

Dated: January 7, 2025.

**Darwin Arceo,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Prohibited Transaction Exemption 2025-01; Exemption Application No. D-12084]

#### Exemption From Certain Prohibited Transaction Restrictions Involving United Brotherhood of Carpenters and Joiners of America (UBC or the Applicant) Located in Washington, DC

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of exemption.

**SUMMARY:** This document gives notice of an individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and the Internal Revenue Code of 1986 (the Code). This exemption permits the Trustees of the United Brotherhood of Carpenters Pension Fund (the Plan) to sell 19.25 acres of improved real property (the Property) on behalf of the Plan to the UBC for cash (the Sale).

**DATES:** The exemption will be in effect on January 13, 2025.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anna Mpras Vaughan, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693-8565 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** UBC requested an exemption pursuant to ERISA section 408(a) and Code section 4975(c)(2) and supplemented the request with certain additional information (that is collectively, referred to as the “Application”).<sup>1</sup> On October 1,

<sup>1</sup> The procedures that govern the Applicant’s request for an exemption (the Exemption Procedures) are set forth in 29 CFR part 2570, subpart B at 76 FR 66637, 66644 (October 27, 2011). Although the Applicant’s submission is being processed under the Exemption Procedures in effect as of December 27, 2011, the Exemption Procedures were recently amended at 89 FR 4662, 4691 (January 24, 2024). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. app. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under the Code section 4975(c)(2) to the Secretary of Labor. Accordingly, the Department grants this exemption under its sole authority. Furthermore, references herein to provisions of Title I of ERISA shall be deemed to refer to their applicable corresponding provision in Code section 4975, unless specified otherwise.

2024, the Department published a notice of proposed exemption in the **Federal Register** (the Proposed Exemption).<sup>2</sup>

Based on UBC’s representations in its Application and the administrative record, the Department has determined to grant the Proposed Exemption. This exemption provides only the relief specified herein and does not provide relief from violations of any law other than the prohibited transaction provisions of ERISA and the Code.

**Benefits of the Exemption:** The Department is granting relief based, in part, on UBC’s representations that the Plan will receive approximately \$4,317,500 to \$4,620,000 more in net proceeds by selling the property to UBC than it would receive in a sale to an unrelated third party. Other expected benefits to the Plan are described below.

As discussed below, the Department makes the requisite findings under ERISA section 408(a) based on the Applicant’s adherence to all the exemption’s conditions at all times. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are necessary for the Department to grant the relief requested by the Applicant, and that the Department would not have granted this exemption without these conditions.

#### Background

1. The UBC is an international labor organization with 725 local unions (UBC Local Unions) and 37 councils (the UBC Councils). The UBC Local Unions are chartered by and affiliated with the UBC and represent the individual members of the UBC in their respective geographic area. Each UBC Council is affiliated with a UBC Local Union and the various UBC Councils are affiliated to the UBC by the UBC Constitution. According to the Applicant, the UBC Councils are separate legal entities from the UBC and the UBC does not control the UBC Councils that are affiliated with it. Further, the Applicant states that none of the trustees appointed by the UBC Councils are officers of the UBC, and no agency relationship exists between the UBC and the UBC Councils.

2. The Plan is a multiemployer defined benefit pension plan located in Las Vegas, Nevada.<sup>3</sup> The Plan provides

<sup>2</sup> 89 FR 79953.

<sup>3</sup> The Applicant states that the Plan elected to become a multiemployer plan in accordance with ERISA section 3(37)(G) and meets the legislative definition of a multiemployer plan under 3(37)(G)(vi). That section reads, “(vi) A plan is described in this clause if it is a plan sponsored by an organization which is described in section 501(c)(5) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(5)] and exempt from tax under section 501(a) of such Code 1986 [26 U.S.C. 501(a)] and

pension benefits to full-time officers or representatives employed by a UBC Local Union, UBC Council, other designated representatives of a UBC Local Union or UBC Council, or persons who are United States residents and are determined to be representative of, or professional, management, or confidential employees of, the UBC.<sup>4</sup> As of December 31, 2022, the Plan had 4,627 participants and as of June 30, 2023, the Plan had approximately \$931,860,235 in assets. According to the Plan’s annual funding notice issued in April 2022, the Plan had a funded percentage of 99.3% as of January 1, 2021.

3. The Plan is sponsored and administered by a Board of Trustees (the Board) comprised of up of six (6) trustees who are current and former members of the UBC Executive Board (the UBC Trustees) and five (5) trustees who are appointed by officers of UBC Local Unions or UBC Councils (the Council Trustees).<sup>5</sup> The UBC Trustees and the Council Trustees are referred to collectively as the “Trustees.” The Applicant represents that the UBC is an employee organization whose members are covered by the Plan and an employer of employees who are covered by the Plan; therefore, it is a party in interest to the Plan pursuant to ERISA section 3(14)(C) and (D).

#### The Property

4. The Plan owns the Property through its wholly-owned limited liability company, Bermuda Hidden Well, LLC (Bermuda LLC), that was incorporated by the Plan on April 19, 2001 in the State of Delaware. Bermuda LLC was originally formed to hold real property on behalf of the Plan and is managed on behalf of the Plan by Washington Capital Management, Inc.

which was established in Chicago, Illinois, on August 12, 1881.” The United Brotherhood of Carpenters Pension Fund is sponsored by the UBC, which is a 501(c)(5) organization, tax exempt under Code section 501(a), and was established in Chicago, Illinois, on August 12, 1881.

<sup>4</sup> Employees of the Carpenters International Training Fund, The International Labor-Management Committee for the Floor and Wall Covering Industry, the UBC National Job Corps Training Fund, The United Brotherhood of Carpenters Pension Fund, and the Carpenters Legislative Improvement Committee may also be eligible for participation in the Plan.

<sup>5</sup> The Applicant represents that, unlike other multiemployer plans, the Plan is not maintained by a collective bargaining agreement and, therefore, is not a “Taft-Hartley” plan, pursuant to Labor Management Relations Act section 305(c)(5). Because the Trustees of the Plan are appointed by either the UBC or UBC Local Unions and UBC Councils, none of the Trustees could be considered “employer representatives,” which would be required for the Plan to constitute a Taft-Hartley multiemployer plan.

(WCM), which serves as the Plan's Qualified Professional Asset Manager for real estate and ERISA 3(38) fiduciary investment manager.

