

Basic class	Proposed 1997 quotas
Morphine (for conversion) .....	68,165,000
Noroxymorphone (for conversion) .....	2,000,000
Opium .....	937,000
Oxycodone (for sale) .....	5,589,000
Oxycodone (for conversion) .....	1,200
Oxymorphone .....	9,000
Pentobarbital .....	16,772,000
Phencyclidine .....	60
Phenmetrazine .....	2
Phenylacetone .....	10
Secobarbital .....	491,000
Sufentanil .....	1,000
Thebaine .....	9,325,000

The Deputy Administrator further proposes that aggregate production quotas for all other Schedules I and II controlled substances included in Sections 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations be established at zero.

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the Federal Register, summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither

negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: October 10, 1996.  
James S. Milford,  
*Acting Deputy Administrator.*  
[FR Doc. 96-26581 Filed 10-16-96; 8:45 am]  
**BILLING CODE 4410-09-M**

**DEPARTMENT OF LABOR**

**Pension and Welfare Benefits Administration**

[Application No. D-10150, et al.]

**Proposed Exemptions; Smith Barney Shearson Prototype**

**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 Smith Barney Shearson Prototype, Defined Contribution Plan (the Plan), Located in Los Angeles, California [Application No. D-10150]

#### *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)(2), and 407(a) 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 past acquisition, holding, and exercise by the Plan of certain stock purchase rights (the Rights),<sup>1</sup> which were issued by the Highland Federal Bank (the Employer) to all shareholders of record, as of November 7, 1995, of common stock of the Employer (the Employer Stock) pursuant to a rights offering (the Rights Offering), provided that the following conditions were satisfied:

(a) The Plan's acquisition and holding of the Rights in connection with the Rights Offering occurred as a result of an independent act of the Employer as a corporate entity;

(b) All holders of the Employer stock, including the Plan, were treated in a like manner with respect to all aspects of the Rights Offering; and

(c) The acquisition, holding, and disposition of the Rights by the affected participant accounts in the Plan occurred in accordance with Plan provisions for the individually directed investment of such accounts.

**EFFECTIVE DATE:** This exemption, if granted, will be effective for the period from November 8, 1995 to December 15, 1995.

#### Summary of Facts and Representations

1. The Plan is a profit sharing plan with a 401(k) feature adopted by the Employer. The Employer is a Federal

savings bank headquartered in Los Angeles, California. Effective January 1, 1995, the previous plan maintained by the Employer was amended and restated as the current Plan to provide for individually directed accounts. As of September 30, 1995, the Plan had total assets of \$2,416,827. As of December 31, 1994, the Plan had approximately 94 participants and beneficiaries. The trustee of the Plan is Smith Barney Corporate Trust Company (the Trustee).

2. Among the assets of the Plan is the Employer Stock. The Employer Stock began to trade on the SmallCap Market of the National Association of Securities Dealers Automated Quotation Stock Market, Inc. (NASDAQ) as of October 16, 1995, under the symbol "HBNK," and was approved for quotation in the NASDAQ National Market System as of December 29, 1995. The trustees of the previous plan made the decision to invest a portion of plan assets in the Employer Stock. The Employer Stock was carried over to the Plan and is now held under the individual accounts of those participants with an interest in the Employer Stock (the Invested Participants). As of December 31, 1994, the Plan had 92 Invested Participants. Participants are no longer permitted to invest in the Employer Stock. The only action that Invested Participants can take with respect to the Employer Stock is to sell such stock and to direct the Trustee as to the investment of the sale proceeds in one or more of the six funds that comprise the investment options currently available to participants. As of November 7, 1995 (the Record Date), there were issued an outstanding 1,105,000 shares of the Employer Stock. As of that date, the Plan held 21,436 shares of the Employer Stock at \$13.25 per share (a total of \$284,027), or about two percent of all outstanding shares.

3. The Employer, as a means of raising capital needed to promote its business plan and to support future growth, made a Rights Offering to its shareholders. The Rights Offering commenced on November 8, 1995 with the issuance by the Employer to all its shareholders of record as of the close of business on the Record Date (the Record Date Shareholders) transferable subscription Rights in the ratio of one Right for every 1.105 shares of the Employer Stock held. The number of Rights actually issued to each Record Date Shareholder was rounded up to the nearest whole Right. It is represented that the Rights Offering was an independent act of the Employer as a corporate entity and that all holders of the Employer Stock, including the Plan, were treated in a like manner with respect to all aspects of the Rights Offering.

