

included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 25, 1997.

Gerald B. Lindrew,

Director, Pension and Welfare Benefits Administration, Office of Policy and Legislative Analysis.

[FR Doc. 97-20103 Filed 7-30-97; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Class Exemption 88-59

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Class Exemption 88-59. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before September 29, 1997.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the number of respondents

and the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- 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 submissions of responses.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N-5647, Washington, DC 20210. Telephone: 202-219-4782 (this is not a toll-free number). Fax: 202-219-4745.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 88-59 exempts from certain prohibited transaction provisions of ERISA, certain transactions involving residential financing arrangements. In the absence of this exemption, these transactions might be prohibited by section 406 of the Employee Retirement Income Security Act of 1974 (the Act).

II. Current Actions

The Pension and Welfare Benefits Administration proposes to extend the currently approved information collection requirements of Prohibited Transaction Class Exemption 88-59. The recordkeeping requirements of the class exemption are intended to protect the interests of plan participants and beneficiaries. The exemption has one basic information collection condition. The plan is to maintain for a period of six years from the date of a covered transaction such records as are necessary to enable the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization any of whose members are covered by such plan to determine whether the conditions of the exemption have been met.

Type of Review: Extension.

Agency: Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Class Exemption 88-59.

OMB Number: 1210-0095.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals.

Frequency: On occasion.

Estimated Total Burden Hours: 1.

Respondents, proposed frequency of response, and annual hour burden: The number of respondents is estimated to be 185. The exemption contains a six year recordkeeping requirement for information related to the affected securities transactions. Most of the records required to be maintained by the exemption are normally maintained for purposes of completing the annual report required by ERISA (Form 5500 Series). Those records not maintained for purposes related to the annual report are maintained as a standard business practice or for purposes of complying with the Internal Revenue Code. We estimate one additional hour of burden for this exemption.

Total Burden Cost (capital/start-up): \$0.00.

Total Burden Cost (operating/maintenance): \$0.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 25, 1997.

Gerald B. Lindrew,

Director, Pension and Welfare Benefits Administration, Office of Policy and Legislative Analysis.

[FR Doc. 97-20104 Filed 7-30-97; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 97-35; Exemption Application No. D-10192, et al.]

Grant of Individual Exemptions; ILGWU National Retirement Fund

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

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

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications

for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

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

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

ILGWU National Retirement Fund, et al. (collectively, the Plans), Located in New York, New York

[Prohibited Transaction Exemption 97-35; Exemption Application Nos. D-10192, L-10193 through L-10196]

Exemption

Section I—Transactions

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, effective July 1, 1995, to—

(A) the provision of banking services (Banking Services, as defined in section IV(C)) by the Amalgamated Bank of New York (the Bank) to certain employee benefit plans (the Plans, as defined in section IV(E)), which are maintained on behalf of members of the International Ladies Garment Workers Union;

(B) the purchase by the Plans of certificates of deposit (CDs) issued by the Bank; and

(C) the deposit of Plans' assets in money market or other deposit accounts established by the Bank; provided that the applicable conditions of Section II and Section III are met:

Section II—Conditions

(A) The terms under which the Banking Services are provided by the Bank to the Plans, and those under which the Plans purchase CDs from the Bank or maintain deposit accounts with the Bank, are at least as favorable to the Plans as those which the Plans could obtain in arm's-length transactions with unrelated parties.

(B) The interests of each of the Plans with respect to the Bank's provision of Banking Services to the Plans, the purchase of CDs from the Bank by any of the Plans, and the deposit of Plan assets in deposit accounts established by the Bank, are represented by an Independent Fiduciary (as defined in section IV(D)).

(C) On a periodic basis, not less frequently than annually, an Authorizing Plan Fiduciary (as defined below in section IV(A)) with respect to each Plan authorizes the representation of the Plan's interests by the Independent Fiduciary and determines that the Banking Services and any CDs and depository accounts utilized by the Plan are necessary and appropriate for the establishment or operation of the Plan;

(D) With respect to the purchase by any of the Plans of certificates of deposit (CDs) issued by the Bank or the deposit of Plan assets in a money market account or other deposit account established at the Bank: (1) Such transaction complies with the conditions of section 408(b)(4) of the Act; (2) Any CD offered to the Plans by the Bank is also offered by the Bank in the ordinary course of its business with unrelated customers; and (3) Each CD purchased from the Bank by a Plan pays the maximum rate of interest for CDs of the same size and maturity being offered by the Bank to unrelated customers at the time of the transaction;

(E) The compensation received by the Bank for the provision of Banking Services to the Plan is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act.

