

**DEPARTMENT OF JUSTICE****Drug Enforcement Administration****Manufacturer of Controlled Substances Notice of Application**

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 15, 2007, Wayne Lee Hauge, 24 Railroad Avenue, P.O. Box 276, Ray, North Dakota 58849-0276, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of marihuana (7360), a basic class of controlled substance listed in Schedules I.

The applicant seeks to cultivate marihuana for commercial sale and industrial purposes.

Any other such applicant, and any person who is presently registered with DEA to bulk manufacture marihuana may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537; or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than July 31, 2007.

Dated: May 25, 2007.

**Joseph T. Rannazzisi,**  
*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E7-10485 Filed 5-31-07; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE****Drug Enforcement Administration****Manufacturer of Controlled Substances Notice of Application**

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 15, 2007, David Carl Monson, 313 Rainbow Road, P.O. Box 8, Osnabrock, North Dakota 58269-0008, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of marihuana (7360), a basic class of controlled substance listed in schedule I.

The applicant seeks to cultivate marihuana for commercial sale and industrial purposes.

Any other such applicant, and any person who is presently registered with DEA to bulk manufacture marihuana may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537; or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than July 31, 2007.

Dated: May 25, 2007.

**Joseph T. Rannazzisi,**  
*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E7-10525 Filed 5-31-07; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF LABOR****Employee Benefits Security Administration**

**[Application Nos. D-11340, Hawaii Emergency Physicians Associated, Inc. Profit Sharing Plan; D-11369, The Swedish Health Services Pension Plan (the Plan); L-11382, Sheet Metal Workers Local Union 17 Insurance Fund (the Fund); and D-11393 and D-11394, Paul Niednagel IRAs and Lynne Niednagel IRAs (collectively, the IRAs), et al.]**

**Notice of Proposed Exemptions**

**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).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days

from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-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](mailto:moffitt.betty@dol.gov)", or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

**Notice to Interested Persons**

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

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority to issue exemptions of the Treasury 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.

**Hawaii Emergency Physicians Associated, Inc. Profit Sharing Plan (the Plan)**

**Located in Kailua, Hawaii**

[Application No. D-11340]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1), and 406(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 Sale (the Sale) by the Plan to 407 Partners LLC (the LLC), a limited liability corporation, and a party in interest to the Plan, of a parcel of improved real property (the Property) located in Kailua, Hawaii. This proposed exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

- (a) All terms and conditions of the Sale are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;
- (b) The fair market value of the Property has been determined by a qualified, independent appraiser;
- (c) The Sale is a one-time transaction for cash;
- (d) The Plan does not pay any commissions, costs or other expenses in connection with the Sale; and
- (e) The Plan will receive an amount equal to the greater of: (i) \$3,250,000; or (ii) The current fair market value of the Property, as established by a qualified independent, appraiser at the time of the Sale.

**Summary of Facts and Representations**

Hawaii Emergency Physicians Associated, Inc. (the Company), a Hawaii corporation, is the sponsor of the Plan. The Company is a medical practice engaged in providing

emergency medical care services in hospitals throughout Hawaii. The Company employs 42 individuals and sponsors no employee benefit plans other than the Plan.

The Plan is a profit sharing plan which, as of December 31, 2005, had participants and beneficiaries totaling 52. The administrator of the Plan is a retirement committee (the Committee) comprised of employees of the Company. As of December 31, 2005, the Plan's assets had an aggregate fair market value of \$20,439,461.67.

All of the assets of the Plan are held in the Hawaii Emergency Physicians Associated, Inc. Profit Sharing Plan Trust (the Trust) for which the Bank of Hawaii serves as the trustee (the Trustee). The assets of the Plan held in the Trust consist of various securities and real property.

The Plan's real property holdings in the Trust include the Property which consists of a parcel of real estate located at 402 Uluniu Street, Kailua, Hawaii 96734. The Property was acquired from an unrelated party on June 8, 1989. The Property has an estimated value of \$3,250,000 as of October 25, 2005 and constitutes approximately 15% of the total value of Plan assets as of October 25, 2005.

The Property consists of a tract of approximately 13,124 square feet of land which is improved by a three story office and apartment building with 14,962 square feet of gross space and surface parking with 16 stalls. No party in interest has ever used or leased all or any portion of the Property. The Plan originally acquired the Property at a total cost of \$1,500,000 from an unrelated third party. The Property is also in close proximity to four parcels of property owned by partners of the LLC.

