4. International comparisons of hourly compensation of manufacturing production workers

Thursday, April 25, 1996

8:30–10:00 a.m.—Committee on Employment Projections

1. Brief update on program
   a. Impact of shutdown
   b. Budget outlook
2. Discussion of proposed change in target date of projections
3. Evaluation of 1995 projections—what went right and why and what did not and why
4. Discussion of plans to initiate the next set of projections in Fall 1996

10:30–12:30 p.m.—Council Meeting

1. Chairperson's opening remarks
2. Commissioner Abraham's address and discussion
3. Report on a test of methods for collecting racial and ethnic information
4. Chairperson's closing remarks

1:30–3:00 p.m.—Committee on Compensation and Working Conditions

1. COMP2000 plans and progress
2. Plans for collective bargaining series
3. Compensation research
4. Other business

1:30–3:00 p.m.—Committee on Occupational Safety and Health Statistics

1. Report on the 1994 Survey of Occupational Injuries and Illnesses: industry summary information
2. Update on occupational safety and health data available on the INTERNET
3. Impact of the OSHA recordkeeping revision on the Survey of Occupational Injuries and Illnesses
4. Report on the potential for using the Census of Fatal Occupational Injuries as a tool for evaluating the impact on safety of commercial driver's license requirements

The meetings are open to the public. Persons with disabilities wishing to attend should contact Constance B. DisCesare, Liaison, Business Research Advisory Council, at (202) 606–5903, for appropriate accommodations.

Signed at Washington, D.C. the 28th day of March 1996.

Katharine G. Abraham,

Commissioner

[FR Doc. 96–8338 Filed 4–3–96; 8:45 am]

BILLING CODE 4510–24–M

Pension and Welfare Benefits Administration

[Application No. D–09334, et al.]

Proposed Exemptions Wells Fargo Bank

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

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing 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.

Wells Fargo Bank, N.A. (the Bank); Located in San Francisco, CA

[Application No. D–09334]

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 Internal Revenue Code (the Code) and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I. Exemption for the In-Kind Transfer of Assets.

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) of the Code, shall not apply, effective July 2, 1993 until October 1, 1993, to the in-kind transfer of all or a *pro rata* portion of the assets of employee benefit plans (the Plans) that are held in certain collective investment funds (the CIF or CIFs), for which the Bank or any of its affiliates (collectively, Wells Fargo) serves as fiduciary, to the Stagecoach

[1] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

Funds, Inc. (the Fund or Funds), an open-end investment company registered under the Investment Company Act of 1940 (the '40 Act), as amended, for which Wells Fargo acts as investment adviser and may provide other services, in exchange for shares of the Funds (the CIF Exchanges), in connection with the partial termination of the CIFs.

This proposed exemption is subject to the following conditions and the general conditions of Section II:

(a) The CIF Exchange is a one-time transaction between the Plan and the respective Fund.

(b) No sales commissions or other fees are paid by the Plans in connection with the CIF Exchanges and no redemption fees are paid by the Plan in connection with the sale by the Plan of shares acquired in a CIF Exchange.

(c) A fiduciary of each Plan who is independent of and unrelated to Wells Fargo (the Second Fiduciary) receives advance written notice of the CIF Exchange and full written disclosure of information concerning the Funds which includes, but is not limited to the following:

(1) A current prospectus for each Fund in which the Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, any secondary services (the Secondary Services) as referred to in paragraph (h) of Section III, and all other fees to be charged to, or paid by, the Plan (and by such Fund) to Wells Fargo, including the nature and extent of any differential between the rates of the fees;

(3) The reasons why Wells Fargo considers an investment in the Fund to be appropriate for the Plan; and

(4) A statement describing whether there are any limitations applicable to Wells Fargo with respect to which assets of a Plan may be invested in a Fund, and, if so, the nature of such limitations.

(d) On the basis of the foregoing information, the Second Fiduciary approves, in writing, the CIF Exchange.

(e) Each Plan receives shares of the Funds which have a total net asset value equal to the value of all or the Plan's *pro rata* share of the Plan's assets invested in the CIF on the date of the transfer, based on the current market value of the CIF's assets, as objectively determined in a single valuation, performed in the same manner at the close of the same business day by a principal pricing service (the Principal Pricing Service), disclosed previously by Wells Fargo to the Second Fiduciary, and/or as applicable, by the amortized cost method.

(f) The terms of the transaction are no less favorable to each Plan than those obtainable in an arm's length transaction with an unrelated party.

(g) Wells Fargo sends by regular mail to each affected Plan a written confirmation, not more than 7 days after the completion of the transaction, containing the date of the transaction, the number of shares acquired by the Plan in each of the Funds, the price paid per share for the shares in each of the Funds and the total dollar amount involved in the transaction with each Fund.

(h) As to each Plan, the combined total of all fees received by Wells Fargo for the provision of services to such Plan, and in connection with the provision of services to any of the Funds in which the Plan may invest, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(i) Wells Fargo does not receive any fees payable pursuant to Rule 12b-1 of the '40 Act in connection with the transactions involving the Funds.

(j) The Plans are not sponsored or maintained by Wells Fargo.

(k) Wells Fargo provides the Second Fiduciary of such Plan with—

(1) A copy of the proposed exemption and/or the final exemption, if granted;

(2) A copy of an updated prospectus of such Fund, at least annually;

(3) A report or statement (which may take the form of the most recent financial report, the current statement of additional Information, or some other written statement) which contains a description of all fees paid by the Fund to Wells Fargo, upon the request of the Second Fiduciary; and

(4) A statement specifying—

(A) The total, expressed in dollars, of brokerage commissions that are paid to Wells Fargo by such Fund;

(B) The total, expressed in dollars, of brokerage commissions that are paid by such Fund to brokerage firms unrelated to Wells Fargo;

(C) The average brokerage commissions per share, expressed as cents per share, paid to Wells Fargo by such Fund; and

(D) The average brokerage commissions per share, expressed as cents per share, paid by such Fund to brokerage firms unrelated to Wells Fargo. (Such statement will be provided at least annually with respect to each of the Funds in which a Plan invests in the event a Fund places brokerage transactions with Wells Fargo.)

(l) All dealings between the Plans and the Funds are on a basis no less favorable to the Plans than dealings with other shareholders of the Funds.

Section II. General Conditions

(a) Wells Fargo maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) of Section II to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Wells Fargo, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest, other than Wells Fargo shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below; and

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504 (a)(2) and (b) of the Act, the records referred to in paragraph (a) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of the Plans who has authority to acquire or dispose of shares of the Funds owned by the Plans, or any duly authorized employee or representative of such fiduciary, and

(C) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1) (B) and (C) shall be authorized to examine trade secrets of Wells Fargo, or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption,

(a) The term ''Wells Fargo'' means Wells Fargo Bank, N.A. and any affiliate of Wells Fargo Bank, N.A., as defined in paragraph (b) of this Section VI.

(b) An ''affiliate'' of Wells Fargo includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Wells Fargo;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee;

(c) The term ''control'' means the power to exercise a controlling

influence over the management or policies of a person other than an individual.

(d) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(e) The term ''Second Fiduciary'' means a fiduciary of a Plan who is independent of and unrelated to Wells Fargo. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to Wells Fargo if—

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with Wells Fargo;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partner, or employee of Wells Fargo (or is a relative of such persons);

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of Wells Fargo (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in the choice of the Plan's investment manager/adviser, the approval of any purchase or sale by the Plan of shares of the Funds, and the approval of any change of fees charged to or paid by the Plan, in connection with any of the transactions described in Section I above, then paragraph (e)(2) of this Section III, shall not apply.

(f) The term ''Fund or Funds'' means a diversified open-end investment company or companies registered under the '40 Act for which Wells Fargo serves as investment adviser and may also provide Secondary Services as approved by such Fund. The Funds are limited to six investment Fund portfolios of the Stagecoach Funds, Inc. These Fund portfolios include include the Asset Allocation Fund, the Bond Index Fund, the Growth Stock Fund, the Short-Intermediate Term Fund, the S&P 500 Stock Fund and the U.S. Treasury Allocation Fund.

(g) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales of shares in a Fund calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to such Fund, less the liabilities charged to the Fund, by the number of outstanding shares in such Fund.

(h) The term ''Secondary Service'' means a service other than an investment management, investment advisory or similar service which is provided by Wells Fargo to the Funds. However, for purposes of this proposed exemption, Secondary Services will include only brokerage services provided to the Funds by Wells Fargo for the execution of securities transactions engaged in by the Funds.

(i) The term ''Principal Pricing Service'' means an independent, recognized pricing service that has determined the aggregate dollar value of marketable securities involved in a CIF Exchange. Prior to the CIF Exchange, the Principal Pricing Service was disclosed in writing by Wells Fargo to the Second Fiduciary.

EFFECTIVE DATE: If granted, this proposed exemption will be effective from July 2, 1993 until October 1, 1993 with respect to CIF Exchanges that occurred on July 2, August 19, and October 1, 1993.

Summary of Facts and Representations

Description of the Parties

1. The applicants involved herein are the Bank, Wells Fargo Nikko Investment Advisors (WFNIA) and Wells Fargo International Trust Company (WFITC).

(a) *The Bank*, a wholly owned subsidiary of Wells Fargo & Company (WFC), is the eighth largest commercial bank in the United States. It serves as a non-discretionary trustee to a number of employee benefit plans. In addition, the Bank serves as a trustee of certain collective trust funds, including certain of the CIFs involved herein. Six of the CIFs, all of which are trusteed by the Bank, hold on a commingled basis, assets of the Bank's Plan clients. These six CIFs do not invest directly but instead are ''shadow'' CIFs (the Shadow CIFs) that hold interests in separate corresponding ''master'' CIFs (the Master CIFs). Two of the Master CIFs are trusteed by the Bank; the four remaining Master CIFs are trusteed by WFITC. Aside from trusteeing some of the CIFs, the Bank serves as an investment adviser to the Funds described below. As of January 6, 1996, the Bank had total assets under management of $5.5 billion.

(b) *WFITC* is a trust company that was formerly 99.9 percent owned by WFNIA and 0.1 percent by WFC. In addition to serving as trustee to some of the Master CIFs, WFITC serves as custodian of certain Wells Fargo Funds.

(c) *WFNIA* is a general partnership that was formerly owned 50 percent by a subsidiary of the Bank and 50 percent by a subsidiary of The Nikko Securities Co., Ltd., a Japanese securities firm unaffiliated with the Bank or WFC. WFNIA, a registered investment adviser, serves as sub-adviser to some of the Funds as well as adviser to WFITC.

Effective December 31, 1995, WFC sold interests in WFNIA and WFITC to Barclays Bank PLC and certain of its affiliates which are entities unrelated to Wells Fargo. WFNIA and WFITC were subsequently incorporated into BZW Barclays Global Investors, N.A. (BZW).

2. *The Plans* include various pension plans, as defined in section 3(2) of the Act, as well as Wells Fargo-sponsored master and prototype pension and profit sharing plans, independently sponsored pension and profit sharing plans and qualified plans of owner-employees. None of the Plans involved in the subject transactions are sponsored by Wells Fargo and/or its affiliates.

3. *The CIFs*, as indicated in part above, consist of (a) six separate portfolios of the Wells Fargo Bank Declaration of Trust Establishing Funds for Retirement Plans, a collective investment trust of which the Bank serves as trustee (i.e., the Shadow CIFs) and (b) six corresponding Master CIFs (of which the Bank serves as trustee with respect to two CIFs and WFITC serves as trustee with respect to four CIFs). The six Shadow CIFs and their corresponding Master CIFs are further identified as follows:

Shadow CIFs	Master CIFs
Asset Allocation Fund for Employee Retirement Plans	WFITC U.S. Tactical Asset Allocation E Fund.
Bond Index Fund for Employee Retirement Plans	WFITC Government/Corporate Bond Fund.
Growth Stock Fund for Employee Retirement Plans	Growth Stock Fund for Retirement Plans.
Intermediate Bond Fund for Retirement Plans	Intermediate Bond Fund for Employee Retirement Plans.
S&P 500 Stock Fund for Employee Retirement Plans	WFITC Equity Index E Fund.
U.S. Treasury Allocation Fund for Employee Retirement Plans	WFITC U.S. Treasury Allocation E Fund.

The interests in the Shadow CIFs are owned by the Bank's trust clients whereas the interests of the Master CIFs are owned by the clients of BZW. Each of the Shadow CIFs is invested exclusively in the corresponding Master CIF.

3. *The Funds* consist of six series or portfolio investment funds of the Stagecoach Funds, Inc., an open-end investment company which was organized on October 15, 1992 and registered under the '40 Act. The Funds are designed to have investment goals that correspond to the CIFs described above and generally have corresponding names. The Funds are comprised as follows: (a) the Asset Allocation Fund; (b) the Bond Index Fund; (c) the Growth Stock Fund; (d) the Short-Intermediate Term Fund; (e) the S&P 500 Stock Fund; and (f) the U.S. Treasury Allocation Fund.

The Bank serves as investment adviser to each of the Funds. WFNIA serves as the sub-adviser with respect to all of the Funds except the Growth Stock Fund and the Short-Intermediate Term Fund. As investment adviser to Funds sub-advised by WFNIA, Wells Fargo provides investment guidance and policy direction with respect to the Funds' daily portfolio management. As sub-adviser, WFNIA is responsible for investing and reinvesting Fund assets, including implementing and monitoring the performance of the investment models used in connection with model-driven funds.

The Bank also serves as the transfer agent and selling agent for the Funds. WFITC serves as the custodian. Stephens, Inc. (Stephens), a broker-dealer and investment advisory firm which is unrelated to Wells Fargo, is the sponsor and administrator of the Funds. The Funds are managed by a board of directors, a majority of whose members are independent of Wells Fargo and Stephens.

The CIF Exchanges

4. Since July 2, 1993, Wells Fargo has been offering the Funds primarily to Plans as a commingled investment vehicle alternative to the CIFs. Wells Fargo believes that the CIFs and the Funds have identical investment objectives and that the Fund option would be selected by Plans that desire readily obtainable daily price quotations and ease of trading. Further, Wells Fargo believes that the ability of a Plan to transfer its CIF assets to a corresponding Fund would substantially reduce the transaction costs that otherwise would be incurred in selling such securities for cash and subsequently acquiring shares in the Funds. To this end, Wells Fargo has offered a Plan the opportunity to designate one or more Funds in lieu of the CIFs with respect to all or a *pro rata* portion of the Plan's assets through a CIF Exchange. Wells Fargo represents that the decision by a Plan to invest in any Fund has been made solely by a Second Fiduciary which is independent of Wells Fargo. Also, no dealer mark-up or sales commissions have been paid by the Plans in connection with any CIF Exchange. Further, Wells Fargo nor an affiliate, including any officer or director, has been permitted to purchase from or sell to any of the Plans shares of the Funds.