5. The Property is comprised on 19.25 acres and located at 6855 Bermuda Road, Las Vegas, Clark County, Nevada. It was specifically developed for car rental operations and includes a passenger terminal, car wash, car repair facility with a service bay, and covered parking.

6. The Plan currently leases the Property to Enterprise Leasing Company-West, LLC (Enterprise) pursuant to a long-term lease that has been extended via several short-term extensions since 2021. Most recently, the Plan and Enterprise amended the lease to extend the expiration date for a portion of the Property through March 31, 2025. UBC represents that the Plan has the ability to terminate the amended lease early. Enterprise's footprint of the premises (and the rent it owes the Plan) has decreased significantly since March 2023 as Enterprise gradually transitions its operational components to other locations.

7. The Property is adjacent to a 10.89-acre parcel owned by UBC (the Adjacent Property) and both parcels abut the Carpenters International Training Center (ITC), which also is owned by UBC. The ITC is designed to provide apprenticeship and training programs to the Plan's participants. The Property, Adjacent Property, and ITC all sit upon an integrated block of land that also houses the UBC offices and several hotels that are owned by UBC and used to host visitors to the UBC Campus.

#### *Decision To Sell the Property*

8. As described in the Proposed Exemption, the Plan fiduciaries, with the assistance of WCM, determined that the most prudent course of action for the Plan upon the termination of the lease is to sell the Property to UBC for the following reasons:

- a new tenant was unlikely to enter a long-term lease at the Property's current fair market rental value;
- the Property had been modified to specifications that suited Enterprise's operations;
- it was unlikely that the Plan could secure another long-term lease without significantly redeveloping the Property; and
- the highest and best use of the Property would be to redevelop it with light industrial buildings.

9. Shumaker, Loop & Kendrick LLP (Shumaker), the Independent Fiduciary, or QIF) was engaged by the Plan to act as its independent fiduciary with respect to the Sale, and is required to

ultimately determine whether the Plan proceeds with the Sale.<sup>6</sup> Shumaker engaged the appraisal firm Cushman (the QIA) to conduct an appraisal of the Property in December of 2022 (the 2022 Appraisal).<sup>7</sup> The 2022 Appraisal valued the Property at \$33,930,000, which includes an "assemblage increase" (the Assemblage Increase)<sup>8</sup> resulting from UBC's ownership of the Adjacent Property and certain "contributory costs" (the Contributory Costs) spent by the Plan for the proposed re-development of the Property.<sup>9</sup>

<sup>6</sup> As described in the Proposed Exemption, Shumaker, as the Plan's independent fiduciary with respect to the Sale, must prudently and loyally: (i) represent the interests of the Plan in the Sale; (ii) determine that the Sale and the Sale price is in the interest and protective of the rights of the Plan and its participants and beneficiaries; (iii) review and approve the terms and conditions of the Sale and further negotiate any conditions they consider to be in the interest of the Plan; (iv) independently and prudently engage the qualified independent appraiser for the Sale; (v) review and approve the methodology used by the appraiser and ensure that such methodology is properly applied in determining the Property's fair market value on the date of the Sale; (vi) monitor the Sale throughout its duration consistent with its duties as a prudent plan fiduciary; (vii) ensure that Cushman & Wakefield of Nevada, Inc. in its role as qualified independent appraiser (Cushman or the QIA) renders an updated fair market valuation of the Property as of the date of the Sale; (viii) determine whether it is prudent to proceed with the Sale; (ix) refrain from entering into any agreement, arrangement or understanding that violates ERISA section 410; (x) ensure compliance with the general terms of the transaction and with the conditions of the exemption; (xi) take any appropriate actions to safeguard the interests of the Plan and its participants and beneficiaries; and (xii) submit a written report to the Department not later than 90 days after the Sale has been completed demonstrating that each exemption condition has been met.

<sup>7</sup> The 2022 Appraisal contains detailed analysis which is available by contacting 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. Please reference D-12084.

<sup>8</sup> As described above, the Original Parcel (30.14 acres previously owned by the Plan in its entirety) was subdivided into the Property (19.25 acres currently owned by the Plan) and the Adjacent Parcel (10.89 acres currently owned by the UBC). The 2022 Appraisal increased the \$30,325,000 "as is" fair market value of the Property by \$3,410,000 (i.e., the Assemblage Increase) to \$33,930,000 to account for the special value that the Property has to the UBC because it is adjacent to the UBC-owned Adjacent Parcel.

<sup>9</sup> At the request of the Independent Fiduciary, the QIA valued the architect, engineer, and development studies and other activities paid for by the Plan in connection with the potential development of the Property, referred to in the Proposed Exemption as the "Contributory Costs." The 2022 Appraisal determined these costs to be approximately \$270,000. The QIA stated in the 2022 Appraisal that these costs represent the value of costs spent by the Plan to date for the benefit of the adjacent property to the proposed buyer (i.e., the UBC) and not the value to the general market. The Contributory Costs further increased the value of the Property if purchased by the UBC to a total of \$34,090,000.

#### *Exemptive Relief*

10. In the proposal, the Department proposed exemptive relief from ERISA sections 406(a)(1)(A) and (D) and 406(b)(1) and (2) for the Sale of the Property by the Plan to the UBC in exchange for an amount of cash equal to the greater of (1) \$34,090,000, or (2) the fair market value of the Property (which includes the Assemblage Increase and Contributory Costs) as established in an updated appraisal of the Property's fair market value on the date of the Sale (the Sale Proceeds).<sup>10</sup>

#### *Plan Benefits*

11. The Department finds that the exemption would be in the Plan's interest, based on the Plan's receipt of additional compensation due to the Assemblage Increase and Contribution Costs, and the QIF's representations that it would not be prudent for the Plan to expend the time and resources that would be necessary to prepare the Property for sale to a third party. According to the QIF, a sale of the Property by the Plan to an unrelated third-party at its "As Is" fair market value would be anticipated to result in approximately \$4,317,500 to \$4,620,000 less in net proceeds than the proposed Sale to UBC, because the Assemblage Increase and Contributory Costs would not be recouped, and brokerage fees and additional transaction costs would be incurred. According to UBC and the QIF, selling the property to UBC would be in the best interest of the Plan and its participants and beneficiaries, because it would provide the Plan with the opportunity to sell an asset for a significant gain due to the Assemblage Increase, eliminate the risk of losing an investment opportunity associated with the redevelopment of the Property (and the time associated with that process), and diversify the Plan's investments by reinvesting the sale proceeds in accordance with the Plan's investment policy statement.<sup>11</sup>

12. Nevertheless, in its initial review of the application, the Department was concerned about the possibility that the transaction was designed to transfer a valuable asset to a party in interest (UBC) solely for UBC's benefit.<sup>12</sup> In

<sup>10</sup> The legal analysis regarding the requested exemptive relief is provided in the Proposed Exemption and can be found in the **Federal Register** at 89 FR 79958 (October 1, 2024).