The Property was appraised on October 25, 2005, by Sanford D. Goto, Inc., a Certified Real Estate Appraiser (the Appraiser). The Appraiser has been engaged in real estate appraisal and consulting services since 1983. The Appraiser is independent of the Company and is located in Honolulu, Hawaii. The Appraiser determined the value of the Property by utilizing three approaches: The cost approach, the market data approach, and the income approach. The values determined under each approach were utilized to establish a final assessed value of \$3,250,000 as of October 25, 2005. A subsequent appraisal was performed by Harlin Young, an independent, certified real estate appraiser since 1971, on December 10, 2005 reflecting a value of \$3,200,000 for the Property. The LLC, however, agreed to accept the greater

value of \$3,250,000 as determined by the October 25, 2005 appraisal as the basis for the sales price of this proposed exemption. Mr. Young represents that notwithstanding the existence of the four nearby parcels owned by the partners of the LLC, the value of the Property is not affected by the proximity of the LLC partner's real estate holdings due to assemblage value.

Pursuant to the terms of the Plan's Trust Agreement, the Committee has been delegated the authority to direct the investments of the Plan. The Committee determined that it is in the best interests of the Plan's participants and beneficiaries to sell the Property to the LLC, a limited liability corporation, the members of which include shareholders of the Company and participants of the Plan and communicated that recommendation to the Trustee, which approved the Sale subject to the Department's consent.

The Committee represents that the proposed exemption is designed to allow the Plan, and thus its participants and beneficiaries, to receive maximum value for the Property. The Committee also wishes to diversify the investment holdings of the Plan such that the Plan's assets are invested in more liquid forms of investment. The Committee intends to use the proceeds of the sale of the Property to invest in such assets. The Committee represents that the sale of the Property will increase diversification, provide the maximum possible investment return for the Plan, and significantly increase the Plan's liquidity, all of which will significantly benefit the Plan's participants and beneficiaries.

There are some members of the Committee that are also members of the LLC. However, these individuals represented a minority of the Committee at the time the Committee made the decision to sell the Property to the LLC. Further, these individuals recused themselves from the decision making process related to this exemption request and were not involved in the decision concerning the Sale. Members of the Committee who were not members of the LLC and who actually participated in the decision to sell the Property to the LLC are all physicians.

In summary, the Applicant represents that the subject transaction satisfies the statutory criteria contained in section 408(a) of the Act and section 4975(c)(2) of the Code for the following reasons: (a) All terms and conditions of the Sale are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party; (b) The fair market value of the Property has been

determined by a qualified, independent appraiser; (c) The Sale is a one-time transaction for cash; (d) The Plan does not pay any commissions, costs or other expenses in connection with the Sale; and (e) The Plan will receive an amount equal to the greater of: (i) \$3,250,000; or (ii) The current fair market value of the Property, as established by a qualified, independent appraiser at the time of the Sale.

**Notice to Interested Persons:** Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Khalif Ford of the Department, telephone (202) 693-8562 (this is not a toll-free number).

#### **The Swedish Health Services Pension Plan (the Plan)**

*Located in Seattle, Washington*

[Application No. D-11369]

#### **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, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(A), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply effective April 14, 2005, to two contributions in-kind (the Contribution(s)) to the Plan of securities (the Securities) made on April 14th and 15th 2005 by Swedish Health Services (the Applicant), the Plan sponsor, a party in interest with respect to the Plan, provided that the following conditions were met:

(a) The Securities were valued at their fair market value at the time of each Contribution;

(b) The Contributions represented no more than 20% of the total assets of the Plan;

(c) The Plan has not paid any commissions, costs or other expenses in connection with the Contributions;

(d) The Contributions represented a contribution in lieu of cash to the Plan to meet ERISA filing requirements;

(e) The Contributions were based on publicly traded closing prices of the Securities on the date of the transfer; and

(f) The terms of the Contributions between the Plan and the Applicant were no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties.

**Effective Date:** This exemption, if granted, will be effective as of April 14, 2005.

#### **Summary of Facts and Representations**

1. The Applicant represents that the Plan is an individually-designed, defined benefit pension plan tax-qualified under Code Section 401(a). The Applicant established the Plan in 1966 and has sponsored and maintained the Plan since then for eligible employees of the Applicant who meet the requirements set out in the Plan. As of December 31, 2004, the value of the Plan's assets was \$269,987,650.

The Applicant provides hospital, medical and health care services and is a tax-exempt organization under Code Section 501(c)(3). The Applicant is the sponsor and named fiduciary of the Plan. The Applicant appoints members of the Swedish Health Services Employee Benefits Administrative Committee to carry out the general administration of the Plan. The Applicant represents that it makes all contributions necessary to fund the Plan in accordance with the Code and the Act.

Wells Fargo NA (the Trustee) was appointed by the Applicant. Acquisition, diversification, disposition (for purposes of investment and reinvestment) and investment of the Plan's assets are the responsibility of the Trustee, except to the extent otherwise provided in the Plan's trust agreement (the Trust Agreement). The Trust Agreement provides that the Applicant may appoint one or more investment managers to have sole responsibility for investment of all or part of the Trust assets. The Applicant appointed investment managers who assembled custom-designed portfolios for investment of the Trust assets in accordance with the Plan's investment policy and guidelines. The Trust Agreement provides that the Trustee will act on investment instructions given to it by an investment manager and in doing so, the Trustee will only be an administrative agent in carrying out the directed investment transactions.<sup>1</sup> The Trustee serves as the

commercial bank for the Applicant in addition to serving as Trustee for the Plan.

