



DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D-12082]

Proposed Exemption for Certain Prohibited Transactions Involving Hawai'i Pacific Health and its Subsidiary, Straub Clinic & Hospital

Located in Honolulu, Hawaii

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: The Department of Labor (the Department) is considering granting an exemption that would permit the Hawai'i Pacific Health Retirement Plan (the Plan) to sell a parcel of improved real property (the Property) to Straub Clinic & Hospital (Straub) for at least the greater of \$16,247,000 or 10% over the Appraised Value of the Property as of the date of the sale (the Sale). As discussed in the Summary of Facts and Representations section below, absent an exemption, the Sale would be prohibited by the Employee Retirement Income Security Act of 1974 (ERISA) and/or the Internal Revenue Code of 1986 (the Code).

DATES: *Exemption date:* If granted, the exemption will be in effect as of the date the grant notice is published 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 51 DAYS FROM 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. D-12082:

- 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, reachable by telephone at (202) 693-8673. See SUPPLEMENTARY INFORMATION below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Nicholas Schroth of the Department at (202) 693-8571. (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 stated above; (2) the only issues identified for exploration at the hearing are

matters of law; or (3) the factual issues identified in the request can be fully explored through the submission of evidence in written (including electronic) form.

Warning: The Department will include all comments received in the public record without change and will make them 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 included information 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 them 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 The exemption would provide relief from the restrictions of ERISA sections

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 December 5, 2022, the procedures in effect as of that date govern. 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

406(a)(1)(A) and (D) and sections 406(b)(1) and (b)(2), discussed below, but would not provide relief from any other violation of law.²

Benefits of the Exemption: The Department is proposing this exemption based in part on its expectation that the Plan will receive at least \$16,247,000 from the Sale, which represents \$1,477,000 more than the Property's Appraised Value³ as of April 1, 2024.

Summary of Facts and Representations⁴

The Applicant and the Plan

1. Hawai'i Pacific Health is a tax-exempt, charitable organization that operates a health system in Hawaii. Hawai'i Pacific Health sponsors the Plan, which is a defined benefit plan with 8,513 participants and \$451,900,283 in net assets as of December 31, 2023. The Plan's named fiduciary and plan administrator is the Hawai'i Pacific Health Retirement Plan Finance Committee (Committee).

2. Hawai'i Pacific Health wholly controls Straub. Straub owns and operates a medical center located at 888 South King Street, Honolulu, HI 96813 and is an employer of employees covered under the Plan.

3. On January 2, 1969, the Plan purchased approximately 31,498 square feet of unimproved land from Pacific Holiday Inc., an unrelated party. At that time, Straub owned a parcel of real estate that abutted the Property on two sides. On the date of

exemptions under the Code Section 4975(c)(2) to the Secretary of Labor. Accordingly, the Department is proposing this exemption under its sole authority.

² Any references hereinafter to sections of ERISA shall be deemed to refer to the corresponding sections of the Code, unless indicated otherwise.

³ "Appraised Value" means the greater of a property's "Fair Market Value" or its "Investment Value" as determined by an independent appraiser. These terms are discussed in further detail below.

⁴ The Summary of Facts and Representations is based on the Applicant's representations provided in its exemption application and does not reflect factual findings or opinion 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 D-12082 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 the Department's sole discretion. *See* 29 CFR 2570.49.

purchase, the Plan and Straub entered into a 75-year lease of the Property (the Lease).

The Lease required Straub to construct a building on the Property, and Straub built a parking garage that stood partially on the Plan's Property and partially on Straub's abutting property. In 1973, Straub constructed a hospital building primarily on Straub's property, but a small portion of the hospital was constructed on the Property.