<sup>11</sup> A description of the Independent Fiduciary's analysis and conclusions can be found in the Proposed Exemption in paragraphs 28-35 at 89 FR 79957 through 58.

<sup>12</sup> The Department notes that the prohibited transaction provisions of ERISA are designed to prevent a fiduciary of plan from using the assets of

particular, the Department was concerned about the possible sale of the Property to UBC on terms that would enable UBC to later sell the Property at a higher price than its appraised fair market value. The Department's concerns were allayed by the Applicant's representations in its comment letter that the UBC has no intentions of purchasing the property and immediately selling it for gain. Based on these representations, the Department added a condition providing that if UBC sold the Property during the 10-year period that commences immediately following the date it purchased the Property from the Plan, UBC would have to contribute the amount of any profit it receives to the Plan (the Sale Proceeds Clawback Condition).<sup>13</sup>

13. The Proposed Exemption also included a condition requiring the UBC to contribute to the Plan an amount in cash equal to 51 percent of any gross revenue it earns in any calendar year from using the Property, including in connection with leasing the Property to a third party in a manner or for a purpose that is inconsistent with UBC's stated intention articulated in the proposal to expand its International Training Center and/or the provision of union-related services permitted under the UBC's governing documents (the Revenue-Sharing Clawback Condition).<sup>14</sup> The Department proposed to include this condition in the exemption because it was concerned that UBC's intention might have been to purchase the Property to develop it to take advantage of its proximity to the Las Vegas Strip.

14. The proposed Revenue-Sharing Condition was based on a representation the Department received from UBC's representative stating the UBC's development of the Property "is primarily [emphasis added] meant to accommodate the Union's expansion of

the plan in a way that is inconsistent with the best exercise of that fiduciary's responsibilities under ERISA. For example, the prohibited transaction provisions prevent a fiduciary from causing a plan to transfer property to a party in interest for the purpose of benefitting that party in interest.

<sup>13</sup>In such event, the UBC must contribute an amount of cash generally equal to the profit on the subsequent sale to the Plan as of the end of the Plan year following the date of such subsequent sale. The Revenue-Sharing Condition would apply if UBC sells the whole Property or subdivides and sells a portion of the Property. See 89 FR 79956, 79957 and section III(h)(1) of the Proposed Exemption.

<sup>14</sup>The condition as proposed required the UBC to contribute cash to the Plan equal to 51 percent of the gross revenue received from UBC's use of the Property (including the leasing of the Property) for a purpose or in a manner inconsistent with what was represented to the Department. See 89 FR 79957. See also section III(h)(2) of the Proposed Exemption.

its International Training Center (ITC)."<sup>15</sup> The requirement, as described in the preamble to the proposal, would be effective for 10 years from the date the revenue was earned by UBC.

#### *Plan Protections*

15. To ensure that the Plan, and its participants and beneficiaries, are adequately protected, Shumaker will continue to monitor the Sale, enforce the final terms, and take whatever actions are necessary to protect the interests of the Plan's participants and beneficiaries through closing of the Sale. Shumaker reviewed and approved the terms and conditions of the Sale in Shumaker's sole discretion and will further negotiate any conditions Shumaker concludes are in the interests of the Plan, in accordance with Shumaker's fiduciary duties. Shumaker, acting on behalf of the Plan in Shumaker's fiduciary capacity, determined that the proposed terms and conditions of the Sale Agreement are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated third party, and will make the final determination regarding whether to proceed with the transaction. Subject to the terms of the exemption, UBC has borne and will continue to bear the costs of the Application, and the Plan will bear the costs of the Independent Fiduciary and the QIA.

#### **Comments Received Regarding the Proposed Exemption**<sup>16</sup>

16. In the Proposed Exemption, the Department invited all interested persons to submit written comments on the proposal and/or requests for a public hearing by November 15, 2024.

17. During the comment period, the Department received 51 phone calls from Plan participants and beneficiaries. Forty-nine of the calls were general inquiries. The other two calls involved substantive comments on the Proposed Exemption. One caller stated their support for the protections afforded to the Plan by the proposed Sales "Clawback" condition and Revenue Sharing "Clawback" condition in section III(h)(1) and (2) of the Proposed Exemption, because they did not want the Plan to sell the Property without benefitting from the Sale, based on their

<sup>15</sup> Email from Diana Cohn, O'Donoghue & O'Donoghue LLP, counsel for Applicant, to the Department on July 19, 2024. A copy of this email and others can be found in the record for this exemption.

<sup>16</sup> All information submitted to the Department in connection with this exemption, including the written comments, is available through the Department's Public Disclosure Room by referencing Exemption Application D-12084.

belief that the Property is valuable and will increase in value. The other caller stated their support for the Sale if it would help the UBC expand the ITC, as that would be beneficial to the Plan participants who use the ITC.

18. The Department received four written comments. Three of these comments were from the UBC and are considered together (the Applicant's Comment) and one comment was from a Plan participant. UBC's comment (1) requested a clarification of the Summary of Facts and Representations (the Summary) in the Proposed Exemption to better explain the UBC's motivations to purchase the Property; (2) provided further justification for the Plan's sale of the Property to the UBC; (3) objected to the proposed Revenue-Sharing Condition; (4) expressed agreement with respect to proposed Sale Proceeds Clawback Condition; and (5) requested the Department to correct two ministerial errors in the preamble of the Proposed Exemption with respect to the gross revenue percentages received by Shumaker from the Plan for the years 2021 and 2022.

19. The written comment from the Plan participant requested a hearing on the issue of selling plan assets to a party in interest. The commenter also maintained that the Department only could approve the Sale if the Property were put out for a public request for proposal to ensure the Plan maximizes its revenue.