Accordingly, Wells Fargo requests retroactive exemptive relief from the Department with respect to the CIF Exchanges commencing in July 1993. Wells Fargo is not requesting exemptive relief with respect to future acquisitions or sales of shares of the Funds by the affected Plans. Instead, Wells Fargo represents that such transactions would be covered under Prohibited Transaction Exemption (PTE) 77–4 (42 FR 18732, April 8, 1977). In pertinent part, PTE 77–4 permits the purchase and sale by an employee benefit plan of shares of a registered open-end investment company when a fiduciary with respect to the plan is also the investment adviser of the investment company.[2] In addition, Wells Fargo states that it is not receiving any commissions or 12b–1 fees in connection with the investment of Plan assets in shares of the Funds. Further, Wells Fargo has confirmed that as to each Plan investing in the Funds, the combined total of all fees it or its affiliates are receiving for the provision of services to the Plans, and in connection with the provision of investment advisory services or Secondary Services to any of the Funds in which the Plans may invest, has not and will not be in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.[3]

5. Wells Fargo represents that the CIF Exchanges were effected on July 2, August 19, and October 1, 1993. On these dates, all or a Plan's *pro rata* interest in the securities held by the Shadow CIFs were exchanged for shares of the Funds.[4] Each affected Plan was notified of the opportunity to participate in a CIF Exchange with respect to its interest. The Master CIFs also participated in the CIF Exchanges to the extent that they held securities which were required to be transferred in-kind or redeemed. Further, a Second Fiduciary approved, in writing, the CIF Exchange. Plans that elected to engage in the CIF Exchanges, received shares in the respective Fund. In effect, the applicants represent that the disclosures and approvals were consistent with the requirements of PTE 77–4.[5]

6. The assets exchanged during the CIF Exchanges consisted of stocks, U.S. Treasury obligations, other government and agency obligations, certain fixed income obligations, asset-backed securities and other securities. All of the securities exchanged were valued on the date of the transfer, by an independent, recognized Principal Pricing Service,[6] except that debt securities that were within 60 days of maturity were valued by the amortized cost method,[7] in the

[2] In this proposed exemption, the Department expresses no opinion on whether any transactions between the Plans the Funds would be covered by PTE 77–4.

[3] The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the fiduciaries of the Plans from the general fiduciary responsibility provisions of section 404 of the Act. Thus, the Department cautions the fiduciaries of the Plans investing in the Funds that they have an ongoing duty under section 404 of the Act to monitor the services provided to the Plans to assure that the fees paid by the Plans for such services are reasonable in relation to the value of the services provided. Such responsibilities would include determinations that the services provided are not duplicative and that the fees are reasonable in light of the level of services provided.

[4] Due to the ''feeder'' relationship existing between the Shadow CIFs and the Master CIFs, the effect of the in-kind transfers was such that all or a *pro rata* portion of a Plan's interest held in the Master CIFs was exchanged for shares of the Funds.

[5] Section II(d) of PTE 77–4 requires, among other things, that an independent plan fiduciary receive a current prospectus issued by the investment company and a full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including a discussion of whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations.

[6] Wells Fargo represents that a pricing service is recognized within the industry when it is used on a regular basis by a number of clients other than Wells Fargo. In effect, the Principal Pricing Service agrees to perform all of the functions of obtaining the (closing) market price or last-reported bid price where available, determining a price where market or bid prices are not available or consulting with market-makers where it cannot determine the price. For this purpose, Wells Fargo asserts that the Principal Pricing Service would have its own internal procedures and pricing methodologies and would provide a single quotation to its clients.

[7] Wells Fargo states that the ''amortized cost'' method refers to an approach to valuing debt securities that are recognized in different contexts by various regulatory agencies and accounting standards boards. Wells Fargo notes that the amortized cost method is a permitted, rather than required, valuation approach and that the term also refers to the value of a security derived from the methodology. For example, Wells Fargo explains that the Securities and Exchange Commission's ''Codification of Financial Reporting Policies,'' describes in detail the use of the amortized cost methodology and recognizes that a mutual fund's board of directors may determine in good faith that,

same manner and at the close of the same business day.

7. Wells Fargo represents that with respect to the CIF Exchanges, on each of the closing dates, the CIFs did not hold any securities other than securities that could be valued by a Principal Pricing Service selected by Wells Fargo, or, if applicable, by the amortized cost method, prior to such CIF Exchange. In this regard, Wells Fargo states that pricing of the securities held by the CIFs and the Funds was determined by the same Principal Pricing Service such that the price of each security involved in each CIF Exchange was identical for the purposes of valuing the Plan's interest in the CIF and for purposes of valuing the net asset value of the relevant Funds. In effect, Wells Fargo explains that the determination of the net asset value of the Funds and of the value of securities held by the CIF involved in the exchange was objectively determined because, for purposes of the transaction, each security was valued either by an independent, recognized Principal Pricing Service identified prior to each CIF exchange or mechanically by the amortized cost method.

8. Wells Fargo states that the pro rata interest of the Plans in the securities underlying the CIFs were transferred to the Funds in connection with each CIF exchange, except to the extent that fractional shares of the underlying securities would have been created by the transaction. In this event, the fraction of the share to be transferred was automatically rounded up or down to the next nearest whole number (i.e., up or down from 0.50 for fractional shares or up and down from $0.005 in the case of fractional dollar amounts). The cash value of any fractional shares of securities that were transferred to the respective Fund or retained by the CIFs was calculated. To the extent the value of the fractional shares retained by the respective CIF exceeded the value of the fractional shares transferred to the respective Fund, that net amount was transferred in cash to the respective Fund. Assuming the value of the fractional shares involved in the transfer to the respective Fund was less than the value of the fractional shares to be retained by the respective CIF, the net amount was transferred in cash from the Fund to the CIF.

except in unusual circumstances, amortized cost approximates the fair market value of debt securities with remaining maturities of 60 days or less (based on cost for securities acquired within 60 days of maturity or fair market value on the 61st day prior to maturity for securities already owned).

Written Disclosures

9. After a CIF Exchange, each Plan received a confirmation which provided the date of the transaction, the number of shares acquired by the Plan in each of the Funds, the price paid per share for the shares in each of the Funds and the total dollar amount involved in the transaction with each Fund. Such confirmations were sent to Plan investors not more than 7 days after the completion of the transaction.

With respect to ongoing disclosures, Wells Fargo represents that it will provide a copy of the proposed exemption and/or the final exemption, if granted, to the Second Fiduciary of each affected Plan. In addition, at least annually, Wells Fargo will furnish the Second Fiduciary of a Plan with a copy of a current prospectus for the Funds and, upon the request of the Second Fiduciary, with a copy of the statement of additional information containing a description of all fees paid by the Funds to Wells Fargo. Further, in the event that a Fund places brokerage transactions with it, Wells Fargo will provide the Second Fiduciary, at least on an annual basis, with a statement specifying (a) the total, expressed in dollars, of brokerage commissions that are paid to Wells Fargo by such Fund; (b) the total, expressed in dollars, of brokerage commissions that are paid by such Fund to brokerage firms unrelated to Wells Fargo; (c) the average brokerage commissions per share, expressed as cents per share, paid to Wells Fargo by such Fund; and (d) the average brokerage commissions per share, expressed as cents per share, paid by such Fund to brokerage firms that are unrelated to Wells Fargo.

10. In summary, it is represented that the CIF Exchanges have satisfied the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) Neither the CIFs nor the Plans have paid any sales commissions or redemption fees in connection with the CIF Exchanges nor will they pay any fees in connection with purchases or redemptions of shares of the Funds.

(b) Prior to the investment by a Plan in the Funds, the Second Fiduciary has received a full and detailed written disclosure of information concerning such Fund and, on the basis of such disclosures, such Second Fiduciary has authorized the transactions.

(c) Each CIF or Plan has received shares of a Fund that are equal in value to the assets of the CIF or the Plan exchanged for such shares, as determined in a single valuation performed in the same manner and as of the close of the same business day using either an independent, recognized Principal Pricing Service that has been disclosed by Wells Fargo to the Second Fiduciary prior to the CIF Exchange and/or, if applicable, by the amortized cost method.

(d) With respect to the CIF Exchanges, Wells Fargo has sent the Second Fiduciary of each affected Plan written confirmation, not more than 7 days after the completion of each transaction, containing the date of the transaction, the number of shares acquired by the Plan in each of the Funds, the price paid per share for each of the Funds and the total dollar amount involved in the transaction with each Fund.

(e) Neither Wells Fargo nor an affiliate, including any officer or director has been or will be permitted to purchase from or sell to any of the Plans shares of any of the Funds.

(f) Wells Fargo has not and will not receive any 12b-1 Fees in connection with the transactions.

(g) As to each individual Plan, the combined total of all fees received by Wells Fargo for the provision of services to the Plan, and in connection with the provision of services to any of the Funds in which the Plan may invest, has not and will not be in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(h) All dealings between the Plans, the Funds and Wells Fargo have or will be on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same shares of the same class as the Plans.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include fiduciaries of Plans invested in the CIFs or the Funds on each of the dates the CIF Exchanges were completed. Accordingly, the Department has determined that the only practical form of providing notice to interested persons is the distribution, by Wells Fargo, of a copy of the proposed exemption by first class mail within 30 days of the date of the publication of the pendency notice in the Federal Register. Such distribution will be made to Second Fiduciaries of the Plans that engaged in the CIF Exchanges. The distribution will include a copy of the notice of proposed exemption, as published in the Federal Register, as well as a supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or to request a hearing. Comments and hearing requests with

respect to the proposed exemption are due 60 days after the date of publication of the proposed exemption 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.)

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

[Application No. D–09915]

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).

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

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, 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

If the exemption is granted, 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.[8]

Section III—General Conditions

The exemption is conditioned upon the adherence by TIAA to the material facts and representations described in this 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 contract between TIAA and a supplemental retirement account (SRA) or an individual retirement account (IRA), the decision to elect to add the Separate Account as an additional pension funding option to a SRA or an IRA has been and is made by the participant in such SRA or IRA, if the Fiduciaries of the Plans and the IRA and SRA participants are unrelated to TIAA and its affiliates (the Affiliates or Affiliate), as defined in Section IV(b) 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 participant 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 and, in the case of a contract between TIAA and a SRA or an IRA, to the participant in such SRA or IRA, the following information:

(1) a copy of the most recent prospectus for the Separate Account, the most recent quarterly and other financial reports for the Separate Account filed with the Securities and Exchange Commission (SEC), and the most recent copy of any supplemental schedule of information, publications, or ancillary materials which have been made available to Plan Sponsors or Participants invested in the Separate Account;

(2) full disclosure concerning the investment guidelines, structure, manner of operation, and administration of the Separate Account; the method of valuation applicable to accumulation units (the Accumulation Units), as defined in Section IV(a) below, and the method of valuation of the Properties, and all other assets owned by the Separate Account;

(3) a written description of potential conflicts of interest that may result from TIAA's acquisition, purchase, retention, redemption, or sale of Accumulation Units in the Separate Account;

(4) the rules and procedures for withdrawal, transfer, redemption, distribution, and payout applicable throughout the term of the Separate Account to TIAA, to individual Participants (and, if applicable, to Plans) which participate in the Separate Account;

(5) the expense and fee provisions of the Separate Account (including but not limited to a description of any services rendered by TIAA, a schedule of fees for such services, and an estimate of the amount of fees to be paid by the Separate Account annually);

(6) a list of all assets in the Separate Account, as of the end of the most recent fiscal period of the Separate Account, and a list of the Properties which the Separate Account acquired or sold within twelve months prior to the end of the most recent fiscal period of the Separate Account;

(7) the appropriate financial statements pertaining to the Separate Account (including but not limited to the most recent audited annual report, income statement, and balance sheet on the Separate Account);

(8) copies of the most recent reports on the Separate Account, including but not limited to information relating the value of units in the Separate Account (the Units), as defined in Section IV(p) below; and the quarterly return for the Separate Account, and the most recent quarterly updates of the valuation of the Separate Account (including a list of the holdings of the Separate Account during the period);

(9) any reasonably available information which TIAA believes to be necessary, or which any fiduciary of a plan or any sponsor of a plan reasonably

[8] For purposes of this proposed exemption references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

requests in order to determine whether such plan should elect to add the Separate Account as an additional pension funding option for the benefit of participants (or, if applicable, for such plan), or, in the case of a contract between TIAA and a SRA or an IRA, which the participant in such SRA or IRA reasonably requests in order to determine if he or she should elect to add the Separate Account as an additional pension funding option under such SRA or IRA contract with TIAA; and

(10) upon publication of this Notice, a copy of such Notice, as it appears in the Federal Register, shall be provided to the Fiduciaries of the Plans, to the sponsors of the Plans (the Plan Sponsors or Plan Sponsor), to the sponsors of any SRA, and to the participants in any TIAA IRA which have elected to add the Separate Account as an additional pension funding option and which have been or are invested in the Separate Account. If this proposed exemption is granted, the Fiduciaries of the Plans, the Plan Sponsors, the sponsors of any SRA, and the participants in any TIAA IRA which have elected to add the Separate Account as an additional pension funding option and which have been or are invested in the Separate Account shall receive upon publication of a Grant of Exemption (the Grant), a copy of such Grant, as it appears in the Federal Register. If subsequent to the publication of the Grant, any fiduciaries of plans, any sponsors of plans, the sponsors of any SRA, or the participants in any TIAA IRA choose to elect to add the Separate Account as an additional pension funding option to enable such plans to invest in the Separate Account, the fiduciaries of such plans, the sponsors of such plans, the sponsors of such SRA, and the participants in any such IRA shall be provided, at least thirty (30) days prior to investment in the Separate Account, with a copy of both the Notice and the Grant, as such documents appeared upon publication in the Federal Register.