3. On September 18, 1981, the Department granted PTE 81-71, which exempted the Lease from ERISA sections 406(a), 406(b)(1) and (b)(2).⁵ The preamble to the proposal for PTE 81-71 required an independent fiduciary to serve as a trustee to the Plan and to determine whether entering into the Lease was in the best interests of the Plan, and, if so to: monitor the Lease; verify the timely collection of rental payments; oversee the periodic reappraisal of the Property; and "enforce[] those legal remedies as may be available." In March, 2001, Straub appointed Central Pacific Bank (CPB) to serve as the Plan's independent fiduciary for purposes of PTE 81-71, replacing the prior trustee.⁶ A provision in the Lease required Straub to pay certain Plan expenses relating to the Property, including taxes, utilities, and maintenance (Property Expenses).

4. From 2006 until 2022, the Plan paid Property Expenses in violation of the Lease and PTE 81-71.⁷ Straub represented that it is not possible to ascertain what caused the Plan to pay these expenses due to a merger involving the Plan and turnover in personnel.

⁵ See 46 FR 46438 (September 18, 1981). The Sponsor represents that the Plan did not need an exemption before PTE 81-71 because ERISA Section 414(c) provides that ERISA Sections 406 and 407(a) shall not apply until June 30, 1984, to a lease or joint use of property involving the plan and a party in interest pursuant to a binding contract in effect on July 1, 1974. The Sponsor states that since the Plan and Straub partnership executed the lease in 1969, they did not need an exemption until 1984. The Department is not expressing a view whether ERISA section 414(c) applies to the Lease of the Property prior to the publication of PTE 81-71 as such matters are outside the scope of this proposed exemption.

⁶ The original independent fiduciary under PTE 81-71 was American Trust Company of Hawaii, Inc., which merged into Hawaii Trust Company, Limited, and which further merged into the Bank of Hawaii (specifically into its trustee division, Pacific Century Trust). Pacific Century Trust was replaced as the Independent Fiduciary for purposes of PTE 81-71 by CPB.

⁷ Plan assets were used to pay the following expenses: (1) \$54,816 in appraisal fees from 2006 to 2022; (2) \$185,310 in rental income taxes for the Property from 2011 to 2016; (3) \$78,880 in trustee fees from 2011 to 2022; (4) \$9,835 in bank fees from 2011 to 2022; and (5) \$167,376 in state taxes from 2017 to 2022. The Applicant represents that the total amount of expenses paid by the Plan in violation of the lease agreement was \$496,217 from 2006 to 2022.

5. On May 31, 2022, Straub repaid the Plan \$315,056, which Straub states includes all Property Expenses and \$148,805.59 in lost earnings for the funds that the Plan erroneously paid on Straub's behalf for all years within the then-applicable statute of limitations (i.e. 2015 to 2022). On June 14, 2022, Hawai'i Pacific Health paid IRS excise taxes totaling \$80,099 relating to the repayment of Plan expenses. Straub has not yet repaid the Plan approximately \$180,185 in Property Expenses that the Plan erroneously paid from 2006 to 2014 because it claims the payments fell outside the statute of limitations, although Straub will be required to repay that amount under the terms of this exemption, if granted.

The Transaction

6. This proposed exemption, if granted, allows the Plan to sell the Property to Straub for at least the greater of \$16,247,000 or 110% of the Appraised Value of the Property on the date of Sale. The Applicant states that Straub intends to incorporate the Property, once purchased, in the construction of a new medical campus (Straub Medical Center). The Applicant represents that development of the Straub Medical Center began on its own property in December 2021. If the exemption is granted, the second phase of the development will involve tearing down the parking structure on the Property and further developing the Straub Medical Center.

Legal Analysis

7. ERISA section 406(a)(1)(A) prohibits a plan fiduciary from causing a plan to engage in a transaction if it knows or should know that such transaction constitutes a direct or indirect sale or exchange, or leasing, of any property between the plan and a party in interest. Straub is a party in interest with respect to the Plan pursuant to ERISA section 3(14)(G), because it is a subsidiary controlled by Hawai'i Pacific Health, a fiduciary with respect to the Plan. The Sale would violate ERISA section 406(a)(1)(A) because the Sale would involve the sale of the Property by the Plan to Straub, a party in interest to the Plan.

