extent such holding violated the provisions of sections 406(a)(2) and 407(a) of the Act. Conversely, the Plans' holding of the Common Stock in the Settlement Fund does not appear to violate these provisions. Therefore, exemptive relief is limited to the Plans' holding of the Warrants.

Absent relief, the Applicants state that the Plans' participation in the Settlement Fund would have to be reversed. This reversal would likely result in the Plans' losing the economic benefit of the significant appreciation in the value of the settlement proceeds after their sale. Furthermore, the Applicants represent, that based on IFS' conclusions, it would not be practical for the Plans to pursue separate litigation in this matter. The Applicants conclude that absent exemptive relief, the Plans would risk losing out on their share of the Settlement Fund or having a potential separate settlement diminished by the costs of pursuing separate litigation.

Settlement Fund Consideration Received by the Plans

18. The 1,833,828 shares of the Common Stock that were held in the Settlement Fund were sold after the January 16, 2007 deadline, approximately in February 2007. Pursuant to the terms of the Settlement Agreement, Class Lead Counsel had "the rights to take any measure they deem[ed] appropriate to protect the overall value of the Krispy Kreme Settlement Stock prior to distribution to Authorized Claimants." This included the right to sell the Common Stock. Based on representations from Class Lead Counsel, the Applicants represent that all of the Common Stock in the Settlement Fund was sold on the New York Stock Exchange at prices higher than the Measurement Price of $9.77 per share. The cash proceeds from the sale of the Common Stock was deposited with the cash portion of the Settlement Fund. This amount earned interest while the claims process was in effect. Then, each claimant was entitled to receive a portion of the cash amount (reflecting both the cash and the Common Stock portions of the Settlement Fund) in accordance with the Plan of Allocation.

The Applicants represent that the Plans were entitled to receive approximately 8,675 shares of the 1,833,828 shares of the Common Stock. Following the sale of the Common Stock, the Plans received a total of $262,097.94 from the Settlement Fund. This amount included unclaimed cash proceeds in addition to proceeds from the sale of Common Stock. Of the total amount, $101,634.42 was attributable to the Savings Plan and $160,463.52 was attributable to the KSOP.

With respect to the Warrants, the Applicants state that 4,296,523 Warrants were distributed to the Settlement Fund on February 4, 2009. Of the 20,324 Warrants allocated to the Plans, 12,443 Warrants were allocated to the KSOP and 7,881 Warrants were allocated to the Savings Plan. Although the Plans had acquired and held the Warrants through the Settlement Fund, the Applicants believed they could reduce the likelihood of a prohibited transaction if the Settlement Fund distributed cash instead of the Warrants to the Plans. Therefore, IFS requested Class Lead Counsel sell the 20,324 Warrants and distribute the cash proceeds to the Plans.

Therefore, Gilardi & Co. (Gilardi), the Claims Administrator for the Settlement Fund, agreed to sell the Plans' Warrants at the direction of Class Lead Counsel. The Claims Administrator sold the Warrants allocated to the Plans on September 16, 2009 for a total price of $1,300.09, or an average price of $0.0639 per Warrant. The Applicants represent that the sale was executed on the OTC Bulletin Board at the best available market price. After deducting fees and commissions of $41.79, Gilardi distributed $770.37 in cash to the KSOP and $487.93 to the Savings Plan, or total net proceeds of $1,258.30 on September 29, 2009.

In addition, the Settlement Fund made several small distributions to the Plans (*i.e.,* $5,920.66) to the KSOP and $3,750.03 to the Savings Plan) related to certain unclaimed funds.

After taking into account the Common Stock, cash proceeds, unclaimed funds distribution and the Warrants, the Plans received aggregate proceeds from the Settlement Fund of $273,026.93. Of this amount, the KSOP received $105,872.38 and the Savings Plan received $167,154.55 from the Settlement Fund.

Summary

19. In summary, it is represented that the transactions satisfied the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The receipt and holding of cash, the Common Stock and the Warrants

exemptive relief for the holding of the Warrants by the Settlement Fund for the Plans.

occurred in connection with a genuine controversy involving the Plans were parties.

(b) An independent fiduciary retained on behalf of the Plans to determine whether or not the Plans should file claims against KKDC pursuant the Settlement Agreement and accept cash, Common Stock and Warrants —

(1) Had no relationship to, or interest in, any of the parties involved in the Securities Litigation that might affect the exercise of such person's judgment as a fiduciary;

(2) Acknowledged, in writing, that it was a fiduciary for the Plans with respect to the settlement of the Securities Litigation; and

(3) Determined that an all cash settlement was either not feasible or was less beneficial to the participants and beneficiaries of the Plans than accepting all or part of the settlement in non-cash assets.

(4) Thoroughly reviewed and determined whether it would be in the best interests of the Plans and their participants and beneficiaries to engage in the covered transactions.

(5) Determined whether the decision by the Plans' fiduciaries to cause the Plans not to opt out of the Securities Litigation was more beneficial to the Plans than having the Plans file a separate lawsuit against KKDC.

(c) The terms of the Settlement Agreement, including the scope of the release of claims, the amount of cash and the value of any non-cash assets received by the Plans, and the amount of any attorney's fee award or any other sums to be paid from the recovery were reasonable in light of the Plans' likelihood of receiving full recovery, the risks and costs of litigation, and the value of claims foregone.

(d) The terms and conditions of the transactions were no less favorable to the Plans than comparable arm's length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.

(e) The transactions were not part of an agreement, arrangement, or understanding designed to benefit a party in interest.

(f) All terms of the Settlement Agreement were specifically described in a written document approved by the District Court.

(g) Non-cash assets, which included the Common Stock and the Warrants received by the Plans from KKDC under the Settlement Agreement, were specifically described in the Settlement Agreement and valued as determined in accordance with a court-approved objective methodology;

(h) The Plans did not pay any fees or commissions in connection with the receipt or holding of the Common Stock and the Warrants.

(i) KKDC maintains, or causes to be maintained, for a period of six years records as are necessary to enable persons, such as duly authorized employees, agents or representatives of the Department, fiduciaries of the Plans, participants and beneficiaries of the Plans, or any employer whose employees are covered by the Plans, to determine whether the conditions of this exemption have been met.

Notice to Interested Parties

Notice of the proposed exemption will be given to interested persons within 10 days of the publication of the notice of proposed exemption in the **Federal Register**. The notice will be given to interested persons by first class mail or personal delivery. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and 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 with respect to the pending exemption. Written comments and hearing requests are due within 40 days of the publication of the notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Anh-Viet Ly of the Department at (202) 693–8648. (This is not a toll-free number.)

