must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determinations.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Act; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 17, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–16064 Filed 7–19–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. L–12006]

Proposed Exemption for Associated General Contractors of America, San Diego Chapter, Inc. Apprenticeship and Training Fund, Located in San Diego, CA

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act). This proposed exemption would permit the leasing of certain improved real property located in San Diego, California by the Associated General Contractors of America, San Diego Chapter, Inc. Apprenticeship and Training Fund (the Plan or the Applicant), from the Associated General Contractors of America, San Diego Chapter, Inc. (the Chapter).

DATES:

Comments due: Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by September 5, 2024.

Exemption date: If granted, this exemption will be in effect beginning on October 1, 2020.

ADDRESSES: All written comments and requests for a hearing should be submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. L–12006 via email to *e-OED@dol.gov* or online through *https://www.regulations.gov.* Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Gonzalez of the Department at (202) 693–8553 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Comments

Persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and how the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) the name, address, telephone number, and email address of the person making the request; (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; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A hearing notice will be published by the Department in the **Federal Register**. The Department may decline to hold a hearing if: (1) the request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

Warning: All comments received will be included in the public record without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute.

If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the *https://www.regulations.gov* website is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of ERISA, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[1] If granted, this proposed exemption would permit, effective October 1, 2020, the leasing of certain improved real property located in San Diego, California by the Associated General Contractors of America, San Diego Chapter, Inc. Apprenticeship and Training Fund (the Plan or the Applicant), from the Associated General Contractors of America, San Diego Chapter, Inc. (the Chapter), provided that the conditions described below are met.

Summary of Facts and Representations[2]

The Plan

1. The Plan provides apprenticeship training for construction trade

[1] This proposed exemption would not provide relief from the requirements of, or specific sections of, any law not noted herein. Accordingly, the applicant is responsible for ensuring compliance with any other laws applicable to this transaction.

[2] The Summary of Facts and Representations is based on the Applicant's representations and does not reflect factual findings or opinions of the

Continued

employees within five Southern California counties. The Plan is funded by participating employers (contributing approximately 90% of the Plan's annual funding) and the State of California (contributing approximately 10% of the Plan's annual funding). Apprentices do not contribute to the Plan. The Plan's most recent audited financial statements reflect that the Plan's total assets were $13,725,754 as of March 31, 2023.

2. The Plan's Board of Trustees (the Board) is comprised of six individual members (the Trustees) of participating construction trade employers. The Trustees make all the Plan's administrative and investment decisions including decisions about the lease that is the subject of this proposed exemption.

The Plan Sponsor: The Chapter

3. The Plan is sponsored by the Chapter, which is a trade organization founded in 1927 to promote the interests of employers in the construction industry located in San Diego, California. A Board of Directors comprised of construction trade employers manages the Chapter.

The Plan's Facilities Before October 1, 2020

4. The Applicant represents that before October 1, 2020, the Plan leased three different properties from unrelated parties comprising 11,293 square feet that were used for administrative, educational, and training purposes. According to the Applicant, the facilities on these properties lacked adequate square footage and had outdated training technology, which resulted in increased costs and wasted resources for the Plan. In addition, one of the properties was located more than three miles from the other two properties.

The Chapter's Property

5. On January 18, 2018, the Chapter and the Plan entered into a Memorandum of Understanding (MOU) documenting their shared interest in providing a ''world class apprenticeship program'' in a ''modernized facility.'' Following execution of the MOU, the Chapter acquired unimproved real property located at 10140 Riverford Road, Lakeside, California (the Parcel) from Lakeside Land Co., a California limited liability corporation (the LLC). The LLC is not a member of the Chapter, there are no common directors between the LLC and the Chapter, and no LLC directors are Plan Trustees. The LLC has neither contributed nor participated in the Plan, nor does the LLC participate in the Plan's apprenticeship training programs.

6. In 2020, the Chapter utilized the Parcel to construct a high-ceiling training space comprising approximately 43,600 square feet (the Building). The Chapter's acquisition of the Parcel, and subsequent construction of the Building, was based on the Plan's intent expressed in the MOU to sign a 10-year lease to use both the Building once constructed and an unimproved exterior lot (the Property).

The Lease

7. On April 25, 2019, the Plan Trustees, acting on behalf of the Plan, caused the Plan to enter into an agreement with the Chapter to lease both a portion of the Building (once constructed) and an unimproved exterior lot located in the Parcel (the Lease), subject to the review and approval of both a qualified independent fiduciary (described below, the Independent Fiduciary) and the Department.