8. ERISA section 406(a)(1)(D) prohibits a plan fiduciary from causing a plan to engage in a transaction if it knows or should know that such transaction constitutes a direct or indirect transfer to or use by or for the benefit of a party in interest, of the assets of the plan. The Sale would violate ERISA section 406(a)(1)(D) because the Sale would involve the transfer of a Plan asset (the Property) to Straub for the use by, and for the benefit of, Straub, a party in interest to the Plan.

9. ERISA section 406(b)(1) prohibits a fiduciary from dealing with plan assets in its own interest or for its own account, and ERISA section 406(b)(2) prohibits a fiduciary from acting in any transaction involving the plan on behalf of a party whose interests are adverse to the interests of the Plan. The Sale would violate ERISA sections 406(b)(1) and 406(b)(2) because Hawai'i Pacific Health and the Committee would be: dealing with Plan assets for its own interest by causing the Plan to sell the Property to a party (Straub) in which Hawai'i Pacific Health has an interest; and acting on behalf of Straub, a party that has interests that are adverse to the interests of the Plan.

10. Therefore, subject to the parties' adherence to the conditions described herein, the Department is proposing an exemption from ERISA sections 406(a)(1)(A) and (D) and 406(b)(1) and (2) for the Sale.

The Qualified Independent Fiduciary (QIF)

11. On July 11, 2022, the Hawai'i Pacific Health and CPB signed a new agreement for CPB to act as the QIF for purposes of the Sale. Under the terms of the agreement, CPB will prudently monitor, negotiate and, if appropriate, approve the Sale. CPB represents that it has served as an independent fiduciary on behalf of 70 plan accounts other than the Plan (none of which were related to Hawai'i Pacific Health) and that the revenue it received for

the current federal income tax year from all parties in interest to the Sale is not more than 2% of CPB's annual revenues from the prior income tax year.⁸

The Qualified Independent Appraiser

12. CPB retained Lesher Chee Stadlbauer (Lesher) to act as the qualified independent appraiser (QIA)⁹ regarding the Sale. Lesher's personnel are accredited as Hawaii State Certified General Appraisers and have provided real estate valuations for more than 80 years for landowners, real estate managers, developers, lenders, investors, trusts, attorneys and governmental agencies. Additionally, the revenue Lesher received, and its projected revenues, for the 2025 tax year from parties in interest (and their affiliates) to the transaction are not more than 2% of Lesher's annual revenues based on its prior income tax year.

13. Lesher appraised the Fair Market Value and Investment Value of the Property at \$13,030,000 and \$14,770,000, respectively, as of April 1, 2024.¹⁰ If this exemption is granted, Lesher will appraise the Fair Market Value and Investment Value of the Property as of the date of the Sale and will provide a qualified appraisal report¹¹ to the QIF.

The Independent Fiduciary's Report

14. CPB concluded in a report, dated November 21, 2022, that the Plan would benefit from selling the Property for two primary reasons. First, even though Lesher determined the appraised Investment Value to be \$14,770,000 on April 1, 2024, CPB negotiated an additional \$1,477,000, or 10% above the Property's Appraised Value, as of

⁸ CPB represents that the percentage of its 2025 revenue that is derived from all parties in interest, or its affiliates is 0.13%, which was computed by comparing (i) the amount of the fiduciary's projected revenues from 2025 that will be derived from the party in interest or its affiliates (the numerator); and (ii) CPB's revenue from all sources (including fixed, nondiscretionary retirement income) for the prior federal income tax year (the denominator).

⁹ As defined in 29 CFR 2570.31(i).