William W. Etherington IRA (the IRA)

Located in Park City, Utah

[Application No. D–11632]

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 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 sale (the Sale) by the IRA to William W. Etherington and his wife, Paula D. Etherington (the Applicants), disqualified persons with respect to the IRA,[12] of the IRA's 80% interest (the Interest) in certain residential real property (the Property); provided that:

(a) The terms and conditions of the Sale are at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party;

(b) The Sale is a one-time transaction for cash;

(c) As consideration, the IRA receives the fair market value of the Interest as determined by a qualified, independent appraiser, in an updated appraisal on the date of Sale; and

(d) The IRA pays no real estate commissions, costs, fees, or other expenses with respect to the Sale.

Summary of Facts and Representations

Background

1. The Applicants reside in Park City, Utah. From 1994 through February, 2010, Mr. Etherington owned and managed a construction company, Northland Excavation LLC, which was forced to close as the result of a deep and lengthy downturn in the local building market. In addition, Mrs. Etherington has owned her own retail business, "Changing Hands," a consignment store specializing in the sale of used clothing, since 1992. According to the Applicants, the recent adverse economic conditions have also forced her business into decline and it is winding up its operations.

2. Mr. Etherington is also a retired commercial airlines pilot, who ended work with Delta Airlines (Delta) on December 1, 2004 with full retirement benefits. At the time of his retirement, Mr. Etherington opted to receive 50% of his pension benefit in a lump sum payment, which was invested in an individual retirement account held with Fidelity Investments and held a portfolio comprised of an assortment of long term investments. Delta subsequently terminated its retirement plan as a result of its bankruptcy and the remainder of Mr. Etherington's pension was turned over to the Pension Benefit Guaranty Corporation (PBGC) on December 31, 2006. On May 7, 2010, the PBGC issued a final benefit determination letter to Mr. Etherington, which states that the remainder of his monthly pension benefit is equal to zero.

3. The IRA was established on May 12, 2009 at Millenium Trust Company, LLC (Millenium), located in Oak Brook, Illinois, in the name of William W. Etherington. As of December 11, 2010, the IRA held assets worth $961,880.17. According to the Applicants, the IRA

[12] Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

was established for the sole purpose of purchasing the Property, located at 67–324 Kaiea Place, Waialua, Hawaii. The Property is legally described as "Lot 717, Kamananui, Wailua, Honolulu County, Oahu, Hawaii, LC App. 1089, Maps 7, 19, and 29." The Property is situated on an ocean front lot consisting of 7,699 total square feet with a residential building comprised of a gross living area of 1,250 square feet. The residence is a single-level house built in 1985 containing three bedrooms and two baths and a large deck off the back door overlooking the beach. The Property is not located in close proximity to other real property owned by the Applicants.

4. The Applicants represent that the goal of the IRA's investment in the Property was twofold. First, the Applicants desired to make a long-term investment for appreciation and cash flow by capitalizing on the recent downturn in the Hawaiian real estate market. Second, the Applicants planned to take ownership of the Property through a series of distributions from the IRA.[13] In this regard, the purchase was structured by the Applicants as a co-investment between themselves and the IRA, as tenants in common.[14] The Applicants explain that at a future date, they would begin taking 10% annual distributions of the Interest over a 10 year period, whereupon at the end of the 10 year period they would own the Property outright. At such point, according to the Applicants, they planned to either sell the Property or occupy it as their residence.

5. Accordingly, after setting up the IRA, Mr. Etherington transferred $940,000 from his tax-qualified retirement account held with Fidelity to the IRA. The Applicants also set aside additional cash in the amount of $234,000 from their personal accounts in order to purchase a collective 20% share of the Property to be held in their personal capacities.

6. On June 8, 2009, Mr. Etherington caused the IRA to purchase the Property, as a tenant in common, with his wife and himself, in an all-cash purchase from unrelated parties, Juergen and Hilde Jenss, as Trustees of the Jenss Family Trust. The total price paid for the Property was $1,174,138.50, including closing costs. The IRA purchased 80% of the Property for a total cash payment of $939,300.23 ($936,000 attributable to the Interest and $3,300.23 attributable to closing costs). Additionally, the Applicants purchased 20% of the Property in their individual capacities, for a total cash payment of $234,838.27, or $117,419.14 each ($234,000 attributable to their 20% ownership interest and $838.27 attributable to closing costs). The Property has not been subject to any loans or other encumbrances.

Management of the Property

7. The Applicants note that, since its purchase, the Property has been managed by two unrelated individuals, Vicky Hanby and Greg McCaul. It is attested by the Applicants that neither of these individuals were disqualified persons with respect to the IRA prior to their management of the Property.

8. Mrs. Hanby, the owner and operator of Homes Hawaii Realty LLC, a real estate agency and property management company, was contracted with to provide management services to the Property. As the property manager, Mrs. Hanby was responsible for managing the Property as a long-term rental residence. In this regard, her responsibilities included finding renters, paying bills, remitting rental receipts, and scheduling repairs and maintenance. The Applicants explain that income and expenses were received and/or paid out of a general bookkeeping account which allocated the amounts to either party in accordance with its ownership percentage of the Property.

9. Prior to renting out the Property, Mrs. Hanby arranged for the Property to be repainted in order to prepare it for its initial tenants. In this regard, Mr. Etherington contracted with Mrs. Hanby's husband, Rick Hanby, for the painting of the interior of the house. The Applicants state that Mrs. Hanby asked her husband to submit a verbal bid to paint the walls of the house, and based on the bid of $300, the Applicants accepted because they believed that Mr. Hanby's bid was the lowest that they would receive. In this regard, the IRA paid $240 and the Applicants paid $60 to compensate Mr. Hanby for his services.[15]

10. At the time that the contract was entered into, Mr. Hanby was a disqualified person with respect to the IRA pursuant to section 4975(e)(2)(F) of the Code, because he was the husband of the Property's manager, Mrs. Hanby. Thus, Mr. Etherington's entering into the service arrangement with, and the rendering of painting services by, Mr. Hanby constituted a prohibited transaction in violation of sections 4975(c)(1)(C) and (D) of the Code. However, it appears that the arrangement with Mr. Hanby may be covered under the statutory exemption found in section 4975(d)(2) of the Code.[16]

11. In July 2009, the Property was rented out on an annual basis to Major Ian Schneller and his family. Major Schneller is a United States military officer who was stationed in Hawaii at the time. The Applicants represent that the Schnellers are unrelated parties with respect to the IRA. During the period that the Property was leased to the Schnellers, it earned approximately $41,933.30 in gross receipts, from which it paid out $23,295.00 in expenses, resulting in $18,638.30 of net income.

12. The Applicants state that in August 2010, Major Schneller was unexpectedly transferred to California and was not able to renew the lease, thus leaving the Property with a vacancy. Shortly thereafter, Mrs. Hanby announced to the Applicants that it could require several months to find new, suitable long-term tenants willing to pay similar rental fees to those that the Schnellers had paid ($3,700 per month). Thus, the Applicants explain, the Property was converted to a short-term rental property. Furthermore, the Applicants note that because Mrs. Hanby would not manage the Property as a short-term vacation rental, she was replaced as the Property's manager by Mr. McCaul.