8. The Lease's term is for 10 years, under which the Plan holds a leasehold interest to occupy and use 90 percent of the Building's rentable space (39,115 square feet of the Building's total space of 43,600 square feet) and an unimproved exterior lot along with rights to use the Property's common areas. The Chapter utilizes the remaining 10 percent, and it has no present plans to change its Building's space allocation.

9. The Plan's initial base rent under the Lease is $40,000 per month or approximately $1.02 per square foot (the Base Rent). This expense during a twelve (12) month period is about 3.5 percent of the Plan's total assets as reflected in the Plan's audited financial statements for accounting year ending March 31, 2023. The Base Rent is subject to annual increases that are discussed further below.

The Independent Appraiser

10. On May 17, 2019, the Plan engaged Cushman & Wakefield Western Inc. as the Independent Appraiser to determine the Property's fair market rental value. Trevor G. Chapman, a California licensed Certified General Real Estate Appraiser, who is an employee of the Independent Appraiser, performed the appraisal.

11. Mr. Chapman represents that the Independent Appraiser has no present or prospective interest in the Property that is subject to the Lease, and no personal interest with respect to the Plan and the Chapter. In addition, Mr. Chapman represents that the Independent Appraiser's annual gross revenues derived from parties in interest with respect to the Plan represented 0.37% of its gross revenues for the 2020 tax year. Furthermore, the Independent Appraiser's agreement with the Plan does not contain any provisions that provide for the direct or indirect indemnification or reimbursement of the Independent Appraiser by the Plan or any other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable to the Independent Appraiser's work, or that waive any rights, claims or remedies of the Plan or its participants and beneficiaries under ERISA, the Code, or other Federal and state laws against the Independent Appraiser with respect to the transaction(s) that are the subject of the exemption.

12. Mr. Chapman inspected the Property on July 1, 2019, to collect primary and secondary data related to the Property, investigate the general trends in the regional economy and local area, analyzed rental data where appropriate, and reviewed (i) the cost estimates based upon submitted architects' plans, and (ii) the proposed Lease using generally accepted market-derived appropriate methods and procedures. In a written report (the Independent Appraisal Report) dated October 23, 2019, Mr. Chapman determined that the Property's fair market rental rate was $44,443 per month, which represented $1.14 per square foot of the Plan's rentable space.

13. According to the Independent Appraiser, the Lease is a triple net lease.[3] Notwithstanding the types of commercial leases that may exist in any given marketplace, the Independent Appraiser informed the Department that the Property subject to the Lease is located in a market area in which commercial leases are typically written on a triple-net basis with tenants

Department, unless indicated otherwise. The Department notes that the availability of this exemption, if granted, is subject to the express condition that the material facts and representations contained in application L–12006 (the Application) are true and complete and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in the transaction covered by this proposed exemption or in a material fact or representation described in the Application, the exemption will cease to apply as of the date of the change.

[3] The Independent Appraiser notes that a triple net lease is a type of commercial lease wherein the lessee is responsible for their pro rata share of expenses for common area maintenance, taxes, and insurance. Also, in addition to a base rent, tenants subject to triple net leases are often required to reimburse the landlord for certain expenses; recovery clauses for expenses range from absolutely net (whereby the tenant pays all property expenses) to fully gross (in which tenant pays no expenses), which provisions can vary by property type, locale, and can fall anywhere within the net to gross range.

responsible for all operating expenses, including common area maintenance, taxes, and insurance. Lease terms within the Property's market are generally between 3 and 7 years for industrial tenants and contain annual escalations of 3.0 percent.

The Independent Fiduciary

14. On October 27, 2019, the Plan Trustees retained the services of Prudent Fiduciary Services, LLC (PFS) of Los Angeles, California, to serve as the Plan's Independent Fiduciary with respect to the Lease. Specifically, Mr. Miguel Paredes, a principal with PFS, was appointed to undertake the duties and responsibilities on behalf of PFS in its role as the Plan's Independent Fiduciary to ensure that the Lease arrangement complied with ERISA.