20. The Department responds to the material issues and the material information provided in the comments below.

#### **The Applicant's Comments and the Department's Responses**

##### *Comment 1—Clarification of the UBC's Motivations for the Purchase*

21. UBC states that the Department's Summary in the Proposed Exemption misstates UBC's intent in acquiring and developing the Property. In this regard, representation 11 of the Summary provides that "[T]he UBC plans to develop the Property into two light industrial buildings to accommodate the UBC's expansion of its International Training Center [ITC]."

22. In its comment, the Applicant clarifies that the UBC's intended future use of the Property is to combine its 10.89-acre Adjacent Property with the 19.25-acre subject Property into a consolidated 30.14-acre block (the Consolidated Property). In its comment letter, UBC states that combining these properties would allow the UBC to redevelop the Consolidated Property by building two industrial warehouses that

will be leased to third-party tenants. UBC represents that its intended use of the Property is consistent with the QIA's determination that the "highest and best use" of the Property is for it to be redeveloped for industrial or mixed use that includes industrial, office and supporting commercial uses. According to UBC's comment, its intended use of the Property is also consistent with the current zoning restrictions on the Property. Referring to the Qualified Independent Appraiser's Report, UBC represents that the Property is zoned "M-1, Light Manufacturing," which may be used for "office, distribution centers, warehouse/flex space, technology and light industry." The UBC also maintains that its intention to use the Consolidated Property conforms with the QIA's determination of the Property's highest and best use and applicable land use laws.

23. Moreover, UBC states that, in the event the ITC should need additional training space in the future, the UBC would be in a position to convert the Property for such purposes at that time. In its comment letter, UBC reports that, over the past 24 years, the ITC has added approximately 189,000 square feet of industrial-type space on its campus, and that the ITC's 25-acre campus is now fully built out except for one vacant lot reserved for a hotel to accommodate an overflow of attendees at the ITC campus. Thus, the Applicant represents that it is quite possible that the ITC will require further expansion in the future. The Applicant states that, although the ITC does not have an immediate need for expansion, it is prudent for UBC to purchase the Property while it is available, because there is no guarantee UBC would be able to purchase or lease the Property if the Plan sold it to an unrelated third party.

24. The Department notes the UBC's requested clarifications to the Summary regarding UBC's intended use of the property.<sup>17</sup> The Department notes further, however, that as stated previously in this preamble, the Summary was based on representations made by UBC's legal counsel (the Representative) in a July 19, 2024 email sent to the Department. In the email, the Representative stated that, "[a]s further explained in its December 28, 2022 exemption application and throughout its responses to the [Department's] information requests, the [UBC] will

<sup>17</sup> The Department notes that section III(n) requires that all the material facts and representations made by the Applicant that are set forth in the Summary are true and accurate at all times. The Department views the Applicant's prompt clarification of portions of the Summary as satisfying this requirement.

develop the [P]roperty into two light industrial buildings, each spanning 300,000 square feet across the two lots. The development is *primarily* meant to accommodate the [UBC's] expansion of its International Training Center (ITC) [emphasis added]. Apart from the subject property, which is adjacent to the ITC, the [UBC] has no other land to expand its campus further."<sup>18</sup>

*Department's Response:* The Department accepts UBC's clarifications as described above.

*Comment 2. Justification for the Plan's Sale of the Property to the UBC*

25. UBC's second comment addresses why it is in the Plan's interest to sell the Property, rather than to redevelop and lease it. The Department solicited this explanation from UBC, in order to address the Department's concern that the Sale may be designed to transfer a valuable development opportunity from the Plan to its party in interest.

26. According to the UBC, the Plan's only source of income from the Property is the rental income it generates, and no other potential tenants have expressed interest in leasing the Property once Enterprise's lease expires. Moreover, UBC points out that it is highly unlikely the Plan will secure a long-term lease with another tenant without significant redevelopment of the Property.<sup>19</sup> Thus, according to UBC, once Enterprise left the Property, the Plan would be left owning an illiquid, unprofitable investment with no potential new tenants on the horizon.

27. UBC maintains that the Plan is not seeking to devote the significant time and plan assets it would take to redevelop the Property itself because of the high cost and time required for redevelopment, the associated risks, and the Plan's significant real estate portfolio. In this regard, the Plan's Independent Fiduciary stated, among other things, that the potential lack of income or investment gain from the Property over a several year development period (compared to an assumed 7.5 percent return on Fund investments), the up-front cost of any development (including risk of escalating costs), and the risk of selecting the right type of redevelopment to increase the value of

<sup>18</sup> The Applicant provided the July 19, 2024 representation in response to a request by the Department that the Applicant clarify the UBC's intended use of the Property.

<sup>19</sup> According to the UBC, the Property was modified to specifications that suited Enterprise's operations (rental car business with attached storage and maintenance facilities). Furthermore, the high fair market value rental rate made a lease for use by a different car rental agency unlikely. See Proposed Exemption at 89 FR 79955.

the Property above what would be realized by the Proposed Transaction, all seem unnecessary and speculative risks for the Plan to take on when compared to the availability of a one-time Sale to a willing buyer. In addition to avoiding the above costs and risks, according to UBC, the Sale allows the Plan to secure significant profits and diversify its plan assets into more liquid investments.<sup>20</sup> UBC notes again that if its Application is granted, UBC will pay the Plan at least \$34,090,000, which includes \$3,410,000 in additional proceeds due to the Assemblage Increase, which would not be received by the Plan in a third-party sale.

28. UBC's comment provides further that the Plan does not have sufficient resources to purchase the Adjacent Property from UBC and develop and manage the entirety of the Consolidated Property (which is the UBC's intended use of the Property), which would be costly, risky, and result in an overweighting of real estate for the Plan's investment allocations. Noting the Appraisal Report, the UBC states in its comment that the estimated cost to redevelop the 19.25-acre Property with just one building alone could exceed \$60 million. The UBC currently estimates that the cost of purchasing the Property and building two warehouses on the Consolidated Property will exceed \$120 million and could take more than three years. According to the UBC, if the Plan attempted to redevelop the Consolidated Property, these high redevelopment costs would impose a tremendous amount of risk on the Plan's ability to maintain a sufficient amount of liquid investments for the payment of benefits to its participants and beneficiaries.