[13] At 62 years of age, Mr. Etherington is currently eligible to receive distributions from the IRA without incurring an early distribution penalty under section 72(t) of the Code.

[14] With respect to the co-investment arrangement between the Applicants and the IRA, the Department notes that if an IRA fiduciary, such as Mr. Etherington, causes his IRA to enter into a transaction where, by the terms or nature of the transaction, a conflict of interest between the IRA and the IRA fiduciary (or persons in which the IRA fiduciary has an interest) exists or will arise in the future, that transaction would violate section 4975(c)(1)(D) or (E) of the Code. Moreover, the IRA fiduciary must not rely upon and cannot be otherwise dependent upon the participation of the IRA in order for the IRA fiduciary (or persons in which the fiduciary has an interest) to undertake or to continue his share of the investment. Furthermore, even if at its inception the transaction does not involve a violation of the Code, if a divergence of interests develops between the IRA and the IRA fiduciary (or persons in which the fiduciary has an interest), such fiduciary must take steps to eliminate the conflict of interest in order to avoid engaging in a prohibited transaction. *See* ERISA Advisory Opinion Letter 2000–10A (July 27, 2000). The Department is not proposing relief for any violations that may have arisen in connection with this co-investment arrangement.

[15] Additionally, $79.97 was spent on painting supplies, of which $63.98 was paid by the IRA and $15.99 was paid by the Applicants.

[16] Section 4975(d)(2) of the Code and section 54.4975–6 of the United States Treasury Regulations provide exemptive relief from the prohibitions described in sections 4975(c)(1)(C) and (D) of the Code for any contract, or reasonable arrangement, made with a disqualified person for services that are necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid for such services. No relief is proposed herein for either the selection of Mrs. Hanby's husband or the provision of his painting services.

13. The Applicants relate that Mr. McCaul is a self-employed business owner with several other properties in the near vicinity of the Property under his management. According to the Applicants, Mr. McCaul assumed full responsibility for advertising, reservations, collections and remittances of payments, and maintenance of the Property, including contracting with third party companies for its cleaning in between rentals. Specifically, in order to prepare the Property for its first vacation rental, at the end of July, 2010, Mr. McCaul purchased several items of furniture from the Schnellers in order to furnish the Property for its short-term rental clients.

14. The Applicants state that, due to the complication of apportioning the proceeds between the IRA and Mr. and Mrs. Etherington in proportion to their respective ownership interests, recordkeeping responsibilities for the Property are shared between Mr. McCaul and Mr. Etherington. In this regard, the Applicants explain that Mr. McCaul collects the rental proceeds and pays for some of the maintenance out of said proceeds, remitting a statement of income and expenses to Mr. Etherington and a rental income check to the IRA's administrator, Millenium Trust, to be deposited in the IRA. The Applicants also note that they are required by U.S. tax law to maintain records related to their personal income tax return on a Schedule E regarding the 20% portion of the Property owned in their personal capacities.

15. Commencing on August 7, 2010, the Property was rented to short-term rental clients. The Applicants state that since its conversion to a daily vacation rental, the Property has had an in-season occupancy rate, including bookings through the end of February, 2011, of approximately 90% at its full nightly rate of $249. In addition, the Applicants point out that the Property has had an off-season occupancy rate of approximately 80%, with an adjustment in the rental rate to accommodate the slack in demand. As such, the Applicants explain that the Property generates more income as a vacation rental than it would under a long-term lease.

16. The Applicants represent that during the period of time that they and the IRA have owned the Property it has earned a profit. As illustrated by the Property's Statement of Profit and Loss for the period beginning on July 1, 2009 and continuing through December 31, 2010 (the Statement), the Applicants' and the IRA's shares of income were $13,188.61 and $52,474.44, respectively. In addition, their respective shares of expenses were $6,980.48 and $27,921.92, paid for items such as taxes, licensing fees, insurance, bank fees, cleaning costs, landscaping, pest control, property management fees, utilities, and costs associated with repairs and maintenance. Thus, the Applicants and the IRA received $6,208.13 and $24,552.52, respectively, in net income during the time period from July 1, 2009 through December 31, 2010. Therefore, the IRA's net acquisition and holding costs with respect to the Property equal $914,747.71 for this time period.

17. The Applicants represent that, since the purchase of the Property, neither they nor any other disqualified person has stayed at the Property or used it for any reason. Further, the Applicants state that neither they nor any family members own any other property in the State of Hawaii. However, since his retirement, Mr. Etherington has been visiting Hawaii approximately once every six weeks for recreational purposes and to perform various management tasks and light maintenance with regard to the Property, but he has not stayed at the Property. Mr. Etherington explains that on these occasions, he visually inspects the Property to assess its condition and periodically performs light lawn cleanup and landscaping maintenance. He also meets in person with Mr. McCaul to discuss his inspections and other issues concerning the Property. However, Mr. Etherington states that he has no input regarding Mr. McCaul's selection of, or interaction with, any of the Property's rental clients. Moreover, Mr. Etherington represents that he has not received any form of compensation for any services provided to the Property.

The Requested Relief

18. The Applicants have requested an administrative exemption from the Department in order to allow them to purchase the Interest from the IRA in their personal capacities. The Sale would be a one-time cash transaction for no less than the fair market value of the Interest, as determined by a qualified, independent appraiser in an appraisal that would be updated on the date of the Sale. Further, the terms of the Sale would be at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party, and the IRA would pay no real estate commissions, costs, or other expenses in connection with the Sale.

Rationale for the Sale

19. The Applicants state that, due to a medical condition suffered by Mrs. Etherington, it is necessary that they take full ownership of the Property now rather than wait to receive the Interest in future payouts from the IRA. The Applicants observe that Mrs. Etherington's medical condition causes her to have an acute sensitivity to temperature extremes and limited mobility, both conditions which can be treated by relocating to the Property. In this regard, the Applicants note that they have received advice from a doctor currently treating Mrs. Etherington, which recommends temperature moderation as well as sunlight therapy as an ideal treatment. Because the Property is a single-level structure located in a more temperate climate than Park City, Utah, the Applicants believe that it is a more suitable residence for Mrs. Etherington.

20. The Applicants also assert that the recession has made the Property an unsuitable investment because it is not appreciating in value as they had anticipated. According to the Applicants, the purchase of the Property was made during a perceived downturn in the Hawaiian real estate market, in the hopes of earning significant long-term appreciation and cash flow. Nevertheless, the Applicants point out that the condition of the real estate market has clouded any anticipation of future appreciation. Thus, they explain that would like to reinvest the IRA in stocks, bonds, and other liquid investments in order to take advantage of greater potential appreciation in value.

21. Furthermore, the Applicants assert that the recent loss of Mr. Etherington's pension with Delta and the winding up of Mr. and Mrs. Etherington's respective businesses have left them with no current cash flow, thereby making the need for liquid investments extremely critical. As described above, on May 7, 2010, the PBGC issued a final benefit determination letter to Mr. Etherington informing him that he would not be receiving the remainder of his monthly pension benefit with Delta. At the same time, the Applicants note that their respective businesses have closed or are in the process of winding down. In fact, Mr. Etherington states that his only source of income going forward will be derived from Social Security.