Investment managers (the Investment Managers) have been appointed to direct investment of the Plan assets pursuant to the authority granted in the Plan and the Trust. Among the Investment Managers are Sanford Bernstein & Associates (Bernstein), Batterymarch Financial Management, Fred Alger Management, Inc., American Funds (EuroPacific) and PIMCO. The Investment Managers assembled custom-designed portfolios for investment of the Plan assets in accordance with the Plan's investment policy and guidelines. The Applicant's business account is managed by the same Investment Managers who invest the Plan assets. Further, the investment objectives of the Applicant's business account and the investment policy of the Plan are similar.

2. The Applicant instructed the Trustee to notify the Investment Managers to select securities held in the Applicant's business account to be transferred to the Plan. By E-mail, the Trustee notified the Investment Managers and collected from each Investment Manager a list of appropriate securities held in the Applicant's business account for transfer to the Plan's account. Each Investment Manager was allocated a percentage of the total Plan assets for management (Target Asset Allocation Percentage). To maintain the Plan assets under management by each Investment Manager after the contribution at or near the Investment Manager's Target Asset Allocation Percentage, the dollar amount of securities to be selected by the Investment Manager was specified by the Applicant. For example, Bernstein's target asset allocation was 14.5%. To maintain Bernstein's asset allocation percentage at approximately 14.5% after the contribution, it was necessary for Bernstein to identify securities valued at approximately \$3.5 million to be transferred to the Plan.

On April 14 and April 15, 2005 contributions were made to the Plan on behalf of the Applicant. The total value of the amounts contributed was slightly less than \$30,000,000. The Applicant states that these amounts were contributed to the Plan to bring the Plan's funding level above minimum filing requirements under section 4010 of ERISA. Of this amount approximately \$14 million constituted the Contributions and the balance was contributed in cash. The Trustee transferred the Securities selected by the Investment Managers from the Applicant's business account to the Plan

<sup>1</sup> Under ERISA section 403(a)(1), a plan may expressly provide that a trustee is subject to the direction of a named fiduciary who is not a trustee, in which case the trustee shall be subject to proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to the Act. 29 U.S.C. 1103(a)(1).

account and confirmed the transfer with the Applicant verbally. According to the Trustee, the market value of the Securities credited to the Plan account was based on the closing price of each security on the date of transfer based on public pricing reports.

At no time did the Trustee inform the Applicant that the Contributions were not in compliance with the Code or the Act or otherwise take any action to prevent the prohibited transactions from occurring. The Applicant represents that Trustee administration continued as usual until the prohibited transaction was discovered by the Applicant. The Applicant became aware that the Contributions were a prohibited transaction on or about July 18, 2005, when the Applicant's ERISA counsel reviewed the Plan statements and informed the Applicant that the Contributions were prohibited.<sup>2</sup>

3. As soon as the Applicant became aware of the prohibited transaction, the Applicant represents that it proceeded to take appropriate action. The Applicant contacted the Department and filed an application for exemptive relief. Furthermore, the Applicant reviewed the business and Plan account statements, verified that the Securities were transferred from the Applicant's business account to the Plan account, and evaluated the scope of the prohibited transaction. In addition, the Applicant compiled a report of the then current value of each Security and concluded that the Securities had increased in value by \$1,403,110 from the Contribution date to September 30, 2005. The Applicant represents that because of the favorable performance of the Securities and the Investment Managers' instructions to retain the same asset allocation in the Plan, the Applicant did not direct a sale of the Securities at that time.

The Contributions consisted of approximately 100 different Securities, including mutual fund shares. The Securities have a readily ascertainable fair market value and are publicly traded on an established market or are mutual fund shares, which are valued daily. The Trustee credited to the Plan's account the fair market value of the Securities as of the Contribution dates, and the Plan's actuaries credited to the Plan's funding standard account the fair market value of the Securities reported

on the Plan account statements provided by the Trustee.

4. The Applicant was unaware that the Contributions were prohibited under the Act. The Trustee implemented the Contributions without objection or comment and did not inform the Applicant of the existence of a prohibited transaction. The Applicant represents that in the future, all transactions that may involve fiduciary self dealing, and in particular, potential prohibited transactions will be submitted to ERISA counsel for review and approval, prior to entering into such transaction. Additionally, the Applicant has undertaken a program conducted by ERISA counsel, involving internal training sessions for fiduciary self dealing issues as well as possible prohibited transaction situations.

5. The Applicant represents that the proposed exemption is in the interests of the Plan and its participants and beneficiaries because it allows the Plan's assets to continue to be invested in accordance with the investment objectives of the Investment Managers, without undertaking unnecessary, costly and administratively burdensome transactions. By transferring the Securities directly to the Plan, the Plan's investment objectives were achieved without the Plan incurring transaction costs that the Plan otherwise would have incurred to purchase the Securities.

