



DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2025-04; Exemption Application No. L-12069]

Exemption from Certain Prohibited Transaction Restrictions Involving

Boilermakers Western States Apprenticeship Fund, Located in Page, Arizona

AGENCY: Employee Benefits Security Administration.

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 (ERISA). The exemption permits the purchase of a parcel of improved real property (the Property) by the Boilermakers Western States Apprenticeship Fund (the Plan or Applicant) from the “Navajo Nation” Lodge 4 of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmith, Forgers, and Helpers (Lodge 4) whose members may be participants in the Plan.

DATES: Exemption Date: This exemption is in effect as of [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Mr. Frank Gonzalez, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693-8553. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Plan requested an exemption pursuant to ERISA section 408(a) and supplemented the request with certain additional information (that is collectively, referred to as the “Application”).¹ On November 4, 2024, the

¹ The procedures for requesting an exemption are set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

Department of Labor (the Department) published a notice of proposed exemption in the *Federal Register* (the Proposed Exemption).²

Based on the Applicant's representations contained in the 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.

Benefits of the Exemption: The Department is granting the exemption based in part on the Applicant's representations that, among other things, the Plan's purchase of the Property would avoid significant time and cost of relocating the Plan's training program to an alternative location (as the property has already been modified at the Plan's own expense for its particular training purposes). The transaction will be subject to further protection because an independent fiduciary will be responsible for ensuring that the Plan does not pay more than fair market value to purchase the Property.

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 Applicant's adherence to all conditions incorporated in this exemption is necessary for the Department to grant the relief that the Applicant requested. Absent these conditions, the Department would not have granted this exemption.

Background

1. As discussed in the Proposed Exemption, the Plan is an apprenticeship program trust fund created to provide training benefits to individuals engaged in the boilermaker construction trade.

² 89 FR 87600

2. The Plan was created pursuant to collective bargaining agreements (under the Taft-Hartley Act of 1947)³ between signatory contractors/employers (the Employers) and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers (the Boilermakers Union). As of December 31, 2023, the approximate aggregate fair market value of the Plan's total assets was \$12,611,589. As of May 17, 2024, there are 369 apprentices currently active in the Plan's apprenticeship program. The program graduated 84 apprentices in 2022, 65 in 2023, and 51 as of May 17, 2024. The Plan admits apprentices on a rolling basis. There have been 1,233 apprentices participating in the Plan's training from May 13, 2019, through May 13, 2024.

3. The Plan provides training and education to eligible participants located in the following states: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming (the Western States Area).

4. The Plan is sponsored by the Boilermakers National Apprenticeship Program (the BNAP).⁴ The BNAP sponsors apprenticeship programs in four different geographical areas, including the Western States Area.

5. A board of trustees -- the Boilermakers National Apprenticeship Board -- administers the Plan (the Board of Trustees). The Board of Trustees consists of equal representation from locals of the Boilermakers Union (the Union Trustees) and signatory contractors/employers (the Employer Trustees). The Board of Trustees has discretion over the Plan's assets, including over the investment of such assets.

³ The Department notes that the Taft-Hartley Act is commonly known as the Labor Management Relations Act of 1947; *see* 29 U.S.C. 141.

⁴ ERISA Section 3(16)(B) defines the term Plan Sponsor to mean in pertinent part ... (ii) the employee organization in the case of a plan established or maintained by an employee organization, (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan...."

6. The Plan receives funding through collectively bargained contributions from contributing employers and grants, among other income sources provided under the Plan's governing documents. According to the Plan's governing documents, the Plan's assets may be used to provide apprenticeship and training benefits and to finance the operation and administration of such apprenticeship and training benefits within the Western States Area. As described in the Proposed Exemption, the Plan provides benefits in two ways: through a regional training center, the JG Cooksey Training Center in Salt Lake City, Utah; and through subsidizing apprenticeship and training programs maintained by locals of the Boilermakers Union within the Western States Area.