Each Right conferred upon its holder an entitlement (the Basic Privilege) to purchase one additional share of the Employer Stock at a subscription price of \$12 per share (the Subscription Price). Each Right also conferred upon its holder a second privilege (the Oversubscription Privilege) allowing each Rights holder exercising the Basic Privilege in full to subscribe for an unlimited number of additional shares of the Employer Stock (the Excess Shares), also at \$12 per share, subject to availability after satisfaction of subscriptions made pursuant to the Basic Privilege. If the number of Excess Shares was insufficient to satisfy all exercises of the Oversubscription Privilege, the Excess Shares were to be allocated on a pro rata basis in accordance with the number of shares of the Employer Stock owned as of the Record Date by each Rights holder who exercised the Oversubscription Privilege. Any exercise of the Oversubscription Privilege had to occur at the same time that the Basic Privilege was exercised. Once the Basic Privilege or the Oversubscription Privilege was exercised, such exercise could not be revoked. The Rights Offering was announced to expire at 5 p.m., Pacific Time, on December 15, 1995 (the Expiration Time), at which time no further exercises of Rights could occur.

While the Basic Privilege under the Rights was generally transferable, the Oversubscription Privilege was not transferable. The Rights traded on the SmallCap Market of NASDAQ under the symbol "HBNKR" until the close of trading on December 14, 1995, the date prior to the expiration date of the Rights Offering. The Employer had authorized the issuance of up to 1,700,500 additional shares of the Employer Stock, for a total of 2,805,500 outstanding shares if the maximum number of additional shares were sold. Payments of the Subscription Price for the purchase of the Employer Stock pursuant to the exercise of the Rights were held in an escrow account maintained by First Interstate Bank of California as the subscription agent (the Subscription Agent) pursuant to an Escrow Agreement with the Employer. The Rights Offering was conditioned upon the receipt of minimum proceeds of \$12 million pursuant to the exercise of Rights and from standby purchasers<sup>2</sup>

<sup>2</sup>The Employer had standby purchase agreements with certain outside investors, who severally agreed to commit to purchasing a specified number of shares of the Employer Stock at the Subscription Price, subject to availability after satisfaction of exercises by Rights holders of the Basic Privilege and the Oversubscription Privilege. The standby

<sup>1</sup> The Department notes that the Rights do not constitute "qualifying employer securities" within the meaning of section 407(d)(5) of the Act.

prior to the Expiration Time, which minimum condition was achieved.<sup>3</sup>

4. It is represented that the acquisition, holding, and disposition of the Rights by the affected participant accounts in the Plan occurred in accordance with Plan provisions for the individually directed investment of such accounts. In anticipation of the Rights Offering, the trust agreement (the Trust Agreement) of the Plan was amended in order to permit Invested Participants as of the Record Date to direct the Trustee either to exercise or sell the Rights attributable to their accounts, and such amendments also established the procedures for making such directions. Due to the amendments to the Trust Agreement and, consequently, the conversion of the Plan from a prototype plan into an individually designed plan, the Employer has submitted the Plan to the Internal Revenue Service for its determination on the qualification of the Plan as an individually designed plan.

5. It is further represented that on November 8, 1995 all Invested Participants received by hand delivery a packet of information pertaining to the Rights Offering, which included: (i) a copy of the Rights Offering Circular published by the Employer; (ii) a notice from the Trustee describing the procedures for participant directions with respect to the Rights Offering; (iii) a direction form (the Direction Form); and (iv) a Statement of Benefits for the quarter ending September 30, 1995, containing information regarding the number of shares of the Employer Stock allocated to each Invested Participant under his or her individual account, as well as the number of Rights issued to each in proportion to the number of shares of the Employer Stock held. As of November 8, 1995, the Employer had also furnished all other Record Date Shareholders with information regarding the Rights Offering by mail.

6. The Direction Form provided to Invested Participants enabled them to direct the Trustee either (i) to exercise

the Rights allocated to their respective accounts, or (ii) to sell the Rights on the open market. In order to allow the Trustee sufficient time to carry out the administrative procedures required to review the Direction Forms of the Invested Participants and to implement such directions, Invested Participants had to return a properly completed form to the Trustee by 5:00 p.m., Pacific Time, on December 1, 1995 (i.e., 10 business days before the expiration date of the Rights Offering). Invested Participants who failed to return a timely and properly completed Direction Form to the Trustee were deemed to have directed the Trustee to sell their respective Rights on the open market.

