the requirement to prevent release of airborne asbestos above the time-weighted average and excursion limit; notification by employers and building/facility owners of designated personnel and employees regarding the presence, location, and quantity of ACMs and/or PACMs; using information, data, and analyses to demonstrate that PACM does not contain asbestos; posting signs in mechanical rooms/areas that employees may enter and that contain ACMs and PACMs, informing them of the identity and location of these materials and work practices that prevent disturbing the materials; posting warning signs demarcating regulated areas; and affixing warning labels to asbestos-containing products and to containers holding such products. Additional provisions of the Standard that contain paperwork requirements include: Developing specific information and training programs for employees; providing medical surveillance for employees potentially exposed to ACMs and/or PACMs, including administering an employee medical questionnaire, providing information to the examining physician, and providing the physician's written opinion to the employee; maintaining records of objective data used for exposure determinations, employee exposure-monitoring and medical-surveillance records, training records, the record (*i.e.,* information, data, and analyses) used to demonstrate that PACM does not contain asbestos, and notifications made and received by building/facility owners regarding the content of ACMs and PACMs; making specified records (*e.g.,* exposure-monitoring and medical-surveillance records) available to designated parties; and transferring exposure-monitoring and medical-surveillance records to the National Institute for Occupational Safety and Health on cessation of business.

These paperwork requirements permit employers, employees and their designated representatives, OSHA, and other specified parties to determine the effectiveness of an employer's asbestos-control program. Accordingly, the requirements ensure that employees exposed to asbestos receive all of the protection afforded by the Standard.

II. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection-of-information (paperwork) requirements contained in the Standard. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of currently approved information-collection requirements.

Title: Asbestos in Construction (29 CFR 1926.1101).

OMB Number: 1218–0134.

Affected Public: Business or other for-profit organizations; Federal, State, Local, or Tribal governments.

Number of Respondents: 286,821.

Frequency: On occasion.

Average Time per Response: Varies from 5 minutes to maintain records to 17.3 hours for training a competent person.

Estimated Total Burden Hours: 5,817,388.

Estimated Cost (Operation and Maintenance): $42,774,491.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No 3–2000 (65 FR 50017).

Signed at Washington, DC on October 26, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

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BILLING CODE 4510–20–U

material. Such material includes, but is not limited to, asbestos-containing wallboard, floor tile and sheeting, roofing and siding shingles, and construction mastics.

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10771, et al.]

Proposed Exemptions; Care Services Employees' 401(k) Profit Sharing Plan and Trust

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

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

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. ______, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

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

Care Services Employees' 401(k) Profit Sharing Plan and Trust (the Plan) Located in Beachwood, OH; Proposed Exemption

[Application No. D–10771]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the (1) cash sale by the Plan, occurring on December 30, 1997, of certain assets (the Assets), to Mr. Warren L. Wolfson, a party in interest with respect to the Plan; and (2) the prospective cash resale of the Assets by the Plan to Mr. Wolfson.

The proposed exemption is subject to the following conditions:

(a) Each sale of the Assets was or will be a one-time transaction for cash.

(b) The Plan received or will receive no less than the fair market value of the Assets at the time of each sale.

(c) The sales price for each Asset was determined or will be determined by a qualified, independent appraiser at the time of each sale transaction.

(d) The terms of the past and prospective sales transactions were or will be no less favorable to the Plan than those obtainable in similar transactions negotiated at arm's length with unrelated parties.

(e) The Plan did not incur any fees or commissions in connection with the past sale of the Assets nor will it incur any fees or commissions expenses with respect to the prospective sale of such Assets.

(f) Within 60 days of the publication, in the **Federal Register**, of the notice granting this proposed exemption, Mr. Wolfson will file a Form 5330 with the Internal Revenue Service (the Service) and pay all appropriate excise taxes that may be due and owing with respect to prohibited transactions arising in connection with certain of the Assets.

Effective Date: If granted, this proposed exemption will be effective as of December 30, 1997 with respect to the initial sale of the Assets by the Plan to Mr. Wolfson. In addition, this proposed exemption will be effective as of the date of the grant with respect to the resale of the Assets by the Plan to Mr. Wolfson.