The Applicant represents that the proposed exemption is protective of the rights of Plan participants and beneficiaries because the Contributions were based on publicly traded closing price of each Security on the date of transfer. Further the Plan paid no commissions, costs, or other expenses with respect to the Contributions.

6. In summary, the Applicant represents that the proposed exemption satisfies the statutory criteria because: (a) The Securities were valued at their fair market value at the time of each Contribution; (b) The Contributions represented no more than 20% of the total assets of the Plan; (c) The Plan has not paid any commissions, costs or other expenses in connection with the Contributions; (d) The Contributions represented a contribution in lieu of cash to meet ERISA filing requirements; (e) The Contributions were based on publicly traded closing prices of the Securities on the date of the transfer; and (f) The terms of the Contributions between the Plan and the Applicant were no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties.

**Notice to Interested Persons:** Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Applicant and Department within 15 days of the date of publication of the Notice of proposed exemption in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of this notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**

Khalif Ford of the Department, telephone (202) 693-8540 (this is not a toll-free number).

**Sheet Metal Workers Local Union 17 Insurance Fund (the Fund),**

*Located in Boston, Massachusetts*

[Exemption Application Number: L-11382]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570 subpart B (55 FR 32836, 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 shall not apply to the purchase (the Purchase) by the Fund of a business condominium unit (Unit No. 1) from the Sheet Metal Workers International Association Local 17 Building Association, Inc. (the Building Corporation), a party in interest with respect to the Fund, provided that the following conditions are satisfied:

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

(b) The Purchase of Unit No. 1 by the Fund is a one-time transaction for cash;

(c) The Fund will not pay any sales commissions, fees, or other similar expenses to any party as a result of the proposed transaction;

(d) The Fund will purchase Unit No. 1 from the Building Corporation for the lesser of (1) \$800,000 or (2) the fair market value of the Property as determined on the date of the purchase by a qualified, independent appraiser;

(e) The proposed transaction will be consummated only after a qualified, independent fiduciary, acting on behalf of the Fund, negotiates the relevant terms and conditions of the transaction and determines that proceeding with the transaction would be in the interest of the Fund; and

(f) The independent fiduciary monitors the transaction on behalf of the Fund to ensure compliance with the agreed upon terms.

<sup>2</sup> The Department wishes to note that ERISA's general standards of fiduciary conduct would apply to the Contribution. In this regard, section 404(a) of the Act requires, among other things, that a plan fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries in a prudent fashion.

### Summary of Facts and Representations

1. The Fund, which is sponsored by the Sheet Metal Workers International Association Local Union No. 17, AFL-CIO (the Union), is an employee welfare benefit plan within the meaning of section 3(1) of the Act. The Fund has been headquartered in an office condominium owned by the Fund that is located at 43 Kingston Street, 5th Floor (the Existing Facility) in Boston, Massachusetts; the Fund has occupied this condominium since March of 1984. As a multiemployer trust fund operating in conformity with the requirements of the Labor Management Relations (Taft-Hartley) Act of 1947 (as amended), the Fund was established under an Agreement and Declaration of Trust (the Trust Agreement) dated May 22, 1950 between the Union and participating employers (with the most recent amendment and restatement of this Trust Agreement occurring on May 1, 1984). The Fund is designed to provide health benefits, life insurance, and related benefits for eligible participants and their dependents. The Fund presently is self-funded, but has an administrative services only (ASO) contract with Blue Cross and Blue Shield of Massachusetts, Inc. with respect to the Fund's provision of medical benefits. As of March 1, 2007, the Fund had 1,380 active participants, 522 retiree participants, and 2,451 beneficiaries/dependents. As of November 30, 2006, the Fund had total assets of \$43,697,288.

The Fund is established by two sponsoring organizations. The first is the Union, a labor organization that represents employees in the sheet metal industry. The second is an association of employers entitled the Sheet Metal and Air Conditioning Contractors National Association of Boston (SMACNA). The Fund is funded by contributions made by employers to the Fund pursuant to one or more collective bargaining agreements. The Fund is administered by a six member Board of Trustees (the Trustees) consisting of three Employer Trustees appointed by SMACNA and three Union Trustees named by the Union. The Trustees of the Fund, who have investment discretion over the assets of the Fund (except to the extent delegated to one or more investment managers), are represented by the applicant to include: Messrs. Joseph Cullen, Jack Desmond, and Kevin Gill, who were appointed by SMACNA; and Messrs. Fred Creagher, Festus Joyce, and James Wool, who were appointed by the Union. The Trustees employ a salaried Fund Administrator, Mr. Robert W. Keough, to oversee the

operations of the Fund. In addition to the Fund Administrator, the Fund employs four other employees, all of whom are located in the Existing Facility and perform various administrative tasks for the Fund.

