



BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. L-12103]

**Proposed Exemption for Certain Prohibited Transactions Involving Mid-America
Carpenters Regional Council Apprentice and Training Fund (the Fund)**

Located in St. Louis, Missouri

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This proposed exemption would permit the sale by the Fund of real property to the Mid-America Carpenters Regional Council (the Sale). Without this exemption, the Sale would be prohibited by the Employee Retirement Income Security Act of 1974 (ERISA).

DATES: Exemption date: If granted, this exemption will be in effect as of the date of publication in the *Federal Register*.

Comments due: Written comments and requests for a public hearing on the proposed exemption must be received by the Department by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: All written comments and requests for a hearing should be submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption

Determinations, Attention: Application No. L-12103:

- via email to e-OED@dol.gov; or

- Electronically at <https://www.regulations.gov>. Follow the “Submit a Comment” instructions.

Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202) 693-8673).

See SUPPLEMENTARY INFORMATION below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Ms. Blessed Chuksorji-Keefe of the Department at (202) 693-8567. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Comments: Persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person’s interest in the proposed exemption and how the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption if their request includes: (1) the name, address, telephone number, and email address of the person making the request; (2) the nature of the person’s interest in the exemption, and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a hearing request made in accordance with the requirements above when it finds that a hearing is necessary to fully explore material factual issues identified by the

requestor, and will publish a hearing notice in the *Federal Register*. The Department may decline to hold a hearing if it finds that: (1) the request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

Warning: All comments received will be included in the public record without change and may be made available online at <https://www.regulations.gov>. The Department notes that it will include any personal information provided in the public record and online, unless the commenter claims that any of the information included is confidential or the disclosure of such information is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. If EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment.

Additionally, the <https://www.regulations.gov> website is an “anonymous access” system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

PROPOSED EXEMPTION

The Department is considering granting this exemption under the authority of ERISA section 408(a), and in accordance with the Department's exemption procedures regulation,¹ because it has tentatively determined that this proposed exemption is administratively feasible, in the interests of the Fund and of its participants and beneficiaries, and protective of the rights of both the Fund and the participants and beneficiaries of the Fund. If the proposed exemption is granted, the Fund will be permitted to sell 1.13 acres of improved real property (the Parcel), which is a portion of a 5.67 acre parcel of real property located at 8955 E. Terrace, Kansas City, Missouri (the Real Property), to the Mid-America Carpenters Regional Council (MACRC). The Fund purchased the Real Property in June 2014, and the Parcel represents a portion of the Real Property.

Benefits of the Exemption: As described in more detail below, the Department is proposing relief based in part on the Fund's representation that the Sale will permit the Fund to earn approximately \$50,000 more in net value than originally offered by the MACRC. Furthermore, in connection with the application for an exemption, the Fund and the MACRC entered into a lease requiring the MACRC to pay annual rent of approximately \$250,000 per year (subject to 2% annual escalation) for the use of a building on the Parcel, beginning on or around November 15, 2020 until the Sale is completed, as well as certain back rent, interest, and penalty amounts discussed in detail below.

¹ 29 CFR part 2570, subpart B (75 FR 66637, 66644, October 27, 2011). The Department's exemption procedures regulation was amended at 89 FR 4662, on January 24, 2024, with an effective date of April 8, 2024. However, because the application was submitted on April 4, 2024, the procedures in effect as of that date govern.

SUMMARY OF FACTS AND REPRESENTATIONS²

Parties to the Transaction

1. The Applicant is the Fund, which became the successor to the Carpenters' Joint Training Fund of St. Louis (CJTF). The Fund assumed all CJTF financial and operational responsibilities on January 1, 2024.

2. The Fund is a Taft-Hartley trust. As of December 31, 2024, 9,660 apprentices and journeymen participated in Fund programs. As of June 30, 2024, the Fund's most recent audit, the Fund held total assets of \$83,027,770 and net assets of \$78,323,645.

3. The Fund sponsors the St. Louis-Kansas City Carpenters Regional Training Fund (the Plan), which operates training and education facilities throughout Missouri, Kansas, Illinois, and eastern Iowa for apprentices and journeymen carpenters, millwrights, cabinet makers, floorlayers, and workers in other trades or specialties.

