information about themselves, it would not be proper administration of the UI program to release such information without the individual's informed consent. Confidentiality of UI records is, therefore, an elementary factor necessary in the proper administration of the UI program, since the release of UI information without the individual's informed consent would bring notoriety upon the UI program.

Certain types of disclosure have, however, been permitted. Disclosure of claimant and employer information to public officials in the performance of their official duties has been permitted if the cost of providing the information is paid for by the requesting public official. States have also been permitted to disclose information relating to an individual to such individual or the individual's agent. The Department has now concluded that States may disclose employment and wage information to a private entity under a written agreement which (1) requires informed consent from the individual to whom the information pertains, (2) continues to safeguard the information once in the hands of the private entity, and (3) requires the private entity to pay all costs associated with disclosure.

b. *Informed Consent.* States choosing to disclose employment and wage information to credit companies must require the individual to sign a release. The release must contain the following: (1) a specific statement indicating that the individual's employment history will be released, (2) a statement that the release is only for that particular credit transaction, (3) a clear statement informing the individual that the credit company may use information from State governmental files, and (4) a statement indicating all the parties who may receive the information released. Consent is not informed if an individual is not told that governmental records may be released and to whom the information may be provided. States must assure that all statements or forms provided under the terms of any agreements require the informed consent of the individual to use the State's records.

c. *Safeguards.* States must safeguard the confidentiality of the UI information once a private entity has been granted access to it. In cases where the private entity is acting as a gateway and passes the information along to a subscriber or client, States must obtain written assurances from the private entity that such subscribers will also safeguard the confidentiality of the information and that the information may be used only for the specific credit transaction authorized by the individual's release.

States must periodically audit a sample of transactions accessing the wage records to assure that the private entity has on file a written release authorizing each access and that the information is not being misused or stored in a database for resale or other unauthorized purpose to assure that no access is made to the wage records without authorization. If the private entity acts as a gateway and audits its subscribers, it will be sufficient for the State to periodically audit the gateway's audit process. A State must ensure that any agreement permits it to exercise control over the UI records even after they are shared with private entities.

The State must be able to terminate the agreement if it determines that the confidentiality provisions are not adhered to. The Department also recommends that the agreement contain a definite expiration date so that the State is assured an opportunity to periodically evaluate such disclosure.

While it is recognized that no system is foolproof, system security through increased audits and other means must be such that any breach will be easily detected. All employees of private entities must be subject to the same confidentiality requirements—and State criminal penalties for violation of those requirements—as are employees of the State UI agency.

d. *Income and Costs.* Under Section 303(a)(8), SSA, funds received for the administration of a State's UI program may be used only as necessary for the ''proper and efficient'' administration of the State's UI law. Departmental regulations at 29 CFR 97.22(b) provide that OMB Circular No. A–87 is used to determine whether an expenditure of granted funds is an allowable cost. Under both the SSA and the Circular, costs of disclosing information for non-UI purposes are not allowable because such costs items are not necessary or reasonable for proper and efficient performance and administration of the Federal award allocated to carry out the State's UI program. The OMB Circular also provides at paragraph 20 of Attachment B that certain costs are not allowable under a grant. These include fines, penalties, damages and other settlements resulting from violations (or alleged violations) or failure to comply with law. As a result, the Department recommends that any agreement with a private entity provide protection to the State for claims that may arise from any unauthorized use of UI records obtained under the agreement.

It is the Department's position that income generated by a State UI agency from the sale of its wage records must be used only as necessary for the proper and efficient administration of the UI program pursuant to administrative requirements for grants to the States. (See 29 CFR 97.25(g)(2) and ET Handbook No. 336, the ''Program and Budget Plan.'') Therefore, States may not use any money generated by the disclosure authorized under this UIPL for any non-UI purposes. For example, income from sales may not benefit a State's general fund or another program.

5. *Action Required.* State administrators are requested to provide the above information to appropriate staff.

6. *Inquiries.* Direct questions to the appropriate Regional Office.

[FR Doc. 96–13869 Filed 6–3–96; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Application No. D–10171, et al.]

Proposed Exemptions; The Everett Clinic Profit Sharing Plan

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 restriction 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 request 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. 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, N.W., Washington, D.C. 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 Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 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 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

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

The Everett Clinic Profit Sharing Plan and 401(k) Employee Savings Plan and Trust (the Plan) Located in Everett, Washington

[Application No. D–10171]

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 (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 following proposed transactions between the Plan and the Everett Clinic (the Employer), a party in interest with respect to the Plan: (1) The exchange of cash and real property (Parcel B) owned by the Plan for other real property (Parcel C) owned by the Employer; (2) the grant by the Employer to the Plan of a perpetual easement to run with the land on the Plan's Parcel B to be exchanged and on the Employer's property (Parcel E); (3) the modification and extension of an existing lease (the New Lease) of improved real property by the Plan to the Employer, so as to include Parcel C and, effective January 1, 1997, a parking lot owned by the Employer (Parcel D) to be contributed gratuitously [1] to the Plan; and (4) the potential future purchase of the leased premises by the Employer pursuant to the terms of an option agreement contained in the New Lease.