(F) Following the merger of the International Ladies Garment Workers Union with UNITE, the Independent Fiduciary made an initial written determination that (1) the Bank's provision of Banking Services to the Plans, (2) the deposit of Plan assets in

depository accounts maintained by the Bank, and (3) the purchase by the Plans of CDs from the Bank, are in the best interests and protective of the participants and beneficiaries of each of the Plans.

(G) On a periodic basis, not less frequently than quarterly, the Bank provides the Independent Fiduciary with a written report (the Periodic Report) which includes the following items with respect to the period since the previous Periodic Report: (1) A listing of Banking Services provided to, all outstanding CDs purchased by, and deposit accounts maintained for each Plan; (2) a listing of all fees paid by the Plans to the Bank for the Banking Services, (3) the performance of the Bank with respect to all investment management services, (4) a description of any changes in the Banking Services, (5) an explanation of any problems experienced by the Bank in providing the Banking Services, (6) a description of any material adverse events affecting the Bank, and (7) any additional information requested by the Independent Fiduciary in the discharge of its obligations under this exemption.

(H) On a periodic basis, not less frequently than annually, the Independent Fiduciary reviews the Banking Services provided to each Plan by the Bank, the compensation received by the Bank for such services, any purchases by the Plan of CDs from the Bank, and any deposits of assets in deposit accounts maintained by the Bank, and makes the following written determinations:

(1) The continuation of the Bank's provision of Banking Services to the Plan for compensation is in the best interests and protective of the participants and beneficiaries of the Plan;

(2) The Bank is a solvent financial institution and has the capability to perform the services;

(3) The fees charged by the Bank are reasonable and appropriate;

(4) The services, the depository accounts, and the CDs are offered to the Plan on the same terms under which the Bank offers the services to unrelated Bank customers in the ordinary course of business; and

(5) Where the Banking Services include an investment management service, that the rate of return is not less favorable to the Plan than the rates on comparable investments involving unrelated parties.

(I) Copies of the Bank's periodic reports to the Independent Fiduciary are furnished to the Authorizing Plan Fiduciaries on a periodic basis, not less frequently than annually and not later than 90 days after the period to which they apply.

(J) The Independent Fiduciary is authorized to continue, amend, or

terminate, without any penalty to any Plan (other than the payment of penalties required under federal or state banking regulations upon premature redemption of a CD), any arrangement involving: (1) The provision of Banking Services by the Bank to any of the Plans, (2) the deposit of Plan assets in a deposit account maintained by the Bank, or (3) any purchases by a Plan of CDs from the Bank;

(K) The Authorizing Plan Fiduciary may terminate, without penalty to the Plan (other than the payment of penalties required under federal or state banking regulations upon premature redemption of a CD), the Plan's participation in any arrangement involving: (1) The representation of the Plan's interests by the Independent Fiduciary, (2) the provision of Banking Services by the Bank to the Plan, (3) the deposit of Plan assets in a deposit account maintained by the Bank, or (4) the purchase by the Plan of CDs from the Bank.

Section III—Recordkeeping

(A) For a period of six years, the Bank and the Independent Fiduciary will maintain or cause to be maintained all written reports and other memoranda evidencing analyses and determinations made in satisfaction of conditions of this exemption, except that: (a) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Independent Fiduciary and the Bank the records are lost or destroyed before the end of the six-year period; and (b) no party in interest other than the Bank and the Independent Fiduciary shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to 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 (2) below;

(B)(1) Except as provided in section (2) of this paragraph (B) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (A) of this Section III shall be unconditionally available at their customary location during normal business hours for inspection by: (a) Any duly authorized employee or representative of the U.S. Department of Labor or the Internal Revenue Service, (b) any employer participating in the Plans or any duly authorized employee or representative of such employer, and (c) any participant or beneficiary of the Plans or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in subsections (b) and (c) of subsection (1) above shall be authorized to examine trade secrets of the Independent Fiduciary or the Bank, or any of their affiliates, or any commercial, financial, or other information that is privileged or confidential.

Section IV—Definitions

(A) *Authorizing Plan Fiduciary* means, with respect to each Plan, the board of trustees of the Plan or other appropriate plan fiduciary with discretionary authority to make decisions with respect to the investment of Plan assets;

(B) *Bank* means the Amalgamated Bank of New York;

(C) *Banking Services* means (1) custodial, safekeeping, checking account, trustee services, and (2) investment management services involving (a) fixed income securities (either directly or through a collective investment fund maintained by the Bank), (b) the LongView Fund maintained by the Bank, and, (c) effective January 3, 1998, the LEI Fund maintained by the Bank.