7. During a five-year period ending on February 11, 2022, the Plan nearly doubled its apprentice numbers, and the participation rate continued to increase as of May 17, 2024, as the demand for boilermakers in the Western States Area continues to rise. Accordingly, the Plan is interested in opening a new regional training center and is seeking to purchase an improved real estate parcel (the Property) from Lodge 4, a labor union, located in Page, Arizona, that is affiliated with the Boilermakers Union. Lodge 4 is a separate legal entity from both the Boilermakers Union and the other lodges of the Boilermakers Union. The Board of Trustees does not currently have any Union Trustees who were appointed by Lodge 4. Rather, the Union Trustees serving on the Plan's Board of Trustees are appointed either by the Boilermakers Union or other lodges of the Boilermakers Union (e.g., Boilermakers Lodge 502).

8. The Property. The Property is an improved real estate parcel located at 294 Cowboy Ray Road, Page, Arizona. The Property's site is 1.678 acres, with two office/warehouse buildings totaling 5,000 square feet in usable space. As discussed further below, the Plan's apprentices currently use the Property's buildings as training facilities (the Training Facility). The Applicant represents that this use of the Training Facility is essential for the Plan to fulfill its purpose of providing education and training

opportunities to its apprentices. As described in the Proposed Exemption, Lodge 4 has decided to move and no longer desires to operate the Training Facility.

9. The Applicant represents that the Property has been modified to carry out the purposes of the Plan and is ideally situated to be a regional training facility for boilermaker apprentices and journeypersons and suited for the Plan's purposes. The Property also has administrative space for the Plan's headquarters.⁵

10. The Union Trustees recused themselves from voting with respect to the Plan's decision to enter into the Transaction, and the Plan's Employer Trustees⁶ determined it would be in the interest of the Plan to purchase the Property because: (a) the Training Facility is already suited for the needs of the Plan; (b) the purchase of the Property would allow the Plan to maintain the Training Program at the Training Facility notwithstanding Lodge 4's decision to terminate operating the Training Facility; (c) using the Property to create a regional training facility would meet the increasing demand for the training of participants, including apprentices within the Western States Area; (d) the purchase of the Property from Lodge 4 would allow the Plan to pay the Property's fair market value without incurring any commission costs or other expenses in connection with the purchase; and (e) the Plan's continued use of the Property for training purposes would provide additional benefits to participants and provide other financial benefits to the Plan.⁷

⁵ The Plan maintains an administrative office in Page, Arizona, three miles away from the Property, that it began leasing from Marquis Realty LLC, an unrelated party to the Plan, on July 1, 2014 (the Leased Office).

⁶ The Applicant represents that the Union Trustees recused themselves from the vote to enter into the Proposed Transaction with Lodge 4 on behalf of the Plan. The recusal is described in more detail below.

⁷ The Department understands that the Plan would financially benefit from the Transaction (and indirectly benefit the Plan's participants and beneficiaries), because it (1) would not need to pay for the removal of the Plan's specialized air venting system from the Training Facility (the venting system is explained further below) and (2) could relocate its administrative office to the Property instead of paying for the Leased Office. The Applicant also stated that participants would benefit by having the ability to visit the Plan's administration office and training facilities at the same location after the office is moved from the Leased Office to the Property.

11. On January 20, 2022, the Employer Trustees gave their approval for the Plan to proceed with the purchase of the Property (the Transaction), subject to the Department's grant of this exemption. The Plan intends to purchase the Property from Lodge 4 within ninety (90) days following the Department's grant of this exemption. The Applicant represents that the Plan considered other possible locations and properties for a regional center, but after consulting with various service providers, it ultimately determined that purchasing the Property was the most appropriate given the Plan's goals, as explained below.

12. In connection with the Transaction, the Plan would pay the lesser of: (i) the Property's fair market value of \$920,000 identified in the appraisal conducted on April 1, 2021; and (ii) the updated appraised fair market value of the Property as determined by the qualified independent appraiser on the purchase date. The Plan may finance its purchase of the Property. In this regard, the exemption prohibits the Plan from financing the acquisition of the Property with any bank that has any pecuniary interest in, or that is owned, managed, or controlled in any manner by a party in interest with respect to the Plan as defined in ERISA section 3(14).

