(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of information collection: new collection.

(2) The title of the form/collection: Juvenile Residential Facility Census.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: Public and Private Residential Facilities for Juveniles. Other: None. This collection will gather information necessary to routinely monitor the types of facilities into which the juvenile justice system places young persons and the services available in these facilities.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 3,500 respondents with an average 7 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 24,500 biennial burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: May 29, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–14535 Filed 6–3–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Census of juveniles in residential placement.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 7, 1997. This process is conducted in accordance with 5 CFR, Part 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of information collection: new collection.

(2) The title of the form/collection: Census of Juveniles in Residential Placement.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: CJ–14, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: Public and private juvenile detention, correctional, shelter, facilities. Other. None.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 3,500 respondents and average 4 hours to respond.

(6) An estimate of the total public burden (in hours) associated with the collection: 11,142 biennial burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: May 29, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–14536 Filed 6–3–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10398, et al.]

Proposed Exemptions; Robert A. Benz & Co., P.A., Certified Public Accountants Employees Profit Sharing Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

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.

Robert A. Benz & Co., P. A., Certified Public Accountants Employees Profit Sharing Plan (The Plan) Located in Pensacola, Florida

[Application No. D–10398]

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, 12847, 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 both (1) the proposed cash sale (the Sale) of certain real property (the Property) to the Plan by Robert A. Benz & Co., P.A., Certified Public Accountants (the Employer), a party in interest with respect to the Plan, and (2) the proposed lease-back (the Lease) of the Property by the Plan to the Employer; provided:

(A) The terms and conditions of the transactions are at least as favorable to the Plan as those obtainable from unrelated parties;

(B) The Plan is represented at all times and for all purposes with respect to the Sale and the Lease by a qualified, independent fiduciary;

(C) The Sale is a one-time transaction for a lump sum cash payment;

(D) The purchase price is the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser;

(E) The monthly rents paid to the Plan will be adjusted every year after the first 12 months of the Lease by an amount to reflect the greater of either a 3 percent per year increase or the most recent percentage increase in the U. S. Department of Labor Consumer Price Index;

(F) In addition, the rents initially paid under the Lease are no less than the fair market rental value of the Property as determined by a qualified, independent appraiser, and thereafter are adjusted every third year to be no less than the fair market rental value as then determined by the independent appraiser;

(G) The Lease is a triple-net lease under which the Employer as the lessee is obligated for all expenses incurred by the Property, including all taxes and assessments, maintenance, insurance, utilities, and any other expense;

(H) The qualified, independent fiduciary of the Plan monitors and enforces compliance with the terms and conditions of the Lease and the exemption herein proposed;

(I) At all times the qualified, independent fiduciary for the Plan determines that the Lease is in the best interests of the Plan and its participants and beneficiaries, and at all times determines that there are adequate protections of the rights of the participants and beneficiaries of the Plan, and takes all the necessary steps to protect those rights;

(J) In the event the Plan sells the Property and the proceeds received from the sale plus the net rentals received for the Property are less than the Plan's cost of acquiring, holding, and maintaining the Property plus a 5 per cent per annum compounded rate of return on the cost to the Plan in acquiring, holding, and maintaining the Property, the Employer, or its successors, shall pay in cash the difference to the Plan within 45 days of the sale;

(K) No commissions, expenses, or costs shall be incurred by the Plan from the Sale or the Lease; and

(L) At all times during the Sale and Lease, the fair market value of the Property represents less than 25 percent of the total assets of the Plan.

Summary of Facts and Representations

1. The Plan is a defined contribution plan that is a profit sharing plan as described in section 401(a) of the Code, and is exempt from taxation pursuant to section 501 of the Code. The Plan has seven participants and beneficiaries and total assets of $2,300,000, as of December 31, 1996. The fiduciary of the Plan is Mr. Robert A. Benz, who is a certified public accountant and also is the president and director as well as 90.79 percent stockholder of the Employer. The Employer is being purchased under a long-term contract from Mr. Benz by other Certified Public Accountants who are presently employed by the Employer. The Employer has been in existence over thirty years as a public accounting firm, and now is a registered professional association under the statutes of Florida.