Necessity To Sell Current Residence

22. The Applicants state that they wish to purchase and occupy the Property as their primary residence. However, the Applicants explain that,

in order to do so, they need to sell their current residence to gain the financial resources to make such purchase. The Applicants' current residence carries no debt and as of October 31, 2010 was listed for sale at $895,000. In the event that insufficient funds are received from the sale of their current residence, Mr. Etherington has stated that he will use proceeds received from (a) the sale of certain of his taxable savings accounts or other non-IRA investments, (b) the sale of machinery owned by his now defunct excavation company, currently on the market for $119,000, (c) the sale of the Kamas, Utah business property, currently owned by BRE, LLC, of which Mr. Etherington is a one-third owner/member (and upon which he carries a mortgage of $368,649), and/or (d) a distribution of funds from his Fidelity IRA.

Appropriateness of Proposed Transaction

23. The Applicants maintain that the Sale will benefit the IRA because it will allow the IRA to invest in a more diversified portfolio with a greater chance of appreciation. As noted in Representation 3, Mr. Etherington's December 11, 2010 financial statement from Millenium revealed that the IRA held total assets of $961,880.17, of which the Property constituted approximately 98% or $939,300.23. The statement also showed that the remaining 2% of the fair market value of the IRA's assets, or $22,579.94, was invested in cash and cash equivalents.[17]

24. As stated above, after completing the Sale, Mr. Etherington plans to reinvest the IRA's proceeds from the Sale in other investments that are more liquid. The Applicants admit that based on current economic conditions, the original purchase of the Property by the IRA for purposes of taking advantage of depressed real estate prices may have been premature. Given the condition of the real estate market, the Applicants suggest that a broad array of stocks and bonds will have higher returns than the Property, partly because such investments will not have the additional recurring expenses such as real estate taxes, property management fees, insurance costs, and various maintenance outlays.

25. Moreover, the Applicants explain that the Sale would be in the interest of the IRA because no real estate commissions or other fees would be payable by the IRA, nor would the IRA incur any expenses. According to the Applicants, a sale of the Property to an independent third party would necessitate that the IRA pay its share of the real estate commission, which would be nearly $60,000. The Applicants represent that the payment of such a fee would create a net loss to the IRA of approximately $28,000, or 3% of the IRA's initial investment. Alternatively, the Applicants point out that the Sale would yield the IRA a net profit of $32,000, comprised of $12,000 attributable to the Property's appreciation and $20,000 attributable to the Property's income, for a return of 3.4% on its initial investment.

26. The Applicants state that they have not contemplated selling the Interest to an unrelated third party or subdividing the Property. In addition to avoiding fees and commissions, they contend that, under current market conditions, the Sale could take place sooner and at a higher price than a sale to a third party. In this regard, the Applicants note that no real estate in a similar category as the Property has sold in the last year due to poor market conditions. Furthermore, based on the Property's 2011 Real Property Assessment Notice from the State of Hawaii for the tax year July 1, 2011 to June 30, 2012 (the Assessment), provided by the Applicants, the Property's assessed value decreased by approximately 15% in the last year, from $1,170,900 (its most recent purchase price) to $993,200. Thus, the Applicants suggest that a sale of the Property to a third party would require more time on the market, and thus sell at a significant discount in price due to the declining price of residential real estate.

The Appraisal

27. The Applicants retained Mary Mau, of Second Opinion Hawaii, Inc., located in Honolulu, Hawaii, to conduct an appraisal of the Property. Ms. Mau is licensed in the State of Hawaii as a certified residential appraiser. Ms. Mau conducted an appraisal of the Property on February 10, 2010, and issued an appraisal report on the same date (the Appraisal). In the Appraisal, Ms. Mau certified that she is independent of the Applicants and does not have an interest in the Property. In a December 7, 2010 letter (the Letter) to the Department supplementing the Appraisal, Ms. Mau represents that her appraisal firm received less than one percent of its gross income, on a 2009 fiscal year basis, from the Applicants, inclusive of income received for the Appraisal. Furthermore, in the Letter, Ms. Mau indicates that she understands the Appraisal will be used for the purpose of obtaining an administrative exemption from the Department for the Sale, that she is unaware of any special benefit that the Applicants may derive from the Property, and that a follow-up appraisal will be needed on the date of the Sale.

28. In conducting the Appraisal, Ms. Mau considered the Sales Comparison Approach and the Cost Approach to valuation. According to the Appraisal, the Income Approach was not used to value the Property, as the typical property valued under the Income Approach is owner-occupied, there were insufficient sales of rental properties to compute a reliable GRM,[18] and investors do not typically purchase residential properties for investment purposes due to its less than desired return on the investment.

29. The Sales Comparison Approach and the Cost Approach yielded values of $1,185,000 and $1,189,825, respectively. Ms. Mau determined that the greatest reliance should be placed upon the Sales Comparison approach, because sales of similar properties are the best indicator of the current opinion of value for the Property. The Appraisal states that, with recent sales displaying overall similarities and making market reaction adjustments for the physical and other differences, an appraiser used the Sales Comparison Approach can arrive at an estimated value for the subject property. On the other hand, the Cost Approach is most effective in determining values for properties with newer improvements, where estimating physical depreciation is more precise than with older improvements. While the Cost Approach was not relied upon, the Appraisal indicates that it nevertheless was significant in that it supported the final opinion of value.

30. Accordingly, Ms. Mau determined the value of the Property, as of February 10, 2010, to be $1,185,000. Thus, according the Applicants, the value of the Interest is approximately $948,000 ($1,185,000 × 80%). The appraised value represents an appreciation of $15,000 over the original purchase price since the time of purchase, $12,000 of which is allocable to the Interest. Ms. Mau will update the Appraisal on the date of the Sale.

[17] The cash and cash equivalents are attributable to the IRA's share of rental receipts received on the Property, plus interest.

[18] GRM, or "gross rent multiplier," is the ratio of the monthly (or annual) rent divided into the selling price, and is useful for valuations of rental houses and simple commercial properties when used as a supplement to other more well developed methods. If several similar properties have sold in the market recently, then the GRM can be computed for those and applied to the anticipated monthly rent for the subject property.

Summary

31. The Applicants represent that the proposed transaction will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because:

(a) The terms and conditions of the Sale will be at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party;

(b) The Sale will be a one-time transaction for cash;

(c) The IRA will receive the fair market value of the Interest as determined by a qualified, independent appraiser in an updated appraisal on the date of Sale; and

(d) The IRA will pay no real estate commissions, costs, fees, or other expenses with respect to the Sale.

Notice to Interested Persons

Because the Applicants are the sole persons with respect to the IRA who have an interest in the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Therefore, comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Blinder of the Department at (202) 693–8553. (This is not a toll-free number.)