2. The Fund represents that the Building Corporation, a non-profit corporation operating pursuant to section 501(c)(5) of the Code and chapter 180 of the Massachusetts General Laws, is wholly owned by the Union. The Building Corporation also owns the business condominium unit that is the subject of the proposed transaction, designated as Unit No. 1, which consists of approximately 3,340 square feet of floor area occupying the ground level of a two-story office building (the Building). The Union currently occupies condominium Unit No. 2 of the Building, which serves as headquarters for the Union. The Building, which is located at 1157 Adams Street, Boston, Massachusetts, is situated on land consisting of two adjacent parcels (the Parcels) owned by the Building Corporation. The Parcels are contiguous to another parcel of land (the Adjacent Parcel) located at 1181 Adams Street in Boston; the Adjacent Parcel is owned by a Union-sponsored apprenticeship plan and contains a separate building (the Training Facility) designed for the training of Union members. The Union began construction of the Building in 2004 to provide new office space for the Union, and also to provide a possible new location for the Fund's offices. There are currently no other tenants in the Building.

3. In 2005, the Trustees of the Fund designated a subcommittee (the Subcommittee) consisting exclusively of employer Trustees to examine the Fund's current and anticipated office space needs. The Subcommittee subsequently determined that the Existing Facility was inadequate for the needs of the Fund, and that it would be in the best interests of the Fund to relocate to Unit No. 1. Among other things, the Subcommittee reported to the Trustees that the efficient operation of the Fund has been adversely affected by the limited area (approximately 1,500 square feet) of the Existing Facility, which has produced congested working conditions and practical obstacles to efficient compliance with the federal requirements pertaining to the confidentiality of participant and beneficiary medical information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). By contrast, the Subcommittee reported that the acquisition of Unit No. 1 would provide a significant increase in the quality and quantity of Fund office and

storage facilities, improved handicapped accessibility, on-site parking space, increased physical security, and greater proximity to major thoroughfares and public transportation. The Subcommittee also advised that the layout of Unit No. 1 would help to ensure the privacy of HIPAA-protected health information pertaining to the Fund's participants and beneficiaries. Furthermore, the Subcommittee reported that Unit No. 1 would provide Fund participants and beneficiaries with close proximity to the offices of the Union and the Training Facility, thus providing Union members who are also Fund participants with convenient "one-stop shopping" for Union-related services and benefits. After reporting these findings to the Trustees, the Subcommittee obtained authorization from the Trustees of the Fund to obtain an initial independent appraisal of Unit No. 1 to assist in the determination of an appropriate purchase price.

Pursuant to this authorization, Unit No. 1 was appraised on June 30, 2005 by the firm of Integra Realty Resources, Inc. (hereinafter "Integra") of Boston, Massachusetts. Integra represents that it is a large property valuation and consulting firm operating throughout the United States, with substantial expertise in the valuation of standard commercial property types. The Fund represents that Integra receives less than one percent of its gross income from the Union. The Subcommittee recommended the selection of Integra to the Trustees after the Fund Administrator obtained favorable references from the Fund's attorney, the Fund's special ERISA counsel, and an outside consultant who monitors and reviews investment managers for the Fund. Specifically, the special ERISA counsel based his recommendation upon past dealings with Integra, its credentials as a real estate appraiser, and the reasonableness of the compensation charged for its appraisal services. The Fund represents that Integra is wholly independent of and unrelated to the Union and the Building Corporation. Moreover, the Fund represents that Integra has no ownership or financial interest in the Union, the Building Corporation, or the property that is the subject matter of the contemplated transaction. One of the Integra directors who conducted the appraisal, Mr. Edward K. Wadsworth, MAI, is a certified general real estate appraiser licensed by the Commonwealth of Massachusetts; Mr. Wadsworth has more than 20 years of experience in the valuation of commercial office buildings, industrial

properties, condominiums, and agricultural and conservation lands in the metropolitan Boston area.

In the initial appraisal report that it issued on July 18, 2005, Integra determined that Unit No. 1 had a fair market value of \$935,000 as of June 20, 2005. An additional summary appraisal of Unit No. 1 was conducted by Integra in March of 2007. This summary appraisal report was issued by Integra on April 11, 2007, and valued Unit No. 1 at \$935,000 as of March 28, 2007.

4. On March 1, 2006, the Fund also retained Integra to represent the interests of the Fund as an independent fiduciary (the Independent Fiduciary) in connection with the proposed purchase of Unit No. 1 by the Fund. The selection of Integra by the Trustees to act as an independent fiduciary was based upon the recommendation of the Subcommittee, which had obtained favorable references concerning Integra's capacity to satisfactorily perform these services from the Fund's attorney and the Fund's special ERISA counsel. In its service contract (Agreement) with the Fund, dated March 1, 2006, the Independent Fiduciary was authorized to negotiate of the terms and conditions of the purchase and sale of Unit No. 1 on behalf of the Fund. In addition, the Agreement provided that, in the event an exemption is granted by the Department, the Independent Fiduciary would monitor the proposed transaction in accordance with its fiduciary obligations under the Act to ensure that such favorable terms are achieved.