The independent fiduciary for the Plan in connection with the proposed transactions is Mr. J. Thomas Fife (the Independent Fiduciary), a resident of Pensacola, Florida, and a Vice President-Investments, for Paine Webber, Incorporated in its Pensacola, Florida office. When accepting his appointment with a written agreement, the Independent Fiduciary was given discretionary authority by the Plan with respect to the acquisition and the leasing of the Property and the management, control, and disposition of the Property. The Independent Fiduciary represents that after a review the terms of the Plan and its portfolio and the terms and conditions of the proposed Sale and the Lease of the Property he is able to render a favorable opinion with respect to the proposed transactions. In addition, the Independent Fiduciary represents that his qualifications, background, and experience qualify him to act as the independent fiduciary for the Plan in connection with the proposed Sale and Lease. The Independent Fiduciary also represents that he has no interest in the Employer or the Plan, and no interest or relationship with any employee, shareholder, or director of the Employer. The Independent Fiduciary has also acknowledged that he has knowledge and experience with the responsibilities, duties, and liabilities of an independent fiduciary under the Act; and that he has a net-worth in excess of the appraised fair market value of the Property.

2. The Property, which the Employer proposes to sell to the Plan and lease-back, is located at 1823 North 9th Avenue, Pensacola, Florida, and consists of a tract of land, zoned commercial, with improvements, totaling approximately 14,404 square feet in area. The improvements on the Property consists of a one-story concrete office building of approximately 4,463 square feet and adjoining asphalt parking facilities. It is encumbered by a real estate mortgage with current balance of $214,951.60, which is to be paid off at the closing of the Sale, so that the Plan is to acquire the title to the Property free and clear of the mortgage. The Property is used solely by the Employer in its business of providing accounting services to the public.

Mr. Richard H. Sherrill of Sherrill Appraisal Company located in Pensacola, Florida, an independent MAI appraiser (the Independent Appraiser) determined, as of November 11, 1996, that the Property has fair market value of $395,000. As of January 27, 1997, the Independent Fiduciary determined the fair market rental value of the Property is $34,500 for the first year of the Lease, based upon a ten year lease providing for a triple net rental terms whereby the lessee pays all expenses. In addition, there is a provision for annual rent increases.

3. The applicant represents that the Sale of the Property to the Plan by the Employer is for cash in an amount equal to the fair market value as determined by an independent appraiser, which amount is less than 17.5 percent of the total assets of the Plan.

The applicant represents the Sale is contingent upon the simultaneous execution of the Lease by the Plan and the Employer. The Lease is a triple-net lease under which the Employer, as the lessee, will pay all expenses incurred by the Property during the term of the Lease including taxes, insurance, maintenance, repairs, utilities, and any other expense. The term of Lease is for a duration of ten years. If the lessee has performed all the covenants contained in the Lease, the lessee has an option to extend the Lease for an additional two years under the same terms and conditions as the original Lease. Beginning in the first year of the Lease, the annual rental is $34,500, and will be adjusted every year thereafter to be the greater of either an increase of 3 percent in the rent or an increase equal to the most recent percentage increase of the Consumer Price Index as determined by the U.S. Department of Labor. Also, the applicant represents that on every third year of the Lease, the rent will be adjusted so as to be no less than the fair market rental value of the Property as then determined by an independent appraiser selected by the Independent Fiduciary, and in no event will the amount of the rent be lowered.

In addition, the applicant represents that it will indemnify and hold the Plan harmless from any liability arising from the Plan purchasing and holding the Property, including, but not limited to, hazardous material found on the Property, violation of zoning, land use regulations or restrictions, and violation of federal, state, or local environmental regulations or laws.

The applicant also represents that if the Independent Fiduciary decides to sell the Property and the proceeds from the sale plus net rentals received for the Property are less than the Plan's cost of acquiring, holding, and maintaining the Property plus a 5 per cent per annum compounded rate of return, the Employer, or its successors, shall pay the difference in cash to the Plan within 45 days of the date of the sale.

The applicant also represents that in order to ensure that the best interests of the Plan are served and to protect the rights of all the Plan participants and beneficiaries, the Independent Fiduciary has the ultimate authority to make distribution of the Property. At the time of distribution of benefits to Mr. Benz, the Independent Fiduciary will determine whether or not the interests of the Plan and its participants and beneficiaries are protected and better served by distributing the Property in kind to Mr. Benz as part of his vested benefits in the Plan, or whether or not the Plan will retain or dispose of the Property in some other manner.

4. In summary, the applicant represents that the proposed transactions satisfies the criteria for an exemption under section 408(a) of the Act because (a) the proposed transactions have been reviewed and approved by the Independent Fiduciary of the Plan; (b) the fair market value and the fair market rental value of the Property have been determined by an Independent Appraiser; (c) the Plan will pay no more than the fair market value for the Property and will receive the fair market rental value from the Lease; (d) in the event the Plan sells the Property and the proceeds received from the sale plus the net rentals received for the Property are less than the Plan's cost of acquiring, holding, and maintaining the Property plus a 5 per cent per annum compounded rate of return on the cost to the Plan of acquiring, holding, and maintaining the Property, the Employer, or its successors, shall pay in cash the difference to the Plan within 45 days of the sale; (e) the Independent Fiduciary will monitor and enforce the terms and conditions of the Sale and the Lease on behalf of the Plan; (f) the Independent Fiduciary will have exclusive authority with respect to the management, control, and disposition of the Property; and (g) the Independent Fiduciary has determined that the proposed Sale and Lease are in the best interests and protective of the rights of the Plan and its participants and beneficiaries.