(d) TIAA has made and will make available, within the time periods specified below in subparagraphs (1) through (4) of this paragraph (d), to the Fiduciaries of the Plans, or in the case of a contract between TIAA and a SRA or an IRA, to the participant in such SRA or IRA:

(1) information relating to the value of the Units in the Separate Account to be available daily over a toll-free telephone number and/or to be distributed in writing to Participants in the Separate Account in quarterly confirmation statements within five (5) to ten (10) days after the end of each calendar quarter;

(2) information concerning the quarterly return of the Separate Account to be available daily over a toll-free telephone number and/or to be distributed in writing to Participants in the Separate Account in quarterly confirmation statements within five (5) to ten (10) days after the end of each calendar quarter;

(3) a prospectus for the Separate Account to be distributed annually; and

(4) any information or TIAA publication, to be distributed from time to time, which TIAA reasonably believes to be necessary or which the Fiduciaries request, or in the case of a contract between TIAA and a SRA or an IRA, which the participant in such SRA or IRA requests (including but not limited to quarterly financial reports filed with the SEC) in order to determine whether any Participant in such Plan, or participant in such SRA or IRA should buy, sell, or continue to hold the Units in the Separate Account, as defined in Section IV(p) below;

(e) An independent, qualified fiduciary (the Independent Fiduciary), as defined in Section IV(f) below, has been appointed prior to or coincident with the start of operations of the Separate Account (and is subject to renewal and removal described herein) whose responsibilities include, but are not limited to:

(1) reviewing and approving the written investment guidelines of the Separate Account as established by TIAA, and approving any changes to such investment guidelines;

(2) monitoring whether the Properties acquired by the Separate Account conform with the requirements of such investment guidelines;

(3) reviewing and approving valuation procedures for the Separate Account and approving changes in those procedures;

(4) reviewing and approving the valuation of Units in the Separate Account and the valuation of Properties held in the Separate Account, as described in the Summary of Facts and Representations in the Notice;

(5) approving the appointment of all independent, qualified appraisers retained by TIAA to perform periodic valuations of the Properties in the Separate Account;

(6) requiring appraisals in addition to those normally conducted, whenever, the Independent Fiduciary believes that the characteristics of any of the Properties have changed materially, or with respect to any of the Properties, whenever the Independent Fiduciary deems an additional appraisal to be necessary or appropriate in order to assure the correct valuation of the Separate Account;

(7) reviewing the purchases and sales of Units in the Separate Account by TIAA and the Participants (and, if applicable, by the Plans) which participate in the Separate Account to assure that the correct values of the Units and of the Separate Account are applied; reviewing the fixed repayment schedule applicable to the redemption of certain seed money units (the Seed Money Units), as defined in Section IV(k) below, as approved by the State of New York Insurance Department; reviewing any exercise of discretion by TIAA to accelerate the fixed repayment schedule applicable to the redemption of Seed Money Units; and, approving TIAA's exercise of discretion only if such acceleration would benefit the Participants in the Separate Account;

(8) after (and, if necessary, during) the Start Up Period, as defined in Section IV(m) below, determining the appropriate Trigger Point, with respect to the ongoing ownership by TIAA of Liquidity Units; establishing a method to implement any changes to the Trigger Point; adjusting the percentage which serves as the Trigger Point; approving or requiring any reduction of TIAA's interest in the Separate Account; and, approving the manner in which such reduction of TIAA's participation in the Separate Account in excess of the Trigger Point is to be effected;

(9) in the event the Trigger Point is reached, participating and planning any program of sales of the assets of the Separate Account, which would include the selection of the Properties to be sold, the guidelines to be followed in making such sales, and the approval of such sales, if in the opinion of the Independent Fiduciary, such sales are desirable at the Trigger Point in order to reduce the ownership by TIAA of Liquidity Units in the Separate Account or to facilitate the Wind Down;

(10) supervising the operation of the Separate Account during the Wind Down of such Separate Account;

(11) during the Wind Down, planning any program of sales of the assets of the Separate Account, including the selection of the Properties to be sold, determining the guidelines to be followed in making such sales, and approving the sale of the Properties in the Separate Account, in the event of the termination of the Separate Account, if in the opinion of the Independent Fiduciary, such sales are desirable to facilitate the Wind Down; and

(12) reviewing any other transactions or matters involving the Separate Account that are submitted to the

Independent Fiduciary by TIAA and determining whether such transactions or other matters are fair to the Separate Account and in the best interest of the Separate Account.

(f) The exemption is also subject to the condition that the following transactions involving the Separate Account have not occurred and will not occur:

(1) participation by the Independent Fiduciary, TIAA, any Affiliate of TIAA, TIAA's general account (the General Account), or any other separate account over which TIAA or its Affiliates has any investment control in any joint venture with the Separate Account, or in the ownership of the Properties of the Separate Account either alone or together with a joint venture partner;

(2) the borrowing of funds from the Separate Account by the Independent Fiduciary, TIAA, any Affiliate of TIAA, TIAA's General Account, or any other separate account over which TIAA or its Affiliates has investment control, or the lending of funds to the Separate Account by the Independent Fiduciary, TIAA, any Affiliate of TIAA, TIAA's General Account, or any other separate account over which TIAA or its Affiliates has investment control in order to leverage any purchase by the Separate Account of any of the Properties, or otherwise; and

(3) the acquisition by the Separate Account of any Properties from or the sale by the Separate Account of any Properties to the Independent Fiduciary, TIAA, any Affiliate of TIAA, TIAA's General Account, or any other separate account over which TIAA or its Affiliates has investment control.

(g) The liquidation of any Accumulation Units held by a Participant or participating Plan, for which a withdrawal request is pending, has not been and will not be delayed by reason of the redemption of Seed Money Units held by TIAA, and TIAA has advanced and will always advance funds by purchasing Liquidity Units to fund the withdrawal requests of Participants or Plans on a timely basis;

(h) TIAA must maintain for a period of six (6) years from the date of any transaction, the records necessary to enable the persons described in paragraph (i) of this Section III to determine whether the conditions of this exemption have been met. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of TIAA and its Affiliates, the records are lost or destroyed prior to the end of the six-year period, and no parties in interest, other than TIAA or its Affiliates, shall be subject to a civil penalty that may be assessed under section 502(i) of the Act, or to taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (i) below.

(i)(1) Except as provided in subparagraph (2) of this paragraph (i) and notwithstanding any provision of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (h) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service;

(B) Any Fiduciary of a Plan which participates in the Separate Account, or in the case of a contract between TIAA and a SRA or an IRA, any participant in such SRA or IRA, who has authority to acquire or dispose of the interests of such SRA or IRA contract, or any duly authorized employee or representative of such Fiduciary of a Plan or participant in such SRA or IRA;

(C) Any contributing employer to any Plan participating in the Separate Account, or any duly authorized employee or representative of such employer; and

(D) Any Participant or beneficiary of any Plan participating in the Separate Account, or any duly authorized employee or representative of such Participant or beneficiary.

(2) None of the persons described in subparagraphs (1)(B) through (D) of this paragraph (i) shall be authorized to examine the trade secrets of TIAA or any of its Affiliates, or any of its commercial or financial information which is privileged or confidential.

Section IV—Definitions

For the purpose of this exemption:

(a) ''Accumulation Units'' mean the units of interest into which equity participation in the Separate Account is divided during the accumulation phase of the annuity contracts prior to retirement by a Participant. Seed Money Units, as defined in Section IV(k) below, and Liquidity Units, as defined in Section IV(g) below, are Accumulation Units.

(b) ''Affiliate'' or ''Affiliates'' of TIAA include(s):

(1) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with TIAA.

(2) any officer, director, or employee of TIAA, or of a person described in paragraph (b)(1) of Section IV, and

(3) any partnership in which TIAA is a partner.

(c) ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) ''Cash Flow'' means: (1) the sum of: (a) income received by the Separate Account from investments (including dividends and/or interest from non-real estate investments, and net operating income, less payment of capital expenditures and changes in reserves for capital expenditures, from equity real estate investments); and (b) Participant and Plan contributions (including transfers to the Separate Account) MINUS (2) the sum of: (a) Separate Account expense charges (including investment and administrative expenses for mortality and expense guarantees); and (b) any redemption of Seed Money Units at fair market value.

(e) ''Fiduciary'' or ''Fiduciaries'' mean(s) the individual fiduciary or fiduciaries acting on behalf of each of the Plans that invest in the Separate Account.

(f) ''Independent Fiduciary''—

(1) For purposes of this definition, an Independent Fiduciary means a person who:

(A) Is not an Affiliate of TIAA;

(B) Does not have an ownership interest in TIAA or its Affiliates;

(C) Is not a corporation or partnership in which TIAA or any of its Affiliates has an ownership interest;

(D) Is not a Fiduciary with respect to any Plan which participates in the Separate Account;

(E) Has acknowledged in writing acceptance of fiduciary responsibility; and

(F) Is either:

(i) a business organization which has at least five (5) years of experience with respect to commercial real estate investments or other appropriate experience;

(ii) a committee comprised of three to five individuals who each have had at least five (5) years of experience with respect to commercial real estate investments or other appropriate experience; or

(iii) a committee comprised both of a business organization or organizations and individuals having the qualifications described in paragraphs (f)(1)(A) through (E) of Section IV above.

(2) For the purposes of the definition of Independent Fiduciary, no organization or individual may serve as Independent Fiduciary for the Separate Account for any fiscal year, if the gross income received from TIAA or its Affiliates by such organization or

individual (or by any partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder) for that fiscal year exceeds five percent (5%) of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent (5%) limitation is applied with reference to the fiscal year in which such organization or individual serves as an Independent Fiduciary. The income limitation includes services rendered to the Separate Account as Independent Fiduciary, as described in this exemption.

(3) No organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder, during the period that such organization or individual serves as an Independent Fiduciary and continuing for a period of six (6) months after such organization or individual ceases to be an Independent Fiduciary, may

(A) acquire any property from or sell any property to TIAA, its Affiliates, TIAA's General Account, or any separate account maintained by TIAA or its Affiliates, including the Separate Account;

(B) borrow any funds from, or lend any funds to TIAA, its Affiliates, TIAA's General Account, or any separate account maintained by TIAA or its Affiliates, including the Separate Account;

(C) participate in any joint venture with TIAA, its Affiliates, TIAA's General Account, or any separate account maintained by TIAA or its Affiliates, including the Separate Account, or participate, either alone or together with a joint venture partner, in the ownership of the Properties with TIAA, its Affiliates, TIAA's General Account, or any separate account maintained by TIAA or its Affiliates, including the Separate Account; or

(D) negotiate any such transactions, described above in paragraph (f)(3) (A) through (C) of Section IV.

(4) No Fiduciary of a Plan or Plan Sponsor which participates in the Separate Account or a designee of such Fiduciary, Plan Sponsor, or Plan may serve as the Independent Fiduciary with respect to the Separate Account.

(g) ''Liquidity Units'' mean Accumulation Units, as defined in Section IV(a) above, that are purchased from Participants (or, if applicable, from the Plans who participate in the Separate Account) by TIAA's General Account, when the Cash Flow of the Separate Account, as defined above in Section IV(d), and liquid investments of the Separate Account are insufficient, in order to guarantee liquidity for such Participants (or, if applicable, for such Plans) who wish to withdraw or transfer funds from the Separate Account.

(h) ''Plan or Plans'' mean(s) an employee benefit plan or employee benefit plans (primarily participant-directed defined contribution plans, but also some defined benefit plans) qualified pursuant to sections 401(a), 403(a), 403(b), 414(d) and 457(b) of the Code, as well as any TIAA IRA and SRA, as described, respectively, under section 408 and section 403(b) of the Code, which may participate in ownerships of Units in the Separate Account and which are subject to section 406 of the Act and/or section 4975 of the Code.

(i) ''Properties'' mean the geographically dispersed retail and office buildings, light industrial facilities, and residential apartment space with good operating income (and such other Properties that may be acquired pursuant to changes in the investment guidelines for the Separate Account that are approved by the Independent Fiduciary) which TIAA has acquired on behalf of the Participants (and, if applicable, the Plans) that invest in the Separate Account.

(j) ''Seed Money'' means the total amount (not to exceed $100 million) actually contributed by TIAA's General Account to the Separate Account for the purpose of acquiring Properties for the Separate Account. Seed Money will be applied to purchase Accumulation Units at the fair market value of those Units at the time of purchase.

(k) ''Seed Money Units'' mean the Accumulation Units, as defined in Section IV(a) above, that are issued by the Separate Account to TIAA's General Account in exchange for Seed Money, as defined above in Section IV(j), during the Start Up Period of the Separate Account.

(l) ''Separate Account'' means the real estate equity pooled separate account invested in by Participants (and, if applicable by Plans), as described herein.

(m) ''Start Up Period'' means the period during which repayment of TIAA's General Account of Seed Money, as defined in Section IV(j) above, must be made on a fixed repayment schedule as approved by the State of New York Insurance Department (NYID). In this regard, the redemption of Seed Money Units by TIAA will begin on the *earlier* to occur of:

(1) two (2) years from the date on which TIAA first opened the Separate Account to Participants (and, if applicable, to Plans) for paying premiums to the Separate Account, or

(2) the date on which the value of the Separate Account first reaches $200 million. Thereafter, at least 20 percent (20%) of the original number of Seed Money Units acquired by TIAA's General Account from the contribution of Seed Money to the Separate Account are to be redeemed on predetermined dates in each year, as established by TIAA, for a period of five (5) years (at fair market value based on the value of Accumulation Units on the date of each redemption). The exercise of any discretion by TIAA to accelerate the fixed repayment schedule applicable to the redemption of Seed Money Units is subject to the advance review and approval of the Independent Fiduciary, and any such acceleration will not be applied so as to prevent a redemption of Seed Money Units scheduled to occur on any of the predetermined dates during any year. The Start Up Period will expire when all the Seed Money Units originally acquired by TIAA's General Account from the contribution of Seed Money to the Separate Account have been redeemed by TIAA.

(n) ''TIAA Pension Plans'' mean certain defined benefit and certain defined contribution plans maintained by TIAA. Among the defined contribution plans maintained by TIAA are the TIAA Retirement Plan, which is tax-qualified under the Code, and the TIAA Tax-Deferred Annuity Plan, which is a salary reduction annuity plan, pursuant to section 403(b) of the Code. Participants in the TIAA Retirement Plan and the TIAA Tax-Deferred Annuity Plan are permitted to invest in the Separate Account.

(o) ''Trigger Point'' means the point, as established by the Independent Fiduciary, at which TIAA's participation in the Separate Account through the ownership of Liquidity Units is decreased with the approval of or as required by the Independent Fiduciary, acting on behalf of the Participants (and, if applicable, the Plans).

(p) ''Units'' mean the units of interest into which equity participation in the Separate Account is divided.

(q) ''Wind Down'' means the period which begins on the date on which TIAA notifies all Participants (and, if applicable, all Plans invested in the Separate Account) that TIAA has decided to terminate the Separate Account and concludes on the date on which no Accumulation Units are held

by Participants (or, if applicable, by Plans).

Effective Date: If the proposed exemption is granted, the exemption will be effective, as of October 2, 1995, the date the Separate Account was first opened to Participants and Plans for investment.

Summary of Facts and Representations

1. TIAA, a non-profit stock life insurance company, was founded on March 18, 1918, by the Carnegie Foundation for the Advancement of Teaching. TIAA offers traditional annuities, which guarantee principal and a specified rate of interest while providing the opportunity for the crediting of additional amounts. TIAA also offers life insurance, long-term disability insurance, and long-term care insurance.

TIAA is organized as a corporation under the laws of the State of New York. All of the stock of TIAA is held by the TIAA Board of Overseers, a non-profit New York corporation. The TIAA Board of Overseers generally monitors TIAA's affairs to assure that TIAA is meeting its Charter purpose. The Board of Overseers do not directly supervise the management of TIAA, but they do elect members of the Board of Trustees of TIAA, which does exercise such supervision. The Board of Trustees consists of twenty (20) members, three of whom are employees of TIAA.

TIAA is the companion organization of the College Retirement Equities Fund (CREF). CREF is a non-profit membership corporation established under the laws of the State of New York in 1952. CREF is registered with the SEC as an investment company under the Investment Company Act of 1940. CREF typically offers to Plans individual annuity contracts with a variety of investment funds. In this regard, CREF currently offers seven (7) investment funds, namely, a stock fund, a money market fund, a bond fund, a social choice fund, a global equities fund, an equity index fund, and a growth fund.

As of December 31, 1993, TIAA had approximately $67 billion in assets. As of the same date, the combined assets of TIAA and CREF totalled approximately $128 billion. In 1993, TIAA's General Account contained $7 billion in real estate investments.

2. It is represented that TIAA and CREF together form the principal retirement annuity funding system for education and research communities in the United States. In this regard, TIAA and CREF serve approximately 1.8 million individuals who are employed at approximately 5,500 educational and research institutions. Typically, TIAA and CREF issue individual annuity contracts (and occasionally group annuity contracts) in order to provide funding for pension plans which are sponsored by these educational institutions for their employees.