13. Lodge 4 and the Plan will each pay half of the costs associated with this exemption, including but not limited to fees for qualified independent fiduciary services, qualified independent appraiser services, and legal fees for preparing the Plan's application to the Department requesting the Exemption.⁸

14. ERISA Prohibited Transaction Analysis. Lodge 4 is an employee organization whose members are covered by the Plan; therefore, it is a party in interest to the Plan pursuant to ERISA section 3(14)(D).⁹

⁸ Matters pertaining to services being provided by the independent fiduciary and independent appraiser with respect to the Transaction, including their qualifications and independence, are explained further below.

⁹ ERISA section 3(14)(D) defines, in part, the term party in interest to an employee benefit plan as "an employee organization any of whose members are covered by such plan."

15. ERISA section 406(a)(1)(A) prohibits a plan fiduciary from causing the sale or exchange, or leasing, of property between a plan and a party in interest. ERISA section 406(a)(1)(D) provides that a plan fiduciary shall not cause the plan to engage in a transaction if (1) that fiduciary knows or should know that such transaction constitutes a direct or indirect transfer of any of the plan's assets to a party in interest or (2) would result in the plan's assets being used by or for the benefit of a party in interest.

16. The Plan's purchase of the Property from Lodge 4 in exchange for the Plan's funds would constitute a prohibited sale and transfer of Plan assets in violation of ERISA sections 406(a)(1)(A) and (D), respectively.

17. Additionally, ERISA Section 406(b)(1) prohibits a plan fiduciary from dealing with a plan's assets "...in his own interest or for his own account." ERISA Section 406(b)(2) prohibits a plan fiduciary "in his individual or in any other capacity [from acting] in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries."

18. The Union Trustees may have an interest in benefitting Lodge 4, a party in interest to the Plan, because Lodge 4 is also a Boilermakers Union lodge, and as such, it is affiliated with the Boilermakers Union. Although the Applicant represents that the Union Trustees "recused" themselves from voting on the Plan's decision to enter into the Transaction, whether the Union Trustees' recusal from any aspects of the Transaction negates a violation of ERISA section 406(b)(1) or (2), involves an inherently factual determination that is beyond the scope of this exemption. Therefore, the Department cannot determine from the record whether the Union Trustees sufficiently recused themselves from engaging in the deliberations regarding of the Transaction or using their positions to influence the Employer Trustees' decision to approve the Transaction in order to determine definitively that there was no violation of ERISA section 406(b)(1) or

(b)(2). To the extent the Union Trustees exercised any authority, control, or responsibility that make them a fiduciary to cause the Plan to engage in the Transaction, they would have violated ERISA Section 406(b)(1) and (b)(2), because the Transaction would benefit Lodge 4, an entity in which the Union Trustees have an interest and involve Union Trustees acting on behalf of both the Plan and Lodge 4.¹⁰

19. Applicant's Representations Regarding the Merits of the Transaction. The Applicant represents that the Transaction would benefit the Plan because the Training Facility is currently operated by Lodge 4 to conduct trainings and the Plan would not have to make any improvements or modifications to continue using it.¹¹

20. The Applicant represents that the Plan has also invested nearly \$600,000 in equipment at the Training Facility to equip 24 welding stations, including installing a \$250,000 custom ventilation system designed to remove noxious fumes that are produced by the welding machines. The Applicant states that the Plan still owns this equipment, which is only used in connection with the training of participants by Lodge 4 in connection with the provision of services to the Plan, described in more detail below.¹²

21. The Applicant represents that the Transaction would benefit the Plan because Lodge 4 intends to terminate its involvement with the Training Facility. If Lodge 4 no longer runs the Training Facility, the Plan could no longer provide training there. Furthermore, the Training Facility is currently equipped with Plan-purchased equipment that is used to provide training for participants. If Lodge 4 terminates its