29. The UBC also states that the Plan would lose the opportunity to reinvest sales proceeds into more liquid and diversified investments, which may have negative consequences for its participants and beneficiaries. In short, if the Plan were to purchase the UBC's parcel and develop the Consolidated Block, it would face an overconcentration of more than \$120 million in a single real estate asset, along with the associated construction risks and lengthy development period. For all of these reasons, the Plan has decided not to redevelop and market the Property itself in the hopes of finding another buyer, or purchase the Adjacent Property and redevelop it, when there is

<sup>20</sup> See the Proposed Exemption at 89 FR 79957 through 58 for an extended discussion of the Independent Fiduciary's analysis and determinations.

a motivated, ready and willing buyer for the Property: the UBC.

*Department's Response:* The Department notes the Plan's rationale for its decision to sell the Property to the UBC.

*Comment 3—Removal of the Revenue-Sharing Condition in Section III(h)(2) of the Proposed Exemption*

30. As previously discussed in this preamble, section III(h)(2) of the Proposed Exemption states that “[i]f UBC earns revenue from its use of the Property in any calendar year, including in connection with the lease of the Property to a third party, in a manner or for a purpose that is inconsistent with the UBC’s stated intention to expand its International Training Center and/or the provision of union-related services permitted under the UBC’s governing documents, then the UBC must contribute to the Plan an amount in cash equal to 51 percent of such gross revenue earned in each such calendar year. Such amounts must be contributed by the UBC to the Plan by the end of the Plan year following the year in which such revenue is earned.” In its Comment, the UBC asserts that the Revenue-Sharing Condition would render the exemption useless to the Applicant for the following reasons:

(I) The condition misapprehends the UBC’s immediate intended use of the Property, inasmuch as there is no intention or need to immediately expand the ITC.

(II) The condition would create a “perpetual entanglement” between the Plan and the UBC, because it would require revenue sharing in any calendar year in which the Property is not used to expand the ITC; the Sale would no longer be a one-time sale for cash (contrary to the condition in section III(a)); the exemption would require continuous monitoring by the Independent Fiduciary and expenditure of additional resources by the Plan; and the exemption would require continuous oversight by the Department. The Applicant also notes that while the preamble to the Proposed Exemption states that the revenue sharing obligation would only apply to revenue earned during the 10 years following the date of the sale, the 10-year limit is not in the condition itself.

(III) The valuation of the Property already considers the revenue that the UBC might generate from redeveloping the Consolidated Property into light industrial facilities and then leasing the facilities to third-party tenants. The Applicant states that requiring the UBC to pay the purchase price and share revenue as part of the Revenue-Sharing

Condition, is illogical and inconsistent with prior exemptions the Department has granted for similar transactions. In addition, the Applicant notes that the UBC estimates it will need to invest at least \$120 million to develop the Consolidated Property into industrial warehouses that it wishes to build. The Applicant states that requiring the UBC to share 51 percent of gross rental revenues after such an investment, in addition to the foregoing reasons, renders the transaction untenable.

*Department's Response:* In response to the UBC’s comment, the Department has removed the Revenue-Sharing Condition. The Department notes that, based on the representations of the Independent Fiduciary, the Sale will provide the Plan with a significantly greater amount of proceeds than a sale to an unrelated third party, providing a substantial benefit to the Plan’s participants and beneficiaries. Based on this factor and the points raised by the UBC in its comment, the Department finds that the exemption is in the interest of the Plan without including the Revenue Sharing Condition.

*Comment 4—Agreement to the Sale Proceeds Clawback Condition at Section III(h)(1) of the Proposed Exemption*

31. As previously discussed in this preamble, section III(h)(1) of the proposed exemption states that “[i]f UBC sells the Property within 10 years after the date of the Sale, for a sale price that is greater than the Sale Proceeds, then the amount of the subsequent sale price received by UBC that exceeds the Sale Proceeds (the Excess Amount) must be contributed by the UBC to the Plan in cash before the end of the Plan year following the date of such subsequent sale. If UBC subdivides the Property and a portion of the Property is subsequently sold by UBC, then the Excess Amount would be determined by subtracting from the subsequent sale price the amount of Sale Proceeds attributable to the portion of the Property that was sold in such subsequent sale as determined by an independent appraiser. The records applicable to any subsequent sale by UBC covered by this provision, including any appraisals, must be provided to the Office of Exemption Determinations at [e-OED@dol.gov](mailto:e-OED@dol.gov) within 90 days after the date of such sale.”

32. UBC states its agreement with this condition in its comment letter, because it has no intention of selling the Property within the next 10 years. Therefore, the Department has finalized this provision as proposed, and renumbered section III(h)(1) as section III(h), in order to reflect the

Department’s removal of section III(h)(2).

*Comment 5—Correction of Ministerial Errors*

33. Representation 15 of the Proposed Exemption states, in pertinent part, that “Shumaker represents that the revenue received from its engagement as Independent Fiduciary for the Plan is less than two percent of its gross revenue for the 2021 federal income tax year, and less than 3.3 percent of its gross revenue for the 2022 federal income tax year.”

34. UBC states that the foregoing figures are erroneous, and UBC represents that Shumaker received less than 0.02 percent of its gross revenue for federal income tax year 2021 from its engagement as the Plan’s independent fiduciary with respect to the proposed Sale (and the Independent Fiduciary has not received any additional compensation since). The Applicant asserts that this percentage represents the sole amount of revenue received by the Independent Fiduciary from any party in interest with respect to its Application.

*Department's Response:* The Department acknowledges this update to the Proposed Exemption. Consistent with the Applicant’s comment, the Independent Fiduciary’s statement, dated December 27, 2022, provides that “revenue received from our engagement as independent fiduciary for United Brotherhood of Carpenters Pension Fund is less than 0.02 percent of the gross revenue of Shumaker, Loop and Kendrick, LLP for the prior federal income tax year.” The Department notes that the Independent Fiduciary would have met the compensation threshold set forth in the Department’s exemption procedure regulation notwithstanding the Department’s erroneous reference to 3.3 percent.<sup>21</sup>

**Comment From the General Public**

35. The Department received a written comment from a Plan participant who requested a hearing on the issue of selling Plan assets to a party in interest. The commenter stated that they would only approve the sale if the Property were put out for a public “RFP” (request for proposal) and the UBC were provided a “right of first refusal” at above the appraised price and above any other RFPs. The commenter stated that this would be the only sure way for the Plan to maximize its revenue and return

<sup>21</sup> 29 CFR 2570.31(h)(1). The procedures that govern the Applicant’s request for an exemption (the Exemption Procedures) are set forth in 29 CFR part 2570, subpart B at 76 FR 66637, 66644 (October 27, 2011).

on investment and to continue on a sound basis. The commenter further noted that the fiduciary responsibility of the trustees is to the Plan and not to their employer.