4. The MACRC is the successor to the St. Louis-Kansas City Carpenters Regional Council, a labor union affiliated with the United Brotherhood of Carpenters and the Joiners of America covering approximately 52,000 members located in Illinois, Missouri, Kansas and Eastern Iowa. The MACRC's membership is comprised of cabinet makers, concrete and drywall installers, general carpenters and joiners, and members of several

² The Summary of Facts and Representations is based on the Applicant's representations provided in its exemption application and does not reflect the factual findings or opinions of the Department, unless indicated otherwise. The Department notes that availability of this exemption is subject to the express condition that the material facts and representations made by the Applicant in Application L-12103 are true, complete, and accurately describe all material terms of the transaction(s) 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 may cease to be effective, with such determination made at Department's sole discretion. See 29 CFR 2570.49.

other trades. Members of the MACRC are eligible to participate and do participate in the Fund.

5. The board of trustees of the Fund (the Board of Trustees) consists of ten trustees appointed by contributing employers (Employer Trustees) and ten trustees appointed by the MACRC (Union Trustees).

The Parcel

6. The Fund purchased the Real Property in 2014, for \$2,195,000 to expand the Plan's training and education programs. Subsequently, the Board of Trustees directed and approved the renovation of the Real Property, to create a 65,000 square foot training center for approximately \$8.26 million, which the Fund paid. The training center opened in October 2015. The renovated facilities include office space, a portion of which is currently leased by the Fund to the MACRC to house the MACRC's Kansas City offices, under an operating lease agreement between the Fund and the MACRC.

7. In August 2019, the MACRC approached the Fund to discuss the sale of all or a portion of the Real Property to the MACRC. At a special meeting of the Trustees held on September 25, 2019, the Trustees discussed the potential sale to the MACRC and voted unanimously to approve the sale in principle, obtain an appraisal of the fair market value of the Real Property, and conduct a later vote to approve the appraisal. Following additional discussions, the Fund and the MACRC entered into a commercial real estate sales contract for the sale of a 1.13 acre Parcel.

8. *The Sale:* The Fund seeks an exemption to permit a sale of the Parcel to the MACRC. As discussed below, the MACRC constructed a health and wellness center on the Parcel to provide medical benefits to its members, including participants of the Fund

who participate in the Carpenters' Health & Welfare Trust Fund of St. Louis (the Welfare Fund). The Fund wants to sell the Parcel to the MACRC for additional cash which would be used to fund the Plan's training programs and acquire vehicles for the purpose of facilitating the training programs. A sale of the Parcel from the Fund to the MACRC would constitute a prohibited transaction because of the relationship between the parties, and therefore an exemption from the prohibited transaction provisions of ERISA is required before the transaction can proceed.

ERISA Prohibited Transaction Analysis

9. ERISA section 406(a)(1)(A) provides, in relevant part, that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he or she knows or should know that such transaction constitutes a direct or indirect sale or exchange of any property between a plan and a party in interest to the plan. The Fund and the Plan are each an "employee welfare benefit plan" within the meaning of ERISA section 3(1) and a "multiemployer plan" within the meaning of ERISA section 3(37). ERISA section 3(14)(D) defines parties in interest with respect to a plan to include, among others, the plan fiduciary, a sponsoring employer of the plan, and an employee organization whose members are covered by the plan. MACRC is an "employee organization" within the meaning of ERISA section 3(4), and it is therefore a party in interest within the meaning of ERISA section 3(14)(D) with respect to the Fund. Therefore, the Fund's sale of the Parcel to the MACRC would violate ERISA section 406(a)(1)(A).