Summary of Facts and Representations

1. The Plan, which was established on December 16, 1983, is a defined contribution plan covering all eligible employees of W.W. Extended Care, Inc.; Richfield Nursing Center, Inc.; Villa Nursing Corporation; Cleveland Golden Age Hospital, Inc.; Pebble Creek Convalescent Center of Ohio, Inc.; Belcare, Inc.; LTC Remedies, Inc.; Richmond Nursing, Inc.; Wyatt Woods, L.L.C., and WLW, Inc., companies which have common ownership. As of December 31, 1999, the Plan had 710 participants and aggregate assets of approximately $3,306,853.

The Plan provides for participant-directed investments for its 401(k) portion. Investment discretion over the profit sharing portion of the Plan is exercised by Warren L. Wolfson, who serves as the Plan trustee. Mr. Wolfson is also a principal of W.L.W., Inc. (the Employer), which operates a chain of six long-term care facilities and an associated management company in northeast Ohio. The Employer does business under trade name ''Care Services Associates.''

2. To provide a more cohesive investment policy and reduce overall administrative costs to the Plan, the Employer and Mr. Wolfson wished to consolidate the Plan's investments with one investment adviser. The new investment adviser, The Heitner Corporation (Heitner), advised the Employer and Mr. Wolfson to dispose of certain of the Plan's investments inasmuch as Heitner did not desire to hold and manage these Assets.[1] The specific Assets targeted by Heitner included the Plan's investments in six bonds issued by the Government of Israel (the Israel Bonds), 50 shares of common stock in River Glen REIT, Inc. (the REIT Interests) and a ¼ limited partnership interest (the ¼ LP Unit) in the Apartment Opportunity Fund II, L.P., (the AOF II Partnership).[2]

3. The six Israel Bonds, which are set forth below in the table, were purchased by the Plan for cash from an unrelated party between November 1986 and July 1997.

Bond	Issuance date	Face value	Interest rate	Maturity date
One	11/1/86	$25,000	Variable	11/1/98
Two	11/1/88	25,000	Variable	11/1/00
Three	11/1/90	25,000	Variable	3/31/02
Four	11/1/93	25,000	6.0%, Fixed	9/30/03
Five	10/1/95	25,000	Variable	1/31/03
Six	7/1/97	25,000	7.5%, Fixed	5/31/07

The Israel Bonds were acquired by the Plan for their $25,000 face value and have (or had) terms ranging from 8 to 12 years. With the exception of Bond One, which matured on November 1, 1998, the other Israel Bonds are still in existence. Bonds One, Two, Three and Five carry (or carried) variable interest rates, based on the average of the prime rates quoted by Bank of America National Trust & Savings Association, Continental Bank, N.A. and Citibank, N.A. Bonds Four and Six bear fixed interest rates of 6 percent and 7.5 percent per annum. Interest has been paid on the Israel Bonds twice per year. During 1997, the Plan received interest payments on the Israel Bonds of $11,109.41.

4. On July 25, 1997, the Plan acquired 25 shares of common stock comprising

[1] In a letter dated May 17, 2000, Mr. Larry Flynn, Vice President and Financial Consultant of Huntleigh Financial Services, Inc. of St. Louis, Missouri, and a former employee of Heitner, stated that he advised Mr. Wolfson regarding the reallocation of the Plan's assets during 1997. Mr. Flynn explained that both he and Mr. Wolfson considered many third party administrators for the Plan. However, none of the prospective candidates expressed an interest in holding the Assets on behalf of the Plan because the investments could not be priced on a daily basis. Therefore, Mr. Flynn said he advised Mr. Wolfson to sell the subject Assets and reallocate the Plan's assets into mutual funds.

[2] It is represented that Mr. Wolfson did not invest in any of the aforementioned Assets in his personal capacity.

the REIT Interests from River Glen REIT, Inc. (River Glen REIT), an unrelated party, for $25,000. On September 11, 1997, the Plan acquired an additional 25 shares comprising the REIT Interests from River Glen REIT for $25,000. The Plan paid the consideration in cash. The REIT Interests are assignable only with the consent of River Glen REIT.

The seller, River Glen REIT, is a Virginia corporation that qualifies as a real estate investment trust for federal income tax purposes. River Glen REIT owns a 99 percent limited partnership interest in River Glen of Orlando Partners, Ltd. (the River Glen Partnership), which, in turn, owns a 396 residential unit located in Orlando, Florida. In addition, River Glen REIT has 5,800 shares of common stock authorized and outstanding with a par value of $1,000 per share.