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

Gart Brothers Sporting Goods Company 401(k) Plan (the Plan) Located in Denver, Colorado

[Application No. D–10403]

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 a 5 per cent interest (the Interest) in the Hampden Enterprises Limited Partnership (the Partnership) to the Gart Bros. Sporting Goods Company, the sponsor of the Plan (the Employer) and a party in interest with respect to the Plan; provided (1) the terms and conditions of the transaction are at least as favorable to the Plan as those obtainable from unrelated parties, (2) the Sale is a one-time transaction for cash, (3) the Plan pays no commissions nor incurs any other expenses in connection with the proposed transaction, (4) the Plan receives as consideration from the Sale the greater of either (a) the total funds expended by the Plan in acquiring and holding the Interest, less any return of capital realized from its investment in the Interest, or (b) the fair market value of the Interest as determined on the date of the Sale by an independent appraiser, and (5) if the Employer ever receives more from the Interest than it pays the Plan when acquiring the Interest, the Employer will pay the Plan the excess.

Summary of Facts and Representations

1. The Plan, effective April 1, 1995, and a successor by amendment to a profit sharing plan that had been established on November 1, 1970, is a defined contribution plan which features (a) employer-matching funding and salary deferral contributions by Plan participants, and (b) self-directed investments by Plan participants of their respective Plan accounts. The Plan is intended to be qualified pursuant to the requirements of sections 401(a) and 401(k) of the Code. The total assets of the Plan are $3,251,355, as of September 30, 1996, and the total participants in the Plan are approximately 747, as of January 17, 1997. The fiduciary of the Plan is the Advisory Committee (the Fiduciary) appointed by the Employer to administer the Plan and to direct the trustee of the Plan with respect to the investments of Plan assets by the participants. Currently, the Fiduciary consists of three employees all of whom are minority shareholders and two are officers of the Employer. The trustee of the Plan is Wells Fargo Bank (Colorado), N.A. (The Trustee) whose principal offices are located in San Francisco, California.

2. The Employer, a Colorado corporation, is a wholly owned subsidiary of Gart Sports Company, a Delaware corporation, which is privately held by 78 shareholders. The Employer was originally founded by the Gart family in 1928 as a family-operated, retail sporting goods store located in Denver, Colorado. From 1971 to the present, the Employer, through several changes in ownership, has expanded its retail stores in size and location throughout six states in the Rocky Mountain Region to include more than 60 stores and more than 1,700 employees.

3. The applicant represents that on November 16, 1987, the Plan, with an investment of $206,000 acquired the Interest in the Partnership, which had been established on March 20, 1970, from an unrelated person, The Denver Sympathy Fountain, a Colorado non-profit corporation.[1] As of March 17, 1997, this investment in the Partnership was determined to have a fair market value of $123,830 by Hale Companies, Inc., a real estate firm, located in Parker, Colorado. Hale Companies, Inc. represents that it is not related to the Plan, the Plan sponsor, or to the Fiduciary of the Plan.

The applicant represents, that because the value of real estate plummeted in Denver, Colorado during the late 1980s and early 1990s, the Partnership, on November 30, 1994, sold an asset, which consisted of real property, and distributed $70,500 to the Plan. During March 1995 the Partnership sold another parcel of real property to Mainstreet Quincy, LLC (Mainstreet LLC), a Colorado limited liability company, for a total sum of $5,010,000. At the closing of the sale of the second parcel of real property, Mainstreet LLC tendered as payment to the Partnership the sum of $760,000 in cash (of which $33,000 was distributed to the Plan on March 22, 1995) and two promissory notes. The first note is in the amount of $1,175,000, and promises to pay one-half of the earned annual 6 percent interest on every March 15th and September 15th, plus annual payments of $293,000 every March 15th on the outstanding principal until the obligation becomes due and payable in full on March 15, 2000. The second note is in the amount of $3,075,000, and earns 6 per cent interest with no interest or principal payable until the note matures on March 15, 2000. The applicant represents that the two promissory notes and a reserve account of approximately $11,000 are the only assets currently possessed by the Partnership.