10. ERISA section 406(b)(1) states that a plan fiduciary shall not deal with the assets of the plan in his own interest or for his own account. For purposes of ERISA, the Union Trustees are fiduciaries with respect to the Fund. The Union Trustees were

appointed by the MACRC and receive salaries from the MACRC for their services as trustees; therefore, they have an interest in the MACRC that would cause them to violate ERISA Section 406(b)(1) if they exercised any of the authority that makes them a fiduciary, in connection with the Sale. ERISA section 406(b)(2) states that a plan fiduciary shall not act in any transaction involving the plan on behalf of a party whose interests are adverse to the interests of the plan. The interests of the MACRC are adverse to the interests of the Fund for purposes of the sale, because the MACRC is the Fund's counterparty. Therefore, the Sale would violate ERISA section 406(b)(2).

11. Although the Applicant states that the Union Trustees recused themselves from the Fund's decision to sell the Parcel to the MACRC since September 23, 2020, whether the Union Trustees effectively recused themselves from all aspects of the Fund's decision making regarding the Sale, so as to negate a violation of ERISA section 406(b)(1) and 406(b)(2), involves an inherently factual determination that is beyond the scope of this proposed exemption.³ In connection with this application, the Department cannot determine whether the Union Trustees sufficiently recused themselves from engaging in the deliberations regarding the Sale or whether they used their positions to influence the Employer Trustees' decision to approve the Sale in order to determine definitively that there was no violation of ERISA section 406(b)(1) or 406(b)(2). To the extent the Union Trustees exercised any authority, control, or responsibility that make them a fiduciary to cause the Fund to engage in the Sale, they would have violated ERISA section 406(b)(1) and (b)(2), because the Sale would benefit the MACRC, an

³ For example, their presence on the Board of Trustees, particularly prior to their official "recusal" on September 23, 2020, may have influenced the Employer Trustees' willingness to cause the Fund to sell the Parcel to the MACRC.

entity in which the Union Trustees have an interest and would involve Union Trustees acting on behalf of both the Fund and the MACRC.

Prior Applications and Prohibited Use of the Parcel

12. *First EXPRO Application.* On June 26, 2020, the Fund filed an application for authorization for approval of the Sale (the Initial EXPRO Application)⁴ under the expedited procedures of Prohibited Transaction Exemption 96-62, as amended (the EXPRO Procedures). At the request of the Department, the Fund withdrew the Initial EXPRO Application on August 25, 2020, to engage the services of an independent fiduciary to review and approve the terms of the sale of the Parcel to the MACRC.

13. *Second EXPRO Application.* The Fund submitted a second application for authorization on April 5, 2021, again under the EXPRO Procedures. The second EXPRO application included a written report submitted by an independent fiduciary, Prudent Fiduciary Services, LLC (PFS), who was tasked with reviewing and approving the terms of the Parcel sale to the MACRC.⁵ The report submitted by PFS noted that, on or around November 15, 2020, the MACRC accessed the Parcel and commenced construction of the health and wellness center building on the Parcel without compensating the Fund. Due to the ERISA fiduciary and prohibited transaction issues caused by the MACRC's access and use of the Parcel, the Department did not approve the second EXPRO Application.

14. *Exemption Application No. L-12068.* The second EXPRO application was converted to a standard individual exemption application and designated Exemption

⁴ Submission No. E-00826.

⁵ As described in further detail below, PFS was ultimately replaced by Gallagher Fiduciary Advisors, LLC in connection with the current application for exemptive relief.

Application No. L-12068, on February 2, 2022. By letter dated March 11, 2022, the Department informed the Applicant that it had tentatively determined not to propose the requested exemption based on: (A) the MACRC's past and continuing construction activities on the Parcel; and (B) the Fund's failure to submit with the application an updated appraisal report and an updated independent fiduciary report from PFS. On April 27, 2022, the Fund supplemented its application with an updated appraisal report from a qualified independent appraiser and an updated report from PFS. The updated fiduciary report from PFS provided the following statement: "[w]e found that the most significant development since the [o]riginal [r]eport has been the progress of construction activities on the subject property. It is our understanding that construction has been completed, and the planned wellness center is ready to operate."