The Fund represents that Integra has past experience as an ERISA fiduciary, and understands its duties and responsibilities under ERISA in serving as an independent fiduciary for the Fund with respect to the proposed transaction. The lead person responsible for performing these fiduciary services for Integra is the aforementioned Mr. Wadsworth, who has extensive experience as an ERISA independent fiduciary in connection with evaluation and oversight of a variety of real estate transactions involving ERISA-covered plans (including multiemployer plans) in the metropolitan Boston area.

On April 29, 2006, the Independent Fiduciary issued a report to the Fund Administrator concerning the proposed transaction. In this report, the Independent Fiduciary reported that it had reviewed the contemplated purchase of Unit No. 1 by the Fund, and had determined that such a transaction would be in the interests of the Fund and protective of the rights of the participants and beneficiaries in the Fund. To support this determination,

the Independent Fiduciary found that a number of serious functional shortcomings present at the Existing Facility—such as inefficient and crowded working conditions, a lack of adequate parking, and the lack of a fire sprinkler system—would be remedied by relocating the Fund's offices to Unit No. 1.

5. The Fund requests an administrative exemption from the Department to purchase Unit No. 1 from the Building Corporation. The Fund represents that the Purchase is in the best interests of the Fund for the reasons described above. The Fund proposes to purchase Unit No. 1 from the Building Corporation for cash in a one-time transaction, and represents that the Building Corporation proposes to sell Unit No. 1 to the Fund for the lesser of (1) \$800,000 or (2) the fair market value of Unit No. 1 as determined on the date of the purchase by a qualified, independent appraiser. The \$800,000 figure for the purchase of Unit No. 1 was determined by the Subcommittee as the maximum expenditure the Fund could afford after considering the liquidity needs of the Fund and other relevant economic factors. The Fund represents that the proposed cash purchase of Unit No. 1 by the Fund would involve the expenditure of less than 2% of the total assets held by the Fund as of November 30, 2006. The Fund further represents that the proposed transaction will not be consummated unless and until the Department grants the requested exemption. If the Department grants the proposed exemption, a final appraisal of Unit No. 1 will be performed at the time of the real estate closing by an independent qualified appraiser.

6. In summary, the Fund represents that the proposed transaction satisfies the requirements for an administrative exemption under section 408(a) of the Act because (a) the terms of the transaction are no less favorable to the Fund than terms negotiated under similar circumstances at arm's length with unrelated third parties, (b) the Purchase is a one-time transaction for cash; (c) the Fund will not pay any sales commissions, fees, or other similar expenses to any party as a result of the proposed transaction, (d) the Fund will purchase Unit No. 1 from the Building Corporation for the lesser of (1) \$800,000 or (2) the fair market value of Unit No. 1 as determined on the date of the purchase by a qualified, independent appraiser, (e) the proposed transaction will be consummated only after a qualified, independent fiduciary, acting on behalf of the Fund, negotiates the relevant terms and conditions of the transaction and determines that

proceeding with the transaction would be in the interest of the Fund, and (f) the independent fiduciary monitors the transaction on behalf of the Fund to ensure compliance with the agreed upon terms.

**Notice to Interested Persons:** The Fund represents that interested persons will receive, within fifteen (15) days after the date of its publication in the **Federal Register**, a copy of this Notice of Proposed Exemption (the Notice). In this regard, the Fund proposes mailing a copy of the Notice, accompanied by a copy of the supplemental statement (the Supplemental Statement) required pursuant to 29 CFR 2570.43(b)(2), to all participants and beneficiaries of the Fund by first class mail, postage prepaid. In addition, the Fund proposes to post copies of the Notice and the Supplemental Statement at the entrance to the Fund's Existing Facility at 43 Kingston Street, Boston, Massachusetts; on the bulletin board or area where notices are generally posted by the Union at the local's headquarters at 1157 Adams Street, Boston, Massachusetts; and on the bulletin board or area where notices are generally posted at the Training Center at 1181 Adams Street, Boston, Massachusetts.

The Department must receive all written comments and requests for a hearing no later than forty-five (45) days after publication of the Notice in the **Federal Register**.

*For Further Information Contact:* Mr. Mark Judge of the Department, telephone (202) 693-8339. (This is not a toll-free number).