4. On March 31, 1994, the Fiduciary communicated to the Partnership its desire to sell the Interest to other limited partners in the Partnership and received no response to its communication. During 1996 the Fiduciary again attempted with no success to sell the Interest to the other limited partners of the Partnership; and also, to a secondary market-maker of limited partnership interests. Also during 1996, an attempt was made by the Plan without success to sell its interest in the Partnership to Mainstreet LLC.

The applicant represents that on March 15, 1997, Mainstream LLC defaulted on the interest payment due on its first promissory note. On April 1, 1997, the applicant received confirmation from the U.S. Bankruptcy Court in Denver, Colorado that on December 30, 1996, Mainstream LLC, d/b/a Main Street Homes had filed for reorganization under Chapter 11 of the Bankruptcy Act and was assigned Case No. 96–26283CEM.

5. The applicant requests an administrative exemption from the prohibited transaction provisions of the Act to enable the Plan to sell the Interest it holds to the Employer, so that not only will the participants of the Plan be able to self-direct all the assets in their individual accounts, but they will be able to unburden the Plan of its investment in the Partnership. Also, the applicant represents that by selling the Interest to the Employer the Plan will avoid selling the Interest at a discounted price on the secondary market, and will avoid any commissions or other expenses in connection with the transaction.

The applicant represents that the Employer will pay to the Plan as consideration for the Sale of the Interest to the Employer the greater of either (a) the total funds expended by the Plan in acquiring and holding the Interest, less any return of capital from its investment in the Interest, or (b) the fair market value of the Interest as determined on the date of the Sale by an independent appraiser. The Trustee represents in a letter dated April 4, 1997, that it will ensure that the Plan will receive the consideration from the Sale as required by the proposed exemption of the Department.

6. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because (a) the terms and conditions of the transaction are at least as favorable to the Plan as those obtainable from unrelated parties; (b) the Sale of the Interest involves a one-time transaction for cash; (c) the Plan will not incur the payment of any commissions nor any other expenses; (d) the transaction will enable the participants of the Plan to direct the investments of all the assets in their individual accounts in the Plan; (e) the Trustee will ensure that the consideration paid by the Employer is (i) the greater of either the funds expended by the Plan from acquiring

[1] The applicant represents that the individuals who were the members of the Advisory Committee and Plan Fiduciaries at the time the Plan acquired the Interest are no longer Fiduciaries of the Plan or employed by the Employer.

and holding the Interest, less any return of capital from the Interest, or (ii) the fair market value of the Interest as determined by an independent, qualified appraiser; and (f) if the Employer ever receives more from the Interest than it pays the Plan when acquiring the Interest, the Employer will pay the Plan the excess.

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

First Savings Bank, F.S.B. Profit Sharing and Employee Stock Ownership Plan (the Plan) Located in Clovis, New Mexico

[Application No. D–10409]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407 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 December 26, 1996 to (1) the acquisition by the Plan of certain stock rights (the Rights) pursuant to a stock rights offering (the Offering) by Access Anytime Bancorp, Inc. (the Parent), which is the parent corporation of First Savings Bank, F.S.B. (the Employer), the sponsor of the Plan; (2) the holding of the Rights by the Plan during the subscription period of the Offering; and (3) the exercise of certain of the Rights by the Plan; provided that the following conditions are satisfied:

(A) The Plan's acquisition and holding of the Rights occurred in connection with the Offering made available to all shareholders of common stock of the Parent;

(B) All holders of the common stock of the Employer were treated in the same manner with respect to the Offering, including the Plan;

(C) All decisions regarding the holding and potential exercise of the Rights by the Plan were made in accordance with Plan provisions for individually-directed investment of participant accounts by the individual Plan participant whose account in the Plan received Rights in the Offering; and

(D) With respect to any participants' accounts in the Plan for which no valid instructions were timely filed regarding the Rights during the Offering, such Rights expired unexercised in the same manner as unexercised Rights issued to all other holders of the common stock of the Parent, since the Rights were not transferable and could not be sold.

EFFECTIVE DATE: This exemption, if granted, will be effective as of December 26, 1996.

Summary of Facts and Representations

1. The Employer is a federal savings bank that conducts full service banking operations from its main office in Clovis, New Mexico, two branch locations in Clovis and Portales, New Mexico and a loan production office in Rio Rancho, New Mexico. Access Anytime Bancorp, Inc. (the Parent) is a Delaware public corporation [2] which was organized to become a holding company for the Employer. Pursuant to a merger agreement (the Merger) between the Employer and the Parent, and upon approval of the holders of the common stock of the Employer (the Employer Stock) on October 18, 1996, all outstanding shares of Employer Stock were converted into and exchanged for an equal number of shares of common stock of the Parent (Parent Stock). The Employer continues its banking operations as a wholly-owned subsidiary of the Parent.