During 1997, the Plan received no distributions with respect to the REIT Interests.

5. On February 24, 1997, the Plan purchased the ¼ LP Unit in the AOF II Partnership, from General Capital Corporation, an unrelated party, for a cash purchase price of $25,000. The AOF II Partnership is a Tennessee limited partnership which was organized on January 10, 1996 for the purpose of owning and operating apartment complexes located in Florida and Tennessee. The general partner (the General Partner) of the AOF II Partnership is General Capital Associates II, L.P., an affiliate of General Capital Corporation. The AOF II Partnership makes quarterly distributions to investors at an annual rate of 8 percent and anticipates selling or refinancing its underlying investments within 4 to 7 years after acquisition. Sales of AOF II Partnership interests, such as the ¼ LP Unit, require the approval of the General Partner.

During 1997, the Plan received a distribution of $1,086 from the AOF II Partnership with respect to the ¼ LP Unit.

6. Because the subject Assets are not publicly-traded, Mr. Wolfson, as Plan trustee, attempted to locate prospective purchasers. In this regard, Mr. Wolfson contacted the sellers from whom the Assets were purchased to determine whether there was a secondary market. [3] Upon learning that there was no secondary market for these Assets, Mr. Wolfson sought the advice of his accountant, who purportedly advised him to purchase the Assets, in his individual capacity, at their fair market value.

The fair market value of each of the Assets was determined by the entities from which they had been acquired. With respect to the Israel Bonds, the fair market value of such instruments was deemed to be equal to their face value by Ms. Evelyn Epstein of the State of Israel Bond Office in Cleveland, Ohio. In a verbal consultation with Mr. Wolfson, Ms. Epstein placed the aggregate fair market value of the Israel Bonds at $150,000 as of December 30, 1997.

In addition, by letter dated December 16, 1997, William J. Gordon, President of River Glen REIT, advised Mr. Wolfson that the fair market value of River Glen REIT common stock was $1,000 per share as of that date. Therefore, Mr. Gordon placed the total value of the Plan's River Glen REIT Interests at $50,000.

Further, on December 22, 1997, Maclin Davis, III, Controller/Secretary of the General Partner, informed Mr. Wolfson, in writing, that because there were no secondary market transactions in the AOF II Partnership interests, the best measure of the fair market value of the ¼ LP Unit was its original cost of $22,500.

Based upon the aforementioned valuations of the Assets, Mr. Wolfson obtained the requisite consents from the issuers and individually purchased all of the Israel Bonds, the REIT Interests and the ¼ LP Unit from the Plan at their respective fair market values on December 30, 1997 for a total cash purchase price of $222,500. The Plan paid no fees or commissions in connection with the sale. In January 1998, all of the remaining assets were transferred to Heitner for investment management.

7. In December 1998, the Plan's auditors discovered a $2,500 shortfall in the purchase price Mr. Wolfson had paid for the Assets. The discrepancy was attributed solely to the ¼ LP Unit for which Mr. Wolfson had erroneously paid $2,500 less than its fair market value through no fault of his own. The problem stemmed from Mr. Davis's December 22, 1997 letter to Mr. Wolfson in which Mr. Davis had mistakenly noted that the ¼ LP Unit's original cost was $22,500. This amount actually reflected the adjusted income tax basis for the ¼ LP Unit rather than its true original cost of $25,000.

Therefore, in an effort to resolve the pricing error, the Plan's auditors established a $2,500 account receivable, which was to be owed to the Plan by Mr. Wolfson. The auditors also recommended that the receivable carry an interest rate of 10 percent per annum from the time of the December 30, 1997 sale transaction. No other loan terms were negotiated by the Plan and Mr. Wolfson. No promissory note was ever executed and the loan amount was unsecured.