15. The Independent Fiduciary represents that neither Mr. Paredes nor PFS had a pre-existing relationship with the Plan or the Chapter. The Independent Fiduciary also represents that Mr. Paredes and PFS expect to derive approximately 0.55 percent of their combined annual gross revenues from the Plan and parties in interest with respect to the Plan. The Independent Fiduciary's agreement with the Plan did not contain any provisions that violated ERISA Section 410 or the Department's Regulations codified at § 2509.75–4; [4] and did not contain any provision providing for the direct or indirect indemnification or reimbursement of the Independent Fiduciary by the Plan or other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable the Independent Fiduciary's work, or waiving any rights, claims, or remedies of the Plan under ERISA, state, or Federal law against the Independent Fiduciary with respect to the transaction(s) that are the subject of the exemption.

16. The Independent Fiduciary examined whether the Lease would be reasonable, prudent, in the interest of, and protective of the Plan and of the Plan's participants. To perform this examination, the Independent Fiduciary: (a) reviewed various documents provided by the Plan, such as trust agreements, IRS Forms 990, financial statements, written policies, guidelines, and procedures, lease agreements, and the Plan Trustees' meeting minutes; (b) interviewed and/or held discussions with representatives of the Plan; (c) reviewed the Independent Appraisal Report; (d) conducted an in-person visit of the Property site; (e) reviewed applicable laws and guidance; and (f) considered the Plan Trustees' decision-making process with respect to entering into the Lease.[5]

17. In a report dated October 28, 2019 (the Independent Fiduciary Report), the Independent Fiduciary noted that the Property allows for onsite heavy equipment operator training, which was not an option in the Plan's former location due to space constraints. Plus, the new location represents an upgrade in size and quality, which should translate into better training programs. The Independent Fiduciary stated that having the classrooms and apprenticeship/training offices in the same location as the Chapter offices potentially improves the operation and efficiency of the training programs because the Chapter's oversight and resources are nearby. The Independent Fiduciary also noted that the Plan and Chapter share an interest in providing high quality apprenticeship and continuing training education programs because the Plan would be able to provide excellent benefits to its participants and the Chapter would be able to use the training programs to promote Chapter membership.

18. The Independent Fiduciary reviewed the Independent Appraiser's specific qualifications, including his education, prior experience, and professional licenses, memberships, and affiliations. Based upon its review, the Independent Fiduciary determined that the Independent Appraiser possessed the appropriate training, experience, and facilities to provide a qualified appraisal report on behalf of the Trust Fund regarding the subject property.

19. The Independent Fiduciary next examined the Independent Appraiser's independence. The Independent Fiduciary represents that it did not find any relationship between Chapman or Cushman, or any affiliates, to the parties that would be engaging in the transaction contemplated by the Lease Agreement. The Independent Fiduciary's review also did not reveal any other information that would call into question the Independent Appraiser's independence.

20. The Independent Fiduciary next determined whether the payments from the Plan to the Chapter under the Lease would be reasonable. To do this, the Independent Fiduciary reviewed the methodology provided by the Independent Appraiser to calculate the fair market rent, which included comparing comparable rental properties, having discussions with local brokers, and testing the Independent Appraiser's conclusions through a return on cost analysis. The Independent Fiduciary adjusted the Lease's base rent of $1.02 per square foot upwards by $0.07 per square foot, to account for the Plan's additional $2,579 monthly payments to the Reserve Fund, and determined that even with the adjusted rate, the Lease's adjusted monthly rent of $1.09 per square foot is less than its appraised fair market value of $1.14 per square foot. Additionally, the Independent Fiduciary noted in the Independent Fiduciary Report that leases in the Property's subject market are typically written on a triple net basis, which is consistent with the structure of the Lease. The Independent Fiduciary stated that it also reviewed the properties and key lease information used in the Independent Appraisal Report analysis of rental activity for comparable space in similar properties in the Property's subject market and found that the selected comparable properties were appropriate and reasonably similar. The Independent Fiduciary noted how other lease terms, such as rent escalation clauses, duration, and tenant improvement allowances, contained in the comparable leases that the Independent Appraiser identified compared to those in the Lease. For the reasons set forth above, the Independent Fiduciary determined that the arrangements provided under the Lease are necessary for the operation of the Plan and that the compensation to be paid by the Plan to the Chapter is reasonable. It also determined that entering into the Lease was reasonable, prudent, and in the Plan's interest.

21. On July 28, 2020, the Independent Fiduciary issued an addendum and supplement to the Independent Fiduciary Report. In the addendum, the Independent Fiduciary agreed to perform the following additional duties on behalf of the Plan: (a) monitor the terms of this exemption, if granted, on an ongoing basis and take all actions that are necessary and proper to enforce the Plan's rights under the Lease to protect the Plan's participants and

[4] ERISA section 410 provides, in part, that ''except as provided in ERISA Sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning Part 4 of Title I of ERISA] shall be void as against public policy.''