¹⁰ The Department notes that “the prohibitions of section 406(b) supplement the other prohibitions of section 406(a) of [ERISA] by imposing on parties in interest who are fiduciaries a duty of undivided loyalty to the plans for which they act. These prohibitions are imposed upon fiduciaries to deter them from exercising the authority, control, or responsibility which makes such persons fiduciaries when they have interests which may conflict with the interests of the plans for which they act. In such cases, the fiduciaries have interests in the transaction which may affect the exercise of their best judgment as fiduciaries.” See 29 CFR 2550.408b-2(e)(1).

¹¹ The Applicant explains that a reimbursement policy between the Plan and Lodge 4 govern the Plan's reimbursement of Lodge 4 for the direct costs that Lodge 4 incurs in conducting training (the Reimbursement Policy) in accordance with ERISA section 408(b)(2). Whether the Reimbursement Policy complies with the requirements of ERISA section 408(b)(2) is an inherently factual inquiry that is beyond the scope of this exemption and with respect to which the Department offers no opinion.

¹² The costs for these pieces of equipment are not included as part of the Property's value appraisal.

involvement with the Training Facility and/or sells the Property, the Plan would need to remove and relocate the equipment at significant time and expense.

22. The Applicant represents that the Plan wants to create a regional training center on the Property due to the transient nature of the boilermaker trade and industry. The Property is centrally located in the Southern portion of the Western States Area with convenient access from New Mexico, Arizona, Southern Nevada, and Southern California. The Property also is located on the edge of the Navajo Nation reservation, which has traditionally been a large source of apprenticeship participants in that area, making the Property a convenient location to a segment of current and future apprenticeship participants.

23. The Applicant represents further that the Transaction would benefit the Plan, because the Property will become the site for the Plan's administrative headquarters. If the Plan moves its administrative headquarters to the Property, the Leased Office will no longer be needed. Additionally, co-locating the Plan's administrative offices at the Training Facility will facilitate the Plan staff's ability to monitor the Training Facility and interact with apprenticeship and journey person participants.

24. The Applicant represents that the Plan would also benefit from the Transaction because the Property provides flexibility for expansion as the number of Boilermaker apprentices continues to grow and significant space for: (a) large training sessions where there are numerous vehicles and recreational vehicles utilized by participants; (b) outdoor training components such as training involving a rigging tower; and (c) expansion of training facilities and/or demonstrations.

25. The Property's Appraisal. The Property was appraised at \$920,000 by an independent appraiser (Qualified Independent Appraiser).¹³ The exemption's conditions for relief require the appraisal to be updated by the Qualified Independent Appraiser to reflect the fair market value of the Property on the Transaction's closing date. The Plan does not expect that the cost to update the appraisal will exceed \$3,750.

26. The Independent Fiduciary. Wagner Law Group was retained by the Plan to serve as the Plan's independent fiduciary with respect to the Proposed Transaction (Wagner).¹⁴ The Proposed Exemption describes Wagner's conclusions regarding the Proposed Transaction. In this regard, Wagner opined that the Proposed Transaction for a price of the lesser of \$920,000 or the Property's appraised value on the date of sale, under the terms and conditions required by the exemption, would be in the best interest and protective of the rights of the Plan's participants and beneficiaries.¹⁵

27. Protective Conditions. In addition to the conditions mentioned above, this exemption requires the parties' adherence to the protective conditions that are summarized below.¹⁶

28. The Transaction must be a one-time transaction in which the Plan pays the lesser of the Property's fair market value of \$920,000 or an updated appraised value to be determined on the date of purchase, subject to cost sharing allocations regarding the cost for this exemption. The updated appraisal must be provided to the Department and will be made a part of the administrative record for this exemption's application.

¹³ See Paragraphs 29-32 of the Proposed Exemption for information regarding the independent appraiser retained by the Plan, at 89 FR 87604.