*Department's Response:* The Department agrees with the commenter that any sale of the Property by the Plan should maximize the Plan's revenue and return on investment. To achieve this result, the Department reviewed multiple appraisals submitted by a QIA, a report and additional information submitted by a QIF, and performed a robust analysis of the Plan's rationale for the Sale and the reasons that the UBC wanted to purchase the Property. Based on this review, the Department expects that the Plan will receive approximately \$4,317,500 to \$4,620,000 more in net proceeds by selling the property to UBC than it would receive in a sale to an unrelated third party. Further strengthening the Department's expectation, the Department developed a novel condition, the Sale Proceeds Clawback Condition, which protects the Plan in the event UBC sells the Property during the 10-year period that commences immediately following the date it purchased the Property from the Plan. After careful review of the record attributable to this exemption, including the commenter's comment, and the exemption's protective conditions, the Department believes that the exemption for the Sale provides the Plan with a meaningful benefit that the Plan may not otherwise receive from a third-party sale, and is protective of the rights of participants and beneficiaries of the Plan. For clarity, the Department notes that the fair market value and Sale price, as determined by the Independent Fiduciary and QIA, must reflect the fair market value of the Property free and clear of any encumbrances, and without any reduction based on the existence of the Clawback Condition.

Regarding the commenter's request for a hearing, the Department notes that its regulations provide that the Department may decline to hold a hearing where, among other things, the only issues identified for exploration at the hearing are matters of law; or the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.<sup>22</sup> The commenter has not provided a general description of the evidence to be presented at a hearing as required by the Department's Exemption Procedure Regulation. Furthermore, the commenter has not identified any

factual issues that have not been fully explored through the submission of written evidence provided to the Department by UBC. Accordingly, the Department declines the commenter's request for a hearing.<sup>23</sup>

#### Other Revisions

36. On its own motion, the Department made the following revisions to the operative language of the Proposed Exemption.

(i) In order to clarify the elements that comprise the Sale price of the Property, *i.e.*, at the time of the Sale, the UBC must pay the greater of: \$34,090,000; or the fair market value of the Property, plus the Assemblage Increase and Contributory Costs, as established on the date of the Sale, the Department is modifying section III(b) to read, "At the time of the Sale, the Plan receives the greater of (1) \$34,090,000; or (2) the fair market value of the Property plus the Property's Assemblage Increase, as established by the QIA in an updated appraisal of such Property on the date of the Sale, plus the Plan's Contributory Costs (together, the Sale Proceeds). The Sale Proceeds, as determined by the Independent Fiduciary and QIA, must reflect the fair market value of the Property free and clear of any encumbrances, and without any reduction based on the existence of the Subsequent Sale Proceeds Subject to Clawback Condition."

(ii) The term "Assemblage Increase" is now defined in section I(b) to mean an increase to the Property's "as is" fair market value to account for the special value that the Property has to the UBC because it is adjacent to a 10.89-acre parcel of property owned by the UBC that is adjacent to the Property, as determined by a QIA.

(iii) The term "Contributory Costs" is now defined in section I(f) to mean certain costs attributed to architect, engineer, and development studies and other activities paid for by the Plan to date for the benefit of the UBC and are not reflective of the value to the general market. These costs are valued in the 2022 Appraisal at approximately \$270,000.

(iv) In order to provide more flexibility in the event the Plan needs to substitute the Independent Fiduciary, the Department is modifying section III(c) defining the term "Independent Fiduciary" to read, "The term 'Independent Fiduciary' means Shumaker, Loop & Kendrick LLP, or any successor thereto, engaged by the Plan and that conforms to the qualified

independent fiduciary requirements described in the Department's procedures for requesting an exemption at 29 CFR 2570.34(e) and (f), found at 89 FR 4695 (January 24, 2024). The Plan fiduciaries must provide the information required by the procedures to the Department within 30 days after such successor is hired."

(v) In order to provide more flexibility in the event the Plan needs to substitute the QIA, the Department is modifying section I(f) defining the term "QIA" to read, "The term 'QIA' means Cushman & Wakefield of Nevada, Inc., or any successor thereto, engaged by the Independent Fiduciary and that conforms to the qualified independent appraiser requirements described in the Department's procedures for requesting an exemption at 29 CFR 2570.34(c), and (d) found at 89 FR 4694 (January 24, 2024). The Plan fiduciaries must provide the information required by the procedures to the Department within 30 days after such successor is hired."

(vi) The Department is modifying section II to refer as well to certain corresponding provisions of Code section 4975. Specifically, section II of the grant notice reads as follows: "The restrictions of ERISA sections 406(a)(1)(A) and 406(a)(1)(D), and 406(b)(1) and (b)(2), and the sanctions resulting from the application of Code section 4975, by reason of Code sections 4975(c)(1)(A), (D), and (E), shall not apply to the Sale, effective as of the date a final exemption is published in the **Federal Register**, provided that the parties adhere to the conditions in Section III, below."

(vii) The Department is modifying section III(d) to read, "The Plan fiduciaries prudently determined that the Sale is in the Plan's best interest and for no less than the fair market value of the Property, free and clear of any encumbrances."

(viii) The Department is modifying section III(g)(2) to read, "The Independent Fiduciary has not and will not enter into any agreement, arrangement or understanding that violates either ERISA section 410 or the Department's Regulations codified at 29 CFR 2509.75-4."

The Department also made several minor, non-substantive revisions that are intended to clarify the exemption and/or correct scrivener's errors.

#### Conclusion

37. The Department has carefully considered the issues expressed by the commenters. After giving full consideration to the entire record, including the comments and the hearing request, the Department has determined

<sup>22</sup> See 29 CFR 2570.46(a), found at 76 FR 66653 of the Department's Exemption Procedures Regulation.

<sup>23</sup> 29 CFR 2570.46(b), found at 76 FR 66653 of the Exemption Procedures.

to grant the exemption subject to the modifications and clarifications described herein. In granting this exemption, the Department has relied on the representations of the Applicant. If any material statement in the Application, final exemption or the Applicant's Comment is not, or may no longer be, completely and factually accurate, the Applicant and recipient of the exemptive relief provided herein must immediately alert the Department.<sup>24</sup>

38. For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the Application (Exemption Application No. D-12084) the Department is maintaining in this case from EBSA's Public Disclosure Room (U.S. Department of Labor, Room N-1515, 200 Constitution Avenue NW, Washington DC 20210 (202.693.8673)).