This proposed exemption is subject to the following conditions:

(1) the Plan is represented in all the transactions by a qualified, independent fiduciary;

(2) the terms and conditions of the transactions are at least as favorable to the Plan as those the Plan could obtain in comparable arm's length transactions with unrelated parties;

(3) under the purchase agreement (the Purchase Agreement) with respect to the exchange of Parcel B for Parcel C, the Plan pays to the Employer an amount no more than the difference between the fair market values of Parcel B and Parcel C as of the date of the exchange, as established by a qualified, independent appraiser, with the Plan receiving full market value for Parcel B (notwithstanding its being transferred subject to an easement);

(4) the rent paid to the Plan under the New Lease is and continues to be no less than the fair market rental value of the leased premises, as established by a qualified, independent appraiser;

(5) the rent is adjusted every three years, based upon an updated independent appraisal, but never falls below the fair market rental amount initially established;

(6) the New Lease is a triple net lease under which the Employer as the tenant is obligated for all operating expenses, including maintenance, repairs, taxes, insurance, and utilities;

(7) the independent fiduciary expressly approves any improvements over $100,000 to the leased premises and any renewal of the New Lease beyond the initial term;

(8) the New Lease contains a two-way option agreement enabling the Plan to sell the leased premises to the Employer (or the Employer to purchase the leased premises from the Plan), in the event the independent fiduciary determines that such a sale is in the best interests of the Plan, for cash in an amount which is the greater of: (a) the original acquisition cost of the premises to the Plan plus expenses, or (b) the fair market value of the premises as of the date of the sale, as established by a qualified, independent appraiser selected by the independent fiduciary;

(9) at all times, the fair market value of the leased premises represents no more than 25% of the total assets of the Plan;

(10) the independent fiduciary determines that all of the transactions are appropriate for and in the best interests of the Plan and its participants and beneficiaries at the time of the transactions;

(11) at all times, the independent fiduciary monitors and enforces compliance with the terms and conditions of the Purchase Agreement, the New Lease, and the exemption; and

(12) the Plan incurs no commissions, costs, fees, nor other expenses relating to any of the transactions.

EFFECTIVE DATE: This exemption, if granted, will be effective as of June 1, 1996.

Summary of Facts and Representations

1. The Plan is a defined contribution, 401(k)/profit sharing plan sponsored by the Employer. The Employer, a Washington corporation, is a multi-specialty group medical practice with a main campus at 3901 Hoyt Avenue, Everett, Washington and five satellite facilities in Snohomish County. As of December 31, 1994, the Plan had 627 participants and beneficiaries and total assets of $55,469,695. The trustees of the Plan are Robert E. Andre, M.D., James R. Pinkham, M.D., John P. Nolan, M.D., Patricia J. Slater, Andrea B. Rodewald, Ann Wanner, M.D., Raymond S. Wilson, M.D., Rochelle Crollard, and Frederick T. Goset.

2. Parcel A, which is owned by the Plan, consists of an area of 74,846 square feet and includes the old clinic building (Old Clinic Building). Parcel A is being leased to the Employer (the Current Lease) pursuant to an individual administrative exemption granted by the Department, Prohibited Transaction Exemption 81–46 (PTE 81–46, 46 FR 113, June 12, 1981). The Plan and the Employer initiated a leasing arrangement in 1962, prior to passage of the Act. In 1974, the parties entered into a revised lease agreement, which was superseded by the Current Lease. The 15-year term of the Current Lease will expire on June 30, 1996. The rights of the Plan with respect to the Current Lease are represented for all purposes by the First Interstate Bank of Washington N.A. (First Interstate), successor to the Olympic Bank of Everett, Washington (the Olympic Bank). First Interstate will also be acting as an independent fiduciary for the Plan with respect to all the proposed

[1] The Department notes the Employer's representation that its contribution of Parcel D to the Plan will not be a prohibited transaction under the Department's regulation at 29 CFR 2509.94–3 because the contribution will not be made pursuant to any legal obligation of the Employer to contribute. The Plan is a profit- sharing plan which provides for a fully discretionary annual contribution by the Employer. It is represented that Parcel D will be contributed to the Plan on December 31, 1996 for the 1996 Plan Year and that no contribution has been declared for the 1996 Plan Year; therefore, the Employer has no existing obligation to contribute any amounts to the Plan. However, the Department expresses no opinion herein as to whether the Employer's contribution of Parcel D to the Plan is fully discretionary.

transactions which are the subject of the instant exemption request.