[5] The Independent Fiduciary represents that the Trustees appeared to have undertaken a reasonable and thorough process before making this decision. The Independent Fiduciary represents that the Trustees had explored other alternatives and real estate properties in the area. Specifically, starting in year 2015 the Trustees began searching for new facilities. The Trustees evaluated 12 real properties, comprised of six existing buildings, three parcels of open land for building, two properties for operating engineer usage, and the additional annex near the then current facility.

beneficiaries; (b) review and approve the material terms and conditions of the Lease and make any adjustments thereto; (c) engage the Independent Appraiser and/or other service providers as they reasonably determine to be necessary; (d) monitor the Lease, including during any subsequent renewal period; and (e) ensure that all conditions of this exemption, if granted, are met. The obligations in the addendum have been subsumed into the Independent Fiduciary's duties below.

22. The proposed exemption requires the Independent Fiduciary to engage a qualified independent appraiser to perform an independent appraisal of the Property following the beginning date of the Lease, on a periodic basis as prudence requires, to ensure the Plan does not pay more than fair market value under the Lease. The Independent Fiduciary must regularly evaluate the prudence of the Plan's continued participation in the Lease and ensure that participation in the Lease remains in the interest of and protective of the interests of the Plan's participants. The Plan's ongoing participation in the Lease requires the ongoing approval and consent of the Independent Fiduciary. The Independent Fiduciary is responsible for the selection of the independent appraiser, the frequency of appraisals, and the assessment of the reliability of the appraisals in determining fair market value. The Plan may continue to participate in the Lease during any period only to the extent the Independent Fiduciary has affirmatively determined that participation in the Lease remains in the interest of and protective of the Plan and its participants and beneficiaries. The amounts that the Plan has paid or will continue to pay under the Lease may not exceed fair market value.

23. In the July 28, 2020, supplement to the Independent Fiduciary Report, the Independent Fiduciary stated that the Plan needed more space to comply with social distancing requirements and guidelines in the COVID–19 environment and to enable the Plan to offer sufficient classes in a manner compliant with State Division of Apprenticeship Standards Guidelines. In the supplement, the Independent Fiduciary confirmed that the Plan's entering into the Lease was reasonable, prudent, and in the interest of the Plan.

24. On October 1, 2020, the Independent Appraiser conducted another appraisal of the Property and determined that the Property's fair market rental value under the Lease was $48,890 per month as of that date.[6] The Plan moved into the Building on the same day, stating that it urgently needed larger space due to the COVID–19 health pandemic. On January 14, 2022, the Independent Fiduciary represented to the Department that for the period beginning on October 1, 2020, the terms of the Lease, including the base monthly rent of $40,000 per month, are in the interest of, and protective of, the Plan and its participants and beneficiaries, and reflect a below fair market rent for the subject premises.

Other Duties of the Independent Fiduciary

25. The Independent Fiduciary must ensure that the Lease is in the interest and protective of the Plan and its participants and beneficiaries, including with respect to any amendment or renewal of the Lease. Further, the Independent Fiduciary must take all necessary and proper steps to ensure that the Plan and its participants and beneficiaries are protected in connection with the Lease, including by approving any amendment or renewal thereof, and beginning on the day that the notice of exemption is published in the **Federal Register**, the Independent Fiduciary must ensure that the Plan's total payments under the Lease during a twelve (12) month period do not exceed ten (10) percent of the Plan's total assets as reflected in the most recently issued report from the independent accounting firm responsible for auditing the Plan's financial statements.

In order to ensure that the Lease and its terms continue to be in the interest of participants and beneficiaries of the Plan, this proposal requires the Independent Fiduciary to give prior written notice to the Department's Office of Exemption Determinations at least 60 days before the Lease is amended, modified, or extended, unless such delay would cause imminent harm to the Plan in which case the notice must be provided immediately. The notification must include a complete description of the amendment, modification, or extension, including all material terms.[7] Additionally, the Independent Fiduciary must notify the Chapter of the Plan's intention to extend the Lease beyond the initial 10-year term, and any subsequent renewal must not exceed five-years.

The Independent Fiduciary, while acting on the Plan's behalf with respect to the Lease, must not be directly or indirectly controlled by or through one or more intermediaries, or under common control with either the Chapter, the Plan, or any related employers' members.