¹⁰ Lesher's defines Investment Value as the value of a property to a particular investor or class of investors based on the investor's specific requirements. In the instant case, Lesher considered the potential benefit to Straub who owned the abutting parcel of real estate. For illustrative purposes, the appraisal submitted with the application provides that the Fair Market Value of the Property on 11/1/2022 is \$13,030,000 and the Investment Value of the Property on 11/1/2023 is \$14,410,000.

¹¹ As defined in 29 CFR 2570.31(h).

April 1, 2024 to arrive at \$16,247,000.¹² In order to ensure that the Plan receives a comparable increased benefit on the date of Sale, the proposed exemption requires that Straub must pay the Plan at least the greater of (a) \$16,247,000 or (b) 110% of the Appraised Value at the time of Sale. Furthermore, the Department notes that, in order to approve the Sale on behalf of the Plan, CPB, as the independent fiduciary for the Plan, is required to find that the Sale is in the best interest of the Plan and its participants and beneficiaries, which may require CPB to further negotiate a higher sales price than described above.

15. Second, CPB represented that the Sale would enable the Plan to remove an illiquid asset from the Plan's inventory of investments. The Property's appraiser represented that the 20-year lease and the Property's odd shape would decrease its value to an independent third party. Further, Straub owns the improvements on the property that cover both the Property and Straub's abutting property. To sell the Property after the expiration of the Lease, the Plan may require Straub to demolish those current improvements, and the Plan would only receive value for the underlying land. CPB ultimately concluded that the Sale of the Property to Straub was in the interest of, and protective of, the Plan and its participants and beneficiaries. CPB reaffirmed this conclusion on November 27, 2024 in an updated report.

16. The conditions of the exemption, if granted, require the QIF to evaluate and monitor the Sale and to confirm whether the terms and conditions of the exemption have been satisfied. As required by the conditions for the exemption, the QIF must represent that it has, among other things, in full accordance with its prudence and loyalty obligations under ERISA sections 404(a)(1)(A) and (B), reviewed a new qualified independent appraisal dated immediately preceding the Sale, negotiated the Sale in

¹² The Property's Fair Market Value was determined as of November 1, 2022, and updated on April 1, 2024.

accordance with the QIF's fiduciary duties and this exemption, and made the final determination to approve the Sale on behalf of the Plan. The QIF must monitor the Sale throughout its duration on behalf of the Plan for compliance with the general terms of the transaction and with the conditions of the exemption and take any appropriate actions to safeguard the interests of the Plan and its participants and beneficiaries. The QIF also must negotiate a higher price than the current purchase price, if necessary, under its fiduciary duties of prudence and loyalty, to determine that the Sale is in the best interest of the Plan and its participants and beneficiaries.

17. The QIF must also conclude, in full accordance with its prudence and loyalty obligations under ERISA section 404(a)(1)(A) and (B), that all Property Expenses erroneously paid by the Plan on behalf of Straub were repaid with the appropriate interest, including Property Expenses that were erroneously paid by the Plan that fall outside the statute of limitations and which were not repaid by Straub to the Plan prior to this exemption. The QIF must document the basis for its conclusions in a written report submitted to the Department's Office of Exemption Determinations no more than 60 days after the Sale or the QIF's determination that the Sale is not in the interest of the Plan. The report must include copies of all documents and evidence the QIF relied on when conducting its review.

Other Protective Conditions

18. The Sale must take place within 60 days of the date of publication of the exemption in the *Federal Register*. The Plan may not pay any costs associated with the Sale and the terms and conditions of the Sale must be as favorable to the Plan as those that the Plan would receive in an arm's length transaction with an unrelated party. The Plan may not provide indemnification, reimbursement, or waiver rights to the QIF or QIA.