(D) *Independent Fiduciary* means a person, within the meaning of section 3(9) of the Act, who (1) is not an affiliate of the Union of Needletrades, Industrial & Textile Employees (UNITE) and any successor organization thereto by merger, consolidation or otherwise, (2) is not an officer, director, employee or partner of UNITE, (3) is not an entity in which UNITE has an ownership interest, (4) has no relationship with the Bank other than as Independent Fiduciary under this exemption, and (5) has acknowledged in writing that it is acting as a fiduciary under the Act. No person may serve as an Independent Fiduciary for the Plans for any fiscal year in which the gross income (other than fixed, non-discretionary retirement income) received by such person (or any partnership or corporation of which such person is an officer, director, or ten percent or more partner or shareholder) from UNITE and the Plans for that fiscal year exceed five percent of such person's annual gross income from all sources for the prior fiscal year. An affiliate of a person is any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual. Initially, the Independent Fiduciary is U.S. Trust Company of California, N.A.

(E) *Plans* means any of the following employee benefit plans, and their successors by reason of merger, spin-off or otherwise:

International Ladies Garment Workers Union Nation Retirement Fund;
International Ladies Garment Workers Union Death Benefit Fund;
Health Fund of New York Coat, Suit, Dress, Rainwear & Allied Workers Union, ILGWU;
Health & Vacation Fund, Amalgamated Ladies Garment Cutters Union, Local 10; ILGWU Eastern States Health & Welfare Fund;
ILGWU Office, Clerical & Misc. Employee Retirement Fund;
ILGWU Retirement Fund, Local 102;
Union Health Center Staff Retirement Fund;
Unity House 134 HREBIU Plan Fund;
Puerto Rican Health & Welfare Fund;
Health & Welfare Fund of Local 99, ILGWU;
Local 99 Exquisite Form Industries, Inc. Severance Fund;
Local 99 K-Mart Severance Fund;
Local 99 Kenwin Severance Fund;
Local 99 Lechters Severance Fund;
Local 99 Eleanor Shops Severance Fund;
Local 99 Monette Severance Fund;
Local 99 Moray, Inc. Severance Fund;
Local 99 Petri Stores, Inc. Severance Fund;
Local 99 Netco, Inc. Severance Fund;
Local 99 Misty Valley, Inc. Severance Fund;
and
Local 99 Norstan Apparel Shops, Inc. Severance Fund.

(F) *UNITE* means the Union of Needletrades, Industrial & Textile Employees and any successor organization thereto by merger, consolidation or otherwise.

EFFECTIVE DATE: This exemption is effective as of July 1, 1995, except for Plan investments in the LEI Fund, for which the effective date is January 3, 1998.

Written Comments: The Department received no requests for a hearing and one written comment submitted by the Amalgamated Bank of New York (the Bank). The Bank's comment, and the Department's response thereto, is summarized as follows:

(1) The Bank notes that section II(H)(1) of the proposed exemption would require the Independent Fiduciary, U.S. Trust, to make a periodic determination with respect to each Plan that the Banking Services, CDs and depository accounts involving the Plan are necessary and appropriate for the establishment or operation of the Plan. The Bank maintains that this periodic determination is more appropriately made by the Authorizing Plan Fiduciary with respect to each Plan, as the parties have agreed under the terms of the appointment of the Independent Fiduciary. The Bank requests that the condition be modified to require the Independent Fiduciary to

receive such an annual determination from the Authorizing Plan Fiduciary with respect to each Plan. The Department has determined to modify the final exemption as requested. Accordingly, the Department has added a requirement to section II(C) of the final exemption that the Authorizing Plan Fiduciary make a periodic determination, at least annually, that the Banking Services, CDs and depository accounts are necessary or appropriate for the establishment or operation of the Plan, and communicate such determination to the Independent Fiduciary. The Department notes that the Independent Fiduciary is responsible under the final exemption for making the other determinations required under section II(H).

(2) The Bank notes that, in paragraph 8 of the Summary of Facts and Representations in the Notice of Proposed Exemption, the Department summarizes U.S. Trust's view of the Bank's financial condition using in some instances language from U.S. Trust's original Independent Fiduciary report. In the interest of complete accuracy of disclosure, the Bank wishes to note that the third sentence following the italicized heading, "Financial condition of the Bank", (commencing with "U.S. Trust represents that the duration positioning * * *") was deleted in the revised Independent Fiduciary report in favor of a more detailed explanation, in Appendix A of the revised report, of the effect of interest rate changes on the Bank. The Bank points out that this change did not alter U.S. Trust's conclusion that the Bank is operated conservatively and is well-capitalized and solvent.