H–E–B Brand Savings and Retirement Plan (the Plan) and H.E. Butt Grocery Company (the Company) (Together, the Applicants)

Located in San Antonio, Texas

[Application No. D–11642]

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 proposed exemption is granted the restrictions of section 406(a), section 406(b)(1), and section 406(b)(2) of the Act and the sanctions resulting from the application of 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale of real property (the Property) by the Plan to the Company, a party in interest with respect to the Plan; provided the following conditions are satisfied:

(a) The sale of the Property is a one-time transaction for cash;

(b) The Plan will receive from the proceeds of the sale of the Property a sales price in the amount of $2,762,566, plus an amount equal to $432,618 (the total of all real estate taxes and expenses incurred by the Plan as a result of holding the Property from the date the Plan purchased the Property through December 31, 2009), plus an additional amount equal to the total of all real estate taxes and expenses from January 1, 2010, to the date of the sale of the Property to the Company;

(c) The terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(d) The Plan pays no fees, commissions, or other expenses in connection with the sale of the Property to the Company; and

(e) Prior to entering into the subject transaction, the trustees of the Plan (the Trustees) determine that the sale of the Property is feasible, protective of, and in the interest of the Plan and its participants and beneficiaries.

Summary of Facts and Representations

1. The Plan is a defined contribution plan incorporating a qualified cash or deferred arrangement. The Plan had approximately 20,454 active participants, as of December 31, 2009. As of December 31, 2009, the Plan had total assets with a fair market value of $1,262,547,711.

2. The Company has sponsored the Plan since 1956. The Company is a Texas corporation engaged primarily in the retail grocery business in Texas. The following entities which are affiliated with the Company have also adopted the Plan: (a) H.E. Butt Grocery Company, LP; (b) HEBCO Partners, Ltd.; (c) Parkway Distributors, Inc.; (d) Parkway Transport, Ltd.; (e) C.C. Butt Grocery Company; and (f) HiTech Commercial Services, Inc. It is represented that Parkway Distributors, Inc. and Parkway Transport, Ltd. are engaged in the business of intrastate and interstate trucking.

3. The Property which is the subject of this proposed exemption is located at the intersection of Mystic Park Drive and Guilbeau Road in San Antonio, Texas. The Property consists of 5.822 acres of undeveloped real property. The current fair market value of the Property constitutes .0003 percent (.0003%) of the total assets of the Plan.

The Plan owns the subject Property which is adjacent to a shopping center, owned by the Company. A portion of the shopping center is currently occupied by a grocery store which is operated by the Company.

Throughout the Plan's existence, the Trustees for the Plan have consisted of a group of Company officers and employees. The Plan purchased the Property in 1986 from Ray Ellison Industries, Inc., an unrelated third party, for $1,077,736.25. The transaction was effectuated by William J. Horvath, trustee for the Plan. The Plan has not been able to locate an outside appraisal of the Property that was done at the time of the initial purchase. The acquisition of the Property by the Plan was a cash transaction. It is represented that no lender was involved.

The Property is deed restricted for 55 years against use of the Property for grocery, fuel, and pharmacy product sales. These deed restrictions were applied to a total of 85 acres surrounding the Company's adjacent parcel (7.385 acres) when such adjacent parcel was purchased on November 27, 1985. It is represented that when in 1986 the Plan purchased the Property, it was subject to these restrictions in the deed and that such deed restrictions were reflected in the purchase price of the Property paid by the Plan.[19]

The Plan purchased the Property with the intent of developing a small shopping center. It is represented that the market shifted to the north, and the interest level diminished. No buildings were ever constructed on the Property. The Property has not been leased since its acquisition by the Plan. It is represented that the only costs incurred by the Plan through the Plan's holding of the Property have been the real estate taxes (described, below, in paragraph number 7) and the incidental costs of mowing the Property of approximately $500 per year.

It is represented that access to the Property from Mystic Park Drive is via a single, concrete curb cut at the northeast corner of the Property paid for by the Company. In addition, the Company paid for the construction of a concrete paved driveway that extends along the north and west boundary of the Property and across the adjacent parcel owned by the Company to Guilbeau Road.

It is represented in the appraisal of the Property, described below, that the primary user of the concrete driveway on the Property is the Company for delivery of merchandise to the adjacent parcel owned by the Company. While the Company acknowledges that it has in the past and is currently using the concrete driveway for east access

[19] The Department, herein, is not providing relief from the general fiduciary provisions of the Act or the Code with regard to the acquisition and holding of the Property by the Plan.

delivery of merchandise, the Company notes that from the adjacent parcel it also has south access for the delivery of merchandise. The Company further maintains that the concrete driveway serves as an improvement (thereby increasing the market value) of both the Property and the Company's adjacent tract.

In addition, the Company represents that it has used an additional portion of the Property (approximately .25 acres) for parking. The Company represents that it paid for the paving of this portion of the Property in 1986 and maintains the parking lot at its cost.

It is represented that the purchase price to be paid by the Company to the Plan for the Property includes compensation for the past and current uses of such Property by the Company, including the Company's use of the concrete driveway across the Property, and Company's use of a portion of the Property for parking.

To the extent that the past and current uses of the Plan's Property by the Company are prohibited transactions, the Department, herein, is not proposing relief for such uses. Further, the Company has represented that within sixty (60) days of the date of the publication in the **Federal Register** of the grant of this proposed exemption, it will file FORM 5330 with the Internal Revenue Service (IRS), and pay to the IRS any applicable excise tax, which is deemed to be due and owing with regard to the past and current uses of the Plan's Property by the Company, including the Company's use of the concrete driveway across the Property, and Company's use of a portion of the Property for parking.

4. The Company desires to purchase the Property, as it owns the adjacent parcel which is improved by a shopping center, including a Company-owned grocery store. In this regard, the Company would like to control the Property for a future parking area and for the possible expansion of its grocery store. Although there are no immediate plans for utilizing the Property other than for parking, it is represented that the Company often acquires adjacent land for future needs. As an employer any of whose employees are covered by the Plan, the Company is a party in interest with respect to the Plan, pursuant to section 3(14)(C) of the Act. Accordingly, the sale of the Property by the Plan to the Company would constitute a prohibited transaction within the meaning of section 406(a)(1)(A), 406(a)(1)(D) and 4975(c)(1)(A), and 4975(c)(1)(D) of the Code. The subject transaction may also constitute a prohibited transaction within the meaning of sections 406(b)(1) and 406(b)(2) of the Act and 4975(c)(1)(E) of the Code, involving fiduciary conflicts of interest.

5. It is represented that several attempts have been made to sell the Property. The Property has been listed with local real estate brokers who have marketed the Property both for sale and for lease. The Property is currently offered for sale at a sales price of $887,000. It is represented that there has been no interest in the Property from qualified third party purchasers. Based on the lack of interest, the Trustees of the Plan have determined that further attempts to sell or lease the Property would result in delay and additional expenses to the Plan which could be avoided by effecting the proposed transaction. Further, the Trustees do not believe it likely that any prospective third party purchaser would be willing to pay more for the Property than the value ($420,000) as reflected in the appraisal, discussed more fully, below, in paragraph number 8.