It is represented that the Plans involved in the proposed transactions are participant directed defined contribution plans, as described in section 401(a), 403(a), 403(b), 414(d) and 457(b) of the Code, as well as any TIAA IRA and SRA, as described, respectively, under section 408 and section 403(b) of the Code. In addition, participants in certain TIAA Pension Plans, as defined in Section IV(n) above, are permitted to invest in the Separate Account.[9] Further, it is represented that less than fifty (50) defined benefit pension plans may also be involved in the proposed transactions.

3. TIAA anticipates that almost all of the educational institutions participating in the TIAA annuity funding system are interested in adding a real estate separate account as an endorsed enhancement to individual annuity contracts. For this reason, TIAA established the Separate Account in which certain Plans covered by the Act and their participants and beneficiaries have invested and will invest.[10]

4. The Separate Account is an open-end commingled equity real estate separate account which invests eligible retirement plan assets primarily in equity real estate, and other real estate related investments, including marketable securities. It is represented that the Separate Account has not invested and will not invest in loans and leases to, or securities issued by, TIAA or its Affiliates. The Separate Account is a separate account, as defined in section (3)(17) of the Act, and was established and is operated in accordance with section 4240 of the New York Insurance law. Units in the Separate Account are registered with the SEC under the Securities Act of 1933. It is represented that TIAA operates the Separate Account so that it is not subject to registration as an investment company under the Investment Company Act of 1940.

TIAA provides investment management services to the Separate Account.[11] As investment manager to the Separate Account, TIAA is a fiduciary, within the meaning of section 3(21)(A) of the Act, with respect to the assets of the Plans held in the Separate Account, and therefore, qualifies as a party in interest, pursuant to section 3(14)(A) of the Act, with respect to the Plans which participate in the Separate Account.

5. TIAA proposes to operate the Separate Account with a sufficiently diverse portfolio of Properties to offer to investing Participants (and, if applicable, to investing Plans). In this regard, it is anticipated that the Properties acquired by the Separate Account will be geographically dispersed retail and office buildings, light industrial facilities, and residential apartment space with good operating income. In order to acquire such Properties, TIAA believes that the Separate Account required an initial contribution of $100 million in Seed Money.

Accordingly, on July 3, 1995, TIAA contributed $100 million in Seed Money in a lump sum to the Separate Account from its General Account. In return for the contribution of Seed Money, TIAA received from the Separate Account, Seed Money Units representing 100% of the value of the Separate Account at the time of the contribution. Thereafter, TIAA proposes to redeem Seed Money Units under a fixed repayment schedule, subject to the approval of the NYID. In the opinion of TIAA, this approach would permit the Separate Account flexibility to acquire equity real estate investments, thereby enhancing the ability of the Separate Account to generate greater returns sooner for Participants (and, if applicable, for Plans).

[9] It is represented that any acquisition of Units in the Separate Account by plans sponsored by TIAA will not violate section 406(a) or 406(b) of the Act by reason of the statutory exemption contained in section 408(b)(5) of the Act. The Department is offering no view, herein, as to whether the acquisition by any plans sponsored by TIAA of Units in the Separate Account is covered by the statutory exemption provided in section 408(b)(5) of the Act.

[10] TIAA has represented its understanding that this proposed exemption, if granted, will apply only to those Plans that are subject to section 406 of the Act and/or section 4975 of the Code.

[11] It is represented that TIAA receives fees for serving as investment manager of the Separate Account. In this regard, TIAA anticipates that the total investment management fees to Participants (and, if applicable, to Plans) which invest in the Separate Account will be in the range of from 50 to 75 basis points. It is represented that the overall expenses charged for the Separate Account will not exceed a maximum of 250 basis points. No other fees or charges are made or will be made, except for operating expenses and taxes that are net of gross income for a specific Property. TIAA maintains that statutory exemptions, pursuant of sections 408(b)(2) or 408(b)(5) of the Act, are available to provide relief for the fees received by TIAA with respect to the management of the Separate Account. The Department is offering no view, herein, as to whether the receipt of fees from the Separate Account by TIAA is covered by the statutory exemptions provided in sections 408(b)(2) or 408(b)(5) of the Act, nor is the Department providing any relief herein with respect to such fees charged by TIAA to the Separate Account.

It is represented that the NYID has approved the redemption by TIAA of its Seed Money Units to begin on the *earlier* to occur of: (i) two years from the date (*i.e.* October 2, 1995) on which TIAA first opened the Separate Account to Participants (and, if applicable, to Plans) for paying premiums to the Separate Account, or (ii) the date on which the value of the Separate Account first reaches $200 million. Thereafter, it is represented that at least 20 percent (20%) of the original number of Seed Money Units acquired by TIAA's General Account from the contribution of the Seed Money to the Separate Account will be redeemed on predetermined dates in each year, as established by TIAA, for a period of five (5) years. In this regard, it is represented that TIAA will select twelve dates each year (*i.e.* the fifteenth day of each calendar month, or if such date is not a business day, then the next following day on which TIAA is open for business) on which it will redeem one-twelfth of the number of Seed Money Units to be redeemed in that calendar year in order to satisfy the requirement that at least 20 percent (20%) of its Seed Money Units is redeemed annually.[12]

Notwithstanding the fixed repayment schedule, described above, TIAA has discretion to accelerate the redemption of Seed Money Units, but represents that it will exercise such discretion, subject to the advance review and approval of the Independent Fiduciary, and only if such exercise would be in the best interest of the Participants invested in the Separate Account. It is further represented that any such acceleration will not be applied so as to prevent a redemption of Seed Money Units scheduled to occur on any of the predetermined dates during any year.

TIAA proposes to redeem the Seed Money Units at the fair market value of such Units on the date of each redemption. TIAA believes that the redemption by the General Account of TIAA's Seed Money Units at the fair market value of such units on the date redeemed is equitable and appropriate from the standpoint of both the General Account and the Separate Account. In this regard, it is represented that New York Insurance law requires TIAA to invest General Account assets in a prudent fashion. Further, TIAA maintains that Seed Money, as part of the General Account, must be invested for the benefit of those who depend upon the assets of the General Account to support their contractual obligations. Accordingly, in the opinion of TIAA, the General Account must share in both the upside and downside risks resulting from its investment of the Seed Money in the Separate Account.

TIAA represents that cash to redeem its Seed Money Units at fair market value will be obtained from the following sources: (a) Cash Flow from the Separate Account; (b) liquid investments in the Separate Account; or (c) the proceeds from the sale of Properties held by the Separate Account. TIAA believes this method of redemption of TIAA's Seed Money Units will allow the Separate Account to purchase additional Properties even during the time when the Seed Money initially contributed by TIAA is being repaid. In the opinion of TIAA, the creation of a more substantial, more diverse real estate portfolio in the Separate Account benefits Participants (and, if applicable, Plans) which invest in the Separate Account by achieving greater investment returns.

6. In accordance with the provisions of the Separate Account, each Participant (and, if applicable, each Plan) that invests in the Separate Account is entitled to withdraw or transfer funds from the Separate Account at the current daily fair market value of the Units of the Separate Account pursuant to the valuation methodology described below. Payouts to individual Participants are made in accordance with any limitations on the timing and frequency of such payouts which may be imposed under applicable Plan provisions.

In order to ensure that Participants (and, if applicable, Plans) may withdraw or transfer amounts from the Separate Account at any time, TIAA proposes to guarantee the liquidity of the Separate Account. In this regard, TIAA will provide a ''safety net'' or ''back-up'' liquidity feature to the Separate Account whenever certain sources of funds in the Separate Account are insufficient to satisfy all of the requests for withdrawal or for transfer from the Separate Account. In this regard, it is represented that in satisfying withdrawal or transfer requests from Participants (and, if applicable, from Plans), the Separate Account first relies on Cash flow, as defined in Section IV(d).

If the Cash Flow of the Separate Account is not sufficient to fund such requests, then TIAA looks to the liquid investments in the Separate Account. It is represented that generally the liquid investments of the Separate Account are expected to represent from 10 to 25 percent (10%–25%) of the assets of the Separate Account and to include Treasury bonds and notes, corporate bonds, money market instruments, collateralized mortgage obligations, shares of real estate investment trusts, and other real estate related companies. Finally, if the Cash Flow and liquid investments of the Separate Account are insufficient, TIAA represents that it will purchase a sufficient number of Liquidity Units, as defined in Section IV(g), from the Separate Account to fund the request for withdrawal or transfer from an exiting Participant (or, if applicable, from an exiting Plan).

TIAA recognizes that, through potential purchases of Liquidity Units, it may retain an unanticipated level of ownership in the Separate Account. As a result of such purchases, TIAA's interest in the Separate Account may at any time increase beyond a predetermined percentage (*i.e.* the Trigger Point, as defined in Section IV(o)) of the total value of the Accumulation Units of the Separate Account, as defined in Section IV(a). In the event of such an increase beyond the Trigger Point through the purchase of Liquidity Units by TIAA from the Separate Account, TIAA proposes to reduce its holding of Liquidity Units by selling such Liquidity Units to the Separate Account. In this regard, cash to purchase Liquidity Units is obtained from the following sources: (a) Cash Flow from the Separate Account; (b) liquid investments in the Separate Account; or (c) the proceeds from the sale of Properties held by the Separate Account.

7. TIAA retains the authority to terminate the Separate Account and wind down the operation of the Separate Account. It is represented that

[12] TIAA believes that the analysis contained in Advisory Opinion 83–38A (July 22, 1983) is applicable to TIAA's transfer of the Seed Money to the Separate Account, and to the Separate Account's redemption of Seed Money Units from TIAA which were acquired when TIAA contributed the Seed Money to the Separate Account. This opinion held that seed money allocated to separate accounts by an insurance company in order to aid in the start-up and management of those accounts would not be treated as assets of the plans which invested in the separate accounts, and that the redemption by the insurance company of participation units in the separate accounts would not constitute a violation of the prohibited transaction provisions of the Act, solely by reason of the transfer of seed money from the separate accounts to the insurance company's general account. In this regard, TIAA maintains that similar transfers of Seed Money between its Separate Account and its General Account do not violate section 406(a)(1) (A) and (D) or section 406 (b)(1) and (b)(2) of the Act. The Department is offering no relief, herein, for the transfer of the Seed Money into the Separate Account or the redemption by the Separate Account of TIAA's Seed Money Units acquired with the Seed Money, as above described. The Department notes that Advisory Opinion 83–38A did not address the situation involving the redemption of units of the separate account by the insurance company, when, at the same time, there were outstanding requests for withdrawal or transfer by participants (or, if applicable, plans) invested in the separate account.

the Wind Down will begin when TIAA informs the Participants (and, if applicable, the Plans) which participate in the Separate Account of its intention to terminate the Separate Account, and will conclude on the date on which no Units are held by any of the Participants or Plans which participate in the Separate Account. Such notification of the intent to terminate the Separate Account must be provided in writing by TIAA at least one year in advance of the termination of the Separate Account to Participants (and, if applicable, Plans) at their last known addresses in TIAA's business records. It is represented, that for one year prior to its termination, the Separate Account will continue to operate and honor withdrawal requests from Participants (and, if applicable, Plans). However, no new contributions or transfers from Participants (and, if applicable, from Plans) will be permitted into the Separate Account during that one-year period.

TIAA has provided rules for the redemption of Units during the Wind Down by Participants (and, if applicable, by Plans) which must be approved by the Independent Fiduciary prior to becoming effective. It is represented that once such rules are approved, TIAA has no discretion regarding their application. Under the rules applicable to Participants, there is no limitation on the amount of withdrawals during Wind Down. With respect to any Plan funded with a TIAA deposit administration type group annuity contract, the redemption of Accumulation Units is tied to the size of such Plan's interest in the Separate Account. If the value of the Accumulation Units held by such a Plan is equal to or less than $1 million on the effective date of the termination of the Separate Account, the entire interest of the Plan will be redeemed. If the value of the Accumulation Units held by such Plan exceeds $1 million on the effective date of the termination of the Separate Account, the distribution of the value of the Accumulation Units of that Plan will occur *pro rata* (with other similarly situated Plans) over no longer than a twelve (12) month period. It is further represented that any Participant (and, if applicable, any Plan) may elect to defer the redemption of Accumulation Units until all Properties in the Separate Account are sold. It is represented that upon termination and liquidation of the Separate Account, any Accumulation Units held by TIAA will be the last Units redeemed, unless the Independent Fiduciary directs otherwise.

8. In the absence of an exemption, under the circumstances described above, the transactions which may be deemed to violate the prohibited transactions provisions of the Act include: (a) the purchase of Liquidity Units by TIAA to provide liquidity to the Participants (and, if applicable, to the Plans) which participate in the Separate Account in the event of net withdrawals; (b) the purchase of Liquidity Units by the Separate Account from TIAA in the event of net contributions to the Separate Account; and (c) the use of Cash Flow and liquid investments in the Separate Account and proceeds from the sale of Properties owned by the Separate Account in order to generate cash to purchase TIAA's Liquidity Units after the Trigger Point has been exceeded or during the Wind Down Period. In addition, because cash is transferred indirectly between the General Account and the Separate Account, in connection with contributions, withdrawals, and transfers of Units, such acquisitions or dispositions theoretically could be viewed as an indirect transfer or use of plan assets between TIAA and the Plans and their Participants. TIAA believes that the methods of reducing TIAA's ownership in the Separate Account to a percentage equal to or below the Trigger Point and the process of increasing and decreasing TIAA's interest in the Separate Account through the purchase or sale of Liquidity Units, involve transactions between the General Account and the Separate Account which may constitute prohibited transactions. Accordingly, TIAA requests exemptive relief from sections 406(a), 406(b)(1) and 406(b)(2) of the Act for the subject transactions.

9. TIAA believes that the requested exemption is in the best interest of Participants (and, if applicable, Plans) who participate in the Separate Account. The establishment and operation of the Separate Account permits Participants in the TIAA-CREF annuity funding system to take advantage of valuable investment opportunities available in real estate. In this regard, it is represented that Participants (and, if applicable, Plans) in the Separate Account are better able to diversify risk in a mixed asset pension portfolio. Moreover, the Separate Account is designed to permit unlimited withdrawal and transfer flexibility. This structure makes it possible for Participants (and, if applicable, Plans) to invest in real estate which is by nature too illiquid to permit rapid withdrawals and transfers. In this regard, TIAA represents that under no circumstances will the liquidation of any Accumulation Units held by a Participant or participating Plan, for which a withdrawal request is pending, be delayed by reason of the redemption of Seed Money Units held by TIAA. It is represented that TIAA will always advance funds by purchasing Liquidity Units to fund withdrawal requests from Participants or Plans on a timely basis.

10. TIAA has adopted a number of safeguards intended to fully protect the interests of Participants (and, if applicable, Plans) which invest in the Separate Account. In this regard, the Independent Fiduciary approves and monitors nearly all material transactions that occur during the establishment, operation, and Wind Down of the Separate Account. In addition, other procedures have been adopted to ensure that appropriate valuations and appraisals are made of the Units and of the assets in the Separate Account. Moreover, TIAA is required to provide disclosures to participants and to plans that contemplate investing in the Separate Account and is required to provide Participants, Plan Fiduciaries, and Plan Sponsors access to certain information about the Separate Account on a continuing basis.