Invested Participants who directed the Trustee to exercise their Rights had to specify the order in which to liquidate their other Plan investments, if necessary, to obtain the funds for the payment of the Subscription Price. If an Invested Participant failed so to specify, the Trustee would automatically liquidate such investments in the following order: (i) Stable Value Fund; (ii) Balanced Fund; (iii) Large Value Equity Fund; (iv) Large Growth Fund; (v) Small Growth Fund; and (vi) International Equity Fund. Invested Participants also had to specify the order in which to liquidate within each investment fund the following types of contributions: profit-sharing contributions, elective deferrals, employer matching contributions, qualified matching contributions, or rollover contributions. If an Invested Participant failed so to specify, the Trustee would automatically liquidate each investment fund from the following order of contributions: (i) Rollover contributions; (ii) profit sharing contributions; (iii) employer matching contributions; (iv) qualified matching contributions; and (v) elective deferrals. The Trustee would exercise Rights only to the extent of the funds available in the Invested Participant's account. Thus, if an Invested Participant had insufficient funds to pay the Subscription Price for all of the shares of the Employer Stock subscribed for, the Trustee would attempt to sell any Rights not exercised on the open market.

7. Once the Trustee obtained the funds necessary for the payment of the Subscription Price, the Trustee would transfer such funds to the Reserve Deposit Account in the Plan, pending a transfer to the Subscription Agent. Once the Subscription Agent purchased the Employer Stock pursuant to an exercise of Rights by an Invested Participant, the Trustee would allocate the newly

acquired shares of the Employer Stock to the account of the Invested Participant from which the funds had been obtained.

In the event that the market price for the Employer Stock, including the effect of any applicable brokerage commissions and other expenses, was less than the Subscription Price at the time the Trustee was to exercise the Rights pursuant to such election by an Invested Participant, the Trustee was not to exercise such Rights. It is represented that on December 15, 1995, the expiration date of the Rights Offering and the date on which the Trustee exercised Rights on behalf of the Invested Participants so directing the exercise of their Rights, the Subscription Price was less than the market price for a share of the Employer Stock on NASDAQ,<sup>4</sup> after giving effect to any applicable brokerage commissions and other expenses.

All sales of Rights by Invested Participants were to be executed by Sandler O'Neal & Partners, L.P., the Employer's financial advisor for the Rights Offering (the Financial Advisor), at the market price per Right. Neither the Trustee nor the Financial Advisor were to charge any commissions or other fees in connection with the sale of Rights. The proceeds from the sale of any Rights were to be deposited in the accounts of the Invested Participants in proportion to the number of Rights they elected to sell, to be invested in accordance with their then current investment selections.

However, the Trustee inadvertently did not follow the Invested Participants' directions with respect to the sale or exercise of their Rights within the time frame established by the Rights Offering Circular. When the Trustee discovered that the Rights Offering had expired, it took immediate steps to make the Plan whole. Accordingly, on January 22, 1996, the Trustee paid \$2,111.31 to the Plan.

8. The Employer represents that the following is a summary of the Rights Offering. As of the Record Date, the total number of shares of Employer Stock outstanding prior to the Rights Offering was 1,105,000, of which approximately 21,436 shares, or approximately two percent were held by the Plan. The Rights issued to the Plan pursuant to the Rights Offering were allocated to the account of each Invested Participant for his or her direction on the exercise or sale of such Rights. The Rights, as listed on NASDAQ, were initially valued at 1/8

purchase agreements have no bearing on this proposed exemption.

<sup>3</sup>The Employer was not required to issue shares of the Employer Stock pursuant to the Rights Offering to any Rights holder or standby purchaser who, in the Employer's sole judgment and discretion, was required to obtain prior clearance, approval, or non disapproval from any Federal bank regulatory authority to own or control such shares, unless prior to the expiration time, evidence of such clearance, approval, or nondisapproval had been provided to the Employer. This regulatory limitation had no bearing on this proposed exemption because it was not possible for the relatively small number of shares of the Employer Stock available for purchase by the Invested Participants to trigger the regulatory limitation on purchases described in the Rights Offering Circular.

<sup>4</sup>As of December 15, 1995, the closing price of the Employer Stock, as quoted on NASDAQ, was \$12.25 per share.

per Right on November 21, 1995 and at  $\frac{1}{64}$  per Right on December 14, 1995, the date prior to the expiration date of the Rights Offering. Ninety of the Invested Participants elected to sell their Rights, a total of 19,117 Rights. The market price of such Rights on December 4, 1995, the date on which such Rights should have been sold, was  $\frac{1}{16}$  per Right. Two of the Invested Participants elected to exercise their Rights pursuant to the Basic Privilege, a total of 282 Rights. No Invested Participants elected to exercise the Oversubscription Privilege.

