

recommendation to the Welfare Fund Trustees whether such Leases would be in the best interest and protective of the Funds; (d) monitor the transactions related to the Training Fund Lease, including verification that monthly rent has been timely paid; (e) monitor the exemption to ensure that the terms are complied with and take all appropriate actions to ensure that the Training Fund Lease is protective and in the best interest of the Welfare Fund; and (f) recommend to the Welfare Fund Trustees whether the Leases should be terminated or the amount of the Lease payment adjustments when the five year options under the Training Fund Lease becomes due.

On behalf of TPC, Mr. Hulse represents that both he and the firm are independent of, and unrelated to either Applicants. In addition, Mr. Hulse states that he has been advised by legal counsel to the Welfare Fund regarding his fiduciary obligations under ERISA and he acknowledges and accepts such duties, responsibilities and liabilities as an ERISA fiduciary for the Welfare Fund.

In his fiduciary capacity, Mr. Hulse has reviewed and made recommendations to the Welfare Fund Trustees on the purchase of the 5735 Elizabeth Avenue Building and contemplated leases involving the Training Fund and the Service Center. Prior to making its determination, Mr. Hulse represents that he has examined the Welfare Fund's overall investment portfolio, considered the liquidity requirements of the Welfare Fund, considered the diversification of the portfolio in light of the proposed transactions, and considered whether the proposed transactions herein comply with the Welfare Fund's investment objectives and policies. Lastly, Mr. Hulse explains that he has reviewed the Training Fund's creditworthiness to enter into the contemplated Lease.

Based on his review, Mr. Hulse has determined that both the purchase and Lease transactions are suitable for the Welfare Fund and its participants and beneficiaries. Mr. Hulse also believes that the Training Fund's "rent buy down" represents a common practice within the real estate industry and is, therefore, appropriate in this transaction. Further, Mr. Hulse represents that due to his commercial leasing experience, he has the ability to procure a fair market valuation of the rental space once the option to renew comes due five years from the inception of the Lease.

18. In summary, the Applicants represent that the transaction will

satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The terms of the Lease will be at least favorable to the Welfare Fund and the Training Fund as those obtainable in an arm's length transaction with an unrelated party.

(b) Qualified, independent appraisers have determined the initial amount of the Lease payments.

(c) A qualified, independent fiduciary has approved the Lease and will monitor the terms of the exemption, at all times, on behalf of the Welfare Fund.

(d) The independent fiduciary will take whatever actions are necessary and proper to enforce the Welfare Fund's rights under the Lease and to protect the participants and beneficiaries of the Welfare Fund.

(e) The rental payments under the Lease will be adjusted once every five years by the independent fiduciary to ensure that such rental payments are not greater than or less than the fair market rental value of the leased space.

(f) The fair market rental amount for the leased space, at no time, will exceed 25 percent of the assets of either Fund, including any improvements that are constructed thereon.

(g) The independent fiduciary, the Welfare Fund Trustees and the Training Fund Trustees have determined that the Lease is an appropriate investment for the Welfare Fund and is in the best interest of the participants and beneficiaries of the respective Funds.

Notice to Interested Persons

Notice of proposed exemption will be provided to all interested persons by first class mail within 10 days of publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption, as published in the **Federal Register**, and a supplemental statement, as described at 29 CFR 2570.43(b)(2). Such notice will inform interested persons of their right to comment on the proposed exemption. Comments are due within 40 days of the date of publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Silvia M. Quezada of the Department, telephone (202) 693-8553. (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 in Washington, DC, this 19th day of May, 2003.

Ivan Strasfeld,

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

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