One such safeguard is the specified valuation rules and procedures which TIAA and the Independent Fiduciary use in the operation of the Separate Account. In this regard, it is represented that on the day the Separate Account was established, the initial value of each of the Accumulation Units in the Separate Account was set at $100. Thereafter, the value of one Accumulation Unit equals the total value of the net assets of the Separate Account divided by the number of outstanding Accumulation Units in the Separate Account. It is represented that as of October 2, 1995, when the Separate Account was opened for investment by Participants (and, if applicable, Plans), the value of a Unit was $101.25.

In order to calculate the value of an Accumulation Unit, each of the Properties held in the Separate Account is valued at its initial price. Thereafter, each of the Properties is valued annually (the Annual Appraisals) by an independent, qualified appraiser. TIAA is responsible for designating one or more independent appraisers, subject to the approval of the Independent Fiduciary, to perform such Annual Appraisals.

It is represented that the Annual Appraisals are conducted during an assigned valuation month for each Property. Each assigned valuation month is chosen with the intent to schedule the independent appraisals in as even a pattern as is practical over the course of a calendar year. It is represented that the Independent

Fiduciary is involved in the assignment of each valuation month and any alternative thereto.

It is represented that procedures are in place to obtain independent appraisals of the Properties and to ensure the integrity of the valuation of the assets of the Separate Account. In this regard, it is represented that the portfolio manager of the Separate Account has no contact with the independent appraisers of the Properties. Instead, asset managers for the Separate Account, who are responsible for the leasing strategy and capital improvement program for each of the Properties and for oversight of the performance of third-party property managers, convey information about the Properties to the independent appraisers. In addition, TIAA's appraisal group, which reports directly to the Senior Vice President of TIAA's Mortgage & Real Estate Division, is responsible for communicating with the independent appraisers on an ongoing basis, and for reviewing draft appraisals in order to recommend corrections of misinformation and obvious errors, such as mathematical calculations.

It is represented that the independent appraisers have the final authority in the preparation of the Annual Appraisals. In this regard, in preparing the Annual Appraisals of the Properties in the Separate Account, the independent appraiser(s) take into account appropriate valuation methodologies which may include replacement cost, comparable costs, comparable sales, discounted cash flow, current and projected occupancy levels, market conditions, and the condition of the Property where appropriate. The cost of the Annual Appraisals, and any other appraisals as necessary, are reflected in the investment management fee charged to the Separate Account. Once prepared, it is represented that the Independent Fiduciary receives copies of the Annual Appraisals which are subject to the Independent Fiduciary's review and approval.

The Annual Appraisals, as approved by the Independent Fiduciary, are updated at least once every three (3) months by the staff of TIAA (the Quarterly Updates) and will be updated more frequently should events occur which have an impact on the value of any Property. TIAA takes into consideration the current rate of interest and inflation, occupancy levels, cash flow, regional and local market conditions, and other relevant factors, including such other appraisal tools and methodologies as in TIAA's judgment are deemed reasonable, prudent, and appropriate. It is represented that the Quarterly Updates are subject to approval by the Independent Fiduciary and are effective as of the quarterly anniversary of the Annual Appraisals. If at any time between Quarterly Updates or between Quarterly Updates and the Annual Appraisals, an event occurs which impacts the value of any of the Properties, TIAA will review such impact on value. It is represented that the Independent Fiduciary receives copies of the internal appraisals for review and any change in the value of a Property is subject to the approval of the Independent Fiduciary. In addition, the Independent Fiduciary has the authority to require an independent appraisal whenever necessary. In that circumstance, the Independent Fiduciary would select such independent appraiser, who would be deemed approved by TIAA, if TIAA does not object within fourteen (14) days thereof. If TIAA does not object to the Independent Fiduciary's choice, then the independent appraiser will be retain to perform the appraisal. If TIAA objects to the Independent Fiduciary choice, the Independent Fiduciary will choose another independent appraiser. Further, the Independent Fiduciary is authorized to select the appropriate value in the event any appraisals of Properties performed by TIAA conflict with those prepared by independent third party appraisers or a conflict arises between different appraisals each of which was prepared by an independent appraiser.

In addition to updating and reviewing the values of the Properties, TIAA calculates daily accruals (the Daily Accruals) for the recognition of income and expenses of the Properties in the Separate Account. It is represented that such Daily Accruals are based on the projected net monthly operating income or loss for each of the Properties divided by the number of days in the month. The projected net monthly operating income or loss for each of the Properties is based on occupancy and rental information, anticipated expenses and other information. In this regard, it is represented that the Daily Accruals are modified as actual performance is determined and projected amounts change. The Independent Fiduciary is responsible for reviewing and approving the methodology to calculate such Daily Accruals and for monitoring the recurring calculation of such Daily Accruals. The Independent Fiduciary's duties also include observing the methodology and analyzing the calculations employed by TIAA in arriving at the Unit value set by the Daily Accruals and by the ongoing monthly reviews of the value of the Properties.

It is represented that all of the valuation procedures utilized by TIAA regarding the value of Properties in the Separate Account, as well as any other investments in the Separate Account, are subject to the monitoring and approval of the Independent Fiduciary. In this regard, non-real estate assets of the Separate Account are generally liquid investments. For public market securities, TIAA calculates the value of the assets as of the close of every valuation day. It is represented that TIAA generally uses market quotations or independent pricing services to value securities and other investments of the Separate Account. If market quotations or independent pricing services are not readily available, and for ''non-public market assets'' (e.g., mortgages), TIAA uses the fair market value of such assets, as determined in good faith by TIAA. It is represented that as of February 29, 1996, there are no ''non-public market assets'' in the Separate Account. In this regard, TIAA represents that while there is no maximum percentage limitation on the amount of ''non-public market assets,'' TIAA does not anticipate that the Separate Account will invest in a significant percentage of such assets.

It is represented that TIAA's valuations are subject to examination every five (5) years by the New York State Insurance Department. Further, the Separate Account is audited periodically by TIAA's internal auditor and annually by an independent outside auditor, currently the firm of Deloitte & Touche LLP (Deloitte). As part of its audit, Deloitte examines samples of valuations performed by TIAA, including valuations of assets for which there is no readily ascertainable market value. In addition, Deloitte is responsible for determining whether the valuation methods used by TIAA are in accordance with generally accepted accounting principles.

It is represented that TIAA will not alter its valuation methodology without the approval of the Independent Fiduciary and that all valuations of investments of the Separate Account are subject to review and approval by the Independent Fiduciary. Further, without the prior approval of the Independent Fiduciary, TIAA is not permitted to alter any valuation, which results in an increase or decrease of: (a) more than 6 percent (6%) of the value of any of the Properties in the Separate Account since the last independent Annual Appraisal; or (b) more than 2 percent (2%) of the value of the Separate Account since the prior month; or (c) more than 4 percent (4%) in the

value of the Separate Account within any calendar quarter. In addition to these percentage limitations, it is represented that any adjustments to the value of the Properties which are made by TIAA during the first three (3) months after receipt of an Annual Appraisal prepared by an independent, qualified appraiser, are subject to the review and approval of the Independent Fiduciary.

11. It is represented that the proposed exemption is feasible in that it imposes no continuing administrative burden on the Department, because the Independent Fiduciary is responsible for monitoring and approving all significant transactions relating to the establishment and operation of the Separate Account. In this regard, among other things, the Independent Fiduciary must review and approve prior to adoption, the investment guidelines of the Separate Account established by TIAA under which the day-to-day investments of the Separate Account are made. Thereafter, the Independent Fiduciary is responsible for approving any changes to such investment guidelines. Further, it is the duty of the Independent Fiduciary to monitor whether the Properties acquired by the Separate Account conform to the requirements of such investment guidelines.

Prior to adoption by TIAA, the Independent Fiduciary must review and approve the valuation procedures of the Separate Account. In this regard, the Independent Fiduciary, among other things, is responsible for overseeing the methodology used in establishing the value of the Units, monitoring the calculation of Daily Accruals and the procedures for valuing the Properties and other assets of the Separate Account, and assigning the valuation month for each of the Properties. Further, any changes to the existing valuation procedures of the Separate Account are also subject to review and approval by the Independent Fiduciary.

The Independent Fiduciary must oversee the quality of the appraisal functions performed by TIAA and by outside independent, qualified appraisers with respect to the valuation of the Properties in the Separate Account. In this regard, the appointment of all the independent appraisers retained by TIAA to perform periodic valuation of the Properties in the Separate Account must first be reviewed and approved by the Independent Fiduciary. Further, the Independent Fiduciary is responsible for approving the list of appraisers submitted by TIAA, and is authorized to remove any names of appraisers from such list.

The Independent Fiduciary is responsible for reviewing and approving the valuation of the Units in the Separate Account and the value of the Properties held in the Separate Account. In this regard, the Independent Fiduciary is authorized to conduct visits to the Properties. The Independent Fiduciary has discretion to adjust the valuation of the Properties at any time. Whenever the Independent Fiduciary believes that the characteristics of any of the Properties have changed materially, or with respect to any of the Properties, whenever it deems an additional appraisal to be necessary or appropriate in order to assure the correct valuation of the Separate Account, the Independent Fiduciary has discretion to require appraisals in addition to those normally conducted. TIAA is not permitted to alter the valuation of any Property or the Separate Account beyond the limits, described in paragraph ten above, without first obtaining the prior approval of the Independent Fiduciary. The opinion of the Independent Fiduciary on the value of any Property controls in the event of a conflict.

As described earlier in this proposed exemption, TIAA received from the Separate Account Seed Money Units upon contribution of the Seed Money to the Separate Account from its General Account, and subsequently intends to redeem such Seed Money Units under a fixed repayment schedule. It is represented that such fixed repayment schedule in addition to being subject to the approval of the NYID is also subject to review and approval by the Independent Fiduciary. Further, the Independent Fiduciary is responsible for reviewing any exercise of discretion by TIAA to accelerate the fixed repayment schedule applicable to the redemption of Seed Money Units, and approving TIAA's exercise of discretion only if such acceleration would benefit the Participants in the Separate Account.

The Independent Fiduciary must monitor and oversee the liquidity guarantee feature of the Separate Account, as described herein, if, during or after the Start Up Period, the Cash Flow or liquid investments of the Separate Account are insufficient to fund requests for withdrawal by Participants (and, if applicable, by Plans). In this regard, the Independent Fiduciary is responsible for reviewing the purchase and sale of Units by TIAA and the Participants (and, if applicable, the Plans) that are withdrawing from the Separate Account, in order to assure that the correct values of Units and of the Separate Account are applied.

As noted earlier, it is intended that TIAA's interest in the Separate Account will not exceed a certain percentage of the Separate Account established by the Independent Fiduciary as a Trigger Point. In this regard, it is represented that the Independent Fiduciary is responsible for determining the appropriate percentage to serve as the Trigger Point. Further, the Independent Fiduciary must determine whether or not to impose a Trigger Point during or after the Start Up Period with respect to TIAA's ongoing ownership of Liquidity Units in the Separate Account, or whether to impose different Trigger Points during or after the Start Up Period. With respect to TIAA's ongoing ownership of Liquidity Units, both during and after the Start Up Period, the duties of the Independent Fiduciary include: (a) establishing a method to implement any changes to the Trigger Point; (b) adjusting the percentage which serves as the Trigger Point; (c) approving or requiring any adjustment of TIAA's ownership interest in the Separate Account in the form of Liquidity Units; and (d) approving the manner in which TIAA' participation in the Separate Account in excess of the Trigger Point is effected.

In the event the Trigger Point is reached, during or after the Start Up Period, the Independent Fiduciary is authorized to sell assets of the Separate Account, if in the opinion of the Independent Fiduciary such sales are desirable at the Trigger Point to reduce TIAA's ownership of Liquidity Units in the Separate Account. In this regard, the Independent Fiduciary is responsible for: (a) participating in the planning of any program of sales of the assets of the Separate Account, including the selection of Properties to be sold; (b) approving the order which causes the sale of any of the Properties; (c) establishing the guidelines to be allowed in making such sales; and (d) approving of such sales. It is represented that the opinion of the Independent Fiduciary controls in any conflict with TIAA over the sale of any of the Properties, and that the Independent Fiduciary is authorized to request appraisals upon the sale of any of the Properties in the Separate Account.

In addition to overseeing the redemption of Seed Money Units, controlling the Trigger Point, and managing the liquidity feature offered by TIAA's General Account to the Separate Account, the Independent Fiduciary is responsible for the activity of the Separate Account in the event of

its termination and during the subsequent liquidation of its assets. During the Wind Down, the Independent Fiduciary must supervise the operation of the Separate Account. It is represented that in the event of termination of the Separate Account, the Independent Fiduciary is responsible for approving all sales of Properties in the Separate Account, and will do so, only if in the opinion of the Independent Fiduciary such sales are desirable to facilitate the Wind Down. In this regard, the Independent Fiduciary must review any program of sales of the assets of the Separate Account, including the selection of Properties to be sold, and the guidelines to be followed in making such sales. It is represented that the Independent Fiduciary also is responsible for approving the order in which the Properties are sold, approving the price for such Properties, and determining the timing of the disposition of such Properties.

It is represented that in addition to performing the duties described herein, the Independent Fiduciary, acting on behalf of Participants (and, if applicable, Plans) invested in the Separate Account, is responsible for reviewing any other transactions or matters involving the Separate Account that are submitted to the Independent Fiduciary by TIAA, and determining whether such transactions are fair to the Separate Account and in the best interest of such account. In order to fulfill all of its duties, it is represented that the Independent Fiduciaries is responsible for developing formats for periodic reports of information on the Separate Account to be provided by TIAA.

12. The Independent Fiduciary must be qualified to act on behalf of the Plans with respect to this proposed exemption. In this regard, the Independent Fiduciary must be an established firm with substantial expertise in real estate matters, such as the acquisition, management, investment valuation, financing, and disposition of real estate.

Such Independent Fiduciary appointed for the Separate Account must be independent of TIAA or its Affiliates. In this regard, the Independent Fiduciary cannot have an ownership interest in TIAA or its Affiliates, and cannot be a fiduciary with respect to any of the Plans that participate in the Separate Account. Further, the Independent Fiduciary may not receive from TIAA or its Affiliates more than 5 percent (5%) of such Independent Fiduciary's annual gross income from all sources, including amounts received for services rendered to the Separate Account during its term as Independent Fiduciary. The Independent Fiduciary must also agree that during its term as Independent Fiduciary (and for six (6) months after the conclusion of its term as Independent Fiduciary), it will not: (a) acquire property from, sell any property to, borrow money from, or lend money to TIAA, its Affiliates, TIAA's General Account, or any separate account over which TIAA or its Affiliates have any investment control, including the Separate Account; (b) participate in any joint venture with TIAA, its Affiliates, TIAA's General Account, or any separate account maintained by TIAA or its Affiliates, including the Separate Account, or participate, either alone or together with a joint venture partner, in the ownership of the Properties with TIAA, its Affiliates, TIAA's General Account, or any separate account maintained by TIAA or its Affiliates, including the Separate Account; or (c) negotiate any such transactions.