3. Parcel B, which is owned by the Plan, consists of a rectangular-shaped parking lot with an area of 28,660 square feet and is located directly across the street from the Old Clinic Building. Parcel B adjoins property owned by the Employer and is being leased to the Employer, along with Parcel A, under the Current Lease. Parcel B is paved, marked, and curbed for automobile parking, and has no building improvements.

Parcel C, which is owned by the Employer, consists of an area of 16,818 square feet and includes a fully improved medical clinic facility (the Addition). Parcel C adjoins the Old Clinic Building and is otherwise surrounded by property owned by the Plan (primarily space used for parking). In its unimproved state, Parcel C originally belonged to the Plan. It is represented that Parcel C was sold to a partnership Colby Building Associates, on June 14, 1984, in accordance with the provisions of section 414(c)(3) of the Act,[2] for purposes of constructing the Addition. That partnership was later merged with the Employer and no longer exists.

Parcel D, which is owned by the Employer, consists of a parking lot with an area of 4,361 square feet and is adjacent to Parcel A, which, as described above, is owned by the Plan.

4. Parcels A, B, and C were appraised by James D. McCallum, M.A.I., and Grant S. Gladow of McCallum & Associates, both independent real estate appraisers certified in the State of Washington. Relying primarily on the income approach to valuation, Messrs. McCallum and Gladow determined that as of July 1, 1996, Parcel A will have a prospective fair market value of $4,900,000 and Parcel C, $3,900,000. Relying on the cost approach to valuation, Messrs. McCallum and Gladow determined that as of that same date, Parcel B will have a prospective fair market value of $390,000.[3] The appraisal states that the total value of $9,190,000 for all three parcels represents a simple summation of the values of each of the individual parcels. While the available market data does not provide direct evidence that the assemblage value of the parcels (under single ownership) is greater than the sum of its component parts, in the opinion of the appraisers, consolidation of ownership in one entity will enhance the marketability of all the parcels.

Messrs. McCallum and Gladow further determined that as of July 1, 1996, Parcel A will have a prospective fair market rental value of $533,688 per annum ($44,474 per month) and Parcel C, $413,616 per annum ($34,468 per month). The appraisal states that the zoning status of Parcels A, B, and C is R–4, allowing for a variety of uses, including multi-family development, commercial activities, and professional office/medical facilities. The highest and best use of the subject parcels, if vacant, is as medical offices. The highest and best use of the subject parcels, as improved, is their continued use as medical facilities.

Parcel D was appraised by Richard J. DeFrancesco of Macaulay & Associates, also an independent real estate appraiser certified in the State of Washington. Relying primarily on the sales comparison approach to valuation, Mr. DeFrancesco determined that the fair market value of Parcel D as of July 21, 1995 was $110,000.

5. An administrative exemption is requested from the Department for the following proposed transactions. The Plan trustees desire that the Plan acquire Parcel C from the Employer in order to consolidate ownership of adjoining Parcels A and C, thus enhancing the marketability of property the Plan already owns. The Employer desires to acquire Parcel B from the Plan for purposes of constructing a three-story parking garage on Parcel B and on other contiguous property owned by the Employer, namely Parcel E. The parking garage, which will be available free of charge to customers of the Employer, will provide parking as required under municipal building codes to support the new surgery center to be built by the Employer on Parcel E, as well as the existing clinic facilities on Parcels A and C. Under the proposed Purchase Agreement, the Plan will convey title to Parcel B to the Employer, and the Employer will convey title to Parcel C to the Plan. The Plan will pay to the Employer additional cash consideration representing the difference between the fair market values of Parcel B and Parcel C ($3,510,000 as of July 1, 1996), based upon an updated independent appraisal as of the date of the exchange. The Employer will grant to the Plan, as part of the exchange, a perpetual, non-exclusive pedestrian and vehicle parking easement[4] to run with the land on Parcels B and E in favor of Parcels A and C to guarantee adequate parking for the Plan-owned property following the exchange. The Plan will receive full market value for Parcel B, notwithstanding its being transferred subject to an easement. Finally, an exemption is requested for the New Lease, which will modify the Current Lease to reflect the transactions described above, as well as the gratuitous contribution by the Employer to the Plan, effective December 31, 1996, of Parcel D (to be included among the premises being leased back to the Employer).