### 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) and/or Code section 4975(c)(2) 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) As required by ERISA section 408(a) and/or Code section 4975(c)(2), the Department hereby finds that the

<sup>24</sup> The Representations stated herein are based on UBC's representations provided in its exemption application, comments, and supporting submissions, including those of the Independent Fiduciary, and do not reflect factual findings or opinions of the Department unless indicated otherwise. The Department notes that the availability of this exemption is subject to the express condition that the material facts and representations contained in application D-12084 are true and complete at all times, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the 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.

exemption is (1) administratively feasible, (2) in the interests of the plan and of its participants and beneficiaries, and (3) protective of the rights of the participants and beneficiaries of the plan;

(3) The exemption is supplemental to and not in derogation of any other ERISA provisions 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 availability of this exemption is subject to the express condition that the material facts and representations contained in the Application are true and complete at all times, and that the Application accurately describes all material terms of the transaction which is the subject of the exemption.

Accordingly, the following exemption is granted under the authority of ERISA section 408(a) and/or Code section 4975(c)(2) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B at 76 FR 66637, 66644 (October 27, 2011).

### Exemption

#### Section I. Definitions

(a) The term "Applicant" or "UBC" means United Brotherhood of Carpenters and Joiners of America.

(b) The term "Assemblage Increase" means an increase to the Property's "as is" fair market value, as determined by a QIA, to account for the special value that the Property has to the UBC because it owns a 10.89-acre real estate parcel that is adjacent to the Property.

(c) The term "Bermuda LLC" means Bermuda Hidden Well, LLC.

(d) The term "Board" means a board of trustees made pursuant to the Plan's Declaration of Trust, consisting of six (6) trustees who are current and former members of the UBC Executive Board and five (5) trustees who are appointed from officers of UBC Local Unions or UBC Councils.

(e) The term "Consolidated Property" means a 30.14-acre combined block of property composed of the Property and a 10.89-acre parcel of property owned by the UBC that is adjacent to the Property.

(f) The term "Contributory Costs" means certain costs attributed to architect, engineer, and development studies and other activities paid for by the Plan to date for the benefit of the UBC and are not reflective of the value to the general market. These costs are valued in the 2022 Appraisal at approximately \$270,000.

(g) The term "Independent Fiduciary" means Shumaker, Loop & Kendrick LLP, or any successor thereto, engaged by the Plan and that conforms to the qualified independent fiduciary requirements described in the Department's procedures for requesting an exemption at 29 CFR 2570.34(e) and (f), found at 89 FR 4695 (January 24, 2024). The Plan fiduciaries must provide the information required by the procedures to the Department within 30 days after such successor is hired.

(h) The term "Plan" means United Brotherhood of Carpenters Pension Fund.

(i) The term "Property" means the 19.25-acre parcel of improved real property owned by the Plan and located at 6855 Bermuda Road, Las Vegas, Clark County, Nevada.

(j) The term "QIA" means Cushman & Wakefield of Nevada, Inc., or any successor thereto, engaged by the Independent Fiduciary and that conforms to the qualified independent appraiser requirements described in the Department's procedures for requesting an exemption at 29 CFR 2570.34(c) and (d), found at 89 FR 4694 through 95 (January 24, 2024). The Plan fiduciaries must provide the information required by the procedures to the Department within 30 days after such successor is hired.

(k) The term "Sale" means the one-time sale for cash of the Property by the Trustees on behalf of the Plan through its subsidiary entity, Bermuda LLC, to the UBC.

(l) The term "Trustees" means the six (6) trustees on the Plan's Board who are current and former members of the UBC Executive Board and five (5) trustees who are appointed by officers of UBC Local Unions or UBC Councils.

#### Section II. Covered Transactions

The restrictions of ERISA sections 406(a)(1)(A) and 406(a)(1)(D), and 406(b)(1) and (b)(2), and the sanctions resulting from the application of Code section 4975, by reason of Code sections 4975(c)(1)(A), (D), and (E), shall not apply to the Sale, effective as of the date a final exemption is published in the **Federal Register**, provided that the parties adhere to the conditions in section III, below.

#### Section III. Conditions

(a) The Sale is a one-time transaction for cash that must be completed within 90 days of the effective date of the exemption;

(b) At the time of the Sale, the Plan receives the greater of (1) \$34,090,000; or (2) the fair market value of the Property plus the Property's Assemblage



Increase, as established by the QIA in an updated appraisal of such Property on the date of the Sale, plus the Plan's Contributory Costs (together, the Sale Proceeds). The Sale Proceeds, as determined by the Independent Fiduciary and QIA, must reflect the fair market value of the Property free and clear of any encumbrances, and without any reduction based on the existence of the Subsequent Sale Proceeds Subject to Clawback Condition;

(c) The Plan pays no commissions, expenses, or fees associated with the Sale, and the Plan does not bear the costs of: (1) the exemption application; nor (2) notifying interested persons;

(d) The Plan fiduciaries prudently determined that the Sale is in the Plan's best interest and for no less than the fair market value of the Property, free and clear of any encumbrances.

(e) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in arm's length transactions with an unrelated third party;

(f) The Independent Fiduciary, in accordance with ERISA sections 404(a)(1)(A) and (B), must prudently and loyally:

(1) represent the Plan's interests with respect to the Sale;

(2) determine that the Sale is in the interests of, and protective of, the Plan and its participants and beneficiaries;

(3) determine that the Sale price for the Property is in the interests of, and protective of, the Plan;

(4) review and approve the terms and conditions of the Sale in their sole discretion and further negotiate any conditions they consider to be in the best interest of the Plan;

(5) independently engage the QIA for the Sale;

(6) ensure that the appraisal is based on complete, current and accurate information; review and approve the methodology used by the QIA that such methodology is properly applied in determining the Property's fair market value on the date of the Sale; and that it is appropriate to rely upon the appraisal as accurately reflecting the fair market value of the Property;

(7) monitor the Sale throughout its duration consistent with its duties as a prudent plan fiduciary;

(8) ensure that the QIA renders an updated fair market valuation of the Property as of the date of the Sale in accordance with paragraph (f)(6) of this section;

(9) determine whether it is prudent for the Plan to proceed with the Sale and has the ultimate decision-making authority to approve the Sale on behalf of the Plan;

