



## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### [Exemption Application No. L-12076]

#### Proposed Exemption Involving the International Brotherhood of Electrical Workers Local Union No. 99 Joint Apprenticeship Training Committee Fund (the Fund)

#### Located in Cranston, Rhode Island

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

**ACTION:** Notice of proposed exemption.

**SUMMARY:** This proposed exemption would allow the Fund to purchase property from Local Union 99 Realty Corporation. Absent an exemption, the purchase would violate certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA). The purchase is expected to save the Fund approximately \$45,000 per year.

**DATES:** *Exemption date:* If granted, this proposed exemption will be effective 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 must be submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. L-12076:

- via email to [e-OED@dol.gov](mailto:e-OED@dol.gov); or
- Electronically at <https://www.regulations.gov>. Follow the “Submit a comment” instructions.

Any such comments or requests must be received 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 1-866-444-3272. See SUPPLEMENTARY INFORMATION below for additional information regarding comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Blessed Chuksorji-Keefe of the Department at (202) 693-8540. (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 they would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above when the Department finds that a hearing is necessary to fully explore material factual issues identified by the requestor, and the Department will publish a hearing notice in the *Federal Register*. The Department may decline to hold a hearing if it finds that: (1) the hearing request 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 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 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) and 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 that information 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.

### **Summary of Facts and Representations<sup>1</sup>**

#### **The Fund**

1. The Fund, also referred to herein as the “Applicant,” is a multiemployer welfare benefit plan based in Cranston, Rhode Island. The Fund finances the International Brotherhood of Electrical Workers Local Union No. 99 Joint Apprenticeship Training Committee (the JATC) and the JATC Training Program. The

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<sup>1</sup> The Summary of Facts and Representations is based on the Applicant’s representations and does not reflect factual findings or opinions of the Department, unless indicated otherwise. The Department notes that the availability of this exemption, if granted, is subject to the express condition that the material facts and representations made by the Applicant in Application L-12076 are true and complete and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption may cease to be effective, with such determination made at the Department’s sole discretion. *See* 29 CFR 2570.49.

Fund is administered by six trustees (the Trustees): three of whom are elected by management contractors (the Employer Trustees); and three of whom are elected by Union members (the Union Trustees). The Fund had \$4,924,206 in total assets and approximately 800 participants as of December 31, 2024.

### The Union

2. The Union is IBEW Local 99, a local chapter of the International Brotherhood of Electrical Workers (the IBEW). Through the Fund, the Union provides training for its members in all aspects of the electrical industry. The Union owns and controls Local Union 99 Realty Corporation (Realty Corp), a real estate holding company that holds title to and operates various real estate owned by the Union.<sup>2</sup>

### The Property

3. The property is a one-story metal and masonry office building located at 40 Western Industrial Drive, Cranston, Rhode Island that is owned by Realty Corp. (the Property).<sup>3</sup> According to the Applicant, as a lessee on the Property the Union has spent approximately \$900,000 to improve and customize the Property to meet the needs of the JATC and the Fund. In this regard, classrooms, office space and laboratories were installed; and fire systems, electrical facilities, computer wiring, ceilings and floors were upgraded, to make the building suitable for training electrical apprentices.

### The Leasing Arrangement

4. The Fund has leased office and classroom space on the Property under multiple leases since 2011 and has paid a total of approximately \$1,973,461 in rent to the Realty

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<sup>2</sup> The Department understands that Realty Corp is wholly-owned and controlled by the Union. For the sake of simplicity when discussing the Property, throughout this proposed exemption, the Union is referred to as the owner of the Property.

<sup>3</sup> Realty Corp. acquired the property for \$1 million on November 30, 2010, from G.A.M. Realty, LLC. The Applicant represents that G.A.M. Realty, LLC is not a party in interest to the Fund and has no connection to the Fund, the Union, or Realty Corp.