An actuarial consulting firm Trautmann, Maher & Associates, located in Mill Creek, Washington, prepared an asset projection report of the Plan's assets. The report, dated September 25, 1995, states that the fair market value of all employer real property after the Plan's divestment of Parcel B and its acquisition of Parcel C will comprise 12.58% of the Plan's total assets, as of December 31, 1996.[5] This projected percentage of all employer real property was calculated to be the highest level of Plan assets that will be reached for the duration of the New Lease.

6. First Interstate, as noted above, will act as an independent fiduciary to represent the Plan's interests with respect to all the proposed transactions. First Interstate and its predecessor the Olympic Bank, have served as non-discretionary custodian of a portion of the Plan's assets since approximately December 1980. In addition, the Olympic Bank was appointed the Plan's independent fiduciary at the time of the filing of the exemption application with respect to the Current Lease, whose term began in 1981. First Interstate, whose fees are paid by the Employer, represents that it is independent of the Employer and that the Bank has less than one percent of its deposits and less than one percent of its outstanding loans attributable to deposits and loans of the Employer. First Interstate represents that it has extensive experience as a fiduciary under the Act, that it is knowledgeable as to the subject transactions, and that it acknowledges and accepts its duties and

[2] The Department expresses no opinion herein as to whether the sale of Parcel C complied with the requirements of section 414(c)(3) of the Act.

[3] The appraisal states that the figure of $390,000 represents a ''fee simple value'' for Parcel B (i.e., a valuation that does not take into account the anticipated transfer of Parcel B subject to an easement).

[4] The Department notes the Employer's representation that the term ''non-exclusive'' refers to an arrangement whereby the Employer and the Plan are intended to have joint use, as opposed to the Plan's having exclusive use, of the easement (i.e., the Employer will reserve the right of access to the new parking garage for all purposes not inconsistent nor in interference with the rights granted to the Plan).

[5] Due to the fact that the Employer's decision to contribute Parcel D (valued at $110,000) to the Plan was made subsequent to preparation of the plan assets projection report by Trautmann, Maher & Associates, such report does not take into account the Plan's acquisition of Parcel D.

responsibilities in acting as a fiduciary with respect to the Plan.

7. Regardless of whether the exchange of Parcel B and Parcel C closes by July 1, 1996, the New Lease, which is to extend and modify the Current Lease, will begin as of that date. The New Lease provides for an initial term of 10 years, which may be extended at the option of the lessee in five-year increments, upon the express approval of the independent fiduciary. The Employer will pay an initial rent to the Plan at the annual rate of $533,688 ($44,474 per month), which is the fair market rental value of Parcel A. When Parcel C is added (upon closing of the exchange), the rent will increase by an amount equal to the fair market rental value of Parcel C as of the date of the exchange (appraised at $413,616 per year as of July 1, 1996) to an annual rate of approximately $947,304 (approximately $78,942 per month). When Parcel D is added, the rent will increase by an amount to be determined by the independent fiduciary by reference to a qualified, independent appraisal of the fair market rental value of Parcel D as of January 1, 1997. The total rent for the leased premises is to be adjusted every three years, based upon an updated independent appraisal, and is not to fall below the fair market rental amounts initially established. The New Lease will be a triple-net lease under which the Employer as the tenant is obligated for all operating expenses, including maintenance, repairs, taxes, insurance, and utilities. The Employer will indemnify and hold the Plan harmless for any loss or damages to the leased premises.

The New Lease permits the Employer to remodel and make structural changes or additions to the leased premises at the Employer's expense, so long as such improvements comply with all applicable government regulations. Any expense over $100,000 must be expressly approved by the independent fiduciary. The threshold of $100,000 is intended to provide the Employer with discretion to make routine renovations, such as the installation of new carpeting, without having to consult the independent fiduciary. Any improvements or renovations of the property will belong to the Plan upon termination of the New Lease.

The New Lease also contains a two-way option agreement enabling the Plan to sell the leased premises to the Employer (or the Employer to purchase the leased premises from the Plan), in the event the independent fiduciary determines that such a sale is in the best interests of the Plan, for an amount which is the greater of: (a) the original acquisition cost of the premises to the Plan plus expenses, or (b) the fair market value of the premises as of the date of the sale, as established by a qualified, independent appraiser selected by the independent fiduciary. Any such sale would be a one-time transaction for cash, and the Plan would incur no expenses relating to the sale.