(10) ensure compliance with the general terms of the Sale and with the conditions of the exemption;

(11) take any appropriate actions to safeguard the interests of the Plan and its participants and beneficiaries; and

(12) submit a written report to the Department not later than 90 days after the Sale has been completed demonstrating that each exemption condition has been met;

(g)(1) The Independent Fiduciary 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 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; the Independent Fiduciary may not seek or receive any waiver of any rights, claims, or remedies of the Plan under ERISA, state, or Federal law against the Independent Fiduciary with respect to the subject matter of the exemption; and

(2) The Independent Fiduciary has not and will not enter into any agreement, arrangement or understanding that violates either ERISA section 410, or the Department's Regulations codified at 29 CFR 2509.75-4;

(h) Subsequent Sale Proceeds Subject to Clawback Condition. If UBC sells the Property within 10 years after the date of the Sale, for a sale price that is greater than the Sale Proceeds, then the amount of the subsequent sale price received by UBC that exceeds the Sale Proceeds (the Excess Amount) must be contributed by the UBC to the Plan in cash before the end of the Plan year following the date of such subsequent sale. If UBC subdivides the Property and a portion of the Property is subsequently sold by UBC, then the Excess Amount would be determined by subtracting from the subsequent sale price the amount of Sale Proceeds attributable to the portion of the Property that was sold in such subsequent sale as determined by an independent appraiser. The Independent Fiduciary and QIA may not reduce the sale price paid to the Plan or the fair market value of the Property based on the Clawback Condition. The records applicable to any subsequent sale by UBC covered by this provision, including any appraisals, must be provided to the Office of Exemption Determinations at *e-OED@dol.gov* within 90 days after the date of such sale.

(i) Any QIA selected by the Independent Fiduciary 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 QIA 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 QIA's work; the QIA may not seek or obtain any waiver of 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 QIA with respect to the subject matter of the exemption; and

(j) The Board and the Independent Fiduciary maintain for a period of six (6) years from the date of Sale, in a manner that is convenient and accessible for audit and examination, the records necessary to enable the persons described in paragraph (k)(1) below to determine whether conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Board and/or the Independent Fiduciary, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than the Board or the Independent Fiduciary shall be subject to the civil penalty that may be assessed under ERISA section 502(i) if the records are not maintained, or are not available for examination as required by paragraph (k) below; and

(k)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of ERISA section 504, the records referred to in paragraph (j) above shall be unconditionally available at their customary location during normal business hours to:

(i) any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) the Board or any duly authorized representative of the Board;

(iii) the Independent Fiduciary or any duly authorized representative of the Independent Fiduciary;

(iv) any participant or beneficiary of the Plan, or any duly authorized representative of such participant or beneficiary;

(2) If any party refuses to disclose information to a person on the basis that such information is exempt from disclosure, such party must provide a written notice to that person advising them of the reasons for the refusal and that the Department may request such information on their behalf by the close



of the thirtieth (30th) day following the request;

(l) The Sale is not part of an agreement, arrangement or understanding designed to benefit UBC or any of its affiliates;

(m) The Board, the UBC, and/or the Independent Fiduciary must provide to the Department the records necessary to demonstrate that the conditions of this exemption, as amended, have been met, within 30 days from the date the Department requests such records; and

(n) All the material facts and representations made by the Applicant that are set forth in the Summary of Facts and Representations are true and accurate at all times.

*Exemption Date:* The exemption will be in effect on January 13, 2025.

Signed at Washington, DC.

**George Christopher Cosby,**

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

[FR Doc. 2025-00405 Filed 1-10-25; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2021-0013]

#### Pilot Study and Prospective Analyses of the Draft Revised Form 33, Safety and Health Program Assessment Worksheet; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning its request to extend OMB's approval of information collection requirements for OMB 1218-0280, Expiration Date: June 30, 2025, regarding the Pilot Study for 3 years (*i.e.*, to June 30, 2028).

**DATES:** Comments must be submitted (postmarked, sent, or received) by March 14, 2025.

**ADDRESSES:**

*Electronically:* You may submit comments and attachments electronically at <https://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Docket:* To read or download comments or other material in the docket, go to [https://](https://www.regulations.gov)

[www.regulations.gov](https://www.regulations.gov). Documents in the docket are listed in the <https://www.regulations.gov> index; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through the websites. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627) for assistance in locating docket submissions.

*Instructions:* All submissions must include the agency name and OSHA docket number (OSHA-2021-0013) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:**

Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693-2222.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance process to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary

duplication of efforts in obtaining information (29 U.S.C. 657).

Section 7(c)(1) of the OSH Act authorizes the Secretary of Labor (Secretary) to, "with the consent of any State or political subdivision thereof, accept and use the services, facilities, and personnel of any agency of such State or subdivision with reimbursement." Section 21(c) of the OSH Act authorizes the Secretary to "consult with and advise employers and employees . . . as to effective means of preventing occupational illnesses and injuries."

Additionally, Section 21(d) of the OSH Act instructs the Secretary to "establish and support cooperative agreements with the States under which employers subject to the Act may consult with State personnel with respect to the application of occupational safety and health requirements under the Act or under State plans approved under section 18 of the Act." This gives the Secretary authority to enter into agreements with the States to provide On-Site Consultation services and establish rules under which employers may qualify for a programmed inspection deferral. To satisfy the intent of these and other sections of the OSH Act, OSHA codified the terms that govern cooperative agreements between OSHA and State governments whereby State agencies provide On-Site Consultation services to private sector employers to assist them in complying with the requirements of the OSH Act. The terms were codified as the Consultation Agreement regulations (29 CFR part 1908).

The Occupational Safety and Health Administration (OSHA) is requesting approval from the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act (PRA), for a 3 year extension of the information collection requirements for OMB Number 1218-0280, Expiration Date: June 30, 2025; to conduct validity and reliability analyses of a safety and health program (SHP) assessment worksheet, the Draft Revised Form 33 (DRF33), that will replace the current SHP Assessment Worksheet, OSHA Form 33, used by the OSHA On-Site Consultation Program (OMB Number 1218-0110; Expiration Date: February 28, 2025. Completion of the studies on the DRF33 will enable OSHA to ensure that a valid, reliable, and efficient tool is provided to On-Site Consultation programs in the fifty (50) states, the District of Columbia, and several United States territories to replace the current OSHA Form 33, thereby, enhancing the quality of consultative services.