Accordingly, the Trustees have determined that it would be in the interest of the Plan and its participants and beneficiaries to sell the Property to the Company for the following reasons: (i) The sale price is substantially higher than the fair market value of the Property; and (ii) the Trustees have concluded that alternative investments would be preferable for the Plan. Further, it is represented that in the current real estate market, there are not many retail investors seeking vacant land in the San Antonio area. In this regard, it is represented that an operating retailer, such as the Company, would be willing to pay more for the Property than a residential developer or a speculative retail developer. It is the view of the Company that the proposed sales price would subsume any assemblage premium over the fair market value of the Property which would reasonably be attributed to the Company as a result of owning an improved parcel of real estate that is adjacent to the Property.

6. It is represented that the proposed transaction is feasible in that the sale of the Property by the Plan to the Company will be a one-time cash transaction.

7. It is represented that the proposed transaction is in the interest of the Plan in that the Plan will receive from the proceeds of the sale of the Property a purchase price in the amount of $2,762,566,[20] plus an amount equal to $432,618 (the total of all real estate taxes and expenses incurred by the Plan as a result of holding the Property from the date the Plan purchased the Property through December 31, 2009), plus an additional amount equal to the total of all real estate taxes and expenses from January 1, 2010, to the date of the sale of the Property to the Company.

8. The Property was appraised by Richard L. Dugger (Mr. Dugger), MAI, CRE and David H. Thomas III (Mr. Thomas) of Dugger, Canaday, Grafe, Inc. in San Antonio, Texas. After personally inspecting the property, Mr. Dugger and Mr. Thomas determined that the fair market value of the Property based on market comparables is $420,000, as of May 17, 2010.

By letter dated November 3, 2010, Mr. Dugger indicated that the assemblage premium with reference to the Property is 10 percent (10%) to 20 percent (20%) above the market value for such Property. As referenced in his May 2010 report prepared for the Plan, Mr. Dugger appraised the fair market value of the 5.822 acres of the Property at $1.65 per square foot or $420,000. Therefore, according to Mr. Dugger the assemblage premium for the Property is $1.82 to $1.98 per square foot or $462,000 (rounded) to $502,000 (rounded).

Both Mr. Dugger and Mr. Thomas are independent in that they have no present or prospective interest in or bias with respect to the Property that is the subject of the appraisal. Further, both Mr. Dugger and Mr. Thomas have no personal interest with respect to the parties involved. It is represented that the fees received by the appraisal firm of Dugger, Canaday, Grafe, Inc. from the Company and its affiliates comprise less than one percent (1%) of the total fees collected by Dugger, Canaday, Grafe, Inc. over the past twelve (12) months. It is further represented that Dugger, Canaday, Grafe, Inc. has collected no fees from the Plan during such time.

Both Mr. Dugger and Mr. Thomas are qualified as State certified general real estate appraisers. Further, Mr. Dugger has been engaged in independent fee appraising since 1969, has earned the designations of MAI, and CRE, and has completed the requirements of the continuing education program of the Appraisal Institute.

9. In summary, the Applicants represent that the subject transaction satisfies the statutory criteria of section

[20] In the Department's view the $2,762,566 amount is intended to reimburse the Plan for the original cost of the Property, plus a reasonable rate of return over the period of time during which the Plan held the Property. This amount also includes the compensation for the past and current uses of the Property by the Company, including the Company's use of the concrete driveway across the Property, and the Company's use of a portion of the Property for parking.

408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The sale of the Property will be a one-time transaction for cash;

(b) The Plan will receive from the proceeds of the sale of the Property a sales price in the amount of $2,762,566, plus an amount equal to $432,618 (the total of all real estate taxes and expenses incurred by the Plan as a result of holding the Property from the date the Plan purchased the Property through December 31, 2009), plus an additional amount equal to the total of all real estate taxes and expenses from January 1, 2010, to the date of the sale of the Property to the Company;

(c) The terms and conditions of the sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(d) The Play will pay no fees, commissions, or other expenses in connection with the sale of the Property to the Company; and

(e) Before entering into the proposed transaction, the Trustees must determine that the sale of the Property is feasible, protective of, and in the interest of the Plan and its participants and beneficiaries.

Notice to Interested Persons

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include all participants having accounts under the Plan, including but not limited to active employees of the Company and of affiliates of the Company that have adopted the Plan, former employees, beneficiaries of deceased employees, and alternate payees.

It is represented that all interested persons will be notified of the publication of the Notice by first class mail within fifteen (15) days of publication of the Notice in the **Federal Register**.

All first class mailings will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all interested persons, of their right to comment and to request a hearing.

All written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption 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.)

The International Union of Painters and Allied Trades Finishing Trades Institute (the Plan or the Applicant)

Located in Hanover, Maryland

[Application No. L–11625]

Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Act in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), (C) and (D), 406(b)(1), and 406(b)(2) of the Act shall not apply to the payment for lodging and meals by the Plan to the International Union of Painters and Allied Trades, AFL–CIO (the Union), a party in interest with respect to the Plan, in a residence hall (the Residence Hall) owned by the Union through its wholly-owned entity IUPAT Building Corporation LLC (the Building Corporation), provided that the following conditions are satisfied:

(a) An independent, qualified fiduciary (the I/F), acting on behalf of the Plan, determines prior to entering into the transaction that the transaction is feasible, in the interest of, and protective of the Plan and the participants and beneficiaries of the Plan;

(b) Before the Plan enters into the proposed transaction, the I/F reviews the transaction, ensures that the terms of the transaction are at least as favorable to the Plan as an arm's length transaction with an unrelated party, and determines whether or not to approve the transaction, in accordance with the fiduciary provisions of the Act;

(c) The I/F monitors compliance with the terms and conditions of this proposed exemption, as described herein, and ensures that such terms and conditions are at all times satisfied;

(d) The I/F monitors compliance with the terms of the written agreement (the Agreement) between the Plan and the Union, and takes any and all steps necessary to ensure that the Plan is protected, including, but not limited to, agreeing to extend the Agreement on an annual basis or exercising his authority to terminate the Agreement on 30 days' written notice;

(e) The payments by the Plan for the lodging at the Residence Hall and for the meals provided under the Agreement and under the terms of any subsequent extension of the Agreement are at no time greater than their fair market value, as determined by the I/F;

(f) The subject transaction is on terms and at all times remains on terms that are at least as favorable to the Plan as those that would have been negotiated under similar circumstances at arm's-length with an unrelated third party;