**Paul Niednagel IRAs and Lynne Niednagel IRAs (collectively, the IRAs),**

*Located in Laguna Niguel, California*

[Exemption Application Numbers: D-11393 and D-11394]

#### Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570 subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(D) and (E) of the Code, shall not apply to the purchase (the Purchase) by the respective IRAs<sup>3</sup> of Paul and Lynne Niednagel (the Account Holders) of certain ownership interests (the Units) from Pacific Island Investment Partners, LLC (Pacific Island) (the issuer of the Units), an entity which is indirectly controlled by Daniel and Stephen Niednagel (the Principals), both of

<sup>3</sup> Because each IRA has only one participant, there is no jurisdiction under 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

whom are lineal descendants of the Account Holders and therefore disqualified persons with respect to the IRAs, provided that the following conditions are satisfied:

#### Conditions

- (a) The Purchase of the Units by each IRA is a one-time transaction for cash;
- (b) The price paid by each IRA to purchase a Unit (\$10,000) is identical to the price paid by other Pacific Island investors to acquire a Unit;
- (c) The terms and conditions of each Purchase are at least as favorable as those available in an arm's length transaction with an unrelated third party;
- (d) Each IRA does not pay any commissions or other expenses in connection with each Purchase; and
- (e) The IRA assets invested in the Units do not exceed 25% of the total assets of each IRA at the time of the Purchase.

#### Summary of Facts and Representations

1. The applicants describe the Account Holders, the Principals, and the IRAs as follows:

(a) Paul Niednagel is the spouse of Lynne Niednagel and the father of each of the Principals. He is the beneficial owner of a traditional IRA trustee by Charles Schwab and established under section 408 of the Code. He is also the beneficial owner of a Roth IRA trustee by Pensco Trust Company and established under 408A of the Code. As of December 31, 2006, the combined value of these IRAs was \$727,114.01.

(b) Lynne Niednagel is the spouse of Paul Niednagel and the mother of each of the Principals. She is the beneficial owner of a traditional IRA trustee by Charles Schwab and established under section 408 of the Code. She is also the beneficial owner of a Roth IRA trustee by Pensco Trust Company and established under section 408A of the Code. As of December 31, 2006, the combined value of these IRAs was \$69,535.24.

(c) Daniel Niednagel is the 100% owner of Skizzim.com, also doing business as Skizzim Financial (Skizzim). Stephen Niednagel is the 100% owner of Three Arch Capital, LLC (Three Arch). Both Skizzim and Three Arch manage the assets of, and are respectively 50% owners of, a limited liability company known as Bird Rock Ventures, LLC (Bird Rock). Bird Rock, in turn, operates as the manager of Pacific Island. In addition, Daniel and Stephen Niednagel serve as Principals of Pacific Island.

2. The Units are issued by Pacific Island, which is a California limited

liability company formed to invest in commercial and real estate loans. Pacific Island's primary activity is to purchase, at a discount, sub-performing or non-performing real estate loans (the Loans). The Loans will be primarily secured by first, second, and third trust deeds (and related collateral) on real property located in California, although Pacific Island may invest in Loans secured by real property in other states.

3. A private placement consisting of 250 Units of limited liability company interest in Pacific Island, at a uniform purchase price of \$10,000 per Unit, was offered to investors beginning on August 28, 2003. The purpose of this placement is to provide Pacific Island with sufficient capital to acquire the Loans. The acquisition of a Unit by an investor entitles such person to admission as a member (Member) of Pacific Island. Units may only be sold to investors who (i) buy a minimum of one Unit (or a fractional Unit thereof, computed on a pro-rata basis) for a purchase price of \$10,000, and (ii) represent in writing that they meet the investor suitability requirements established by Bird Rock (the Manager) as well as those that may be required under Federal or State law. The financial exposure of such Members is limited to each Member's respective investment interests in the Units.

4. The applicants request an exemption for the proposed Purchase of the Units by the individual IRAs (both traditional and Roth) of the respective Account Holders. As of January 1, 2007, the Account Holders, in their individual capacities, hold approximately 10.0% of the Units of Pacific Island, while the lineal descendants of the Account Holders hold approximately 15.7% of the Units. Accordingly, the majority of the Units in Pacific Island are owned by Members other than the Account Holders and their lineal decedents.<sup>4</sup>

5. The applicants represent that each IRA will pay no commissions or other expenses in connection with the Purchase. The Purchase will involve a one-time transaction for cash. Each IRA will pay a purchase price (\$10,000) for a Unit of Pacific Island; this price is identical to the price paid for each Unit of Pacific Island by other investors. The applicants further represent that the value of the Units to be purchased will not exceed 25% of the value of the

<sup>4</sup> The Department notes that a divergence of interests may develop over time between (1) the IRAs and the IRA fiduciaries in their capacities as individuals, or (2) the IRAs and other persons in which the IRA fiduciaries, in their individual capacities, may have an interest. In the interests develops event that such a divergence of, the IRA fiduciaries would be required to take steps to eliminate the conflict of interest in order to avoid engaging in a prohibited transaction.

assets of each IRA at the time of the proposed transaction.