(3) The Bank states that while the Department has accurately and completely identified the Plans and the Bank's products and services as they existed at the time of the filing of the exemption application, the Plans' investment needs are dynamic and one or more Plans might identify additional products offered by the Bank in the normal course of its business that would fit the Plan's investment needs. The Bank represents that this has occurred since the exemption application was filed, with respect to two of the Bank's collective funds:

The LongView Fund: A commingled, equity investment fund which invests proportionately in the securities that comprise the S&P 500 Index, designed to mirror the rate of return on the S&P 500 Index. The LongView Fund currently has approximately \$1.2 billion in assets. The Bank has overall responsibility for the LongView Fund, acts as custodian, and oversees

investment of the Fund, which is offered to the public in the ordinary course of the Bank's business. Although trustees of the Plans have tentatively approved investments in the LongView Fund, none of the Plans have yet invested in it.

The LEI Fund: A commingled, equity investment fund designed to "outperform" the S&P 500 Index by 100 basis points per annum, gross of fees. The LEI Fund opened in January 1997 and has approximately \$38 million in assets. The Bank has overall responsibility for the Fund, acts as custodian and recordkeeper, and oversees the investment managers. None of the Plans have invested in the LEI Fund, although trustees of certain of the Plans have expressed an interest in such investment.

The Bank requests, in view of the pendency of the current exemption proposal, that the Department add these two funds to the exemption by amending the definition of "Banking Services" in Section IV(c) of the exemption specifically to include these funds. In support of this request, the Bank requested that the Independent Fiduciary, U.S. Trust, conduct the same type of review of the LongView and LEI Funds that it conducted with respect to the other banking services and products that are the subject of this exemption. The Independent Fiduciary's reports with respect to each fund was submitted to the Department with the Bank's comment. As with respect to the investment management services reviewed in its original report, the Independent Fiduciary requested that Towers Perrin prepare reports regarding these products, and the Towers Perrin reports were also submitted to the Department with the Bank's comment. The Bank states that inclusion of these funds in the exemption at this time would be in the interests of administrative convenience and feasibility for the Department and the parties to avoid a second exemption proceeding. The Bank notes that the two additional funds are fully described and analyzed in the reports of Towers Perrin and the Independent Fiduciary, which were submitted with the comment.

With respect to the LongView Fund, in a supplemental report dated January 14, 1997, the Independent Fiduciary summarizes its findings and conclusions regarding that fund. The Independent Fiduciary states that it considered information obtained from its own research as well as an extensive report prepared by Towers Perrin which analyzed the Bank's management structure regarding the LongView Fund, the investment process, key investment

professionals, performance results, fees, style and risk characteristics, and clients. The Independent Fiduciary concludes that making the LongView Fund available for investments by the Plans would be reasonable, appropriate, and in the best interests of the Plans.

With respect to the LEI Fund, in a second supplemental report dated May 8, 1997, the Independent Fiduciary summarizes its findings and conclusions regarding that fund. As with the LongView Fund, the Independent Fiduciary states that it considered information obtained from its own research as well as an extensive report on the LEI Fund by Towers Perrin. On the basis of its review and evaluation, the Independent Fiduciary determined that it would be in the best interests of the Plans to make the LEI Fund available through inclusion in the exemption. However, in view of the relatively short performance history of the LEI Fund, the Independent Fiduciary intends to defer any Plan investments in the LEI Fund until it completes its annual review of the Bank's investment management services included under the exemption, such review to occur effective January 3, 1998. If at that time the Independent Fiduciary concludes that the LEI should continue to be made available under the exemption, the Independent Fiduciary proposes to authorize Plan investments in the LEI Fund.

The Bank represents that the inclusion of these two funds in the exemption would be protective of the interests of participants and beneficiaries of the Plans. In this regard, the Bank notes the independent review and analysis of the funds by the Independent Fiduciary and Towers Perrin, and the continuing oversight of the Independent Fiduciary of any Plan investments in either of the Funds.

On the basis of the information contained in the reports of the Independent Fiduciary reports and Towers Perrin, the Department has determined that it would be appropriate to include the LongView Fund and the LEI Fund in the exemption. Accordingly, the definition of Banking Services in the exemption has been modified to include the LongView Fund and, effective January 3, 1998, the LEI Fund.

For a more complete statement of the summary of facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on February 18, 1997 at 62 FR 7269.

FOR FURTHER INFORMATION CONTACT:
Ronald Willett of the Department,

telephone (202) 219-8881. (This is not a toll-free number.)