26. The Independent Fiduciary has not entered into and must not enter into any agreement or instrument that violates either ERISA Section 410 or the Department's Regulations codified at § 2509.75–4;[8] and has not entered and must not enter into any agreement, arrangement, or understanding that includes any provision that provides for the direct or indirect indemnification or reimbursement of the Independent Fiduciary by the Plan or other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable the Independent Fiduciary's work, or that waives any rights, claims, or remedies of the Plan under ERISA, state, or Federal law against the Independent Fiduciary with respect to the transaction(s) that are the subject of the exemption.

Other Lease Terms

27. The Lease defines the formula to be used in determining the Base Rent annual increases as follows:

"Beginning on the date that is one (1) year after the Commencement Date [Lease's start date], and on each successive one-year anniversary thereof (each an 'Adjustment Date') throughout the [t]erm, the Base Rent shall be increased by the amount of increase in the CPI . . . [s]uch increase shall be calculated by multiplying the then-current Base Rent by a fraction, the numerator of which shall be the CPI for the Adjustment Date and the denominator of which shall be the CPI for the previous Adjustment Date (or the CPI for the Commencement Date in case of the adjustment for the first Adjustment Date). If there is no increase in CPI, or a decrease in CPI, the Base Rent shall remain unchanged."[9]

[6] This determination is set forth in the Independent Appraiser's written report, dated December 16, 2021.

[7] Because the proposed exemption provides retroactive exemptive relief, within 60 days of the date of publication of the notice of exemption in the **Federal Register** (the Publication Date), the Independent Fiduciary will provide a summary of all amendments, modifications, or extensions of the Lease made between October 1, 2020, and the Publication Date.

[8] ERISA section 410 provides, in part, that "except as provided in ERISA Sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning Part 4 of Title I of ERISA] shall be void as against public policy."

[9] CPI means the Consumer Price Index; the Department's Bureau of Labor Statistics publishes the CPI. The Lease also provides that ". . . [t]he CPI for any Adjustment Date shall be the CPI for the most recent month for which it is published before the Adjustment Date (or before the Commencement Date, as the case may be)." The Department understands such Base Rent increase calculation to mean that the Base Rent may increase annually based on the published CPI for the applicable period.

28. Notwithstanding the Lease's CPI Base Rent annual increases provision discussed above, and as further described below, the Independent Fiduciary must ensure that the total amount paid by the Plan in connection with the Lease does not exceed the fair market rental value.

29. In addition to the Base Rent, the Lease requires the Plan to pay certain operating expenses (the Operating Expenses).[10] The Operating Expenses are subject to both an annual reconciliation process (the Annual Reconciliation) and to the Plan's exercise of audit rights, because of the Building's 90/10 allocation ratio between the Plan and the Chapter, respectively. The computation of the Operating Expenses must be made in accordance with fair and reasonable accounting principles customarily applied by owners of similar properties located in San Diego, California.[11]

30. The Lease requires both the Plan and the Chapter to make monthly payments into a Capital Replacement Reserve Fund (the Reserve Fund); both the Plan and the Chapter must pay their pro rata monthly amount to the Reserve Fund based on their space utilization under the Lease—the Chapter must pay $136 per month for occupying 4,485 square feet while the Plan must pay $2,579 per month for occupying 39,115 square feet.[12] The Reserve Fund's monthly amounts will remain the same throughout the Lease's duration, including extensions.

31. The Reserve Fund is intended to segregate payments for future replacement needs and its calculations are based on reasonable life expectancy [13] and anticipated replacement costs of the Reserve Fund Items; as such, the Reserve Fund is not subject to the Annual Reconciliation provision.

32. The Reserve Fund may only be used for the replacement of certain items (such as roofing, doors, frames and hardware, flooring, asphalt and concrete paving and resealing, fencing and gates, etc.) that are listed in the Lease's addendum, and the Reserve Fund may not be used for any other purpose unless agreed to by both the Chapter and the Plan, subject to the Independent Fiduciary's approval.[14]

33. Further, the Lease requires the Chapter to keep the Property, including interior and exterior walls, roof, and common areas, in good condition and repair except that the Plan is responsible for day-to-day maintenance and repairs to the interior of its allocated rented space to the extent such cost is attributable to causes beyond normal wear and tear. The Lease requires the Chapter to keep the moneys in the Reserve Fund in a restricted account that may not be used for any purpose other than to fund the replacement of the items described above. Amounts paid by the Plan into the Reserve Fund constitute a portion of the Plan's overall consideration paid to the landlord, and once the amounts are paid into the Reserve Fund, the Plan has no legal right to such amounts beyond what is described in the Lease. The Lease's termination ends the Plan's right under the Lease.[15]