6. The applicants represent that the proposed transactions are feasible in that each Purchase will involve a one-time transaction for cash. Furthermore, the applicants represent that the proposed transaction will be in the best interests of each IRA in that the Purchases will enable each IRA to invest in an instrument which, based on recent history, has yielded a favorable rate of return for investors. In this connection, the applicants represent that the Purchases of Units by the IRAs will not require the payment of commissions or other expenses.

Finally, the applicants represent that the transactions will be protective of the rights of each participant because, at the time of the Purchase, the investment will not exceed 25% of the assets of each IRA.

7. In summary, the applicants represent that the proposed transactions satisfy the statutory criteria of section 4975(c)(2) of the Code because: (a) The Purchase of the Units will be a one-time transaction for cash; (b) Each IRA will purchase each Unit at a price (\$10,000) that is identical to the price paid by other investors in acquiring a Unit; (c) The terms and conditions of each Purchase will be at least as favorable as those available in an arm's length transaction with an unrelated third party; (d) Each IRA will not pay any commissions or other expenses in connection with each Purchase; and (e) The IRA assets invested in the Units will not exceed 25% of the total assets of each IRA at the time of the Purchase.

**Notice to Interested Persons:** Because the applicants are the only participants in the IRAs, it has been determined that there is no need to distribute this 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:** Mr. Mark Judge of the Department, telephone (202) 693-8339. (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 May, 2007.

**Ivan Strasfeld,**

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

[FR Doc. E7-10488 Filed 5-31-07; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Proposed Collection for Data Validation Requirement for Employment and Training Programs; 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 preclearance 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 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This 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 collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning a revision of a data validation requirement for the following employment and training programs: Workforce Investment Act (WIA) Title IB, Wagner-Peyser, Trade Adjustment Assistance (TAA), National Farmworker Jobs (NFJP), Indian and Native American Employment and Training, and Senior Community Service Employment (SCSEP).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice or by accessing: <http://www.doleta.gov/OMB/CN/OMBControlNumber.cfm>.

**DATES:** Written comments must be submitted to the office listed in the addressee's section below on or before July 31, 2007.

**ADDRESSES:** Submit written comments to the U.S. Department of Labor, Employment and Training Administration, Office of Performance and Technology, 200 Constitution Avenue, NW., Room S-5206, Washington, DC 20210, Attention: Karen A. Staha, Director, Division of System Accomplishments. Telephone number: (202) 693-3031 (this is not a toll-free number). Fax: (202) 693-3490. E-mail: [Staha.Karen@dol.gov](mailto:Staha.Karen@dol.gov).

**FOR FURTHER INFORMATION CONTACT:** Traci DiMartini, Office of Performance and Technology, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-5206, Washington, DC 20210; telephone: (202) 693-3698 (this is not a toll-free number); fax: (202) 693-3490; e-mail: [Dimartini.Traci@dol.gov](mailto:Dimartini.Traci@dol.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The accuracy and reliability of program reports submitted by states and grantees using Federal funds are fundamental elements of good public administration, and are necessary tools for maintaining and demonstrating system integrity. The President's Management Agenda to improve the management and performance of the

Federal government has emphasized the importance of complete information for program monitoring and improving program results. States and grantees receiving funding under WIA Title IB, Wagner-Peyser Act, TAA, and the Older Americans Act (i.e., SCSEP) are required to maintain and report accurate program and financial information (WIA section 185 (29 U.S.C. 2935) and WIA Regulations 20 CFR 667.300(e)(2), Wagner-Peyser Act section 10 (29 U.S.C. 49i), Older Americans Act section 503(f)(3) and (4) (42 U.S.C. 3056a(f)(3) and (4)), and TAA regulations 20 CFR 617.57). Further, all states and grantees receiving funding from ETA and the Veterans' Employment and Training Service are required to submit reports or participant records and attest to the accuracy of these reports and records.

Performance audits conducted by the Department of Labor's Office of Inspector General, however, found that the accuracy of reported performance outcomes could not be assured due to insufficient local, state, and Federal oversight. To address this concern and meet the Agency's goal for accurate and reliable data, ETA implemented a data validation process in order to ensure the accuracy of data collected and reported on program activities and outcomes.

**Data Validation.** The data validation requirement for employment and training programs strengthens the workforce system by ensuring that accurate and reliable information on program activities and outcomes is available. Data validation is intended to accomplish the following goals:

- Ensure that critical performance data are accurate.
- Detect and identify specific problems with a state's or grantee's reporting process, including software and data issues, to enable the state or grantee to correct the problems.
- Help states and grantees analyze the causes of performance successes and failures by displaying participant data organized by performance outcomes. In addition, the process allows states and grantees to select appropriate validation samples necessary to compute statistically significant error rates.

Data validation consists of two parts:

1. Report validation evaluates the validity of aggregate reports submitted to ETA by checking the accuracy of the reporting software used to calculate the reports. Report validation is conducted by processing a complete file of participant records into validation counts and comparing the validation counts to those reported by the state or grantee.

2. Data element validation assesses the accuracy of participant data records.