The total number of shares of the Employer Stock outstanding after the Rights Offering was 2,295,983, an increase of 1,190,983 shares. Of these additional 1,190,983 shares, approximately 190,983 were sold to shareholders upon exercise of their Rights, or to investors who purchased the Rights on the open market, and the other 1,000,000 shares were sold to outside investors pursuant to certain standby purchase agreements.

9. In summary, the applicant represents that the transactions satisfied the criteria for an exemption under section 408(a) of the Act for the following reasons: (1) The Plan's acquisition and holding of the Rights in connection with the Rights Offering occurred as a result of an independent act of the Employer as a corporate entity; (2) all holders of the Employer Stock, including the Plan, were treated in a like manner with respect to all aspects of the Rights Offering; (3) the acquisition, holding, and disposition of the Rights by the affected participant accounts occurred in accordance with Plan provisions for the individually directed investment of such accounts; and (4) the Invested Participants' accounts held only approximately two percent of the Employer Stock outstanding as of the Record Date.

#### Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons, and all employee organizations in which they are members, by personal delivery, by first-class mail, or by posting in the Employer's offices within 15 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 45 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.)

John A. Colglazier Self Employment Retirement Plan (the Plan), Located in San Antonio, TX

[Application No. D-10291]

#### *Proposed Exemption and Replacement of Exemption*

The Department is proposing to grant a new exemption that will replace Prohibited Transaction Exemption (PTE) 86-95 (51 FR 26077, July 18, 1986).

Authority to grant the proposed exemption and to replace PTE 86-95 is given to the Department under 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 proposed exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, will not apply to the cash sale by the Plan, for \$74,250, of a parcel of unimproved real property (the Property) to John A. Colglazier, a sole proprietor and a disqualified person with respect to the Plan.<sup>5</sup>

This proposed exemption is subject to the following conditions:

(a) The sale is a one-time transaction for cash that is entered into within 90 days following the publication, in the Federal Register, of the notice granting the proposed exemption.

(b) The Plan does not pay any real estate fees or commissions in connection with the sale.

(c) The Property is appraised by a qualified, independent appraiser.

(d) The Plan receives, as consideration, an amount that is equal to the greater of \$74,250 or the fair market value of the Property as of the date of the sale, including any special value attributed to the Property by reason of its proximity to other real property (the Adjoining Properties) owned by Mr. Colglazier.

(e) All terms and conditions of the sale remain at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party at the time of the sale.

#### *Temporary Nature of Exemption/Effective Date*

This proposed exemption, if granted, will be effective for a period of 90 days

<sup>5</sup> Because Mr. Colglazier is a sole proprietor and the only participant in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

subsequent to the date the grant notice is published in the Federal Register.

#### *Preamble*

This proposed exemption is requested in an application filed with the Department by Mr. Colglazier. The application updates the facts and representations contained in PTE 86-95 which would have permitted the Plan to sell the Property to Mr. Colglazier. The transaction was never consummated due to declining real estate values which resulted in Mr. Colglazier's inability to obtain financing. In view of the passage of time and certain factual changes, the Department believes that it is necessary to replace PTE 86-95 by repropounding the requested exemption in a form which accurately reflects the current facts and circumstances.

#### *Summary of Facts and Representations*

1. The Plan is a defined contribution, profit sharing plan and the successor to another plan that was originally established in 1983. The Plan, including its predecessor, has always had one participant, John A. Colglazier. Mr. Colglazier, a sole proprietor engaged in the commercial and investment real estate business in San Antonio, Texas, serves as the Plan trustee and the decisionmaker with respect to the Plan's investments. As of March 31, 1996, the Plan had total assets of \$98,487.

2. Among the assets of the Plan<sup>6</sup> is a parcel of real property consisting of 1.0307 acres of unimproved land located in the northeast corner of the intersection of Mesquite and Duval Streets in San Antonio, Bexar County, Texas. The Property is in close proximity to the Adjoining Properties that are owned by Mr. Colglazier.

3. The Plan purchased the Property on October 1, 1985 from William Cole Butler, an unrelated party, for a purchase price of \$2.80 per square foot plus \$101 in charges, or a total acquisition price of \$126,093.94. At no time has the Property ever been encumbered by a mortgage or a deed of trust.