Exemptive Relief Requested and Analysis

34. Absent an administrative exemption, the Lease would violate ERISA Sections 406(a)(1)(A) and (D) and 406(b)(2). ERISA Section 406(a)(1)(A) prohibits the sale, exchange, or lease, of any property between a plan and a party in interest. The Chapter is a party in interest with respect to the Plan under ERISA Section 3(14)(D) because it is an employee organization whose members are covered by the Plan. Therefore, the Lease would violate ERISA section 406(a)(1)(A).

35. Additionally, ERISA section 406(a)(1)(D) prohibits the transfer to or use of any plan assets by or for the benefit of a party in interest of a plan. Because the Lease requires monthly cash payments from the Plan's assets to the Chapter, the payments would be considered a transfer of Plan assets to a party in interest in violation of ERISA section 406(a)(1)(D).

36. Finally, the Lease would violate ERISA section 406(b)(2), which prohibits a plan fiduciary acting in their individual capacity or in any other capacity in a transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or its participants or beneficiaries. Because both the Trustees and the Board are comprised of individuals representing participating employers who are the Chapter's members, these individuals are involved on both sides of the Lease in violation of ERISA Section 406(b)(2).

Conditions for Exemptive Relief [16]

37. In addition to the protections described above, the Plan's participants must not pay any of the Plan's operating expenses. The terms and conditions of the Lease must be at least as favorable to the Plan as those that the Plan could obtain in a comparable lease from an unrelated party in an arm's-length transaction. If granted, this exemption will not cover any type of service that is otherwise covered under an administrative class exemption or a statutory exemption of ERISA, such as ERISA section 408(b)(2).

38. In the event that the Independent Fiduciary retains an Independent Appraiser in connection with the Lease, such Independent Appraiser must not have entered into, and must not enter into, any agreement, arrangement, or understanding that includes any

[10] The Lease defines Operating Expenses as additional rent for costs that the Chapter incurs, which include the following: (1) operation, repair, maintenance, and replacement of the common areas; (2) trash disposal, janitorial and security services; (3) any service provided by the Chapter that is an operating expense under the Lease; (4) the cost of the premiums for the liability and property insurance policies required to be maintained by the Chapter under the Lease; (5) the cost of water, sewer, gas, electricity, solar panels, and other publicly mandated services; (6) labor, salaries and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the premises, and accounting and management fees attributable to the operation of the premises; (7) replacing and/or adding improvements mandated by any governmental agency and any repairs or removals necessitated thereby; (8) replacements of equipment or improvements, as amortized over such equipment or improvements' useful life for depreciation purposes according to federal income tax guidelines; (9) reserves set aside for maintenance, repair and/or replacement of common area improvements and equipment as set forth in the Lease's Addendum; (10) environmental damages and earthquake coverage to the extent not recovered by Chapter directly from any tenants; and (11) all taxes, assessments and charges levied on or with respect to the facility, or any personal property of the Chapter used in the operation thereof and payable by the Chapter.

[11] The Independent Fiduciary's duties include reviewing and approving the Lease's Operating Expenses provisions.

[12] As noted above, the Independent Fiduciary determined that these payments had the effect of adjusting the Lease's base rent of $1.02 per square foot upward by $0.07 per square foot.

[13] The Lease provides a life cycle costs analysis for the Reserve Fund Items, which considers all costs of acquiring, operating, maintaining, and disposing of a building component or system.

[14] The Reserve Fund includes the following additional items: backflow preventers on site utilities; casework and countertops; sheet metal, caulking, joint sealants; roofing maintenance and re-roofing; doors, frames, and hardware; operable walls in classroom; coiling service doors; glass and glazing storefront system; ceramic tile; flooring carpet replacement and base; paint and coatings; elevator; plumbing; HVAC equipment; electrical and site lighting; and fire alarm and security system.

[15] As described in more detail above, the Independent Fiduciary determined that the aforementioned Lease terms, including the Reserve Fund provision, were prudent, and in the interest of the Plan. Moreover, this proposed exemption prohibits the Plan's participants from paying any Plan operating expenses, including amounts paid into the Reserve Fund.