8. Also in December 1998, the Plan's auditors were advised by their legal counsel that the December 1997 sale had resulted in a prohibited transaction in violation of the Act. In order to ''correct'' the prohibited transaction, counsel advised the auditors to resell the Assets to the Plan for their fair market value. Accordingly, on December 31, 1998, Mr. Wolfson sold all of the previously purchased Assets back to the Plan at what was believed to be no more than the fair market value of such Assets.[4] The receivable owed to the Plan was also canceled. Further, Mr. Wolfson made a total restoration payment to the Plan of $18,290.56. Of this amount, $2,000.00 represented a distribution from the AOF II Partnership, $4,269.00 represented a dividend on the REIT Interests, $819.00 represented a non-taxable distribution attributed to the REIT Interests, $9,312.50 represented interest derived from the Israel Bonds, for a subtotal of $16,400.50. Of the subtotal, Mr. Wolfson made a 10 percent interest payment to the Plan in the amount of $1,640.06. In addition, Mr. Wolfson made a cash payment to the Plan of $250, reflecting a 10 percent interest factor on the receivable for its one year duration.[5]

Between January 1999 and August 2000, the Plan has received additional income with respect to the subject Assets. In regard to the Israel Bonds and the REIT Interests, the Plan has received total interest payments and distributions of $23,953 and $7,176, respectively. In

[3] Specifically, Mr. Wolfson attempted to sell. the Israel Bonds to several business acquaintances. However, these persons did not wish to purchase the Israel Bonds at that time due to their cost. With respect to the REIT Interests and the ¼ LP Unit, Mr. Wolfson was informed by officials at River Glen REIT and General Capital Corporation, respectively, that there was no buyers available to acquire these Assets.

[4] The Department has no jurisdiction with respect to section 53.491(e)–(c)(1) of the Foundation Excise Tax Regulations (the FETR). This provision applies to prohibited transactions under section 4975 of the Code by reason of Temporary Pension Excise Tax Regulation 141.4975–13. Under section 53.4941(e)–1(c)(1) of the FETR, any correction pursuant to Code section 4941 is not an act of self-dealing. Similarly, the Department has determined that the correction of a prior prohibited transaction is not a prohibited transaction under section 406 of the Act. Therefore, the Department expresses no opinion herein on whether the return of the Assets by Mr. Wolfson to the Plan was a proper correction.

[5] Specifically, the Plan repurchased the Israel Bonds for $150,000, the REIT Interests for $50,000 and the ¼ LP Unit for $22,500, for a total reacquisition price of $222,500. Along with the $18,290.56 total restoration payment made by Mr. Wolfson, the Plan received a total payback of $240,790.56 with respect to the subject Assets.

regard to the 1/4 LP Unit, the Plan has received a total distribution of $11,457.

9. Mr. Wolfson believes that the safeguards necessary for the granting of a prospective exemption were present at the time the original sale transaction was consummated. It is represented that Mr. Wolfson acted in good faith and took reasonable and appropriate steps to protect the Plan from abuse and unnecessary risks by restoring the Assets to the Plan, returning all income and distributions he had received and making interest payments upon discovery that the transaction was prohibited. In addition, Mr. Wolfson represents that at no time was he aware that he was engaging in a prohibited transaction.

In this regard, the Department notes that there was no contemporaneous, written valuation for the Plan's sale of the Israel Bonds to Mr. Wolfson. Instead, Mr. Wolfson relied upon the oral valuation of Ms. Epstein to establish the fair market value of the Israel Bonds. In addition, with respect to the Plan's acquisition and holding of the $2,500 account receivable, the terms of this arrangement did not appear to reflect arm's length dealings between the parties since the loan was never collateralized, and there was no independent fiduciary to protect the interests of the Plan and its participants and beneficiaries.

Due to the absence of adequate independent safeguards necessary for the granting of an administrative exemption in both instances, the Department has decided not to provide exemptive relief for these transactions. Therefore, Mr. Wolfson represents that within sixty days of the publication, in the **Federal Register**, of the notice granting this proposed exemption, he will file a Form 5330 with the Service and pay all appropriate excise taxes that are due and owing with respect to the Plan's sale of the Israel Bonds and the extension of credit transaction.

10. Aside from the retroactive exemption request involving the sale by the Plan to Mr. Wolfson of the REIT Interests and the 1/4 LP Unit, Mr. Wolfson is also seeking a prospective exemption from the Department which, if granted, will allow the Plan to resell the Assets to him, in his personal capacity. It is represented that the prospective exemption will simplify Plan administration, reduce recordkeeping costs, and ensure that the Plan receives a return on the Assets in excess of its original investment, and allow the Plan to dispose of illiquid assets. The proposed resale of the Assets will be a one-time transaction for cash and the Plan will receive fair market value for the Assets as determined by a qualified, independent appraiser. The Plan will not be required to pay any fees or commissions in connection with the resale of the Assets.