19. Straub must pay back the Plan the erroneously paid Property Expenses from

2006 to 2014, prior to the Sale. The Sale cannot commence until the QIF concludes that Straub paid back the appropriate amounts. Additionally, Straub must pay the IRS the appropriate legally required excise tax on all prohibited transactions from 2006 to 2022 relating to the erroneously paid property expenses. However, Straub need not pay the IRS prior to the Sale to meet the terms of this exemption. Should there be a dispute with the IRS concerning the amount of excise tax Straub must pay, Straub must pay the amount the IRS concludes is due or adhere to the applicable court order concerning the amount due. If the IRS does not receive the appropriate excise tax after a final determination by the court or the IRS, this exemption is considered retroactively null and void prior to the Sale.

20. Straub and Hawai'i Pacific Health must maintain the appropriate records relating to the Sale for a period of 6 years and provide the Department access to these records upon the Department's request. All the material facts and representations made by the Applicant that are set forth in the Summary of Facts and Representations must be true and accurate at all times.

Statutory Findings

21. The Department has the authority under ERISA section 408(a) to grant an exemption from the prohibited transaction provisions of ERISA section 406 if the Department finds that the transaction is in the interest and protective of the rights of the affected plan and its participants and beneficiaries and is administratively feasible.

22. "In the Interest of the Plan and its Participants and Beneficiaries." The Department has tentatively determined that the proposed exemption would be in the interest of the Plan and its participants and beneficiaries because: (a) if approved by the QIF, the Plan will receive the greater of \$16,247,000 or 110% of the Appraised Value at the time of Sale; (b) the Sale will allow the Plan to remove an illiquid asset from its investments; (c) the Plan has not and will not incur any transaction costs in connection

with the Sale; (d) the Sale will not be subject to any financing contingencies because Straub will be making a one-time, lump-sum, cash payment to the Plan on the closing date for the Sale; (e) the Sale will eliminate ongoing appraisal fees, administrative costs, taxes, and fiduciary fees and legal responsibilities that are associated with the Plan's continuing ownership of the Property; and (f) CPB will reimburse the Plan for the improper payments of Property Expenses and any associated lost interest not already paid to the Plan.

23. "Protective of the Rights of Participants and Beneficiaries of the Plan." The Department has tentatively determined that the proposed exemption is protective of the rights of Plan participants and beneficiaries because a QIF will represent the interests of the Plan's participants and beneficiaries with respect to: (a) selecting a QIA; (b) reviewing the QIA's Qualified Appraisal Report to ensure this report appraises the Fair Market Value and Investment Value of the Property as of the transaction date (i.e. date of the Sale) based on appropriate appraisal methodologies; (c) negotiating the purchase price of the Property solely in the interests of participants and beneficiaries in accordance with the QIA's ERISA duties and the terms of this exemption, if granted; (d) reviewing and negotiating the terms and execution of the Sale; and (e) authorizing the Plan to sell the Property to Straub.

24. "Administratively Feasible." The Department has tentatively determined that the proposed exemption would be administratively feasible because: (a) a QIF will monitor, review, negotiate, and potentially authorize the Sale of the Property to Straub and (b) the QIF will exercise its duties solely in the interest of participants and beneficiaries in accordance with ERISA and the conditions of this exemption.

Notice to Interested Persons

Interested persons include participants and beneficiaries of the Plan. The Applicant will provide notification to interested persons by electronic mail and/or first-

class mail within 21 calendar days of the date of the publication of the Notice in the *Federal Register*. The mailing will contain a copy of the Notice, as it appears in the *Federal Register*, plus a copy of the Supplemental Statement that is required pursuant to 29 CFR 2570.43(a)(2), which advises the interested persons of their right to comment and to request a hearing. The Department will not consider comments and requests for a hearing received by the Department after 51 days from the date of the publication of the Notice in the *Federal Register*.

All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments become part of the disclosable administrative record. Further, comments may be posted on the internet and can be retrieved by most internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan and its participants and beneficiaries and in a prudent manner in accordance with ERISA section 404(a)(1)(B); nor does it affect the requirement of Code section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA section 408(a), 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, would be supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is, in fact, a prohibited transaction; and

(4) The proposed exemption, if granted, would be 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 transactions which are the subject of the exemption.