2. The Employer maintains the Plan as a defined contribution plan combining a profit sharing component (the PSP) with an employee stock ownership component (the ESOP) for the benefit of employees of the Employer and each of the employers which are members of a controlled group with the Employer. As of October 31, 1996, the Plan had approximately 54 participants and total assets of $319,659. The trustee of the Plan is Roddy Pearce (the Trustee), who is an officer of the Employer. The Plan provides for individual participant accounts (the Accounts) in both the ESOP and the PSP, and participant-directed investment of the PSP Accounts. The Trustee acts as custodian of Plan assets, holding legal title to the assets and executing investment directions in accordance with the participants' directions. A committee appointed by the Employer's board of directors (the Committee) reviews all investment direction forms filed by Plan participants to check for possible errors, such as the failure of a participant to enter a signature or to specify clear instructions. The Plan assets in the ESOP are invested primarily in Parent Stock under the direction of the Trustee, and the assets in the PSP are invested pursuant to participant directions among nine different investment options. As of October 31, 1996, the ESOP component of 35 Accounts in the Plan held a total of 9,798 shares of Parent Stock comprising approximately 18 percent of total Plan assets.

3. Following the Merger and the conversion of Employer Stock to Parent Stock, the Parent commenced on December 26, 1996 (the Opening Date) an offering (the Offering) of new shares of Parent Stock to all holders of record (the Shareholders) of Parent Stock as of December 20, 1996 (the Record Date) pursuant to nontransferable subscription rights (the Rights) [3] issued to all of the Shareholders, including the Plan. One Right was issued for each share of Parent Stock held by the Shareholders, and each Right conferred upon its holder an entitlement to purchase one new share of Parent Stock at a stated subscription price of $5.25 per share (the Subscription Price) during the Offering, prior to close of business on the date of the Offering's expiration (the Expiration Date). The original Expiration Date was January 31, 1997, but the directors of the Parent extended the Offering to April 8, 1997. Under the terms of the Offering, each Right was non-transferable and was required to expire if not exercised prior to the close of the Expiration Date. As of the Opening Date, 732,198 shares of Parent stock were issued and outstanding, held by 450 Shareholders, including the Plan Accounts' investments in 9,798 shares, which constituted about 1.33 percent of all issued and outstanding Parent Stock. The Employer and the Parent are requesting an exemption for the Plan's acquisition and holding of 9,798 Rights pursuant to the Offering and, to the extent the Rights were exercised, for the exercise of the Rights, under the terms and conditions described herein.

4. In anticipation of the Offering, the Plan and its related trust agreement were amended with respect to all Plan participants with an Account invested in the Parent Stock (Invested Participants). Prior to this amendment and restatement of the Plan, participants had no authority to direct any investments of the ESOP portion of their Accounts. With the amendment, the Plan document enabled Invested Participants to determine the disposition of all Rights allocated to their Accounts. Pursuant to these

[2] The common stock of Access Anytime Bancorp, Inc. is publicly traded on the National Association of Securities Dealers Automated Quotation Small-Cap Market System under the symbol, ''AABC''.

[3] The Department notes that the Rights do not constitute ''qualifying employer securities'' within the meaning of section 407(d)(5) of the Act.

amended Plan provisions, each Invested Participant was permitted to direct the Trustee to exercise any or all of the Rights attributable to his or her Account. The Employer represents that the amendment and restatement of the Plan to provide pass-through elections to Plan participants was intended to place the Invested Participants in a like position with other Shareholders for purposes of the Offering. Since all shares of Parent Stock held by the Plan were allocated to participant Accounts, all decisions with respect to the Rights acquired by the Plan were made by individual Invested Participants. In order to exercise the Rights, the Invested Participants were required to file valid instructions with the Trustee no later than the close of the Expiration Date and to liquidate a sufficient portion of the non-Parent Stock assets in their Accounts to cover the Subscription Price. Those Rights with respect to which the Invested Participant failed to file with the Trustee valid exercise instructions before close of business on the Expiration Date expired in the same manner as the Rights held by non-Plan Shareholders. The Employer represents that 5,000 Rights were exercised by Invested Participants, that the remaining 4,798 Rights expired on the Expiration Date, and that no expenses were incurred by the Invested Participants or the Plan in connection with the Offering.