15. The Fund and the Department held a tentative denial conference on May 4, 2022 and, following subsequent discussions, the Department, the Fund, and the MACRC agreed in May 2023 that: (A) the Fund would withdraw Exemption Application No. L-12068; (B) the MACRC would enter into a settlement agreement with the Employee Benefits Security Administration's Office of Enforcement to address the MACRC's access to and use of the Parcel under ERISA section 502(i); (C) the Fund would engage the services of a new independent fiduciary to review the terms of the Sale and determine the "amount involved" for purposes of correcting the MACRC's access to and use of the Parcel under ERISA section 502(i); and (D) once the prior steps had been completed, the Fund would submit a new exemption application to the Department for prospective relief for the sale of the Parcel to the MACRC at an appraised fair market value that takes into consideration the value of the completed wellness center building on the Parcel.

16. The Employer Trustees selected Gallagher Fiduciary Advisors, LLC (Gallagher) to act as the new independent fiduciary for the Fund. Gallagher is a registered investment adviser with no relationship with the Fund or the MACRC, except as the Fund's independent fiduciary with respect to the Sale. Gallagher's fee for its services as independent fiduciary for the Fund will be less than 2% of its annual revenues for Gallagher's prior income tax year.

The Settlement Agreement and Ground Lease

17. The MACRC and the Department entered into a Settlement Agreement on January 31, 2024 (the Settlement Agreement). Among other things, the Settlement Agreement required the Fund and the MACRC to enter into a lease, whereby the MACRC would pay the Fund: ground rent for its past use of the Parcel from November 15, 2020 (the date that the MACRC first accessed the Parcel) to January 31, 2024 (the Ground Rent); and office rent for its use of the wellness center beginning on February 1, 2024 (the Office Rent).⁶

18. Gallagher hired Newmark Valuation & Advisory (Newmark) to determine these rental rates.⁷ Newmark provided an appraisal report, dated November 29, 2023 (the Appraisal Report), which set the Ground Rent at \$50,666 and the Office Rent at \$252,125 per year, subject to annual escalations of two percent.

19. The Fund and the MACRC entered into a lease agreement (the Lease Agreement) on January 31, 2023, pursuant to which the MACRC will lease the Parcel (including the wellness center and any other buildings on the Parcel) from the Fund in

⁶ Thereafter, members of the MACRC were able to access and utilize the building.

⁷ Gallagher also intended to rely on Newmark's appraisal to determine the market value of the Parcel for purposes of the Sale.

exchange for: (1) a one-time payment of past-due rent plus interest and penalties in an amount equal to \$50,666; and (2) the payment of \$252,125 per year subject to annual escalations of two percent per year.⁸ The commercial market rental amount, which takes into account the close proximity of the wellness center property to the MACRC, was determined by Newmark and approved by Gallagher. Gallagher determined that the lease terms are commercially reasonable. The lease terminates upon the earlier of the date that the Parcel is sold or either party terminates the lease agreement pursuant to its terms.

Re-Submission of Application

20. In April 2024, the Fund re-submitted its application for an exemption. In its resubmission, the Fund stated that, if the exemption is granted, the MACRC will pay the estimated value of both the Parcel and the wellness center (\$3.4 million) to the Fund and the MACRC will receive a credit for the \$3.18 million that the MACRC spent on construction costs, resulting in approximately \$220,000 of net proceeds being received by the Fund at closing. If this exemption is granted, the fair market value of the Parcel will be updated by an independent appraiser on the date of the sale, and the Fund will receive the greater of such price or \$220,000.

21. The Fund remains represented by Gallagher in connection with the Sale. In this regard, Gallagher is required to: review all relevant materials to evaluate the Sale; review and modify (as needed) the Sale agreement and related documents; prepare a report describing its review and determinations with respect to the Sale; advise the Employer Trustees regarding its review of the Sale; respond in writing to the Department with respect to the application and with respect to comments to the proposed exemption;

⁸ As described above, the past due rent, plus interest and penalties were determined by Gallagher based on an appraisal by Newmark and were paid in connection with the Settlement Agreement.

make a final determination on behalf of the Fund whether to approve the sale of the Parcel to the MACRC; and ensure that the Fund receives all rent due under the terms of the lease, and receives the fair market value of the Parcel as agreed upon under the terms of the purchase and sale agreement.