PROPOSED EXEMPTION

The Department is considering granting an exemption under the authority of ERISA section 408(a) in accordance with the Department's exemption procedures regulation.¹³ Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested by the Applicant to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

SECTION I. DEFINITIONS

¹³ 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 December 5, 2022, the procedures in effect as of that date govern. For purposes of this proposed exemption, references to ERISA section 406, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code section 4975.

(a) “Appraised Value” means the greater of a property’s Fair Market Value or its Investment Value, as determined by the QIA.

(b) “Plan” means the Hawai’i Pacific Health Retirement Plan, a defined benefit plan that provides retirement benefits to Hawai’i Pacific Health employees and the employees of Straub Clinic & Hospital. Hawai’i Pacific Health appointed the Hawaii Pacific Health Retirement Plan Finance Committee (the Committee) to serve as the Plan’s named fiduciary and plan administrator.

(c) “Investment Value” means the value of a property to a particular investor or class of investors based on the investor’s specific requirements. In the instant case, Leshner considered the potential benefit to Straub for purchasing the Property because Straub owned an abutting parcel of real estate.

(d) The “Property” means the parcel of real property owned by the Plan located at 888 South King Street, Honolulu, HI 96813.

(e) “Property Expenses” mean the expenses and costs relating to the Property that Straub was responsible to pay pursuant to several provisions in the lease between Straub and the Plan, dated January 2, 1969. These costs and expenses include taxes, utilities, and maintenance.

(f) “Purchase Price” means the price paid by Straub to the Plan for the Property, which must be the greater of \$16,247,000 or 110% of the Appraised Value as determined by the QIA on the date of Sale. This amount may be further negotiated upwards by the QIF if necessary to determine that the Sale is in the best interest of the Plan.

(g) “Qualified Appraisal Report” means the report appraising the Property as of the Sale date that comports with the requirements of 29 CFR 2570.31(h).

(h) “QIA” means Leshner Chee Stadlbauer (Leshner), or such other “Qualified Independent Appraiser,” as defined in 29 CFR 2570.31(i), hired by the QIF to determine the Property’s Appraised Value as of the date of the Sale. If the QIF replaces Leshner with a

new entity to act as the QIA in connection with the Sale, the new entity must be approved in writing by the Department and the Department must receive a copy of the new appraiser's appraisal report for the Property 60 days in advance of the Sale.

(i) "QIF" means Central Pacific Bank (CPB), or such other "Qualified Independent Fiduciary," as defined in 29 CFR 2570.31(j), hired by the Plan to monitor, review, negotiate, and exercise the sole authority to approve the Sale of the Property in accordance with the requirements of ERISA Section 404(a) and 404(b), and this exemption, if granted. If the Plan replaces CPB with a new entity to serve as the QIF in connection with the Sale, the new entity must be approved in writing by the Department 90 days in advance of the Sale

(j) "Straub" means Straub Clinic & Hospital, a wholly controlled subsidiary of Hawai'i Pacific Health, the employees of which are participants in the Plan.

SECTION II. TRANSACTIONS

This exemption would provide relief from the prohibited transactions provisions of ERISA sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) for Hawai'i Pacific Health and the Committee in connection with the sale of the Property by the Plan to Straub in exchange for a lump sum payment of cash equal to the Purchase Price (the Sale). To receive this relief, the conditions in Section III must be met in conformance with the definitions in Section I.

SECTION III. CONDITIONS

(a) The Sale must be a lump sum payment in cash equal to the Purchase Price, and the Sale must take place within 60 days of the date of publication of the exemption in the *Federal Register*.