(g) The Applicant's independent auditor will perform an annual audit for the Plan to verify whether the Plan paid the proper amounts with respect to the subject transaction. In this regard, the written audit report for each year must identify, as applicable, any errors or irregularities relating to such payments, any internal control weaknesses that must be addressed under generally accepted auditing standards, and any recordkeeping matters that would impede the auditor from properly auditing such payments. To the extent there are any discrepancies as to the foregoing matters, the independent auditor will promptly communicate them to the Board of Trustees of the Plan (the Trustees), who will, in turn, promptly notify the I/F about such discrepancies.[21]

(h) The transaction is appropriate and helpful in carrying out the purposes for which the Plan is established or maintained;

(i) The Trustees maintain, or cause to be maintained within the United States for a period of six (6) years in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described, below, in paragraph (j)(1) of this proposed exemption to determine whether the conditions of this proposed exemption have been met; except that—

(1) If the records necessary to enable the persons described, below, in paragraph (j)(1) of this proposed exemption to determine whether the conditions of this proposed exemption have been met are lost or destroyed, due to circumstances beyond the control of the Trustees, then a separate prohibited transaction will not be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest, other than the Trustees, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (i) of this proposed exemption; and

[21] To the extent that the independent auditor raises issues with respect to the payments, the Trustees have an obligation to address them in a manner consistent with their fiduciary responsibilities pursuant to section 404 of the Act.

(j)(1) Except as provided, below, in paragraph (j)(2) of this proposed exemption and notwithstanding any provisions of sections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (i) of this proposed exemption are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or any other applicable Federal or State regulatory agency;

(B) Any fiduciary of the Plan, or any duly authorized representative of such fiduciary;

(C) Any contributing employer to the Plan and any employee organization whose members are covered by the Plan, or any duly authorized employee or representative of these entities; or

(D) Any participant or beneficiary of the Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described, above, in paragraph (j)(1)(B)–(D) of this proposed exemption are authorized to examine trade secrets or commercial or financial information that is privileged or confidential.

Summary of Facts and Representations

1. The International Union of Painters and Allied Trades Finishing Trades Institute (the Plan) is an innovative training program which is governed by a board of trustees (the Trustees) consisting of members of the Applicant and its signatory employers. At the International Training Center (the Training Center) operated by the Plan, trainees receive continued education and training, including, but not limited to, skill enhancement and health and safety training.

2. The Plan is a Taft-Hartley and ERISA plan funded by contributions received from employers throughout the United States based on the hours worked by employees in collective bargaining units throughout the country. The Plan represents a workforce of over 110,000 working men and women in the United States and Canada whose members work in the finishing trades as painters, drywall finishers, glaziers, glass workers, floor covering installers, sign makers, display workers, convention and show decorators, and in many other occupations.

3. At the Training Center, instructors learn new innovative training techniques in the finishing industry. Upon return to their respective local apprenticeship training centers, these instructors (the Trainees) can then provide journey-worker upgrade and apprentice training, enabling those journey-workers and apprentices to progress to the highest wage levels in their industry. The Trainees are all participants in the Plan.

4. The International Union of Painters and Allied Trades, AFL–CIO (the Union), through its wholly-owned entity IUPAT Building Corporation LLC (the Building Corporation), owns the Training Center and other buildings at its Hanover, Maryland campus. The Building Corporation leases training space to the Plan. The Applicant represents that the leasing of the training facility to the Plan is covered by Prohibited Transaction Exemption 78–6 (PTE 78–6, 43 FR 23024, May 30, 1978). In this regard, the Applicant represents that the leasing has satisfied and will continue to satisfy all the conditions contained in PTE 78–6.[22] The Applicant further represents that the leasing of the training facilities is not prohibited under section 406(b) of the Act, as any decisions made with respect to the Plan's leasing of the facilities are made by the Plan's Board of Trustees, which is separate from the Union's Board of Directors. To the extent that any individual trustee sits on both Boards, those individuals recuse themselves from and abstain from any vote by the Plan's Board when decisions are being made by the Plan regarding leasing the training facilities from the Union.

5. One of the challenges that has arisen during the past few years is that the Trainees, most of whom fly to the Training Center, must reside off-campus at area hotels and, therefore, require transportation each day to and from the Training Center. The Plan represents that it incurs significant costs in housing Trainees at off-campus hotels, providing transportation and supplying meals. As a result, the Applicant wishes to begin paying for lodging at a residence hall (the Residence Hall) which is currently under construction. The Residence Hall, which is being built at the Hanover, Maryland campus, will be owned by the Building Corporation.

6. An independent, qualified fiduciary has been retained by the Plan and has conducted a study regarding the proposed transaction. The independent fiduciary is John Ward, of Washington, DC. Mr. Ward is a solo practitioner and former partner at Dow Lohnes & Albertson, PLC. He has focused his professional energies on tax and ERISA matters faced by labor unions and their associated benefit funds. The Applicant represents that Mr. Ward is, therefore, highly qualified to ascertain whether the proposed transaction would benefit the Plan. The Applicant represents that Mr. Ward has never previously worked directly for either the Applicant or the Union, and that the Plan is paying for his services.

7. Mr. Ward's study has found that the average cost of lodging at five area hotels, including the Embassy Suites, is $159 per night. This assumes that the Applicant enters into an agreement for a minimum of four thousand room-nights per year, and does not include the cost of transportation to or from the Training Center or the cost of meals other than breakfast. The Union proposes charging the Plan $156 per night per Trainee for a room, an amount which is less than the average market rate. The Union further proposes charging the Plan $48.25 per Trainee for lunch, dinner and snacks during the day. This amount is based upon the Federal government meals and incidentals per diem reimbursement rate for the Baltimore County, Maryland area (currently $61.00), minus $12.75 to account for the cost of breakfast and incidental expenses that was included in the average cost of lodging calculation. The Union has provided the Applicant with a proposal from P&P Catering, Inc., showing that the actual cost of providing meals to the Trainees would otherwise be $86.10 per Trainee per day. The Applicant represents that it will therefore be paying less than fair market value for the cost of the Trainees' meals. Thus, based on these rates, the Union proposes charging the Plan $204.25 per Trainee per day for lodging, meals and snacks during the day.

8. The Plan will realize further savings in terms of transportation costs, as it currently pays approximately $2 per day per Trainee for transportation between each Trainee's accommodations and the Training Center. Taking this into account along with the below-market room rates and the discounted meals charged at government reimbursement rates, the Plan will benefit from the cost savings. The Applicant estimates that its annual savings on lodging alone would be approximately $12,000. The Union has represented that it will not be making a profit from charging the Applicant for lodging and meals. The Applicant represents that, in addition, if the Trainees are lodged at the Residence Hall on the same campus as the Training Center, they will have off-hours access to the Training Center's facilities and equipment, which will help develop a sense of unity and will

[22] The Department is expressing no opinion herein as to whether the leasing of the training facilities to the Plan is exempt under PTE 78–6.

enhance the time for interaction between Trainees and trainer, all of which support the Applicant's core mission.