Gallagher's Fiduciary Report

22. In support of its exemption request, the Applicant submitted a fiduciary report issued by Gallagher dated March 8, 2024 (the Gallagher Report). In making its conclusions, Gallagher performed a review of: (A) the First and Second EXPRO Applications, and Exemption Application No. L-12068; (B) the Form 990 for the Fund as of December 31, 2022; (C) the Appraisal Report; (D) prior appraisals of the Parcel obtained by the Fund in connection with the prior exemption applications; and (E) the prior purchase and sale agreement between the Fund and the MACRC for the Sale. Gallagher also conducted an in-person visit to the Real Property in September 2023 (and intends to re-visit the Real Property if the Sale is approved by the Department); and held discussions with legal counsel for the Fund.

23. Gallagher states that the Sale is in the interest of the Fund and its participants, because:

- the Fund will be compensated at the fair market value of the Parcel's underlying land, at \$220,000, plus rent payments for the period November 15, 2020 to closing, including penalties and interest on back rent (which it has already received).
- the MACRC has been caused to pay market office space rent of \$252,125 per year as determined by the Newmark appraisal, which took into account the close

proximity of the MACRC to the Wellness Center, to the Fund until such time that the Wellness Center Property is either sold to the MACRC with the permission of the Department and Gallagher, or the lease is terminated.

- the Fund's members will enjoy ready access to the Wellness Center, in a system that has already worked successfully at another the MACRC wellness facility.
- neither the Fund's staff nor its participants are expected to be burdened by parking limitations as a result of the sale, as the remaining acreage after the sale is expected to provide ample parking for Fund staff and participants.
- the MACRC is a ready and willing purchaser for the wellness center, and there will be no additional sales expenses or timing delays that would be inherent in a sale to an unconflicted third party, as the time to market the Parcel to a third party could be up nine months and would necessitate additional marketing, brokerage and closing costs to the Fund.

24. Gallagher notes that the value of the Parcel, net of the value of the completed wellness center building, was determined by Newmark to be \$220,000, which is \$50,000 more than the original offer that the MACRC made to the Fund. Gallagher notes further that Newmark appropriately considered the close proximity of the MACRC (the interested buyer) to the wellness center and that the MACRC built the Wellness Center on property it didn't own, used appropriate methodologies and assumptions to make its determination, and applied those methodologies and assumptions correctly to its valuation of the Parcel.

25. Gallagher opined that, if the MACRC was not permitted to purchase the Parcel, Fund participants would not be afforded the benefits that the wellness center is

expected to provide, and the Fund would more than likely need to market the Parcel to an unconflicted third party (since owning and maintaining the building as landlord does not coincide with the purpose of the Fund, which is to provide training to Union members). The Fund would be responsible, as owner of the building and seller, for standard closing costs and fees that are commonly negotiated to be paid between uninterested parties. Gallagher noted that the MACRC will be responsible for all recording fees and closing costs with regard to the Sale, all of the due diligence such as the appraisal and other costs necessary for the Sale, as well as any real estate transfer taxes. Further, Gallagher noted that the Fund would likely have to pay a brokerage fee to market the wellness center property and would be subject to any delays and market conditions necessary for such a sale. Gallagher noted that, to its knowledge, there are no other interested buyers for the Parcel, thus the time to market the Parcel to a third party could be up to nine months.

26. Gallagher noted in its report that the MACRC had provided proof that it paid the required back rent, interest and penalties due under the Lease Agreement, the security deposit due under the lease, and its first and second month's rent.

Statutory Findings

The Department has tentatively made the following required findings under ERISA section 408(a) with respect to the proposed exemption:

27. *In the Interest of the Fund and its Participants.* The Department has tentatively determined that an exemption for the Sale is in the interest of the Fund and its participants because the Fund will receive the greater of the fair market value of the

Parcel, or \$220,000.⁹ The fair market value of the Parcel that the Fund will receive in the Sale is \$50,000 more than the original offer from the MACRC. Furthermore, absent the exemption, the Independent Fiduciary and the MACRC likely would not have negotiated for the payment of annual rent of \$250,000 (with a yearly escalation) until the date of closing of the Sale.