11. Donald C. May, CPA/ABV, CVA, a qualified, independent appraiser affiliated with the accounting firm of Howard Wershable & Co. of Cleveland, Ohio has valued the Assets for purposes of their potential resale. Following is a discussion of Mr. May's valuations of each of the subject Assets.

(a) *Israel Bonds.* In an appraisal report dated June 5, 2000, Mr. May valued the Israel Bonds as of April 15, 2000. With respect to Bonds Two, Three and Five, Mr. May concluded that the $25,000 face value of these Israel Bonds would be indicative of their fair market value as of April 15, 2000. He also noted that Bond One, which matured on November 1, 1998, was redeemed for its $25,000 face value.

With respect to Bond Four, Mr. May noted that as of April 15, 2000, rates on U.S. Treasury Notes having terms that were similar to the remaining term on Bond Four increased to 6.21 percent. Therefore, he placed the fair market value of Bond Four at $23,028 as of April 15, 2000.

With respect to Bond Six, Mr. May observed that as of April 15, 2000, the rate on U.S. Treasury Notes having terms similar to the remaining term of Bond Six was 6.16 percent. Because overall market interest rates had fallen since Bond Six's acquisition on July 1, 1997, he projected the fair market value of Bond Six, which carries a 7.5 percent fixed rate, to be $26,178 as of April 15, 2000.

In summary, the fair market values of each of the Israel Bonds, as determined by Mr. May, are reflected in the following table:

Bond	Face value	Fair market value as of 4/15/00
One	$25,000	Matured
Two	25,000	$25,000
Three	25,000	25,000
Four	25,000	23,028
Five	25,000	25,000
Six	25,000	26,178
Total		124,206

(b) *REIT Interests.* In an appraisal report dated May 17, 2000, Mr. May stated that the fair market value of a REIT unit should be determined by the value of the properties underlying the REIT. Because River Glen REIT owns a 99 percent interest in a parcel of property known as the "Heather Glen," Mr. May believed that the book value of River Glen REIT, adjusted for the accumulated depreciation of Heather Glen, would reflect the fair market value of River Glen REIT as of April 15, 2000.

Based on the fact that management had been able to raise rents and occupancy for the property and the local economy had remained strong, Mr. May stated that the fair market value of the underlying property would at least be equal to its original cost. Although financial information was only available through December 31, 1999, Mr. May observed that there were no events which would significantly affect the value of the underlying property and require adjustments to other assets or liabilities. Therefore, Mr. May placed the fair market value of the REIT Interests at $57,500 (or $1,150 per share) as of April 15, 2000.

(c) *The 1/4 LP Unit.* In an appraisal report dated May 15, 2000, Mr. May also noted that the fair market value of a real estate partnership unit should be determined by the value of the underlying properties in the partnership. Because the AOF II Partnership properties had been acquired in recent years, Mr. May asserted that the book value of such properties, with an adjustment for accumulated depreciation, would reasonably reflect the value of such properties as of April 15, 2000.

Based on the fact that management had been able to raise rents and occupancy for most of the properties and the local economies had remained stable or increased, Mr. May stated that the fair market value of the underlying properties was at least equal to their original acquisition costs. Although at the time of his appraisal, Mr. May stated that financial information was available through December 31, 1999, he noted that no events had taken place that would significantly affect the value of the 1/4 LP Unit and require adjustments to other assets or liabilities. Therefore, as of April 15, 2000, Mr. May placed the fair market value of the 1/4 LP Unit at $25,000. He also noted that there had been no recent sales of AOF II Partnership units.

12. Thus, based upon Mr. May's valuations of the Assets as of April 15, 2000, Mr. Wolfson proposes to purchase the five remaining Israel Bonds from the Plan for $124,206, the REIT Interests for $57,500 and the 1/4 LP Unit for $25,000, which reflects the fair market value of such Assets. The aggregate purchase price of $206,706 [6] will be paid by Mr.

[6] To recap, during 1997 and between January 1999 and August 2000, the Plan has received—

- $44,374.91 in interest payments with respect to the Israel Bonds for which it had paid an aggregate

Wolfson to the Plan in cash. Mr. May will update his valuations of the Assets on the date of the sale.