Corp up to and including 2025.<sup>4</sup> According to the Applicant, these leases were/are intended to comply in all respects with (and be covered by) the following statutory administrative class exemptions:

- ERISA section 408(b)(2) for the lease of office space by the Fund from the Union; and
- PTE 78-6, for the lease of classroom space by the Fund from the Union.<sup>5</sup>

5. The Applicant represents that the Fund's use of the Property has always been appropriate, beneficial, and critical in carrying out the Fund's central training purposes.<sup>6</sup> Further, according to the Applicant, the prior and existing lease rental amounts and other terms and conditions between the Union and the Fund have been reasonable and appropriate and have been, at a minimum, as favorable to the Fund as an arm's length lease agreement transaction between the Union and an unrelated party would have been.

#### The Proposed Purchase

6. The Applicant seeks an exemption that would permit the Fund to purchase the Property, which is located in Cranston, Rhode Island, from Realty Corp, an entity that is 100% owned and controlled by the Union. The Union is a party-in-interest with respect to the Fund.

#### Reasons for the Purchase

7. The Fund proposes to purchase the Property because: (a) the Property was originally acquired by the Union for the specific purpose of serving as a training facility; (b) since its acquisition, the Property has received approximately \$900,000 in renovations

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<sup>4</sup> For the years ending December 31, 2023 and December 31, 2024, the annual rental amounts paid by the Fund to the Realty Corp were \$120,099 (as of December 31, 2023) and \$184,080 (as of December 31, 2024).

<sup>5</sup> See 43 FR 23024 (May 30, 1978), as corrected by 43 FR 25492 (June 13, 1978). The Department expresses no opinion as to whether the leasing arrangement has satisfied or currently satisfies requirements of PTE 78-6 with respect to classroom space and ERISA section 408(b)(2) with respect to office space comprising the Property.

<sup>6</sup> The Applicant represents that the Union does not use any portion of the Property for any non-Fund purposes.

and capital improvements, which the Fund has directly benefitted from; (c) the Property is now a critical component of the Local #99 JATC Training Program; and (d) the Fund has sufficient liquid assets to pay for the down payment. In addition, the Applicant represents that the Fund's Employer Trustees solely and unanimously approved the Purchase.

ERISA Analysis

8. Absent an exemption, the Purchase would not be permitted under various sections of 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 of property between a plan and a party in interest. The term "party in interest" is defined under ERISA section 3(14)(A) to include a fiduciary such as the Fund's Trustees. Under ERISA section 3(14)(D), the term party in interest also includes an employee organization, any of whose employees or members are covered by such plan. Here, the Union is a party in interest with respect to the Fund because it is an employee organization whose members are covered by the Fund. Therefore, the Fund's Purchase of the Property from the Union would otherwise violate ERISA section 406(a)(1)(A).

9. ERISA section 406(a)(1)(D) provides that a fiduciary shall not cause a plan to engage in a transaction if he knows or should know that such transaction constitutes a transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan. Here, the Fund's transfer of cash to the Union in exchange for the Property would otherwise violate ERISA section 406(a)(1)(D).

10. 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.”<sup>7</sup>

*Terms of the Purchase Required by the Exemption*

11. The Purchase will be a one-time transaction for cash. An independent fiduciary (the Independent Fiduciary) who must be prudently hired by the Fund’s Employer Trustees, will represent the interests of the Fund and its participants and beneficiaries for all purposes with respect to the Purchase. The Independent Fiduciary will review and approve the terms and conditions of the Purchase on behalf of the Fund and determine whether it is prudent for the Fund to proceed with the Purchase. The Independent Fiduciary will also determine in writing that the Purchase and any related terms and conditions are in the interest of, and protective of, the Fund and its participants and beneficiaries. The Independent Fiduciary will review the Appraisal Report (discussed below), confirm that the underlying methodology is reasonable and accurate, confirm that the valuation of the Property was reasonably derived, and ensure that the Independent Appraiser (discussed below) renders an updated fair market valuation of the Property as of the date of the Purchase. In the event the Fund finances the Purchase, it will do so with an unrelated, third-party bank and on terms that the Independent Fiduciary determines in writing are prudent and in the interest of, and protective of the rights of, the Fund.