It is represented that TIAA has the discretion to appoint the Independent Fiduciary. The Board of Trustees of TIAA established on December 19, 1995, a special subcommittee (the Subcommittee) of the Mortgage Committee. The Mortgage Committee is one of several standing committees of the Board of Trustees of TIAA which traditionally has been responsible for supervising the investment of funds of TIAA's General Account in real estate mortgages and real estate. The Subcommittee is composed exclusively of trustees who are independent outside members of the Mortgage Committee. In this regard, it is represented that the Subcommittee consists of five (5) individuals at least two (2) of which are employees of institutions participating in the TIAA annuity funding system and three (3) of which are otherwise independent of TIAA.

It is represented that TIAA has contractually bound itself to rely solely on the judgment of the Subcommittee with respect to the removal of the Independent Fiduciary ''with'' or ''without cause,'' under the terms of the Agreement between TIAA and the current Independent Fiduciary. It is represented that the current Independent Fiduciary, was appointed for an initial term of five (5) years and thereafter may be reappointed for successive terms of three (3) years each. It is represented that the Subcommittee may remove the Independent Fiduciary, ''without cause,'' only at the expiration of the initial 5-year term or at the expiration of any successive 3-year term. In this regard, the Independent Fiduciary is subject to removal ''with'' or ''without cause,'' if a majority of the Subcommittee members (i.e. three of the five members) vote in favor of such removal, following receipt by the Subcommittee of a report on the Independent Fiduciary's activities respecting the Separate Account.

It is represented that the Board of Trustees has delegated to the Subcommittee alone the power to renew the Independent Fiduciary agreement. In this regard, any agreement with the Independent Fiduciary will not be renewed, if 40 percent (40%) of the Subcommittee members (*i.e.* two of the five members) disapprove of such renewal.

In the event the Independent Fiduciary is removed or the agreement with Independent Fiduciary is not renewed, it is represented that the Board of Trustees of TIAA will delegate to the Subcommittee the authority to select and appoint any successor Independent Fiduciary for the Separate Account. In this regard, it is represented that any successor Independent Fiduciary will perform all of the duties of Independent Fiduciary and comply with all of the conditions, as described herein.

The Independent Fiduciary may resign upon providing TIAA with 180 days' advance written notice of such resignation. In the event of resignation, it is represented that the Board of Trustees of TIAA will delegate to the Subcommittee the authority to select and appoint any successor Independent Fiduciary for the Separate Account, who will perform all of the duties of Independent Fiduciary and comply with all of the conditions, as described herein.

Prior to investing in the Separate Account, it is represented that each prospective participant (and, if applicable, each fiduciary of prospective participating plans) has been and will be provided with information regarding the role of the Independent Fiduciary with respect to the Separate Account and has been and will be advised of the identity of the party appointed to serve as the Independent Fiduciary. In this regard, a decision by a Fiduciary or Plan Sponsor or by a participant in a SRA or IRA to elect to add the Separate Account as an additional pension funding option and to participate in the Separate Account, after full disclosure by TIAA, constitutes approval and acceptance by such Fiduciary or Plan Sponsor or such participant in a SRA or IRA of such Independent Fiduciary.

Further, it is represented that in the event the Independent Fiduciary were to change, TIAA would within thirty (30) days of such change supplement the prospectus of the Separate Account

and distribute such prospectus to participating institutions and to participants who express an interest in the Separate Account or who transfer money into the Separate Account.

13. As of May 17, 1995, TIAA appointed Institutional Property Consultants, Inc. (IPC) to serve as the Independent Fiduciary on behalf of the Separate Account. Thereafter, TIAA and IPC entered into an agreement (the Agreement) for a term of five (5) years which describes the conditions of such appointment and the duties performed by each party in accordance with the requirements of the Act. It is represented that on June 9, 1995, IPC accepted and executed the Agreement.

IPC is a sub-Chapter S Corporation, 100% owned by its senior professionals, which provides professional real estate counseling services nationwide. In this regard, it is represented that IPC maintains a principal office in San Diego, California, and a secondary office in Hudson, Wisconsin. It is further represented that IPC is a Registered Investment Advisor under the Investment Advisors Act of 1940 and qualifies as a Women Business Enterprise.

IPC provides services for business, financial, and non-profit institutions. In this regard, IPC clients are tax-exempt institutions, including public pension funds, corporate funds, Taft Hartley funds, and retirement funds. It is represented that the total plan assets of the IPC client group are approximately $250 billion, with real estate investments comprising $12 billion. Of IPC's corporate and Taft Hartley clients, approximately 10 percent (10%), calculated on the basis of total plan assets, are subject to the Act.

It is represented that IPC has considerable background, qualifications, and expertise in order to perform Independent Fiduciary services for the Separate Account. In this regard, IPC has represented to TIAA that it has at least five (5) years of experience with respect to commercial real estate investments.

It is represented that IPC is independent of TIAA and its Affiliates. In this regard, it is represented that gross income received by IPC (or by any partnership or corporation of which IPC is a 10 percent (10%) or more partner or shareholder) from TIAA and its Affiliates for any fiscal year ending during the term of the Agreement does not exceed 5 percent (5%) of its annual gross income from all sources for the preceding fiscal years. Such income limitation includes the fees for services rendered to the Separate Account by IPC for serving as the Independent Fiduciary.

It is represented that IPC has acknowledged in writing that it has assumed responsibility, as a fiduciary under the Act, with regard to the Separate Account, particularly on behalf of the Participants (and, if applicable, the Plans) who participate in the Separate Account. It is represented that IPC has undertaken to perform for the exclusive benefit for the individual Participants in the Plans and their beneficiaries the duties of the Independent fiduciary, as described in TIAA's Application for a Prohibited Transaction Exemption and in subsequent supplemental information submitted by TIAA, and as described herein.

On September 13, 1995, IPC provided the Department with a report on its activities to date with respect to the Separate Account. As of that date, IPC reported that the Separate Account was in its Start-Up Period, no Properties had been acquired by the Separate Account, and no Units had been issued to the public. Nevertheless, subsequent to its appointment as Independent Fiduciary, it is represented that TIAA furnished IPC with detailed information on the expected operation of the Separate Account. Further, IPC has engaged in numerous discussions with the senior TIAA real estate staff involved in establishing and managing the Separate Account. In this regard, IPC represents that to date, it has reviewed and approved the investment guidelines established by TIAA for the Separate Account and that TIAA and IPC are currently working out specific procedures to ensure the flow, on a weekly and monthly basis, of all the information, including real estate valuations, that IPC deems necessary to fulfill its fiduciary obligation to the Separate Account.

With respect to valuation, IPC has reviewed, and approved the valuation procedures of the Separate Account. In this regard, IPC represents that it understands the need for independence in the valuation structure and has maintained an independent position with respect to TIAA and its staff. Because no Properties had, as of September 13, 1995, been acquired by the Separate Account, no independent appraisers had been appointed. IPC has been provided with a list of appraisers that TIAA intends to use for valuation purposes, and IPC has approved such list. In carrying out its responsibility as Independent Fiduciary once Properties are acquired by the Separate Account, IPC will oversee the appraisal function conducted by TIAA and by outside independent appraisers and will, if it deems necessary, conduct surprise visits of Separate Account Properties. Further, IPC has authority to require an independent appraisal whenever it deems it necessary to do so. While TIAA would hire the independent appraiser in that circumstance, such independent appraiser would initially be chosen by IPC and will be deemed approved, if TIAA does not object within fourteen (14) days thereof.

IPC expects that the structuring of the relationship between TIAA, as investment manager, and IPC, as Independent Fiduciary, protects against the manipulation of the Separate Account by TIAA. Further, IPC represented that it will maintain a written record of its monitoring of appraisals and valuation of Properties acquired by the Separate Account. In this regard, IPC believes that the monitoring process is protective of the interests of Participants (and, if applicable, of Plans) in the Separate Account.

14. It is represented that during the operation of the Separate Account, no member of the Board of Trustees of TIAA or of CREF has had or will have a role in the selection of the Separate Account as a funding vehicle for any of the Plans or has served or will serve as a Fiduciary to any Plan participating in TIAA investment funding options. In this regard, Fiduciaries of the Plans unrelated to TIAA, or in the case of a SRA or an IRA, participants unrelated to TIAA who participate in such SRA or IRA, have made and will make the decision to invest in the Separate Account.[13]

Before making the decision to invest in the Separate Account, TIAA is required to make certain disclosures to prospective investors in the Separate Account. Such disclosures include the information described above in Section III(c) of this proposed exemption. TIAA proposes to meet these disclosure obligations, by distributing a prospectus of the Separate Account, under the Securities Act of 1933. It is represented that the prospectus contains, among other things, a list of all the Properties in the Separate Account and their values, detailed audited financial information, and information about the operation and investment objectives of the Separate Account. Specifically, TIAA represents that prior to the investment in the Separate Account by any Participants (and, if applicable, by

[13] TIAA has not requested and the Department is not proposing, herein, any relief for the selection of the Separate Account as a funding vehicle for any of the Plans for which TIAA or CREF issue annuity contracts.

any Plans), it has furnished and will furnish, either in a prospectus of the Separate Account or in ancillary materials, the disclosures, as required pursuant to Section III(c) of this proposed exemption, to any participant who expresses an interest in the Separate Account, all Plan Sponsors and Fiduciaries of Plans which participate in the Separate Account, and in the case of a contract between TIAA and a SRA or an IRA, to the participant in such SRA or IRA. In the event a Participant transfers money to the Separate Account before receiving a prospectus, it is represented that such a prospectus is sent to him concurrently with the required confirmation statement.

With respect to disclosure on an on-going basis to Fiduciaries of the Plans or in the case of a contract between TIAA and an SRA or an IRA, to the participant in such SRA or IRA, it is represented that TIAA under the Securities Act of 1933 is required to update information set forth in the prospectus on an annual basis. In addition, the prospectus is updated as the Separate Account acquires or sells Properties; provided such acquisition or sale has a material impact on the Separate Account. It is represented that each Participant and all of the Plan Sponsors have received and will receive annually an updated prospectus and such updated information has and will become part of the prospectus sent to potential investors in the Separate Account.

The Separate Account is required to file quarterly and other financial reports with the SEC, pursuant to the Securities and Exchange Act of 1934. It is represented that these reports are available directly from the SEC. In addition, TIAA represents that it includes, either as part of these financial reports filed with the SEC, or as a supplemental schedule, a list of the Properties in the Separate Account and their market values. It is represented that TIAA has made and will make such quarterly and other financial reports, including the supplemental schedule, available to Plan Sponsors and Participants in the Separate Account upon request.

It is represented that TIAA has sent and will send to Participants written information relating the value of the Units in the Separate Account and information on the quarterly return for the Separate Account in quarterly confirmation statements which are mailed within five (5) to ten (10) days after the end of a calendar quarter. Further, TIAA has published and will publish in a TIAA publication, which is provided at least quarterly to all Plan Sponsors and Fiduciaries of the Plans, a written notice that the quarterly financial reports (including the list of Properties and their current values) are available on request. It is represented that TIAA intends to establish an 800 number telephone system that allows Fiduciaries and Participants access 24 hours per day every day to information about the current market value of the Units in the Separate Account. Starting with the quarter ending December 31, 1995, it is represented that the 800 number telephone system will also include a quarterly valuation update on the investment performance of the Separate Account. It is represented that once established TIAA will publish the 800 telephone number in its quarterly publication in order to enable Plan Sponsors and Fiduciaries of the Plan to easily get prompt delivery of quarterly financial reports upon request.

In addition, upon publication of this Notice and, if this proposed exemption is granted, upon publication of the Grant, a copy of such Notice and such Grant, as each appears in the Federal Register, will be provided to the Fiduciaries of the Plans, to Plan Sponsors, to the sponsors of any SRA, and to participants in any TIAA IRA which were invested in the Separate Account and have withdrawn or are at the time invested in the Separate Account. Further, if subsequent to the publication of the Grant, any fiduciaries of plans, plan sponsors, the sponsors of any SRA, or the participants in any TIAA IRA chose to elect to add the Separate Account as an additional pension funding option to enable such participants (or, if applicable plans) to invest in the Separate Account, the fiduciaries of such plans, plan sponsors, the sponsors of such SRA, or the participants in any such IRA will be provided, at least thirty (30) days prior to investment in the Separate Account, with a copy of both the Notice and the Grant, as such documents appeared upon publication in the Federal Register.

15. In summary, TIAA, the applicant, represents that the proposed transactions meet the statutory criteria of section 408(a) of the Act because:

(a) The decision to elect to add the Separate Account as an additional pension funding option for the Plans which invest in the Separate Account has been and is made by the Fiduciaries of such Plans or in the case of a contract between TIAA and a SRA or an IRA, the decision to elect to add the Separate Account as an additional pension funding option to a SRA or and IRA has been and is made by the participant in such SRA or IRA;

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

(c) Prior to the investment of funds in the Separate Account by any Participants (and, if applicable, by any of the Plans) which participate in the Separate Account, TIAA has furnished and will furnish certain disclosures to the Fiduciaries of such Plans and, in the case of a contract between TIAA and a SRA or an IRA, to the participant in such SRA or IRA;

(d) TIAA periodically has made and will make available information which TIAA reasonably believes to be necessary or which the Fiduciaries of the Plans, or in the case of a contract between TIAA and a SRA or an IRA, which the participant in such SRA or IRA may reasonably request in order to determine whether any Participant in such Plan, or participant in such SRA or IRA should buy, sell, or continue to hold Units in the Separate Account;

(e) the Independent Fiduciary was appointed prior to or coincident with the start of operations of the Separate Account (and is subject to renewal and removal described herein) and is responsible, among other things, for reviewing and approving the value of the Units and the assets of the Separate Account, establishing the Trigger Point, and supervising the operation of the Separate Account during the Wind Down of such Separate Account;

(f) Neither the Independent Fiduciary, TIAA, any Affiliate of TIAA, TIAA's General Account, nor any other separate account over which TIAA or its Affiliates has any investment control:

(i) has participated or will participate in any joint venture with the Separate Account, or in the ownership of the Properties of the Separate Account either alone or together with a joint venture partner;

(ii) has borrowed or will borrow any funds from the Separate Account or has lent or will lend any funds to the Separate Account in order to leverage any purchase of any of the Properties, or otherwise; or

(iii) has acquired or will acquire any Properties from or has sold or will sell any Properties to the Separate Account;

(g) The liquidation of any Accumulation Units held by a Participant or participating Plan, for which a withdrawal request is pending, has not been and will not be delayed by reason of the redemption of Seed Money Units held by TIAA, and TIAA has advanced and will always advance funds by purchasing Liquidity Units to fund Participants' or Plans' withdrawal requests on a timely basis; and

(h) TIAA will maintain for a period of six (6) years from the date of any transaction, the records necessary to enable certain persons to determine whether the conditions of this exemption have been met.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include, but are not limited to, the Fiduciaries of the Plans which have in the past invested, are invested, and may invest in the Separate Account, the individual Participants in such Plans, and in the case of a contract between TIAA and an IRA or SRA, to the participants in any such IRA or SRA which have in the past invested, are invested, and may invest in the Separate Account. Because of the large number of potentially interested parties and because TIAA does not know which participants (or, if applicable, which plans) may choose from time to time in the future to invest in the Separate Account, TIAA maintains that it is not possible to provide a separate copy of the Notice to each participant (or, if applicable, to each plan) which therefore may be affected by the requested exemption. Accordingly, the Department has determined that the only practical form of providing notice to interested persons is the distribution by TIAA of a copy of the Notice, as published in the Federal Register, together with a supplemental statement, in the form set forth in the Department's regulations under 29 CFR 2570.43(b)(2), to the Fiduciaries of any Plans, to the Plan Sponsors, to the sponsors of any SRA, and to the participants any TIAA IRA which have in the past or are invested in the Separate Account at the time the Notice is published in the Federal Register. Distribution of the Notice will be effected by first-class mail, postage prepaid, within fifteen (15) days of the date of publication of the Notice in the Federal Register.