13. In summary, it is represented that the transactions have satisfied or will satisfy the statutory exemptive relief that is available under section 408(a) of the Act because:

(a) Each sale of the Assets was or will be a one-time transaction for cash.

(b) The Plan received or will receive no less than the fair market value of the Assets at the time of each sale.

(c) The sales price for each Asset was determined or will be determined by a qualified, independent appraiser at the time of each sale transaction.

(d) The terms of the past and prospective sales transactions were or will be no less favorable to the Plan than those obtainable in similar transactions negotiated at arm's length with unrelated parties.

(e) The Plan did not incur any fees or commissions in connection with the past sale of the Assets nor will it incur any fees or commissions expenses with respect to the prospective sale of such Assets.

(f) Within 60 days of the publication, in the **Federal Register**, of the notice granting this proposed exemption, Mr. Wolfson will file a Form 5330 with the Service and pay all appropriate excise taxes that may be due and owing with respect to the sale of the Israel Bonds and the extension of credit transaction.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Department of Labor, telephone (202) 219–8881. (This is not a toll-free number.)

Gillespie Real Estate Professional Corporation Defined Benefit Plan (the Plan) Located in Phoenix, Arizona; Proposed Exemption

[Applicant No. D–10880]

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, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of a certain residential lot (the Property) by the Plan[7] to Bruce and Ann Gillespie (the Applicants), disqualified persons with respect to the Plan, provided that the following conditions are met:

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

(b) 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;

(c) The Plan receives the greater of $450,000 or the fair market value of the Property at the time of the Sale; and

(d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale.

Summary of Facts and Representations

1. The Plan is a defined benefit plan which was established by the Applicants, the sole participants and beneficiaries. As of March 6, 2000, the Plan held assets valued at approximately $1.9 million. The trustees of the Plan are Bruce and Ann Gillespie.

2. The Property is a 34,372 square foot residential lot located at Forest Highlands, Lot 781, Coconino County, Arizona.

According to the Applicants, the Plan originally acquired the Property as a real estate investment. The Plan purchased the Property in June 24, 1998, from an unrelated third party, the Homeowners Association of the Forest Highlands.[8] First of American Mortgage served as the lender for the Plan's mortgage. The purchase price of the Property including settlement charges was $343,350.57. The Plan paid a cash deposit of $168,133.07 and financed the balance of the purchase price.

The Applicants represent that the only expenditures the Plan has paid since owning the Property are $2,397.46 in property taxes, $5,729.08 in association fees, and $13,977.81 in loan interest payments from 1998 (*i.e.*, the year of original acquisition) until August 18, 2000. Therefore, the total cost to the Plan for the Property is $365,454.92 as of August 18, 2000 ($343,350.57 + $2,397.46 + $13,977.81 + $5,729.08 = $365,454.92). From the time of the purchase through August 18, 2000, the Property has remained vacant and no income has been generated.

The Applicants represent that the Property has not been leased to, or used by, any disqualified persons.

3. The Applicants request an exemption for the Sale. The Applicants represent that the proposed transaction would be feasible because it would be a one-time transaction for cash. Furthermore, the Applicants state that the transaction would be in the best interest of the Plan because the Sale would enable the Plan to invest the proceeds from the Sale in assets with a higher rate or return. The Applicants desire to sell the Property because they wish to build a personal residence on the lot. Finally, the Applicants assert that the transaction will be protective of the rights of the Plan's participants and beneficiaries as indicated by the fact that the Plan will receive the fair market value of the Property, as determined by a qualified, independent appraiser on the date of the Sale, and will incur no commissions, costs, or other expenses as a result of the Sale.

4. Stephen G. Leach (Mr. Leach), an accredited appraiser with Cushman & Wakefield of Arizona, Inc., located in Phoenix, Arizona, appraised the Property on September 5, 2000. Mr. Leach states that he is a full time qualified, independent appraiser, as demonstrated by his status as a Certified Residential Real Estate Appraiser licensed by the State of Arizona. In addition, Mr. Leach represents that both he and his firm are independent of the Applicants.

In his appraisal, Mr. Leach relied primarily on the sales comparison approach. According to Mr. Leach, this method best represents the actions of buyers and sellers in the market place. This method of appraisal involves an analysis of similar recently sold properties in the area in question so as to derive the most probable sales price of the Property. Mr. Leach's appraisal indicates that he compared the Property to nine recently sold lots in the Forest Highland's complex before reaching a conclusion as to the value of the Property. After inspecting the Property and analyzing all relevant data, Mr. Leach determined that a fee simple interest in the Property had a fair market value of approximately $450,000, as of September 5, 2000.