[16] The Department notes that this is a summary of the conditions intended for the convenience of a reader; however, the governing conditions for the Proposed Transaction are those reflected in section II of the proposed exemption.

provision that provides for the direct or indirect indemnification or reimbursement of the Independent Appraiser by the Plan or any other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable to the Independent Appraiser's work, or that waives any rights, claims or remedies of the Plan or its participants and beneficiaries under ERISA, the Code, or other Federal and state laws against the Independent Appraiser with respect to the transaction(s) that are the subject of the exemption.

39. Finally, this proposed exemption would require the Plan to adhere to the material facts and representations described in the proposed exemption and set forth in the exemption application, including the Plan's representations made pursuant to the Department's Regulations codified in 29 CFR 2570.34–35.

Statutory Findings

40. ERISA Section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such plan and its participants and beneficiaries, which criteria are discussed below.

a. *The Proposed Exemption Is* ''*Administratively Feasible.*'' The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, the Independent Fiduciary must represent the Plan for all purposes relating to the proposed transaction. This representation includes: reviewing and approving the Lease terms and conditions; and ensuring that the Plan's entering into the Lease and continuation of the Lease, including any amendment to or renewal thereof, is reasonable, prudent, and in the interests of, the Plan and its participants and beneficiaries.

b. *The Proposed Exemption Is* ''*In the Interests of the Plan.*'' The Department has tentatively determined that the proposed exemption is in the Plan's interest because the Lease permits the Plan to rent a modern facility located in a central location with updated equipment that can accommodate a large group of apprentices for an amount not exceeding fair market value.

c. *The Proposed Exemption Is* ''*Protective of the Plan.*'' The Department has tentatively determined that the proposed exemption is protective of the rights of the Plan and its participants, and beneficiaries, because the Independent Fiduciary must represent the Plan's interests for all purposes with respect to the Lease in accordance with ERISA's fiduciary duties of prudence and loyalty, including prudently monitoring the terms of the Lease on an ongoing basis and ensuring that the protective conditions of the exemption are fully met.

Notice to Interested Persons

Notice of the proposed exemption will be given to all Interested Persons within 15 days of the publication of the notice of proposed exemption in the **Federal Register**, by first class U.S. mail, to the last known address of all such individuals. The notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. Written comments are due within 45 days of the publication of the notice of proposed exemption in the **Federal Register**. All comments will be made available to the public.

Warning: If you submit a comment, the Department recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

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 ERISA section 408(a) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA section 404(a)(1)(b); nor does it affect the requirement of Code section 401(a) 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 ERISA section 408(a) and/or Code section 4975(c)(2), 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 exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA 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 exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete at all times, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Proposed Exemption

Section I. Covered Transaction

If the proposed exemption is granted, the restrictions of ERISA sections 406(a)(1)(A), (D), and 406(b)(2) shall not apply, effective October 1, 2020, to the leasing of office, classroom, and training facilities (the Lease) located on an improved parcel of real property (the Property) by the Associated General Contractors of America, San Diego Chapter, Inc. Apprenticeship and Training Fund (the Plan) from the Associated General Contractors of America, San Diego Chapter, Inc. (the Chapter), to provide construction trade apprenticeship training to Plan participants, as long as the conditions set forth in section II are met.

Section II. General Conditions

(a) The Plan has paid, and will continue to pay, no more than the fair market rental value in connection with the Lease;

(b) The Plan's participants do not contribute to the Plan;

(c) A qualified independent fiduciary (the Independent Fiduciary) represents the Plan's interests in all respects to the Lease, including by approving the Lease and, if warranted, any amendment to or renewal of the Lease. Additionally, the Independent Fiduciary, acting on the Plan's behalf with respect to the Lease:

(1) Must not be directly or indirectly controlled by or through one or more intermediaries, or under common control with either the Chapter, the Plan, or any related employers' members;

(2) Reviewed the Lease, including the terms and conditions, and determined that the Lease was reasonable and in the interest of and protective of the Plan and its participants and beneficiaries in accordance with ERISA's fiduciary duties of prudence and loyalty;

(3) Confirmed that the initial base rent did not exceed the current fair market rental value of the Property by reviewing an appraisal performed by a qualified independent appraiser (the Independent Appraiser) both when the Plan entered into the Lease, and when the Plan began occupying the Property;

(4) Determined in advance of the Plan's entering into the lease for the Property, that the Lease is reasonable, prudent, in the interest of, and protective of the Plan and its participants and beneficiaries in accordance with ERISA's fiduciary duties of prudence and loyalty;