5. The Employer represents that upon commencement of the Offering, all Invested Participants were notified of the Offering and the procedure for filing instructions with the Trustee with respect to the Rights. The Employer states that all instructions timely filed by the Invested Participants were properly executed. The Employer represents that the Plan was necessarily involved in the Offering because the Parent accorded equal treatment to all Shareholders with respect to issuance of the Rights, and that the Plan was entitled to all rights and benefits available to other Shareholders. The Employer maintains that all actions by the Trustee with respect to the Offering were taken pursuant to express instructions of Invested Participants except when an Invested Participant failed to file timely, valid instructions, in which case the Rights were allowed to expire unexercised, since the Rights were non-transferable and could not be sold. The Employer represents that the Plan procedures requiring Invested Participants to file written instructions with the Trustee in order to exercise the Rights, and the expiration of the Rights upon the failure to do so, were fully disclosed in the advance notice to Invested Participants.

6. In summary, the applicant represents that the transactions satisfied the criteria of section 408(a) of the Act for the following reasons: (A) The Plan's acquisition of the Rights resulted from an independent act of the Parent; (B) With respect to all aspect of the Offering, all Shareholders were treated in the same manner, including the Plan; (C) All decisions with respect to the Plan's acquisition, holding and control of the Rights were made by the individual Invested Participants whose Accounts held Parent Stock, except for those Invested Participants who failed to file timely and valid instructions, in which case the Rights expired unexercised; and (D) The acquisition and holding of Rights affected 35 of the Plan's 54 participants whose accounts held only about 1.33 percent of the Parent Stock issued and outstanding as of the Record Date of the Offering.

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

BP America Inc. Retirement Trust (the BP Trust), Located in Cleveland, Ohio; IBM Retirement Plan Trust (the IBM Trust), Located in Armonk, New York; United States Steel Corporation Plan (the US Steel Plan), Located in Pittsburgh, Pennsylvania; and Retirement Plan of Marathon Oil Company (the Marathon Plan), Located in Findlay, Ohio; (collectively, the Plans)

[Application Nos. D–10441 through D–10444]

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 section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the proposed granting to The Industrial Bank of Japan, Limited, New York Branch (IBJ), as the representative of lenders (the Lenders) participating in a credit facility (the Facility), of security interests in limited partnership interests in The Westbrook Real Estate Fund II, L.P. (the Partnership) owned by the Plans with respect to which some of the Lenders are parties in interest; and (2) the proposed agreements by the Plans to honor capital calls made by IBJ in lieu of the Partnership's general partner; provided that (a) the proposed grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; (b) the decisions on behalf of each Plan to invest in the Partnership and to execute such grants and agreements in favor of IBJ are made by a fiduciary which is not included among, and is independent of, the Lenders and IBJ; and (c) with respect to plans that may invest in the Partnership in the future, such plans will have assets of not less than $100 million and not more than 5% of the assets of such plans will be invested in the Partnership.

Summary of Facts and Representations

1. The Partnership is a Delaware limited partnership the general partner of which is Westbrook Real Estate Partners Management II, L.L.C. (the General Partner), a Delaware limited liability company. The Partnership has an eight-year term from the initial closing date, expiring on February 24, 2005, and will be self-liquidating. The Partnership has been organized to make investments, including leveraged equity investments, in undervalued or inappropriately capitalized real estate assets and portfolios, and corporate real estate. Proceeds from the sale or refinancing of properties generally will not be reinvested, but will be distributed to the limited partners, so that the Partnership will be self-liquidating.

2. After execution of the Partnership Agreement (the Agreement), the General Partner sought capital commitments through private placement and has obtained, as a result, irrevocable, unconditional capital commitments in excess of at least $410,000,000 from approximately 17 current and prospective purchasers of limited partnership units (the Limited Partners). The Agreement requires Limited Partners to make capital contributions upon receipt of notice from the General Partner. Under the Agreement, the General Partner may make a call for cash contributions, also known as a ''drawdown'', up to the total amount of the Limited Partner's capital commitment upon 15 business days' notice, with some limitations. The Partners' capital commitments are structured as irrevocable, unconditional and binding commitments to contribute equity when capital calls are made by the General Partner. The obligation of each Limited Partner to contribute the full amount of its capital commitment is secured by a security interest granted to

the Partnership in the Limited Partner's partnership interest.