8. The independent fiduciary represents that it has negotiated the terms and conditions of the Purchase Agreement and of the New Lease and has determined that such terms and conditions are at least as favorable to the Plan as those the Plan could obtain in comparable arm's length transactions with unrelated parties. The properties involved have been independently appraised, as well as having been subjected to an environmental audit. The independent fiduciary recognized that because of Parcel B's importance to the Employer's plans to construct a parking garage and a surgery center, the Plan was entitled to a premium in the exchange of Parcel B for Parcel C. Accordingly, the Plan will receive from the Employer the benefit of a perpetual parking easement to run with the land on Parcels B and E, in addition to the full market value of Parcel B. Finally, the independent fiduciary has conducted an investigation of the relevant rental market in order to develop appropriate terms for the New Lease.

9. The independent fiduciary represents that it believes the proposed transactions are in the best interests of the Plan and its participants and beneficiaries. The Plan's acquisition of Parcels C and D will combine adjoining Parcels A, C, and D under single ownership, providing the Plan with ownership of almost an entire block (the block between Hoyt and Colby Avenues), and thus will enhance the value and marketability of property that the Plan already owns. Parcel B will be transferred to the Employer at its full market value, despite being subject to a perpetual parking easement in favor of Plan-owned Property. The New Lease will generate income to the Plan in the form of rent and thus provide the Plan with a return on its investment in addition to any appreciation of the value of the leased property. The Plan is bearing none of the expenses with respect to any of the proposed transactions.

The independent fiduciary has also determined that the proposed transactions are appropriate for the Plan in light of the Plan's overall investment portfolio for the following reasons. The projected percentage of all employer real property (Parcels A, C, and D) will not exceed approximately 13% of Plan assets for the duration of the New Lease. The Plan's acquisition of Parcel C will not create a liquidity problem, will provide increased assurance that the Plan will be able to sell the adjoining property the Plan now owns, and will return income to the Plan. The Plan's divestment of Parcel B will reduce the concentration of Plan assets in real estate and the amount that the Plan must pay for Parcel C. The Current Lease should be extended because of the difficulties involved in finding another tenant or a ready purchaser for the leased property at its appraised fair market value. The income from the Current Lease has provided the Plan with a stable and favorable rate of investment return (over 9% per annum for the period covering the 1980's and the first half of the 1990's, ranking in the top 5% of the Independent Consultants Cooperative database). The stable and predictable returns provided by the Current Lease have enabled the Plan trustees to invest the remainder of the Plan's assets in more volatile investments offering the potential for higher returns. The independent fiduciary has also examined the financial viability of the Employer (including the potential impact of any substantial malpractice claims), determined that the Employer's past performance under the Current Lease has been in accordance with its contractual obligations, and concluded that the Employer will continue to be a good tenant.

The independent fiduciary will recommend to the Plan trustees execution of the Purchase Agreement and the New Lease only if they remain appropriate for and in the best interests of the Plan and its participants and beneficiaries at the time of the transactions. Further, the independent fiduciary will, at all times, monitor and enforce the Employer's compliance with the terms and conditions of the Purchase Agreement, the Proposed Lease, and the exemption.

10. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (1) The Plan will be represented in all the transactions by a qualified, independent fiduciary; (2) the terms and conditions of the transactions will be at least as favorable to the Plan as those the Plan could obtain in comparable arm's length transactions with unrelated parties; (3) the Plan will pay to the Employer cash in an amount no more than the difference between the fair market

values of Parcel B and Parcel C as of the date of the exchange, as established by a qualified, independent appraiser; (4) the Plan will receive in the exchange full market value for Parcel B, while retaining a perpetual parking easement granting the Plan access to the new parking garage to be constructed; (5) the Plan will have single ownership of both portions of the clinic facilities, as well as Parcel D, which will enhance the value and marketability of the Plan-owned property; (6) the rent paid to the Plan under the New Lease will be no less than the fair market rental value of the leased premises, as established by a qualified, independent appraiser; (7) the rent will be adjusted every three years, based upon an updated independent appraisal, but will never fall below the fair market rental amount initially established; (8) the New Lease will be a triple net lease under which the Employer as the tenant is obligated for all operating expenses, including maintenance, repairs, taxes, insurance, and utilities; (9) the independent fiduciary will expressly approve any improvements over $100,000 to the leased premises and any renewal of the New Lease beyond the initial term; (10) the New Lease will contain a two-way option agreement enabling the Plan to sell the leased premises to the Employer (or the Employer to purchase the leased premises from the Plan), in the event the independent fiduciary determines that such a sale is in the best interests of the Plan, for cash in an amount which is the greater of: (a) the original acquisition cost of the premises to the Plan plus expenses, or (b) the fair market value of the premises as of the date of the sale, as established by a qualified, independent appraiser selected by the independent fiduciary; (11) at all times, the fair market value of the leased premises will represent no more than 25% of the total assets of the Plan; (12) the independent fiduciary will determine that all of the transactions are appropriate for and in the best interests of the Plan and its participants and beneficiaries at the time of the transactions; (13) at all times, the independent fiduciary will monitor and enforce compliance with the terms and conditions of the Purchase Agreement, the New Lease, and the exemption; and (14) the Plan will incur no commissions, costs, fees, nor other expenses relating to any of the transactions.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons by first-class mail and by posting the required information at the Employer's offices within 10 days of the date of publication of the notice of pendency 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/or to request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 40 days of the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The SUP Welfare Plan (the Plan) Located in San Francisco, California