¹⁴ See Paragraphs 33-36 of the Proposed Exemption for information regarding the selection of Wagner as the Plan's independent fiduciary, at 89 FR 87604.

¹⁵ Wagner's conclusions are described in Paragraphs 37-43 of the Proposed Exemption at 89 FR 87604-05. Among other things, Wagner noted that the Plan already owns the training equipment currently housed at the Training Facility, and removing and relocating this equipment to another location would be extremely costly. Because of this, the Plan will receive significant cost savings by purchasing the Property as compared to purchasing a comparable facility and having to pay to relocate this equipment or purchase new equipment to furnish the new facility.

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 transaction are those reflected in Section III of the exemption.

29. Acting as the Plan's independent fiduciary, Wagner must:

a) Determine that the Transaction is in the interest of and protective of the rights of the Plan and its participants and beneficiaries;

b) Determine whether it is prudent for the Plan to proceed with the Transaction;

c) Review, negotiate, and approve the terms and conditions of the Transaction;

d) Represent the Plan's interests in connection with the Transaction, including monitoring the parties' compliance with terms of the contract of sale and the closing contract, enforcing the Plan's rights under the contract of sale and the closing contract, and ensuring the satisfaction of all preconditions for the Plan's purchase of the Property, including the terms of the financing from an unrelated third-party bank;

e) Monitor the Transaction to ensure that all conditions in the exemption are met and take whatever actions are necessary to protect the rights of the Plan and its participants and beneficiaries in the Transaction;

f) Review the Appraisal Report and confirm that the underlying methodology is reasonable and accurate such that the valuation of the Property was reasonably derived;

g) Ensure that the Appraisal Report is based on complete, current, and accurate information; the appraiser was prudently selected; the methodology used by the Qualified Independent Appraiser is consistent with sound valuation principles; and that it is reasonable under the circumstances to rely upon the Appraisal Report, as updated, to determine the fair market value of the Property as of the date of the transaction; and

h) Not have entered into, or 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

30. Furthermore, Wagner 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 Wagner by the Plan or other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable to Wagner's work; or waives any rights, claims, or remedies of the Plan under ERISA, state, or Federal law against Wagner with respect to the Transaction;

31. The Qualified 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 Qualified 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 Qualified Independent Appraiser's work. The Plan also must not 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 Qualified Independent Appraiser with respect to the Transaction.

32. The Employer Trustees but not the Union Trustees must determine that the Transaction is prudent and in the Plan's interest to proceed with the Transaction; the Union Trustees cannot participate or in any way influence the Employer Trustees' determination.

33. The terms and conditions of the Transaction must be at least as favorable to the Plan as the terms and conditions the Plan would have received in an arm's length

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 Title I of ERISA] shall be void as against public policy."

transaction between unrelated and independent parties. The Transaction must not be part of an agreement, arrangement, or understanding designed to benefit Lodge 4.

34. The conditions for relief also require that any mortgage loan secured by the Plan to purchase the Property must be approved by the Qualified Independent Fiduciary, and its monthly payments must not exceed \$10,000. Further, the collateral for such loan must be limited to a first mortgage lien and assignment of lease and rents on the Property. Finally, the Plan may not obtain a mortgage loan from a bank that has any pecuniary interest in, or is owned, managed, or controlled in any degree by any party in interest with respect to the Plan as defined in ERISA section 3(14).

35. The Plan must not pay any commissions, costs, or other expenses in connection with the Transaction, and Lodge 4 must pay half of the costs associated with the exemption including but not limited to fees for Wagner's services, fees for Qualified Independent Appraiser services, and fees for preparing the Plan's application to the Department requesting this exemption (but not including the actual purchase price of the Property).

36. No later than 30 days after the Transaction is completed, Wagner must submit to the Department a written certification that all of the conditions of the exemption have been met. Wagner must also provide a statement of its determination that the Transaction is in the interests of the Plan and of its participants and beneficiaries explaining the reasons on which its determination is based.