28. *Protective of the Rights of the Participants of the Fund.* The Department has tentatively determined that an exemption for the Sale is protective of the rights of the participants and beneficiaries of the Fund. The exemption would be conditioned upon the MACRC's compliance with its obligations under the Settlement Agreement and the Lease Agreement.¹⁰ The Sale must be a one-time transaction for cash, overseen in all material respects by a qualified independent fiduciary who solely represents the Fund. The Union Trustees must have recused themselves from any discussion and approval of the Sale since September 23, 2020. Further, the fair market value of the Parcel must be established by a qualified independent appraiser who has undertaken its obligations without contractual indemnification provisions.¹¹

29. *Administratively Feasible.* The Department has tentatively determined that an exemption for the Sale is administratively feasible, because, among other things, the Sale would be a one-time transaction overseen by a qualified independent fiduciary responsible for ensuring that, among other things, each condition of the exemption has

⁹ The purchase price of the Parcel paid by the MACRC to the Fund will be \$3,400,000 based on the appraised value of the Parcel, and a credit for the costs that the MACRC incurred in constructing the improvements will be given to the MACRC in the amount of \$3,180,000. Thus, the net purchase price will be \$220,000.

¹⁰ Gallagher represents in its report that the MACRC paid the required back rent, interest and penalties under the Lease Agreement to the Fund and paid the required ERISA 502(i) penalty to the Department. The MACRC also provided proof of payment of the security deposit under the lease and its first two months' rent.

been met. Further, the Sale will end the entanglement of the Fund with the MACRC regarding the leasing of the Parcel and resolve the issues covered in the Settlement Agreement.

NOTICE TO INTERESTED PERSONS

Notice of the proposed exemption will be provided by the Fund to all Interested Persons within fifteen (15) days of the publication of the notice of proposed exemption in the *Federal Register*, by first class U.S. mail to the last known address of all such individuals. The notice will contain a copy of the notice of proposed exemption, as published in the *Federal Register*, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within forty-five (45) days of the date of publication of this proposed exemption in the *Federal Register*. All comments will be made available to the public.

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

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) does not relieve a fiduciary or other party in interest from certain other provisions of ERISA, 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 in accordance with ERISA section 404(a)(1), and in a prudent fashion in accordance with ERISA section 404(a)(1)(B);

(2) Before an exemption may be granted under ERISA section 408(a), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete at all times, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

PROPOSED EXEMPTION

The Department is considering granting an exemption under the authority of ERISA section 408(a) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). If the proposed exemption is granted, the restrictions of ERISA sections 406(a)(1)(A), 406(b)(1), and 406(b)(2), shall not apply to the sale of the 1.13 acre portion of improved real property located at 8955 E. Terrace, Kansas City, Missouri (the Parcel) by the Mid-America Carpenters Regional Council Apprentice and Training Fund (the Fund) to the Mid-America Carpenters Regional Council (the MACRC) (the Sale), provided the following conditions are satisfied at all times:

(a) The MACRC complied with all applicable obligations under the “Settlement and Agreement to Pay ERISA Section 502(i) Amount Involved and Penalty Amount” entered into between the MACRC and the Department, effective January 31, 2024 (the Settlement); and the MACRC paid all back rent, penalties, and interest due to the Fund under the terms of the Lease Agreement dated January 31, 2024 between the MACRC and the Fund (the Lease) for the period of time that the MACRC improperly accessed the Parcel and commenced construction of the building on the Parcel, from November 15, 2020 through January 31, 2024, the date of the Settlement Agreement.

(b) The MACRC complies with all terms of the Lease, and any violation of or failure to comply with any term of the Lease is corrected as soon as reasonably possible upon discovery.

(c) The Sale is a one-time transaction for cash that must close within ninety (90) days of the issuance of the final exemption.

(d) At the time of the Sale, the Fund receives the greater of (1) \$220,000; or (2) the fair market value of the Parcel as established by an independent appraiser in an updated appraisal of such Parcel on the date of the Sale. The independent appraiser must meet the Department's definition of a "qualified independent appraiser" under the Department's Exemption Procedure in 29 CFR 2570.31(i) and, at all times: 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 Fund, the MACRC, 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 Fund or its participants and beneficiaries under ERISA or other Federal and state laws against the qualified independent appraiser with respect to the Sale.