[Application No. L–10221]

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), 406(b)(1) and (b)(2) of the Act shall not apply to the proposed sale by the Plan of the remaining term of a one-hundred year pre-paid leasehold interest (the Interest) to the Sailors' Union of the Pacific Building Corporation (SUPBC), a party in interest with respect to the Plan, provided the following conditions are satisfied: a) the sale is a one-time transaction for cash; b) the Plan pays no commissions or other expenses in connection with the sale; c) the Plan receives the greater of $438,000 or the fair market value of the Interest as of the date of the sale; and d) the fair market value of the Interest has been determined by a qualified, independent appraiser.

Summary of Facts and Representations

1. The Plan was created in 1952 to provide welfare benefits to eligible unlicensed seamen who work in the West Coast maritime industry. The Plan is sponsored by the Sailors' Union of the Pacific (the Union). The Plan has approximately 2,500 participants and beneficiaries, and as of July 31, 1994, the fair market value of the net assets of the Plan was $10,269,079.

2. During its early years, the Plan acquired facilities in Los Angeles, San Francisco, Portland and Seattle to provide temporary shelter for participants who were sometimes impoverished and homeless between periods of shipboard employment. In 1954, the SUPBC, an affiliate of the Union, constructed a building (the Building) at 2505 First Avenue, Seattle, Washington, for use as the Union's headquarters in Seattle.

3. In exchange for $251,200, SUPBC conveyed to the Plan a pre-paid one hundred year lease of the third floor of the Building. The lease term began on June 1, 1954. Since 1954, the Plan has used the space to provide housing benefits to Plan participants.

4. The applicants represent that the huge decline in the American flag merchant marine has seriously eroded the funding available to the Plan. The Plan's trustees desire to eliminate the housing program and to concentrate Plan resources for the purpose of providing traditional medical benefits. An opportunity currently exists to dispose of the Interest because the Union and SUPBC have decided that they no longer need to retain their interests in the property. Accordingly, the applicants have requested the exemption proposed herein to permit the Plan to sell the Interest to SUPBC.

5. The Plan will receive cash in the amount of the appraised fair market value of the Interest. Mr. Allen N. Safer, MAI, of Property Counselors, an independent appraiser in Seattle, Washington, appraised the Interest as having a fair market value of $375,000 on July 1, 1994. In 1995, Mr. Safer updated his appraisal of the Interest and determined that the Interest had a fair market value of $405,000 as of December 14, 1995. However, Mr. Safer represents that he did not take into account any premium that the Plan might receive based on its position of being able to block the SUPBC's sale of the Building to a third party. Mr. James B. Welle, a Senior Broker for the real estate firm of Cushman & Wakefield of Washington, located in Bellevue, Washington, has determined that a premium of $33,000 to the Plan is appropriate under the circumstances. Accordingly, the applicants represent that the Plan will receive the greater of $438,000 or the fair market value of the Interest as of the date of the sale. The Plan will pay no commissions or other expenses in connection with the sale.

6. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) the sale is a one-time transaction for cash; (b) the Plan will pay no commissions or other expenses in connection with the sale; and (c) the Plan will receive the greater of $438,000 or the fair market value of the Interest as of the date of sale as determined by a qualified, independent appraiser.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Cablevision Industries Corporation Profit Sharing Plan (the Plan) Located in New York, New York

[Application No. D–10233]

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 C.F.R. Part 2570, Subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(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 to the proposed purchase from the Plan by Cablevision Industries Corporation (the Employer), the sponsor of the Plan, of the Plan's entire remaining interest (the Surviving Claim) in guaranteed investment contract number GCNG8690011A (the GIC) issued by the Executive Life Insurance Company (Executive Life); provided that the following conditions are satisfied:

(A) All terms and conditions of the transaction 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 Plan receives a cash purchase price which is no less than the greater of (1) the fair market value of the Surviving Claim as of the sale date, or (2) the Plan's principal investment attributable to the Surviving Claim plus interest through the purchase date at the Contract Rate (as defined below); and

(C) In the event the Employer subsequently receives payments with respect to the Surviving Claim from any source in excess of the purchase price paid to Plan, such excess will be paid to the Plan.