3. In the ordinary course of its business operations, it is contemplated that the Partnership will incur indebtedness in connection with many of its investments. This on-going need for credit will be provided by the Facility, a two-year, eleven month arrangement for revolving credit with restricted availability levels, which will enable the Partnership to consummate investments quickly without the delay of separate arrangements for interim or permanent financing for each investment. The Facility is funded by the Lenders, represented by IBJ and NationsBank, N.A. (NationsBank) which will also be participating lenders. IBJ and NationsBank will serve as administrative agents for the Facility. The Facility will be a non-recourse obligation of the Partnership which matures in the year 2000 and which is secured by a security interest in the Limited Partners' capital commitments, the General Partner's right to make drawdowns and the Partnership's lien and security interest in each Limited Partner's partnership interest. As additional security, the Facility will require each Limited Partner to execute an agreement (the Security Agreement) granting to IBJ, for the benefit of each Lender, a security interest and lien in the Limited Partner's partnership interest, and covenanting with IBJ, for the benefit of the Lenders, that such Limited Partner will unconditionally honor any drawdown made by IBJ in accordance with the Agreement in lieu of the General Partner to the full extent of the Limited Partner's unfunded capital commitment.

4. The trusts which hold assets of the Plans (the Trusts) own limited partnership interests as Limited Partners in the Partnership. Some of the Lenders may be parties in interest with respect to some of the Plans in the Trusts by virtue of such Lenders' (or their affiliates') provisions of fiduciary services to such Plans with respect to Trust assets other than the Partnership interests. IBJ is requesting an exemption to permit the Trusts to enter into the Security Agreements under the terms and conditions described herein. The Plans and the other Limited Partners with the largest interests in the Partnership and the extent of their respective capital commitments to the Partnership are described as follows:

(a) The BP Trust holds the assets of the following Plans: BP America Master Hourly Plan for Represented Employees, a defined benefit plan with 16,165 participants as of December 31, 1995, and BP America Retirement Accumulation Plan, a defined benefit plan with 25,636 participants as of that date. The BP Trust also holds assets from some smaller Plans (together with two above-described Plans, the BP Plans). The approximate fair market value of the total assets of the BP Plans held in the BP Trust is $1.6 billion. The fiduciary of the BP Plans generally responsible for investment decisions is S.W. Percy, Chief Executive Officer, BP America, Inc. Mr. Percy is also the fiduciary responsible for reviewing and authorizing the investment in the Partnership to which the exemption proposed herein relates. The BP Trust has undertaken a total capital commitment of $10,000,000 in the Partnership.

(b) The IBM Trust holds the assets of the IBM Retirement Plan (the IBM Plan), a defined benefit pension plan with 289,934 participants as of December 31, 1995, and assets with a total value of approximately 31 billion dollars as of that date. The fiduciary of the IBM Plan generally responsible for investment decisions is the IBM Investment Committee, which is the fiduciary responsible for reviewing and authorizing the IBM Plan's investment in the Partnership. The IBM Trust has undertaken a total capital commitment of $75,000,000 in the Partnership.

(c) The USS Special Investments Group Trust holds assets of the US Steel Plan, a defined benefit pension plan with 139,082 participants as of December 31, 1995, and with assets of approximately 8.5 billion dollars as of that date. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the US Steel Plan is United States Steel and Carnegie Pension Fund, Trustee, which is the fiduciary of the US Steel Plan generally responsible for investment decisions. This Trust has undertaken a total capital commitment of $20,000,000 in the Partnership.

(d) The MRO Special Investments Group Trust holds assets of the Marathon Plan and the Petroleum Marketing Retirement Plan (the PMR Plan). The Marathon Plan is a defined benefit plan with 10,519 participants and approximately $881 million in total assets as of December 31, 1995. The PMR Plan is a defined benefit plan with 6,608 participants and approximately $15.9 million in total assets as of December 31, 1995. The fiduciary of the Marathon Plan and the PMR Plan generally responsible for investment decisions is United States Steel and Carnegie Pension Fund, Trustee, which is also the fiduciary responsible for reviewing and authorizing the investment in the Partnership to which the exemption proposed herein relates. This Trust has undertaken a total capital commitment of $5,000,000 in the Partnership.

(e) The applicant represents that it is possible that one or more other Plans may become Limited Partners at some time in the future, and requests relief for any such Plan under the exemption proposed herein, provided the Plan meets the standards and conditions set forth herein. The applicant further represents that any such Plan will have assets of at least $100 million, and that no more than 5% of the assets of such Plan will be invested in the Partnership.

(f) Limited Partners which are not ERISA-covered plans include:

(i) Arkansas Teacher Retirement System, which has undertaken a total capital commitment of $50,000,000.

(ii) Allstate Insurance Company, which has undertaken a total capital commitment of $20,000,000.

(iii) Atlantic Equity Corporation, which has undertaken a total capital commitment of $20,000,000.

(iv) The Trustees of Columbia University, which has undertaken a total capital commitment of $20,000,000.

(v) The Trustees of Dartmouth College, which has undertaken a total capital commitment of $10,000,000.

(vi) New York State Common Retirement Fund, which has undertaken a total capital commitment of $25,000,000.