(b) The QIF must have the sole authority to approve the Sale and take any other fiduciary action on behalf of the Plan with respect to the Sale; and the QIF must take the following actions in accordance with its fiduciary responsibilities under ERISA Section 404(a) and (b):

(1) Determine whether it is prudent to go forward with the Sale and make a final determination on the record whether or not to proceed with the Sale;

(2) Approve the terms and conditions of the Sale;

(3) Retain the services of a QIA, review the Qualified Appraisal Report, approve the methodology used by the QIA, and ensure that such methodology is properly applied in determining the Property's Fair Market Value and Investment Value on the date of the Sale;

(4) Negotiate a higher price than the current Purchase Price, if necessary, in order to determine that the Sale is in the best interest of the Plan and its participants and beneficiaries;

(5) Monitor the Sale throughout its duration on behalf of the Plan to ensure the parties' compliance with the terms of applicable sale agreements and related documents and enforce the rights of the Plan and its participants and beneficiaries in connection with such agreements;

(6) Monitor compliance with the conditions for this exemption, if granted, and take any appropriate actions to safeguard the interests of the Plan and its participants and beneficiaries;

(7) Review and approve in writing, prior to approving the Sale, that the amounts of Property Expenses erroneously paid by the Plan from 2006 through 2014, with associated lost interest as calculated using the Department's VFCEP Calculator, have been

paid by Straub to the Plan to make the Plan whole, using the Department's applicable correction procedures;¹⁴

(8) Create and deliver to the Department a report (i) justifying its conclusion that the Sale is in the best interest of the Plan and its participants and beneficiaries, and conducted in accordance with the terms of this exemption, (ii) confirming that the calculation and repayment of the erroneously paid expenses described in the preamble to the notice of proposed exemption (above) and associated lost interest were accurately repaid, and (iii) confirming that the conditions for the exemption have been satisfied with copies of any applicable reports needed to make the confirmations. The Report must be delivered to the Department within 60 days after the Sale, or the QIF's determination that the Sale is not in the interest of the Plan, at e-OED@dol.gov.

(c) The Plan does not pay any costs associated with the Sale, including brokerage commissions, fees, appraisal costs, or any other expenses.

(d) The terms and conditions of the Sale are at least as favorable to the Plan as those it would have obtained in an arm's length transaction with an unrelated party.

(e) The QIF 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 QIF by the Plan or other party for any failure to adhere to its contractual obligations or to state or Federal laws applicable to the QIF's work; and the QIF may not seek or receive any waiver of any rights, claims, or remedies of the Plan under ERISA, state, or Federal law against the QIF with respect to the subject matter of the exemption;

(f) The QIA must not have entered into, and must not enter into, any agreement,

¹⁴ See 29 CFR Parts 2560 and 2570, most recently amended in the *Federal Register* at 90 FR 4192 (January 15, 2025). The Department's VFCP Calculator can be found online at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/correction-programs/vfcp/calculator>.

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; and 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;

(g) Straub must pay back to the Plan the remaining Property Expenses the Plan erroneously paid from 2006 through 2014, including lost interest, in violation of the Lease and PTE 81-71. Straub must pay the IRS the legally required excise tax for all prohibited transactions conducted by the Plan from 2006 until 2022.

(h) Straub and Hawai'i Pacific Health maintains 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 (i)(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 merely because, due to circumstances beyond the control of Straub, Hawai'i Pacific Health, and/or the QIF, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than Straub, Hawai'i Pacific Health or the QIF 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 (i) below;

(i)(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 (h) 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) Straub, Hawai'i Pacific Health or any duly authorized representative of Straub or Hawai'i Pacific Health;

(iii) the QIF or any duly authorized representative of the QIF;

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

(j) Straub, Hawai'i Pacific Health and/or QIF must provide to the Department the records necessary to demonstrate that the conditions of the exemption have been met, within 30 days from the date the Department requests such records; and

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

Exemption date: If granted, the exemption will be in effect as of the date the grant notice is published in the *Federal Register*.

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

Christopher Motta,

Acting Director, Office of Exemption Determinations, Employee Benefits Security

Administration, U.S. Department of Labor

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