4. Since it has owned the Property, the Plan has incurred total costs and real estate taxes of approximately \$24,059. The Plan has also leased the Property to Conex Construction, Inc., an unrelated party, but never to a disqualified person. The subject lease, which commenced on November 1, 1989 and expired on October 15, 1990, required the lessee to pay a monthly rental of \$200.

5. At the time the Property was purchased by the Plan, it is represented

<sup>6</sup> Unless otherwise noted, references to the Plan include its predecessor.

that Mr. Colglazier, as Plan trustee, intended to develop the Property with a warehouse that would be constructed thereon and used for commercial rental. Soon after closing the sale, Mr. Colglazier realized that the Plan did not have sufficient assets to construct the warehouse and considered obtaining third party financing to realize this objective. However, after exploring various options, Mr. Colglazier decided that it would be more appropriate to purchase the Property from the Plan. Therefore, on advice of counsel, Mr. Colglazier applied to the Department for an administrative exemption.

6. On July 18, 1986, the Department granted PTE 86-95 which would have permitted the Plan to sell the Property to Mr. Colglazier for cash, for the higher of the fair market value of the Property or \$146,000. Although Mr. Colglazier was ready to complete the sale following the granting of PTE 86-95, he was unable to obtain the necessary financing because the real estate market had collapsed in Texas. Therefore, Mr. Colglazier never utilized PTE 86-95.

7. On February 7, 1996, Mr. Colglazier purchased the Adjoining Properties from Flo-Line Filters, Inc., an unrelated party for a total purchase price of \$37,500. The Adjoining Properties consist of two parcels of vacant land. One of the parcels is located on Austin Street and Duval Street and contains 0.7059 acres. The other parcel is located on Mesquite Street and Brooks Street and contains 0.2473 acres.

It is represented that Mr. Colglazier decided to purchase the Adjoining Properties because it would allow him to construct a larger warehouse, when combined with the Property. Also, it is represented that one of the Adjoining Properties has frontage on a freeway and Mr. Colglazier believes that this factor will enhance his ability to sell all of the Properties as one tract if he decides not to construct the warehouse. However, at this time, Mr. Colglazier intends to construct the warehouse to provide income for his retirement.

8. The Property has been appraised by Richard L. Dugger, MAI, CRE, a qualified, independent appraiser. In an appraisal report dated May 14, 1996, Mr. Dugger has placed the fair market value of the Property at \$67,500 as of April 19, 1996. In valuing the Property, Mr. Dugger has considered comparable sales of other properties.

In an addendum to the appraisal dated July 17, 1996, Mr. Dugger has determined that the Property has nominal, incremental value by reason of Mr. Colglazier's ownership of the Adjoining Properties. According to Mr. Dugger, the incremental value is

nominal since there has been very limited development activity in the San Antonio area for many years. Mr. Dugger concludes that the intrinsic value of the Property to Mr. Colglazier is approximately 10 percent above the market value of \$67,500 or \$74,250.

9. Accordingly, Mr. Colglazier requests an administrative exemption from the Department in order to purchase the Property from the Plan. The new exemption is being requested in view of changed circumstances that would render PTE 86-95 invalid. As discussed above, these factual changes are (a) Mr. Colglazier's acquisition of the Adjoining Properties and (b) the special value attributed to the Property by Mr. Dugger as a result of such Adjoining Property acquisition. If granted, the new exemption will replace PTE 86-95.

10. Mr. Colglazier proposes to purchase the Property from the Plan for cash for a price that is equal to the greater of \$74,250 or the fair market value of the Property on the date of the sale, including any special value attributed to the Property by reason of its proximity to the Adjoining Properties. The Plan will not incur any fees, commissions, expenses or other costs in connection with the sale. In addition, the transaction must be entered into within 90 days following the publication, in the Federal Register, of the notice granting the proposed exemption.

11. In summary, it is represented that the proposed transaction will satisfy the terms and conditions of section 4975(c)(2) of the Code because: (a) The sale will be a one-time transaction for cash that must be entered into within 90 days following the publication, in the Federal Register, of the notice granting the proposed exemption; (b) the Plan will not pay any real estate fees or commissions in connection with the sale; (c) the Property has been appraised by a qualified, independent appraiser; (d) the Plan will receive as consideration an amount that is equal to the greater of \$74,250 or the fair market value of the Property as of the date of the sale, including any special value attributed to the Property by reason of its proximity to the Adjoining Properties; and (e) all terms and conditions of the sale will remain at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party at the time of the sale.