Operating Engineers Local 150, Apprenticeship Fund (the Fund), Located in Plainfield, Illinois

[Prohibited Transaction Exemption 97-36; Exemption Application No. L-10280]

Exemption

The restrictions of section 406(a) and 406(b) (1) and (2) shall not apply to the sale (the Sale) of a certain parcel of improved real property (the Property) from the Fund to International Union of Operating Engineers, Local 150 (Local 150), a party in interest with respect to the Plan provided that the following conditions are met:

(1) The fair market value of the Property is established by a qualified and independent real estate appraiser;

(2) Local 150 pays the greater of \$180,000 or the current fair market value of the Property as of the date of the transaction;

(3) The Sale is a one time transaction for cash; and

(4) The Fund pays no fees or commissions related to the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 17, 1997 at 62 FR 18803.

FOR FURTHER INFORMATION CONTACT:

Allison Padams of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

The Roquette America, Inc. Pension Plan, for Salaried Employees (the Plan) Located in Keokuk, Iowa. [Prohibited Transaction Exemption 97-37; Exemption Application No. D-10390]

Exemption

The restrictions of sections 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 loan by Aon Consulting, Inc. (Aon Consulting) to the Plan, in connection with certain excess distributions (the Overpayments) that Aon Consulting inadvertently caused to be made under the Plan, and (2) the potential repayment of the loan by the Plan to Aon Consulting.

This exemption is subject to the following conditions:

(1) The Plan pays no interest nor incurs any other expense relating to the loan;

(2) The loan amount covers the Overpayments, plus lost opportunity costs attributable to the Overpayments;

(3) Any repayment of the loan is restricted solely to the amount, if any,

recovered by the Plan with respect to the Overpayments in litigation or otherwise; and

(4) A qualified, independent fiduciary for the Plan has reviewed the terms and conditions of the loan on behalf of the Plan and determined that such terms and conditions are in the best interests of and appropriate for the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 17, 1997 at 62 FR 18806.

Written Comments

The Department received two written comments with respect to the notice of proposed exemption.

Both commenters expressed concern that the proposed exemption would negatively affect their retirement benefits. Northern Trust, the Plan's independent fiduciary, confirmed that the proposed exemption would not change benefit payments under the Plan. The first commenter also stated that Aon Consulting should make the Plan whole, not merely make the Plan an interest-free loan. Northern Trust responded that the interest-free loan would have the effect of making the Plan whole, since Aon Consulting would receive repayment of the loan only to the extent that the Plan recovered any portion of the Overpayments made to certain Participants. The second commenter added that further legal action should be taken against these Participants. Northern Trust responded that under the proposed exemption, Aon Consulting would pay the legal fees associated with recovering the Overpayments.

After a careful consideration of the entire record, the Department has determined to grant the exemption as proposed.

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

Robert A. Benz & Co., P. A., Certified Public Accountants

Employees Profit Sharing Plan (The Plan)

Located in Pensacola, Florida

[Prohibited Transaction Exemption 97-39;

Exemption Application No. D-10398]

Exemption

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 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 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 this exemption;

(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 percent 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.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on June 4, 1997, at 62 FR 30616.

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

Gart Brothers Sporting Goods Company 401(k) Plan (the Plan) Located in Denver, Colorado [Prohibited Transaction Exemption 97-39; Exemption Application No. D-10403]

Exemption

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 cash sale (the Sale) by the Plan of a 5 percent 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 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.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on June 4, 1997, at 62 FR 30618.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department,

telephone (202) 219-8881. (This is not a toll-free number.)

BP America Inc. Retirement Trust, Located in Cleveland, Ohio; IBM Retirement Plan Trust, Located in Armonk, New York; United States Steel Corporation Plan, Located in Pittsburgh, Pennsylvania; and Retirement Plan of Marathon Oil Company, Located in Findlay, Ohio; (collectively, the Plans) [Prohibited Transaction Exemption No. 97-40; Exemption Application Nos. D-10441 through D-10444]

Exemption

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 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 agreements by the Plans to honor capital calls made by IBJ in lieu of the Partnership's general partner; provided that (a) the 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.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 4, 1997 at 62 FR 30621.

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 or disqualified person from certain other

provisions to which the exemptions 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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of July, 1997.

Ivan Strasfeld,

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

[FR Doc. 97-20242 Filed 7-30-97; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL SCIENCE FOUNDATION

**Agency Information Collection
Activities: Proposed Modification OMB
No. 3145-0101; Comment Request;
Title of Collection: 1998 Survey of
Scientific and Engineering Research
Facilities at Colleges and Universities**

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3501 et seq.), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed information collection. This notice describes a modification to the currently cleared collection, NSF Survey of Scientific and Engineering Research Facilities at Colleges and Universities, OMB No. 3145-0101.