5. In summary, the Applicants represent that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because: (a) The terms and conditions of the Sale would

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purchase price of $150,000. Thus, the Plan's total net cost with respect to the Israel Bonds (excluding Bond One which matured on November 1, 1998 and was subsequently redeemed by the Plan for its $25,000 face value) is $80,625.09.

- $12,624 in distributions with respect to the REIT Interests. Because the Plan paid $50,000 for the REIT Interests, its net cost with respect to this investment is $37,376.
- $13,457 in distributions from the AOF II Partnership. Because the Plan had acquired the ¼ LP Unit for $22,500, its net cost with respect to the ¼ LP Unit is $9,043.

Thus, the Plan's overall net cost with respect to the Assets is $127,044.09.

[7] Because Bruce Gillespie is the sole shareholder of the Employer and he and his wife, Ann Gillespie, are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

[8] The Department is expressing no opinion as to whether the acquisition and holding of the Land by the Plan was a prohibited transaction under section 4975(c)(1)(D) and (E) of the Code, and no relief is provided herein.

be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated third party; (b) the Sale would be a one-time cash transaction allowing the Plan to divest itself of the Property and reinvest the proceeds of the Sale in assets that will yield a higher rate of return; (c) the Plan would receive an amount equal to the greater of $450,000, which represents the appraised fair market value of the Property, as appraised by Mr. Leach in September 2000, or the fair market value of the Property at the time of the Sale, based on an updated appraisal of the Property by Mr. Leach or another independent, qualified appraisal; and (d) the Plan would not be required to pay any commissions, costs or other expenses in connection with the Plan.

Notice to Interested Parties: Because Mr. Gillespie is the sole shareholder of the Employer and he and his wife, Ann Gillespie, are the only participants in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 219–8883 (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 25th day of October 2000.

Ivan Strasfeld,

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

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BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Services for Persons With Limited English Proficiency; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: The public is invited to comment on National Archives and Records Administration (NARA) programs and activities available to persons with limited English proficiency (LEP) and steps that the agency could take to ensure that persons with LEP have meaningful access to NARA services. NARA will use the information gathered from this notice and other outreach efforts to develop a plan to improve access to its programs and activities by eligible LEP persons.

DATES: Written comments should be received on or before November 30, 2000.

ADDRESSES: Comments should be sent to: Comments on Services for Persons with Limited English Proficiency, Attn: Diane Dimkoff (NWCC), Room 2400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; faxed to 301–713–7482; or electronically mailed to comments@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Diane Dimkoff at telephone number 301–713–6107, or fax number 301–713–7482.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 2000, President Clinton issued Executive Order 13166, entitled ''Improving Access to Services for Persons With Limited English Proficiency.'' 65 FR 50119 (August 16, 2000). The Executive Order directs each Federal agency to examine the services it provides to persons who, as a result of national origin, are limited in their English proficiency. Agencies must then develop a plan and implement measures that will enable persons with LEP to have meaningful access to the agency's programs and activities, consistent with the fundamental mission of the agency. NARA will submit its LEP plan to the Department of Justice for review and approval by December 11, 2000.

As part of this process, NARA is consulting its stakeholders for input on the needs of persons with LEP. NARA is requesting comment from persons with LEP, their representative organizations, as well as grant applicants and recipients, and any other individuals or entities that make use of NARA programs, facilities, activities and financial opportunities.

NARA's Programs and Activities

NARA establishes policies and procedures for managing U.S. Government records and assists Federal agencies in documenting their activities and administering records management programs. NARA preserves and provides access to the essential documentation of the three branches of Government through a nationwide system of archival facilities, records storage facilities, and Presidential Libraries. NARA operates research rooms, answers written and oral requests for information on its holdings, provides copies of records, offers public programs and exhibits, and makes information available on its web site at http://www.nara.gov. The National Historical Publications and Records Commission (NHPRC), a statutory body affiliated with NARA, makes grants nationwide to help nonprofit and educational organizations identify, preserve, and provide access to materials that document American history. NARA also publishes Federal laws and regulations, and Presidential and other public documents. It also