(e) The Fund pays no fees, commissions, or other expenses associated with the Sale.

(f) The terms and conditions of the Sale are at least as favorable to the Fund as those obtainable in an arm's length transaction with an unrelated third party.

(g) The trustees appointed by the MACRC (the Union Trustees) recused themselves, and continue to recuse themselves, from any involvement in the decision-making process with respect to the Fund's decision to enter into the Sale, since September 23, 2020.

(h) Gallagher Advisory Services, LLC (Gallagher), or another "qualified independent fiduciary" as defined under 29 CFR 2570.31(j) (the Independent Fiduciary)

is retained to act as the Independent Fiduciary on behalf of the Fund for all purposes in connection with the Sale and the Lease, and at all times: 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 such Independent Fiduciary by the Fund, the MACRC, or other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable to the Independent Fiduciary's work; or that waives any rights, claims, or remedies of the Fund under ERISA, state, or Federal law against the Independent Fiduciary with respect to the Sale.

(i) The Independent Fiduciary must represent the Fund and its participants and beneficiaries for all purposes in connection with the Sale and the Lease in accordance with its fiduciary duties under ERISA section 404, including taking the following actions:

(1) review relevant materials to evaluate the Sale and determine whether it is in the best interest of the Fund to proceed with the Sale;

(2) determine whether to rely upon the appraisal report used to determine the fair market value of the Parcel for all purposes in connection with the Sale, and review and approve the methodology used in such appraisal in order to determine that the appropriate methodology is applied by the independent appraiser in determining the fair market value of the Parcel on the date of the Sale;

(3) review, negotiate, and modify (as needed) the Sale agreement and related documents;

(4) prepare a report in connection with the application of the exemption request describing the Independent Fiduciary's review and determinations with respect to the Sale, including whether the Sale is in the best interest of the Fund and its participants and beneficiaries;

(5) make a final determination on behalf of the Fund whether to approve the Sale;

(6) ensure that the Fund receives the fair market value of the Parcel as agreed upon under the terms of the purchase and sale agreement; and that the remaining terms of the purchase and sale agreement and any related instruments are complied with; and

(7) ensure that the MACRC has complied with and continues to comply with all applicable terms of the Lease, including that the Fund receives all rent due to it under the terms of the Lease.

(j) The Independent Fiduciary must prepare an "After Closing Report" for the Employer Trustees of the Fund and the Department, which must be delivered to both parties within 60 days of the closing of the sale of the Parcel. The report must describe the extent to which the conditions of the exemption have been complied with by the parties, the reasons for any non-compliance, and the steps that the Independent Fiduciary took on behalf of the Fund to enforce the rights of the Fund in respect to such non-compliance. The report should describe the documents reviewed or other steps taken in order for the Independent Fiduciary to make its determinations.

(k) The Fund's Trustees and the Independent Fiduciary maintain for a period of six (6) years from the date of any transaction related to the Sale, in a manner that is

convenient and accessible for audit and examination, the records necessary to enable the persons described in paragraph (l)(1) below to determine whether conditions of this exemption, if granted, 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 Fund's trustees 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 Fund's trustees 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.

(l)(1) Notwithstanding any provisions of sections (a)(2) and (b) of ERISA Section 504, the records referred to in paragraph (k) 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 Fund's trustees or any duly authorized representative of the Fund's trustees; (iii) the Independent Fiduciary or any duly authorized representative of the Independent Fiduciary; (iv) any participant or beneficiary of the Fund, or any duly authorized representative of such participant or beneficiary; and (2) should the MACRC 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.

(m) 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: If granted, this exemption will be in effect as of the date of publication in the *Federal Register*.

Signed at Washington, DC, this 19th day of August 2025.

Christopher Motta,

Acting Director,

Office of Exemption Determinations,

Employee Benefits Security Administration,

U.S. Department of Labor.

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