37. This relief under this exemption is also subject to a recordkeeping requirement, and a requirement for all the material facts and representations set forth in the Summary of Facts and Representations to be true and accurate at all times.

Written Comments Received Regarding the Proposed Exemption

38. In the Proposed Exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to such notice, which comment period ended on December 19, 2024. The Department did not receive any comments and it did not receive any hearing requests.

39. The complete application file (L-12069) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, D.C., 20210, reachable by telephone at (202) 693-8673. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, please refer to the notice of proposed exemption published on November 4, 2024, at 89 FR 87600.

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 from certain requirements of other ERISA provisions, including but not limited to 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 plan's participants and beneficiaries and in a prudent fashion in accordance with ERISA section 404(a)(1)(B).

(2) As required by ERISA section 408(a), the Department hereby finds that the exemption is: (a) administratively feasible for the Department; (b) in the interests of the Plan and the Plan's participants and beneficiaries; and (c) protective of the rights of the Plan and the Plan's participants and beneficiaries.

(3) This exemption is supplemental to, and not in derogation of, any other ERISA provisions, 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 for determining whether the transaction is in fact a prohibited transaction.

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transactions that are the subject of the exemption and are true at all times.

Accordingly, after considering the entire record developed in connection with the Applicant's exemption application, the Department has determined to grant the following exemption under the authority of ERISA section 408(a) in accordance with the Department's exemption 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 "Qualified Independent Fiduciary" means the Wagner Law Group, and any of its employees that provide any fiduciary service to the Plan in respect to this exemption; or such other "qualified independent fiduciary" as defined under 29 CFR part 2570, subpart B, as updated from time to time.

(b) The term "Qualified Independent Appraiser" means Accurity Morley & McConkie, LC, and any of its employees that provide any appraisal related service to the Plan in connection with this exemption.

(c) The term "Mortgage Loan" means a mortgage loan from an independent, third-party bank consisting of a five-year term with payments based on 20-year

amortization, ballooning at maturity, or such other mortgage loan prudently entered into by the Independent Fiduciary on behalf of the Plan.

SECTION II. TRANSACTIONS

The restrictions of ERISA Sections 406(a)(1)(A), (D), and 406(b)(1) and (2) shall not apply to the purchase of the improved real property located at 294 Cowboy Ray Road, Page, Arizona (the Property), by the Boilermakers Western States Apprenticeship Fund's (the Plan) from the "Navajo Nation" Lodge 4 of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmith, Forgers, and Helpers (Lodge 4), a party in interest with respect to the Plan (the Purchase); provided that the conditions in Section III are satisfied.

SECTION III. CONDITIONS

(a) The Purchase is a one-time transaction for the lesser of \$920,000 in cash or an updated appraised value to be determined by the Qualified Independent Appraiser as of the Purchase's closing date (the Price). The updated report from the Qualified Independent Appraiser must be submitted to the Department within 30 days before the date the Purchase is completed for inclusion in the record for this exemption's application;

(b) Approval of the Purchase must be made solely by Plan trustees that are not, and were not, appointed by a labor union that is affiliated with the International Brotherhood of Boilermakers, and such Plan trustees must prudently determine in a writing that the Purchase is in the Plan's best interest. Such non-union appointed Plan trustees must have considered other possible locations and properties that were unrelated to Lodge 4 prior to determining that the Purchase is the most appropriate given the Plan's goals. Any trustee appointed by a labor union that is affiliated with the International

Brotherhood of Boilermakers cannot participate or in any way influence a non-union appointed Plan trustee;

(c) The Plan must retain the services of a Qualified Independent Fiduciary and the Qualified Independent Fiduciary must prudently:

(1) Determine that the Purchase is in the interest of, and protective of, the Plan and the Plan's participants;

(2) Determine whether it is prudent for the Plan to proceed with the Purchase;

(3) Review, negotiate, and approve the terms and conditions of the Purchase;

