

the Pooled Fund itself technically cannot satisfy the requirement that at least 50% of the units of beneficial interest in the Pooled Fund be held by plans having total net assets with a value of at least \$50 million.

The Department accepts this comment and has modified the language of section I(o) of the exemption to clarify that the requirements therein are satisfied if each plan in the Pooled Fund meets the general requirement of \$50/\$100 million, even though 50 percent or more of the units of beneficial interest in such Pooled Fund are not held by plans.

Accordingly, in consideration of the entire record, including the comments submitted by the Applicants, the Department has determined to grant the exemption as proposed, with the modifications and clarifications described herein.

**FOR FURTHER INFORMATION CONTACT:** Gary Lefkowitz of the Department, telephone (202) 693-8546. (This is not a toll-free number).

*IBEW Local No. 1 Health and Welfare Fund (the Welfare Fund) and IBEW Local No. 1 Apprenticeship and Training Fund (the Training Fund; collectively, the Funds) Located in St. Louis, MO*

[Prohibited Transaction Exemption 2003-25; Exemption Application Nos. L-11155 and L-11156, respectively]

#### Exemption

The restrictions of section 406(a) of the Act shall not apply to the lease of certain classroom space and supplemental facilities (the Lease) by the Welfare Fund to the Training Fund.

The exemption is subject to the following conditions:

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

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

(3) A qualified, independent fiduciary, The Philip Company, has approved the Lease and has agreed to monitor the terms of the exemption, at all times, on behalf of the Welfare Fund.

(4) The independent fiduciary agrees to 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.

(5) The rental payments under the Lease are adjusted once every five years by the independent fiduciary to ensure that such Lease payments are not greater

than or less than the fair market rental value of the leased space.

(6) 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.

(7) The independent fiduciary and the Board of Trustees of the Welfare Fund have determined that the Lease is an appropriate investment for the Welfare Fund and is in the best interest of the Welfare Fund's participants and beneficiaries.

(8) The Board of Trustees of the Training Fund has determined that the Lease transaction is an appropriate investment for the Training Fund and is in the best interest of the Training Fund's participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 22, 2003 at 68 FR 28026.

**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 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) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately

describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of August 2003.

**Ivan Strasfeld,**

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

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## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of July 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and