EFFECTIVE DATE: This exemption, if granted, will be effective as of June 17, 1996.

Summary of Facts and Representations

1. The Employer, an indirect subsidiary of Time Warner, Inc., is a New York corporation engaged in the distribution of cable television services, with its principal place of business in New York, New York. The Plan is a defined contribution profit sharing plan with 1,598 participants and total assets of approximately $16,810,297 as of February 13, 1996. The Plan's assets are held by its trustee, Fleet Trust Company in New York, New York (the Trustee), subject to the direction of the Plan's investment committee (the Committee). The Committee, comprised of officers of Time Warner Inc. (TWI), the parent corporation of the Employer, has complete authority to manage and control Plan assets and to determine the investment policy of the Plan.

2. Assets of the Plan are invested by the Trustee pursuant to the directions of the Committee. Among the assets in the Plan is an interest in a single-deposit guaranteed investment contract (the GIC) issued to the Trustee on August 8, 1986 by Executive Life Insurance Company of California (Executive Life). The Trustee purchased the GIC on behalf of approximately 81 employee benefit plans which were clients of the Trustee, including the Plan. At the time the GIC was purchased, the Trustee served as investment manager of the Plan. The Plan made an initial principal deposit of $49,800, representing a 1.66 percent interest in the GIC (the GIC Interest). Under the terms of the GIC, which is designated as Executive Life Contract Number GCNG8690011A, the principal earns interest at the rate of 8.86 percent per annum (the Contract Rate). The GIC terms permit the Plan to make withdrawals (the Withdrawals) solely for the purchase of individual annuity contracts for retiring Plan participants. Upon the GIC's stated maturity date of August 8, 1991 (the Maturity Date), Executive Life was obligated to make a lump-sum payment (the Maturity Payment) in the amount of the total principal plus interest at the Contract Rate less Withdrawals.

3. On April 23, 1991 (the Conservatorship Date), Executive Life was placed into conservatorship and rehabilitation by order of the Supreme Court of New York (the Court), and a rehabilitator (the Rehabilitator) was appointed by the Court. Payments and withdrawals with respect to all Executive Life guaranteed investment contracts, including the GIC, ceased at that time.[6]

As of the Conservatorship Date, the accumulated book value[7] of the GIC Interest was $74,325. As of the Maturity Date the amount of the Maturity Payment which was due the Plan under the GIC as determined by the Contract Rates was $76,132. On December 16, 1992, the Court approved a plan of rehabilitation (the Rehab Plan) of Executive Life which provided for the Rehabilitator to set new rates of interest (the Rehab Rates) with respect to the GIC. In accordance with the Rehab Plan, the Rehabilitator established the following Rehab Rates for the principal amounts deposited under the GIC:

From 8/8/86 to 8/8/91: 8.86 percent
From 8/8/91 to 8/7/92: 6.00 percent
From 8/7/92 to 2/28/93: 3.50 percent
From 2/28/93 to 2/15/94: 3.25 percent
From 2/15/94 to Final Payment: 4.00 percent

Pursuant to the Rehab Plan and a consequent agreement of January 4, 1994 (the Rehab Agreement) between the Trustee and the Rehabilitator, the value of the GIC Interest, determined by the Rehab Rates, was disbursed in a 93.7 percent immediate payout with a surviving claim (the Surviving Claim) for the remaining 6.3 percent. The Surviving Claim continues to earn a Rehab Rate of four percent annual interest until payment to the Trustee with respect to the GIC Interest is completed. Although the Plan received $79,862.91 on February 15, 1994 as the 93.7 percent payout with respect to the GIC Interest exclusive of the Surviving Claim, the Employer represents that under the Rehab Plan and the Rehab Agreement the Plan will not be made whole with respect to its investment in the Surviving Claim in accordance with the original terms of the GIC. The value of the Plan's interest in the Surviving Claim, as determined by the Rehab Rates, was $5,871.67 as of April 30, 1996.

4. Meanwhile, in January 1996 the Employer was acquired by a subsidiary of TWI, and became a member of its controlled group of entities involved in the cable television industry (the Merger). As a result of the Merger, the Employer has determined to merge the Plan with the Time Warner Entertainment Company, L.P. Additional Account Plan (the New Plan), of which the Fidelity Management Trust Company (Fidelity) is the trustee and investment manager. However, the Employer represents that Fidelity will be unable to administer the GIC Interest as part of the merged trust assets in the New Plan without considerable additional cost.