Further, if this proposed exemption is granted, the Fiduciaries of the Plans, the Plan Sponsors, the sponsors of any SRA, and the participants in any TIAA IRA which have elected to add the Separate Account as an additional pension funding option and which have been or are invested in the Separate Account shall receive upon publication of the Grant, a copy of such Grant, as it appears in the Federal Register. If subsequent to the publication of the Grant, any fiduciaries of plans, the sponsors of plans, the sponsors of any SRA, or the participants in any TIAA IRA choose to elect to add the Separate Account as an additional pension funding option to enable such plans to invest in the Separate Account, the fiduciaries of such plans, the sponsors of such plans, the sponsors of such SRA, and the participants in any such IRA shall be provided, at least thirty (30) days prior to investment in the Separate Account, with a copy of both the Notice and the Grant, as such documents appeared upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Sprague Electric Company Retirement and Savings Plan (the Plan), Located in Cincinnati, Ohio

[Application No. D–10049]

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) 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 proposed cash sale (the Sale) by the Plan of its 34.2 interest in both the Group Annuity Contract No. CG0128203A (ELIC Contract) issued by Executive Life Insurance Company (ELIC) and the Group Annuity Contract No. GA–4724 (MBL Contract) issued by Mutual Benefit Life Insurance Company (MBL) to American Annuity Group, Inc., the current sponsor of the Plan (the Employer), and a party in interest with respect to the Plan; provided that the following conditions are met: (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss and incurs no expense from the Sale; (3) the Plan receives as consideration for the Sale the greater of either (a) 34.2 percent of the fair market value of the ELIC Contract and the MBL Contract, respectively, as determined on the date of the Sale, or (b) 34.2 percent of the accumulated book value of the ELIC Contract and the MBL Contract, respectively, as set forth in paragraph 4 of this Notice, with such determinations as to the consideration for the Sale to be made by the State Street Bank and Trust Company, the Plan fiduciary.

Summary of Facts and Representations

1. The Employer, a Delaware corporation, the current sponsor of the Plan with its principal offices located in Cincinnati, Ohio, is a holding company whose primary asset is the capital stock of Great American Life Insurance Company (GALIC). GALIC was incorporated in New Jersey in 1959, and redomiciled as an Ohio corporation in 1982. Prior to 1976, GALIC primarily wrote whole-life, term-life, and accident and health insurance policies; and in 1976, GALIC entered the tax-deferred annuity business.

The Employer also is the successor corporation to the STI Group, Inc. (STI), which was formerly known as Sprague Technologies, Inc. In May 1987 STI was formed for the purpose of divesting itself of the electronic components businesses. In two transactions on December 19, 1990, and November 14, 1991, STI disposed of substantially all of its assets, including Sprague Electric Company, a wholly-owned subsidiary, and the original sponsor of the Plan, to Allegro Microsystems, Inc. and Vishay Intertechnology, Inc.

2. The Plan is a defined contribution plan intended to be tax-qualified under sections 401(a) and 401(k) of the Code. It has a total of 1,396 participants and beneficiaries, as of May 22, 1995, and total assets of $1,548,598.20, as of May 31, 1995. As provided by Plan documents and instruments, the Board of Directors of the sponsoring employer from time to time appointed a committee (the Committee) from its employees to administer the Plan. The duties of the Committee included, *inter alia,* selecting the investment funds or vehicles used by the Plan participants when self-directing investments for their respective Plan accounts, and appointing a trustee, accountants, investment advisors, and legal counsel for the Plan. The assets of the Plan are held in trust and invested in accordance with a Master Trust Agreement executed by and between the sponsoring employer of the Plan and State Street Bank and Trust Company (the Trustee), a Massachusetts trust company, with its principal offices located in Boston, Massachusetts. The Trustee is represented by the applicant to not only hold in trust the Plan assets, but is the investment manager for the Plan, overseeing the establishment and maintenance of investments and disbursements of the respective participant accounts in the Plan.

The Plan provided for investments in several different investment vehicles or funds, which included one designated as the Selection Fund. The Selection Fund was invested in several guaranteed contracts, including the ELIC Contract and the MBL Contract. The ELIC Contract was issued to the Trustee of the Plan, as of February 10,

1988, guaranteeing an interest rate yield of 7.90 percent net, and maturing on June 30, 1992. The MBL Contract was issued to the Trustee of the Plan and is dated July 1, 1985, and provided a guaranteed interest rate of 8.65 percent through June 30, 1988, and 8.30 percent from July 1, 1988, through the maturity date of June 30, 1992. After STI divested itself of its electronics business in two transactions on December 19, 1990, and November 14, 1991, respectively, the applicant represents that on January 23, 1991, the Plan's Selection Fund spun-off 32.6 percent of its interest in the ELIC Contract and MBL Contract to the Allegro Plan, and on May 15, 1992, 33.2 percent of its interest in the ELIC Contract and MBL Contract to the Vishay Plan.[14] The transfer of these parital interests was done to allow certain former employees of the Employer and former participants of the Plan to transfer their accounts in the Selection Fund of the Plan to employee benefit plans sponsored by their new employers.

As of December 31, 1992, the assets in the Plan totalled $2,860,686.94, of which the ELIC Contract represented 3.2 percent and involved approximately 1,131 participants, and the MBL Contract represented 2.09 percent of the total assets and involved approximately 1,074 participants, Also, as of December 31, 1992, the book value of the Plan's 34.2 percent interest in the ELIC Contract was $91,514.88 and the book value of the Plan's 34.2 percent interest in the MBL Contract was $59,686.08. The book value of each contract was determined from the total deposits made to each contract, plus the interest earned, and less any withdrawals or distributions from each contract.

On May 5, 1995, the Plan filed an application with the Internal Revenue Service requesting a favorable determination letter with respect to terminating the Plan. The Plan is being terminated because no active employees of the Employer remain as participants in the Plan. Other than the partial investment (34.2 percent) in the ELIC Contract and the MBL Contract, respectively, all assets of the Plan are now invested in short-term funds to provide liquidity for distribution of its assets to Plan participants and beneficiaries when the Plan terminates.

[14] The Allegro Plan is sponsored by Allegro Microsystems, Inc., a Delaware corporation located in Worcester, Massachusetts, which is a wholly-owned subsidiary of Sanken Electric Co., Ltd., a Japanese corporation located in Saitama-ken, Japan. The Vishay Plan is sponsored by Vishay Intertechnology, Inc., a Delaware corporation located in Malvern, Pennsylvania.

3. On April 11, 1991, the California Department of Insurance obtained a court order from the Superior Court of California for the County of Los Angeles placing ELIC under conservatorship and freezing as of March 31, 1991, the value of the ELIC Contract and any interest payments thereunder.[15] The following month First Executive Corporation, a Delaware corporation, which wholly owns ELIC, filed for reorganization under Chapter 11 of the Bankruptcy Code.

On August 13, 1993, the Superior Court of California approved a Rehabilitation Plan of the Department of Insurance for California with respect to ELIC and its successor, Aurora National Life Insurance Company (Aurora), a California corporation. The Rehabilitation Plan provided two options to every contract-holder with ELIC. Under the first option the contract-holder could continue coverage through Aurora. The second option provides a choice to opt-out of the Rehabilitation Plan and receive the book value of the ELIC Contract as of April 11, 1991, which includes interest to April 11, 1991, computed at the contract rate, and thereafter at a specified reduced rate of return over an extended period of time.

In 1994, the Trustee, as investment manager for the Plan, decided to have the Plan opt-out of the ELIC Rehabilitation Plan. To reach this decision the Trustee conducted a credit review of Aurora and completed an economic analysis of the option provisions. Also, consideration was given to other factors, such as, priority legislation in California, the status of a new contract with Aurora in any liquidation proceedings in the future, and the ability of Aurora to meet cash flow requirements when its contracts mature.

On July 16, 1991, the New Jersey Department of Insurance took control of MBL pursuant to an order of the Superior Court of New Jersey. The court's order imposed a moratorium on cash withdrawals from the MBL Contract.[16] On November 10, 1993, the Superior Court of New Jersey approved a Rehabilitation Plan for MBL which provided two options to the Plan. The first option allowed the holders of the MBL Contract to opt-in the Rehabilitation Plan, allowing the Plan to receive the accumulated book value of the MBL Contract (which represents the deposits made to MBL by the Plan), less distributions, and plus interest earned. The interest will be calculated at the guaranteed rate as provided by the MBL Contract, which is 8.65 percent through June 30, 1988, and 8.30 percent from July 1, 1988, through maturity date of June 30, 1992, and thereafter the rate prescribed by the Rehabilitation Plan of 5.75 percent in 1992, 5.25 percent in 1993, 5.10 percent in 1994, 5.10 percent in 1995, and 5.10 percent through 1996.

The second option allowed the holders of the MBL Contract to opt-out of the Rehabilitation Plan and receive on April 29, 1994, 55 percent of the MBL Contract value as of July 16, 1991, in a lump sum and interest at the rate of 3.50 percent from July 16, 1991 through April 29, 1994.

The Trustee of the plan elected to have the Plan opt-in the MBL Rehabilitation Plan.

There have been quarterly distributions from the MBL Contract in the amount of 0.25 percent of the contract balance for the months of August 1991 through October 1991, 1.375 percent for November 1991 through September 1992, and 0.375 percent for October 1992 through December 1992.

4. The Employer seeks an exemption from the prohibited transaction provisions of the Act so that the Plan may be terminated and the cash received by the Plan from the proposed Sale may be distributed to Plan participants and beneficiaries whose respective accounts remain invested in the ELIC Contract and the MBL Contract. The Employer proposes to pay the Trustee of the Plan cash in an amount equal to the greater of either the fair market value of the Plan's 34.2 percent interest in the ELIC Contract, as determined by the Trustee on the date of the Sale, or an amount equal to 34.2 percent of the Plan's deposits under the ELIC Contract, plus the 7.90 percent net interest yield guaranteed through the maturity date of June 30, 1992, of the ELIC Contract, and thereafter at an interest rate equal to the interest yield of the ''Yield Enhanced STIF Interest Checking Rate Fund'', which is sponsored by the Trustee, and invests in

[15] The Department notes that the decision to acquire and hold the ELIC Contract is governed by the fiduciary responsibility provisions of Part 4, Subtitle B, Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the ELIC Contract by the Plan.

[16] The Department notes that the decision to acquire and hold the MBL Contract is governed by fiduciary responsibility provisions of Part 4, Subtitle B, Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the MBL Contract by the Plan.

CDs, Time Deposits, and Short Term Bonds.[17]

Any proceeds received by the Plan from the ELIC Contract on or before the date of the Sale will be subtracted from the consideration for the Sale.

The Employer proposes also to purchase from the Trustee of the Plan in a one-time, cash transaction the 34.2 percent interest in the MBL Contract owned by the Plan. The consideration for the partial interest in the MBL Contract will be the greater of either the fair market value of the 34.2 percent interest in the MBL Contract as determined by the Trustee on the date of the Sale, or 34.2 percent of the amount of the funds deposited with MBL, plus interest credited to the date of the Sale. This interest yield will be determined by the Trustee by computing the guaranteed rate under the terms of the MBL Contract during the period the terms of the MBL Contract provided accrual, plus, thereafter through the date of the Sale, at the rate of interest provided for under the Rehabilitation Plan for MBL, described above in paragraph 3. Any proceeds received by the Plan from MBL on or before the date of Sale will be subtracted from the consideration paid by the Employer for the Plan's 34.2 percent interest in the MBL Contract.

All expenses incurred from the Sale of both the ELIC Contract and the MBL Contract will be paid by the Employer.

The applicant and the Trustee both represent that the proposed Sale is in the best interests of the Plan and its participants and beneficiaries and is protective of the rights of the participants and beneficiaries. It is represented that the Sale will permit the Plan to avoid the risks associated with continuing to hold the ELIC Contract and the MBL Contract and will permit the Plan to complete its termination. The Trustee further represents that in its capacity of independent fiduciary for the Plan, it will calculate the values of both the ELIC Contract and MBL Contract so that the consideration for the Sale will be the greater of either the fair market value or the alternatives as stated above.

5. In summary, the applicant represents that the proposed exemption will satisfy the criteria for an exemption under section 408(a) of the Act because (a) the proposed transaction is a one-time transaction for cash; (b) the proposed transaction will enable the plan and its participants and beneficiaries to avoid any risks associated with the continue holding of the ELIC Contract and the MBL Contract and permit the termination of the Plan; (c) the Plan will receive the greater of either the fair market value of 34.2 percent interest in the ELIC Contract and MBL Contract, respectively, or the accumulated book value as determined by the Trustee and described above in paragraph 3, for the 34.2 percent interest in the ELIC Contract and for the 34.2 interest in the MBL Contract, respectively; and (d) the Plan will not incur any expense or loss from the proposed transaction.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Buchanan Broadcasting Co., Inc. Profit Sharing Plan and Trust (the Plan), Located in Birmingham, AL

[Application Nos. D–10133 and D–10134]

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 proposed leasing of certain office space in a building (the Property) by the individual account of Robert M. Buchanan, Jr. (the Account) in the Plan to Buchanan Broadcasting Co., Inc. (Buchanan Broadcasting) and to Westwood Square, Ltd. (Westwood Square), both parties in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The terms and conditions of the leases are and continue to be at least as favorable to the Account as those the Account could obtain in comparable arm's length transactions with unrelated parties;

(b) The rent charged by the Account under the leases is and continues to be no less than the fair market rental value of the Property, as established every three years by the independent property manager;

(c) At all times, the fair market value of the leased premises represents no more than 25 percent of the total assets of the Account;

(d) Mr. Buchanan is the only participant of the Plan to be affected by the proposed transactions; and

(e) Within 90 days of the publication in the Federal Register of a notice granting this proposed exemption, both Buchanan Broadcasting and Westwood Square file Form 5330 with the Internal Revenue Service (the Service) and pay all excise taxes applicable under section 4975(a) of the Code that are due by reason of certain prior prohibited lease transactions.

Summary of Facts and Representations

1. The Plan is a profit sharing plan sponsored by Buchanan Broadcasting. Buchanan Broadcasting, a Mississippi corporation, is engaged in the business of radio broadcasting and is located in Jackson, Mississippi. The Plan, which was established on January 1, 1995, is as yet completely unfunded. The Plan provides for individually directed accounts and is to have approximately 4 participants and beneficiaries. It is represented that Mr. Buchanan will roll over to the Account all of his assets in the Union Health Care, Inc. d/b/a Laird Hospital Profit Sharing Plan and Trust (the Laird Plan), which is sponsored by his former employer. As of March 31, 1994, the Laird Plan had 411 participants and beneficiaries and total assets of $3,766,262. As of that date, Mr. Buchanan's Laird Plan account had total assets of $1,433,609. The trustee of both the Plan and the Laird Plan is J. Thomas Murfee IV, an independent third party.