(4) Represent the Plan's interests in connection with the Purchase, including monitoring the parties' compliance with terms of the sales contract and the closing contract, enforcing the Plan's rights under the sale contract and closing contract, and ensuring the satisfaction of all conditions precedent to complete the Purchase, including the terms of the Mortgage Loan;

(5) Monitor to ensure that all of the conditions in this exemption are met and take whatever actions are necessary to protect the rights of the Plan and its participants and beneficiaries with respect to the Purchase;

(6) Review the Qualified Independent Appraisal Report and confirm that the underlying methodology is reasonable and accurate and that the valuation of the Property was reasonably derived;

(7) Ensure that the Qualified Independent Appraisal Report is based on complete, current, and accurate information; the Qualified Independent Appraiser was prudently selected; the methodology used by the Qualified Independent Appraiser is consistent with sound valuation principles; and that it is reasonable under the

circumstances to rely upon the Qualified Independent Appraisal's report to determine the fair market value of the Property as of the date of the Purchase; and

(8) Not have 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;

(d) The terms and conditions of the Purchase must be at least as favorable to the Plan as the terms and conditions the Plan would have received in an arm's length transaction with an unrelated and independent party, each of which had full knowledge of the relevant facts, and neither of which were under any compulsion to buy or sell;

(e) The Purchase must not be part of an agreement, arrangement, or understanding designed to benefit Lodge 4 or the International Brotherhood of Boilermakers;

(f) In the event the Purchase is financed with a Mortgage Loan, then the Mortgage Loan must be approved by the Qualified Independent Fiduciary, and its monthly payments must not exceed \$10,000;

(g) The Mortgage Loan collateral is limited to a first mortgage lien and assignment of lease and rents on the Property. The Plan may not obtain a Mortgage Loan from a bank that has any pecuniary interest in, or is owned, managed, or controlled in any degree by any party in interest with respect to the Plan as defined in ERISA section 3(14);

(h) The Plan must not pay any commissions, costs, or other expenses in connection with the Purchase subject to the cost sharing allocations regarding the cost for this exemption as provided below in paragraph (i);

(i) Lodge 4 and the Plan must each pay half of the costs associated with the exemption including but not limited to fees for Qualified Independent Fiduciary services,

fees for Qualified Independent Appraiser services, and fees for preparing the Plan's application to the Department requesting this exemption, but not including the Price;

(j) The Qualified 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 Qualified 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 Qualified Independent Fiduciary's work; or that waives any rights, claims, or remedies of the Plan under ERISA, state, or Federal law against the Qualified Independent Fiduciary with respect to the Purchase;

(k) The Qualified 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 Qualified 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 Qualified 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 Qualified Independent Appraiser with respect to the Purchase;

(l) The Plan's trustees and the Qualified Independent Fiduciary maintain for a period of six (6) years from the date of any transaction related to the Purchase, in a manner that is convenient and accessible for audit and examination, the records necessary to enable the persons described in paragraph (m)(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 Plan's trustees and/or the Qualified 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 Plan's trustees or the Qualified 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 (n) below; and

(m)(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 (l) 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 Plan's trustees or any duly authorized representative of the Plan's trustees;

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

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

(2) Should Lodge 4 or any party refuse to disclose information to a person on the basis that such information is exempt from disclosure, such party shall provide a written notice advising that person of the reasons for the refusal and that the Department may request such information by the close of the thirtieth (30th) day following the request;

(n) Within 30 calendar days after the Property is purchased, the Qualified Independent Fiduciary must provide to the Department a written certification that all of this exemption's conditions have been met and must provide to the Department the Statement documenting its conclusion that the Proposed Transaction is in the Plan's best interest; and

(o) All the material facts and representations set forth in the Proposed Exemption's Summary of Facts and Representations are true and accurate at all times.

Exemption Date: This exemption is in effect as of [INSERT DATE OF PUBLICATION
IN THE *FEDERAL REGISTER*].

Signed at Washington, DC,

George Christopher Cosby,

Director, Office of Exemption Determinations,

Employee Benefits Security Administration,

U.S. Department of Labor

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