#### *Notice to Interested Persons*

Because Mr. Colglazier is the only person in the Plan who will be affected by the proposed transaction, it has been determined that there is no need to

distribute the notice of pendency to interested persons. Therefore, comments and requests for a hearing are due 30 days from the publication of this notice in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady 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 11th day of October, 1996.

Ivan Strasfeld,

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

[FR Doc. 96-26602 Filed 10-16-96; 8:45 am]

BILLING CODE 4510-29-P

**[Prohibited Transaction Exemption 96-76;  
Exemption Application No. D-09915, et al.]**

**Grant of Individual Exemptions;  
Teachers Insurance and Annuity**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

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

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, 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 proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon

the entire record, the Department makes the following findings:

- (a) The exemptions are administratively feasible;
- (b) They are in the interests of the plans and their participants and beneficiaries; and
- (c) They are protective of the rights of the participants and beneficiaries of the plans.

Teachers Insurance and Annuity Association of America (TIAA) Located in New York, New York

[Prohibited Transaction Exemption 96-76 Exemption Application No. D-09915]

**Exemption**

**Section I—Exemption for Certain Transactions Involving the Purchase and Sale of Certain Units in a Real Estate Separate Account by TIAA**

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, effective October 2, 1995, to the transactions described below, if each of the conditions set forth in Section III have been satisfied:

(a) The purchase by TIAA of certain units (the Liquidity Units), as defined in Section IV(g) below, in a real estate separate account established and operated by TIAA (the Separate Account), as defined in Section IV(l) below, in the event of net withdrawals from the Separate Account; and

(b) The sale of Liquidity Units of the Separate Account by TIAA in the event of net contributions to the Separate Account.

**Section II—Exemption for the Purchase of Liquidity Units Owned by TIAA in the Separate Account in Connection With a Decrease in TIAA's Participation in the Separate Account Under Certain Circumstances**

The restrictions of section 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, effective October 2, 1995, to: (a) The use of cash flow from the Separate Account (the Cash Flow), as defined in Section IV(d) below; (b) the use of liquid investments in the Separate Account; or (c) the use of the proceeds from the sale of certain properties (the Properties), as defined in Section IV(i) below, owned by the Separate Account, for the purpose of purchasing Liquidity Units in the Separate Account from TIAA in connection with a decrease in the

participation by TIAA in the Separate Account after the trigger point (the Trigger Point), as defined in Section IV(o) below, has been reached or during the wind down period of the Separate Account (the Wind Down), as defined in Section IV(q) below, provided that the conditions set forth in Section III have been satisfied.\*

**Section III—General Conditions**

This exemption is conditioned upon the adherence by TIAA to the material facts and representations described in the notice of proposed exemption (the Notice) and upon satisfaction of the following requirements:

(a) The decision to elect to add the Separate Account as an additional pension funding option for employee benefit plans (the Plan or Plans), as defined in Section IV(h) below, which invest in the Separate Account has been and is made by the fiduciaries of such Plans (the Fiduciary or Fiduciaries), as defined in Section IV(e) below, or in the case of a TIAA supplemental retirement annuity contract (SRA) or a TIAA individual retirement annuity contract (IRA), the decision to elect to add the Separate Account as an additional pension funding option to a TIAA SRA or a TIAA IRA, has been and is made by the participant in such TIAA SRA or TIAA IRA, if the Fiduciaries of the Plans, and the TIAA SRA and TIAA IRA participants are unrelated to TIAA and its affiliates (the Affiliates or Affiliate), as defined in Section IV(b) below (other than the fiduciaries of any TIAA Pension Plans, as defined in Section IV(n) below);

(b) Each of the Properties in the Separate Account has been and is valued at least annually by an independent, qualified appraiser;

(c) Except as otherwise specified below in paragraph (c)(10) of this Section III, prior to investment of funds in the Separate Account by any participants in a Plan (the Participant or Participants) (and, if applicable, by any of the Plans) which participate in the Separate Account, TIAA has furnished and will furnish to the Fiduciaries of such Plans, to the sponsors of any TIAA SRA, and to the participants in any TIAA IRA, the following information:

(1) A copy of the most recent prospectus for the Separate Account;

(2) Full disclosure concerning the investment guidelines, structure, manner of operation, and administration of the Separate Account; the method of

\* For purposes of this exemption references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.