9. In his analysis, Mr. Ward reaches the conclusion that: (1) the proposed combined rate per night of $204.25 ($156.00 for lodging and $48.25 for meal service) which the Union proposes to charge the Plan for each Trainee receiving training at the Training Center is both appropriate and in the best interests of the Plan's participants and beneficiaries; and (2) the terms on which the Union proposes to offer lodging and meal service to Trainees at the Residence Hall are more favorable to the Plan and its participants and beneficiaries than the terms of any similar package would—or could—be offered to the Plan by a combination of one of the comparable local lodging facilities that he investigated and by any restaurant or combination of restaurants located within five miles of the Training Center.

10. As part of his engagement as an independent fiduciary, Mr. Ward will monitor the transaction on an annual basis to ensure that the transaction continues to comply with the requirements for the exemption proposed herein.

11. The subject transaction will be entered into pursuant to a written agreement (the Agreement) between the Union and the Plan. The Agreement is intended to serve as an annual agreement between the Plan and the Union. However, each party shall have the right to withdraw from the Agreement by furnishing the other party with written notice 30 days prior to withdrawing. Either party may withdraw for any reason without further obligations to the other party. However, if the Plan has prepaid for the use of rooms at the Residence Hall for dates that fall after the effective date of withdrawal, the Union shall reimburse the Plan any monies paid for such use.

12. Peter Novak, a certified public accountant with Novak Francella LLP, an independent auditor in Philadelphia, PA, that is paid by the Applicant, has certified that, upon reviewing the estimated cost of renting rooms at the Residence Hall, the Applicant has sufficient income to pay for the proposed transaction on an on-going basis. The Department notes on the financial statements provided by Mr. Novak that the Plan currently has assets in excess of $13 million. Mr. Novak represents that the annual audit will ensure that there are no discrepancies in the amounts being paid by the Applicant to the Union.

13. In summary, the Applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) An independent, qualified fiduciary, Mr. Ward, acting on behalf of the Plan, has determined prior to entering into the proposed transaction that the transaction is administratively feasible, in the interest of, and protective of the Plan and the participants and beneficiaries of the Plan;

(b) Mr. Ward has reviewed the transaction to ensure that its terms are at least as favorable to the Plan as an arm's-length transaction with an unrelated party, and has determined to approve the transaction, in accordance with the fiduciary provisions of the Act;

(c) Mr. Ward will monitor compliance with the terms and conditions of this proposed exemption, as described herein, and ensure that such terms and conditions are at all times satisfied;

(d) Throughout the duration of the subject transaction, Mr. Ward will monitor compliance with the terms of the written agreement (the Agreement) pursuant to which the transaction is entered into, and take any and all steps necessary to ensure that the Plan is protected, including, but not limited to, agreeing to extend the Agreement on an annual basis or exercising his authority to terminate the Agreement on 30 days' written notice;

(e) The payments paid by the Plan for lodging and meals under the terms of the Agreement and under the terms of any subsequent extension of the Agreement will at no time be greater than the fair market value of the lodging and meals, as determined by the independent fiduciary;

(f) Under the provisions of the Agreement, the transaction is on terms and at all times remains on terms that are at least as favorable to the Plan as those that would have been negotiated under similar circumstances at arm's-length with an unrelated third party;

(g) The Applicant's independent auditor will perform an annual audit for the Plan to verify whether the Plan paid the proper amounts with respect to the subject transaction. In this regard, the written audit report for each year will identify, as applicable, any errors or irregularities relating to such payments, any internal control weaknesses that must be addressed under generally accepted auditing standards, and any recordkeeping matters that would impede the auditor from properly auditing such payments. To the extent there are any discrepancies as to the foregoing matters, the independent auditor will promptly communicate them to the Board of Trustees of the Plan (the Trustees), who will, in turn, promptly notify the independent, qualified fiduciary about such discrepancies;

(h) The transaction is appropriate and helpful in carrying out the purposes for which the Plan is established or maintained; and

(i) The Trustees will maintain, or cause to be maintained within the United States for a period of six (6) years in a manner that is convenient and accessible for audit and examination, such records as are necessary to determine whether the conditions of this proposed exemption have been met.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693–8546 (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 9th day of March 2011.

Ivan Strasfeld,

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

[FR Doc. 2011–5911 Filed 3–14–11; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Number D–11638]

Withdrawal of the Notice of Proposed Exemption Involving Owens & Minor, Inc. (the Applicant), Located in Mechanicsville, VA

In the December 16, 2010 issue of the **Federal Register**, at 75 FR 78772, the Department of Labor published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended, and from certain taxes imposed by the Internal Revenue Code of 1986. The notice of proposed exemption, if granted, would have permitted the sale of certain shares in a hedge fund by the Owens & Minor, Inc. Pension Plan to the applicant.

By e-mail dated February 8, 2011, the applicant requested that the application for exemption be withdrawn.

Accordingly, the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC, this 9th day of March 2011.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration.

[FR Doc. 2011–5913 Filed 3–14–11; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,441A]

Quad Tech, Inc., Sussex, WI; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated February 7, 2011, a worker requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Quad Tech, Inc., Sussex, Wisconsin (TA–W–73,441A) (subject firm). The determination was issued on January 4, 2011. The Department's Notice of Determination was published in the **Federal Register** on January 26, 2011 (76 FR 4729). The workers are engaged in activities related to the production of magazines and catalogs. Specifically, the workers of the subject firm provide steel stackers and equipment for printers to affiliated locations.

The negative determination was based on the Department's findings that, with regards to workers covered by TA–W–73,441A, Quad Graphics did not shift to or acquire from a foreign country the production of articles like or directly competitive with those produced by the subject workers; that there were no increased imports of articles like or directly competitive with those produced by the subject firm during the relevant period; and that the workers are not adversely-affected secondary workers.

In the request for reconsideration, the petitioner alleged that "work here decreased from work being sent elsewhere (India)" and "shift from our firm to India with silo work."

The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the petitioning workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 17th day of February 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–5932 Filed 3–14–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection of Information for an Evaluation of the Young Parents Demonstration Project (YPDP); Comment Request

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3505(c)(2)(A)]. The program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirements on respondents can be properly assessed.

The proposed information collection is for an evaluation of the YPDP. The YPDP is sponsored by ETA to test innovative strategies that can improve the skills and education of young parents and, ultimately their employment and earnings.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before May 16, 2011.

ADDRESSES: A copy of this proposed information collection request may be obtained by contacting Savi Swick at 202–693–3382 (this is not a toll-free number) or *e-mail: swick.savi@dol.gov.* Comments are to be submitted to Department of Labor/Employment and Training Administration, *Attn:* Savi Swick, 200 Constitution Avenue, NW., (Room N–5641) Washington, DC 20210). Written comments may be transmitted by facsimile to 202–693–2766 (this is not a toll-free number) or e-mailed to *swick.savi@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The proposed information collection is for an evaluation of the YPDP. The YPDP is sponsored by ETA to test innovative strategies that can improve the skills and education of young parents and, ultimately their employment and earnings.