(5) Must engage a qualified independent appraiser to perform an independent appraisal of the Property following the beginning date of the Lease, on a periodic basis as prudence requires, to ensure the Plan does not pay more than fair market value under the Lease. The Independent Fiduciary is responsible for the selection of the Independent Appraiser, the frequency of appraisals, and the assessment of the reliability of the appraisals in determining fair market value;

(6) Must regularly evaluate the prudence of the Plan's continued participation in the Lease and ensure that participation in the Lease remains in the interest of and protective of the interests of the Plan's participants;

(7) Must monitor the parties' compliance with the terms and conditions of the exemption, if granted, and take all necessary and proper steps to ensure that the Plan and its participants and beneficiaries are completely protected throughout the Lease's term and any related transactions (including any renewal thereof);

(8) Must review and approve the Lease's operating expenses on an ongoing basis, including but not limited to ensuring that the Plan undergoes both an annual reconciliation for such accrued expenses and it exercises its audit rights when prudently needed.

(9) Must give prior written notice to the Chapter of the Plan's intention to extend the Lease beyond the initial 10-year term;

(10) Has not entered into and must not enter into any agreement or instrument that violates either ERISA section 410, or the Department's Regulations codified at 29 CFR 2509.75–4; [17] and

(11) Has not entered into and must not enter into any agreement, arrangement, or understanding that includes any provision that provides for the direct or indirect indemnification or reimbursement of the Independent Fiduciary by the Plan or other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable to the Independent Fiduciary's work, or that waives any rights, claims, or remedies of the Plan under ERISA, state, or Federal law against the Independent Fiduciary with respect to the transaction(s) that are the subject of the exemption;

(d) The Plan's ongoing participation in the Lease requires the continuing approval and consent of the Independent Fiduciary and the Plan may continue to participate in the Lease during any period only to the extent the Independent Fiduciary has affirmatively determined that participation in the Lease remains in the interest of and protective of the Plan and its participants and beneficiaries;

(e) Any adjustments to the base rent under the Lease must be linked to the Consumer Price Index for All Urban Consumers for the San Diego, California area, as published by the Department's Bureau of Labor Statistics;

(f) Any renewal of the Lease's initial 10-year term must be made solely at the Plan's discretion subject to approval by the Independent Fiduciary and if the Lease is renewed, the Lease term must not exceed five-years;

(g) The Independent Appraiser must not have entered into, and must not enter into, any agreement, arrangement, or understanding that includes any provision that provides for the direct or indirect indemnification or reimbursement of the Independent Appraiser by the Plan or any other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable to the Independent Appraiser's work, or that waives any rights, claims or remedies of the Plan or its participants and beneficiaries under ERISA, the Code, or other Federal and state laws against the Independent Appraiser with respect to the transaction(s) that are the subject of the exemption;

(h) The exemption does not cover any type of service that is otherwise covered under an administrative class exemption or a statutory exemption from ERISA's prohibited transaction provisions;

(i) Beginning on the day that the notice of exemption is published in the **Federal Register**, the Plan's total payments under the Lease during any given twelve (12) month period must not exceed ten (10) percent of the Plan's total assets as reflected in the most recently issued report from the independent accounting firm that audited the Plan's financial statements;

(j) The terms and conditions of the Lease are at least as favorable to the Plan as those which the Plan could obtain in a comparable lease from an unrelated party in an arm's-length transaction;

(k) All of the material facts and representations set forth in the Summary of Facts and Representations are true and accurate; and

(l) Within 60 days of the date of publication of the notice of exemption in the **Federal Register** (the Publication Date), the Independent Fiduciary will provide a summary of all amendments, modifications, or extensions of the Lease made between October 1, 2020, and the Publication Date. After the Publication Date, on an ongoing basis, the Independent Fiduciary must inform the Department's Office of Exemption determinations if the Lease is amended, modified, or extended at least 60 days before the amendment, modification, or extension unless such delay would cause imminent harm to the Plan in which case the notice must be provided immediately. The notification must include a complete description of the amendment, modification, or extension, including all material terms thereof.

Exemption Date: The proposed exemption would be effective October 1, 2020.

Signed at Washington, DC, this 16th day of July 2024.

George Christopher Cosby,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

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[17] ERISA section 410 provides, in part, that "except as provided in ERISA Sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning Part 4 of ERISA] shall be void as against public policy."