2. Among Mr. Buchanan's assets in the Laird Plan to be rolled over to the Account is the Property. The Property consists of a two-story commercial office building located at 1985 Lakeland Drive, Jackson, Mississippi. The applicant represents that the Property is not near any other real property personally owned or used by Mr. Buchanan. The applicant further represents that the Property is not subject to any debt.

The Property is currently being leased to seven tenants. Among these tenants are Buchanan Broadcasting and Westwood Square. Westwood Square is a partnership organized for purposes of investing in commercial real estate. In light of the fact that Mr. Buchanan is the sole owner of Buchanan Broadcasting and a limited partner (having a 99% interest) in Westwood Square, the applicant acknowledges that the leases of office space by Mr. Buchanan's Laird Plan account to Buchanan Broadcasting and to Westwood Square constitute violations of the prohibited transaction provisions of the Act. Further details concerning these prohibited leases and the steps taken by the applicant to correct them are provided in paragraph 4.

[17] The Fund, which is sponsored by the Trustee had an interest rate of 3.85 percent for 1992, 3.42 percent for 1993, 4.08 percent for 1994, 5.88 percent for 1995.

3. The fair market rental value of the Property was initially established by the independent property manager, Chad D. Clark. Mr. Clark is president of Chad D. Clark, Commercial Properties, a real estate brokerage firm. Taking into account other comparable rentals and the condition, location, and features of the Property, Mr. Clark concluded that the fair market rental value of the Property was the annual rate of $7 per square foot. Mr. Clark twice later updated his appraisal, on July 20, 1995 and again on January 18, 1996, and concluded that the fair market rental value of the Property remained unchanged.

The Property was appraised by Robert L. Lloyd, SRA, an independent general real estate appraiser certified in the State of Mississippi. Mr. Lloyd employed all three basic valuation methodologies utilized in the appraisal field but gave greatest credence to the income approach, due to the nature of the Property's use, along with consideration of the sales comparison approach. He concluded that the fair market value of the Property, as of September 9, 1994, was $245,000. Mr. Lloyd also concluded as of that date, that the Property, with its net rentable area of 8,061 square feet, had a fair market rental value of $7 per square foot per annum, thus corroborating Mr. Clark's valuation. In arriving at this figure, Mr. Lloyd took into account the occupancy levels of nearby competing buildings, the Property's past leasing history, and the average quality of the improvements.

4. Mr. Buchanan's Laird Plan account first began leasing approximately 300 square feet of office space in the Property to Buchanan Broadcasting on January 1, 1994. On December 1, 1994, an additional 1,117 square feet of office space was leased to Buchanan Broadcasting, for a total of approximately 1,417 square feet. On December 1, 1994, Mr. Buchanan's Laird Plan account also began leasing approximately 846 square feet of office space in the Property to Westwood Square. The applicant represents that Buchanan Broadcasting and Westwood Square have each paid rent at the annual rate of $7 per square foot (or $9,919/yr. and $5,922/yr., respectively), since the inception of their leases.

The applicant represents that the then trustee of the Laird Plan Charles E. Gibson III, who negotiated the leases on behalf of Mr. Buchanan's Laird Plan account, was not aware that such leasing was in violation of the Act. Both Buchanan Broadcasting and Westwood Square have since filed Form 5330 with the Service and paid all excise taxes applicable under section 4975(a) of the Code that were due for the years 1994–1995 by reason of these prior prohibited transactions with the Laird Plan. It is represented that within 90 days of the publication in the Federal Register of a notice granting this proposed exemption, both Buchanan Broadcasting and Westwood Square will pay any additional excise taxes that are still outstanding.

5. The applicant now requests an exemption to lease office space in the Property by the Account to Buchanan Broadcasting and to Westwood Square, after rolling over all of Mr. Buchanan's assets in the Laird Plan to the Account. Both of these entities are employers whose employees are covered by the Plan. The proposed leases each provide for a primary term of 10 years, which may be extended at the option of the lessor for a period of five years. Buchanan Broadcasting and Westwood Square will each pay rent to the Account at the annual rate of $7 per square foot (or $9,919/yr. and $5,922/yr., respectively), which is the fair market rental value of the Property, with the rent to be adjusted (upwards only) every three years.

Mr. Clark, the independent property manager, and Mr. Murfee, the Plan trustee, have both reviewed the terms and conditions of the leases on behalf of the Account. Mr. Clark represents that such terms and conditions are at least as favorable to the Account as those the Account could obtain in comparable arm's length transactions for commercial property in Jackson, Mississippi. Mr. Murfee represents that he believes the leases are in the best interests of the Account and that he will monitor and enforce compliance with the terms and conditions of the leases and of the exemption for the duration of the leases.

The applicant himself represents that the leases are in the best interests of the Account because they will maximize the cash flow and earnings from the Property. Further, the costs of this exemption application will be borne by Buchanan Broadcasting and Westwood Square.

6. 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: (a) the terms and conditions of the leases will be at least as favorable to the Account as those the Account could obtain in comparable arm's length transactions with unrelated parties; (b) the rent charged by the Account under the leases will be no less than the fair market rental value of the Property, as established every three years by the independent property manager; (c) at all times, the fair market value of the leased premises will represent no more than 25 percent of the total assets of the Account; (d) Mr. Buchanan will be the only participant of the Plan to be affected by the proposed transactions; and (e) within 90 days of the publication in the Federal Register of a notice granting this proposed exemption, both Buchanan Broadcasting and Westwood Square will file Form 5330 with the Service and pay all excise taxes applicable under section 4975(a) of the Code that are due by reason of the prior prohibited lease transactions.

Notice to Interested Persons

Because the only Plan assets involved in the proposed transactions are those to be rolled over to the Account, and Mr. Buchanan is the only participant affected by the proposed transactions, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing on the proposed exemption are due 30 days after 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)

Puckett Machinery Company Profit Sharing Plan (the Plan), Located in Jackson, Mississippi

[Exemption Application No. D–10149]

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 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)((A) through (E) of the Code shall not apply to the proposed sale (the Sale) of improved real property (the Property) by the Plan to Richard H. Puckett, a party in interest with respect to the Plan provided that: (a) the Sale is a one time transaction for cash; (b) the Plan will receive the greater of $315,000 or the fair market value of the Property at the time of the Sale; (c) the Property has been appraised by a independent and qualified real estate appraiser; (d) the Plan will pay no fees or commissions associated with the Sale; and (e) the terms and conditions of the

Sale are at least as favorable as those obtainable with an unrelated third party.

Summary of Facts and Representations

1. The Plan is a defined contribution plan having 200 participants and net assets of $6,030,711 as of December 31, 1995. The trustee of the Plan, Trustmark National Bank, has investment discretion over the assets involved in the Sale.

2. The Plan is sponsored by Puckett Machinery Company (the Employer) which maintains its principal place in Jackson, Mississippi and is engaged in the business of selling equipment and machinery. Richard H. Puckett is an officer of the Employer and holder of 17% of the issued and outstanding common shares of the Employer. In addition, Mr. Puckett is the son of Ben Puckett who holds 43% of the issued and outstanding shares of the Employer.

3. The Property consists of a 6.5 acre tract of real property and a building located on Highway 61 North in Natchez, Mississippi. In 1970, a predecessor to the Plan acquired the Property for $250,000. The Property is currently leased to the Employer.[18] Under the terms of this lease, the Employer has paid all real estate taxes, insurance premiums and certain repair and maintenance costs incurred on the Property. On March 28, 1995, the Property was appraised by Dan Bland, a Certified Real Estate Appraiser who calculated the fair market value of the Property to be $240,000. The appraisal method employed by Mr. Bland was the market approach which is directly related to the sales prices and asking prices of similar properties in competing areas near the subject property. The Property was also appraised by Robert E. Gavin, a Certified Real Estate Appraiser, who determined the fair market value of the Property to be $315,000 as of February 1995.

4. Mr. Puckett proposes to purchase the Property for $315,000 for cash. The Applicant represents that the Sale will result in a conversion of Plan assets from real property to a liquid investment. This will enable the Plan to offer participants and beneficiaries an additional opportunity for self-directed investments. Further, retaining the Property in the Plan would make it difficult to properly and fairly allocate the value of the earnings from the Property to those participants and beneficiaries who desire self-directed investments.

5. In summary, the applicant represents that the requested exemption will satisfy the criteria of section 408(a) of the Act for the following reasons: (a) the Sale is a one time transaction for cash; (b) the Plan will receive the greater of $315,000 or the fair market value of the Property at the time of the transaction; (c) the fair market value of the Property has been determined by an independent and qualified real estate appraiser; and (d) the Plan will pay no fees or commissions associated with the Sale.

FOR FURTHER INFORMATION CONTACT: Allison Padams of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

James Flynn & Associates, Ltd. Pension Plan (the Plan), Located in Scottsdale, Arizona

[Application No. D–10164]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: 1) the proposed transfer of a parcel of real property (Lot 1) to the Plan by James T. and Britt Marie Flynn (the Flynns), disqualified persons with respect to the Plan, together with a cash payment by the Flynns to the Plan of $29,000, and 2) the proposed transfer of a parcel of real property (Lot 2) by the Plan to the Flynns, provided the following conditions are satisfied: a) the Plan receives not less than the fair market value of Lot 2 as of the date of the transfers; b) the fair market values of Lots 1 and 2 are determined by a qualified, independent appraiser; and c) the Flynns are the only participants in the Plan to be affected by the transactions, and they both desire that the transactions be consummated.[19]

Summary of Facts and Representations

1. In 1972, James Flynn established James Flynn & Associates, Ltd. (JFA) as a professional service corporation providing architectural services. Since that time, Mr. Flynn has been the sole shareholder and the only corporate officer of JFA. Shortly after incorporating, Mr. Flynn adopted the Plan, a defined benefit plan. In 1989, Mr. Flynn began to wind down his practice, and several employees approached him about forming their own architectural firm with intentions of continuing the practice that JFA had operated. A transition period was established, and shortly thereafter, JFA became inactive with two employees, the Flynns.

2. In 1989, the benefits that had accrued to the Plan participants (other than the Flynns) were distributed and set aside in a profit sharing plan which became the plan of the new architectural firm. Shortly thereafter, the Flynns began to take distributions from the Plan as retired participants, and to this date they remain the only employees of JFA and the only participants covered by the Plan. The Plan currently has assets with an approximate aggregate fair market value of $4,893,100.

3. The Flynns currently own Lot 1, a parcel of property located on 136 Street, Maricopa County, Arizona. The Plan owns Lot 2, a parcel of real property adjacent to Lot 1, also located on 136 Street, Maricopa County, Arizona. The Flynns have requested the exemption proposed herein to permit the transfer of the two Lots, so that the Plan would own Lot 1 and the Flynns would own Lot 2. The applicants represent that the Plan would enter into the transaction for the following reasons. Lot 2, which is currently held by the Plan, is more suitable for improvements on a near-term basis. Such improvements, if completed, would increase the marketability of both Lots 1 and 2. However, the Plan does not wish to get involved with the project of improving Lot 2. The applicants represent that Lot 1, currently owned by the Flynns, has greater long-term potential as investment property. The applicants further represent that if the improvements are made to Lot 2, the marketability of both Lots 1 and 2 would improve, thus protecting the Plan's prospective investment in Lot 1.

4. The Lots have both been appraised by Roy E. Morris III, SRA FASA, an independent certified real estate appraiser in Scottsdale, Arizona. Mr. Morris has determined that as of July 18, 1995, Lot 1 had a fair market value of $191,000, and Lot 2 had a fair market value of $220,000. The applicants represent that if the exemption proposed herein is granted, the Flynns would also make a cash payment to the Plan of $29,000, which is equal to the difference in appraised values of the Lots as determined by Mr. Morris.

[18] On October 26, 1988, the Department granted PTE 88–98 to permit the lease of the Property by the Plan to the Employer.

[19] Since Mr. Flynn is the sole stockholder of JFA and the Flynns are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3 (b) and (c). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

5. In summary, the applicants represent that the proposed transactions satisfy the criteria contained in section 4975(c)(2) of the Code because: a) the Plan will receive not less than the fair market value of Lot 2; b) the fair market values of Lots 1 and 2 have been determined by a qualified, independent appraiser; and c) the only Plan participants to be affected by these transactions are the Flynns, and they both desire that the transactions be consummated.

NOTICE TO INTERESTED PERSONS: Since the Flynns are the only Plan participants to be affected by the proposed transactions, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due within 30 days from the date of publication of this notice of proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz 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 accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 29th day of March, 1996.

Ivan Strasfeld,

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

[FR Doc. 96–8138 Filed 4–3–96; 8:45 am]

BILLING CODE 4510–29–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION

Meeting

AGENCY: Border Environment Cooperation Commission (BECC).

ACTION: Notice of public meeting.

SUMMARY: This notice announces the 8th public meeting of the BECC Board of Directors on Tuesday, April 30, 1996, from 9:00 a.m. to 3:00 p.m. at the Hotel Lucerna, located at Paseo Triunfo de la Republica No. 3976, in Ciudad Juarez, Chihuahua, Mexico.

FOR FURTHER INFORMATION CONTACT: M.R. Ybarra, Secretary, United States Section, International Boundary and Water Commission, telephone (915) 534–6698; or Tracy Williams, Public Relations Officer, Border Environment Cooperation Commission, P.O. Box 221648, El Paso, Texas 79913; telephone (011–52–16) 29–23–95; Fax: (0110–52–16) 29–23–97; E-mail: becc@cocef.interjuarez.com.

SUPPLEMENTARY INFORMATION: The U.S. Section, International Boundary and Water Commission, on behalf of the Border Environment Cooperation Commission (BECC) cordially invites all interested persons to attend the 8th Public Meeting of the Board of Directors on Tuesday, April 30, 1996, from 9:00 a.m.–3:00 p.m., at the Hotel Lucerna, located at Paseo Triunfo de la Republica No. 3976, in Ciudad Juarez, Chihuahua.

Proposed Agenda

9:00 a.m.—Welcome
Report from General Manager (Information)
—Report on status of previously certified projects
—Availability of BECC Annual Report
—Status of Small Communities Initiative
—Status of Technical Assistance Program
Consideration of Project Certification (Action)
—Procedure for Complaints
—Procedure for Confidentiality Requests
—Public Comments
General Comments by Board of Directors and Advisory Council
3:00—Adjourn

Any member of the public interested in submitting written comments to the Board of Directors on the projects proposed for certification should send written material to the BECC staff 15 days prior to the scheduled public meeting. Anyone interested in making a brief statement to the Board may do so during the public meeting.

Dated: March 27, 1996.

M.R. Ybarra,

Secretary, U.S. IBWC.

[FR Doc. 96–8274 Filed 4–3–96; 8:45 am]

BILLING CODE 4710–03–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, April 18, 1996.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Manalapan Mining Co., Docket Nos. KENT 93–646 and KENT 93–884. (Issues include whether the judge should have assumed the existence of a fire emergency when analyzing whether Manalapan's violation of sections 75.1101 and 77.1109(c) were S&S, and whether the judge correctly determined that Manalapan's violation of section 75.360(a) was not S&S.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those