The Employer desires to facilitate completion of the merger of the Plan with the New Plan by providing for total and immediate liquidation of the GIC Interest, and to prevent any loss on amounts due the Plan under the terms of the GIC. To accomplish these

[6] The Department notes that the decisions to acquire and hold the GIC Interest are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC Interest.

[7] The accumulated book value of the GIC Interest is the total principal deposited plus interest at the Contract Rate less Withdrawals.

objectives, the Employer and the Committee determined that the most expeditious means would be the Employer's cash purchase of the Plan's remaining interest in the GIC. The Employer requests an exemption for this transaction under the terms and conditions described herein.

5. The Employer proposes that the Plan transfer to the Employer the Plan's entire remaining interest in the GIC in exchange for a cash purchase price in the amount of the Plan's GIC Interest principal investment attributable to the Surviving Claim plus interest at the Contract Rate effective August 8, 1986 through the date of the purchase. The Plan will incur no expenses with respect to the proposed transaction. Subsequent to the purchase, the Employer, as owner of the GIC Interest, will receive the Rehab Payments with respect to the Surviving Claim, which includes interest at four percent. In the event the Employer receives funds from any source with respect to the Surviving Claim in excess of the purchase price paid to the Plan by the Employer, such excess will be paid to the Plan.

6. The Employer is requesting that the exemption, if granted, be effective as of June 17, 1996. The Employer explains that its reorganizational activities commencing with its acquisition by TWI subsidiaries in January 1996 have led to a greater number of Plan participant terminations than usual. Whereas the Plan has permitted distributions only annually, the New Plan enables distributions on a monthly basis. Because distributions to many former participants of the Plan are pending, the Employer desires to enable distributions to be processed in the June 1996 processing cycle of the New Plan. This will require the completed liquidation of the GIC Interest by June 17, 1996. Accordingly, the Employer intends to consummate the proposed purchase transaction on that date under the terms and conditions described above.

7. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The transaction will provide the Plan with an immediate return on its investment in the Surviving Claim at a rate of interest, the Contract Rate, which is higher than the Rehab Rates; (2) The proposed transfer of the GIC Interest to the Employer for a cash purchase price will be a one-time transaction in which the Plan receives no less than the greater of the fair market value of the GIC Interest or the Plan's principal investment attributable to the Surviving Claim plus interest through the purchase date at the Contract Rate; (3) The Plan will incur no expenses with respect to the proposed transaction; and (4) In the event the Employer receives payments with respect to the GIC Interest in excess of the purchase price paid the Plan, such excess will be paid to the Plan.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (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 of 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 30th day of May, 1996.

Ivan Strasfeld,

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

[FR Doc. 96–13916 Filed 6–3–96; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 96–14; Exemption Application No. D–09940]

Morgan Stanley & Co. Incorporated (MS&Co) and Morgan Stanley Trust Company (MSTC)

AGENCY: Pension and Welfare Benefits Administration, Labor (the Department).

ACTION: Notice of technical correction.

On March 12, 1996, the Department published in the Federal Register (61 FR 10032) a notice granting an individual exemption (the Exemption) on behalf of MS&Co and MSTC (collectively, the Applicants). The first paragraph of the Exemption states, in pertinent part, that ‘‘the restrictions of sections 406(a)(1)(A) through (D) 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 lending of securities to Morgan Stanley & Co., Incorporated (MS&Co) and to any other U.S. registered broker-dealers affiliated with Morgan Stanley Trust Company (the Affiliated Broker-Dealer, collectively, the MS Broker-Dealers) by employee benefit plans with respect to which MS&Co is a party in interest * * *’’

The Applicants believe that the aforementioned language should have referred to an MS Broker-Dealer, as a party in interest rather than to MS&Co because the exemption application contemplated that an MS Broker-Dealer, other than MS&Co, might be borrowing securities from a plan with respect to which such MS Broker-Dealer, but not necessarily MS&Co, is a party in interest. Therefore, the Department has amended the first paragraph of the Exemption to read as follows:

> ‘‘The restrictions of sections 406(a)(1)(A) through (D) 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 lending of securities to Morgan Stanley & Co. Incorporated (MS&Co) and to any other U.S. registered broker-dealers affiliated with Morgan Stanley Trust Company (the Affiliated Broker-Dealer; collectively, the MS Broker- Dealers) by employee benefit plans with respect to which the MS Broker-Dealer who is borrowing such securities is a party