(vii) Commonwealth of Pennsylvania State Employees' Retirement System, which has undertaken a total capital commitment of $56,000,000.

(viii) J.H. Pew Freedom Trust, which has undertaken a total capital commitment of $4,200,000.

(ix) J.N. Pew, Jr. Trust, which has undertaken a capital commitment of $2,100,000.

(x) Mabel Pew Myrin Trust, which has undertaken a total capital commitment of $2,700,000.

(xi) Pew Memorial Trust, which has undertaken a total capital commitment of $21,000,000.

(xii) State of Wisconsin Investment Board, which has undertaken a total capital commitment of $75,000,000.

(xiii) The General Partner, which has undertaken a total capital commitment of $4,151,515.

5. IBJ represents that the Partnership will obtain an opinion of counsel that the Partnership will constitute an ''operating company'' under the Department's plan asset regulations [29 CFR 2510.3–101(c)] if the Partnership is operated in accordance with the Agreement and the offering memorandum (the Offering) distributed

in connection with the private placement of the limited partnership interests.[4]

6. IBJ represents that the Security Agreement constitutes a form of credit security which is customary among financing arrangements for real estate limited partnerships, wherein the financing institutions do not obtain security interests in the real property assets of the partnership. IBJ also represents that the obligatory execution of the Security Agreement by the Limited Partners for the benefit of the Lenders was fully disclosed in the Offering as a requisite condition of investment in the Partnership during the private placement of the limited partnership interests. IBJ represents that with respect to the Partnership and its activities, the only direct relationship between any of the Limited Partners and any of the Lenders is the execution of the Security Agreements. All other aspects of the transaction, including the negotiation of all terms of the Credit Facility, are exclusively between the Lenders and the Partnership. IBJ represents that the proposed executions of the Security Agreements will not affect the abilities of the Trusts to withdraw from investment and participation in the Partnership. The only Plan assets to be affected by the proposed transaction are each Plan's limited partnership interests in the Partnership and the related Plan obligations as Limited Partners to respond to drawdowns up to the total amount of each Plan's capital commitment to the Partnership.

7. IBJ represents that neither it nor any Lender acts or has acted in any fiduciary capacity with respect to any Trust's investment in the Partnership and that IBJ is independent of and unrelated to those fiduciaries (the Trust Fiduciaries) responsible for authorizing and overseeing the Trusts' investments in the Partnership. Each Trust Fiduciary represents independently that its authorization of Trust investment in the Partnership was free of any influence, authority or control by the Lenders. The Trust Fiduciaries represent that the Trust's investments in and capital commitments to the Partnership were made with the knowledge that each Limited Partner would be required subsequently to grant a security interest in the Partnership to the Lenders and to honor drawdowns made on behalf of the Lenders without recourse to any defenses against the General Partner. Each Trust Fiduciary individually represents that it is independent of and unrelated to IBJ and the Lenders and that the investment by the Trust for which that Trust Fiduciary is responsible continues to constitute a favorable investment for the Plans participating in that Trust and that the execution of the Security Agreement is in the best interests and protective of the participants and beneficiaries of such Plans.

8. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Plans' investments in the Partnership were authorized and are overseen by the Trust Fiduciaries, which are independent of the Lenders; (2) None of the Lenders have any influence, authority or control with respect to the Plans' investments in the Partnership or the Plans' executions of the Security Agreements; and (3) The Trust Fiduciaries invested in the Partnership on behalf of the Plans with the knowledge that the Security Agreements are required of all Limited Partners investing in the Partnership.

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 30th day of May, 1997.

Ivan Strasfeld,

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

[FR Doc. 97–14559 Filed 6–3–97; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL BANKRUPTCY REVIEW COMMISSION

Meeting

AGENCY: National Bankruptcy Review Commission.

ACTION: Notice of Public Meeting.

Time and Date: Thursday, June 19, 1997; 10 a.m. to 5:30 p.m. and Friday, June 20 1997; 8:30 a.m. to 5 p.m.

Place: Theodore Levin United States Courthouse, 231 West Lafayette Boulevard—Room 115, Detroit, Michigan. It is recommended that the public use the entrance located at Fort Street. The handicap entrance is also located on Fort Street.

Status: The meeting will be open to the public.

Notice: At its public meeting, the Commission will consider general administrative matters and substantive agenda items including small business, single asset and partnership bankruptcies; sections 105 and 362(b) of the Bankruptcy Code; and the use of alternative dispute resolution, mediators

[4] The Department expresses no opinion herein as to whether the Partnership will constitute an operating company under the regulations at 29 CFR 2510.3–101.