*The Independent Fiduciary*

12. The Applicant states that Gallagher Fiduciary Advisors, LLC (Gallagher) will act as the Independent Fiduciary and represent the Fund with respect to the Purchase.

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<sup>7</sup> The Applicant states that the Union Trustees recused themselves from all matters relating to the transaction. However, the Department cannot opine as to whether the Union Trustees effectively recused themselves from all aspects of the Purchase so as to negate a violation of ERISA section 406(b)(1) and 406(b)(2), because that determination is inherently factual. This exemption would not extend relief to the Purchase to the extent the Union Trustees did, in fact, exercise any fiduciary authority or discretion to cause the Fund to engage in the Purchase in order to benefit themselves or their own interests.

Gallagher, along with its predecessor firm, has been carrying out independent fiduciary decision-making assignments for ERISA-covered plans since 1989 and represents that it has no relationship with either the Fund or the Union, except for its role as the Fund's Independent Fiduciary with respect to the Purchase. Gallagher represents that the fee for its services as Independent Fiduciary for the Fund will be less than 1% of its annual revenues for its prior income tax year.

*The Independent Appraiser*

13. Peter M. Scotti & Associates of Providence, Rhode Island (Scotti) was retained by the Employer Trustees to serve as the Independent Appraiser with respect to the valuation of the Property. Scotti represents that it has no relationship with any party in interest with respect to the Fund, the Union or Realty Corp. Scotti further represents that the percentage of projected revenues for the current federal income tax year (including amounts received from preparing the appraisal report) that it will derive from parties in interest to the Fund represents less than 1% of the appraiser's revenue from the prior federal income tax year.

14. R. Peter Tache, a Scotti staff appraiser, inspected the Property on February 7, 2019, and again on or about September 29, 2022. Mr. Tache states that he has no present or contemplated future interest in the Property nor any personal interest or bias with respect to the parties involved in the Purchase.

15. Mr. Tache produced an Appraisal Report dated October 3, 2019, which he subsequently updated on October 7, 2022 (with an effective date of September 29, 2022) (referred to collectively as the Appraisal Report).<sup>8</sup> Mr. Tache determined that the fair market value of the Property was \$1,610,000 as of September 29, 2022 and will update

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<sup>8</sup> The Independent Fiduciary requested that Scotti perform an updated Appraisal of the Property as of September/October, 2022.

the Appraisal Report on the date of the closing of the Purchase, if the proposed exemption is granted.

*The Independent Fiduciary Analysis*

16. The Independent Fiduciary represents that the proposed transaction is in the best interests of the Fund because: (a) the Fund will save approximately \$45,000 per year in expenses related to the Property;<sup>9</sup> (b) the JATC and the Fund have historically operated the JATC's Training Program at the Property, which is centrally located for students and journeymen, with customized classroom and training space that is sufficient for current and future needs; and (c) the Fund will not reimburse or otherwise pay the Union for the cost of the improvements (\$900,000) that the Union made to make the Property suitable for the Training Program. Furthermore, the Independent Fiduciary represents that there are no alternative suitable properties available for the Fund to purchase or lease in the area.

17. The Independent Fiduciary considered whether, in lieu of purchasing the Property, the Fund could continue leasing the Property. In this regard, the Independent Fiduciary reviewed the Appraisal Report for the Property, analyzed commercial listings for properties available for lease and their suitability for the Fund, and held conversations with commercial real estate brokers regarding potential leasing options. Based on this research and other data, the Independent Fiduciary determined that there were no comparable properties available for lease with similar benefits and location as the Property.

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<sup>9</sup> In its report dated October 28, 2024, the Independent Fiduciary compared the current expenses prior to the Purchase and the projected expenses after the Purchase and determined a "Decrease in Total Expense" after the Purchase of \$45,000 per year on average. The Independent Fiduciary considered: the amount of building expenses that were paid at the Realty Corp. level; in the event that purchase is financed, projected debt service payments of \$57,954 per year, which is based on a twenty-year loan with monthly payments calculated at the current 6.58% interest rate; and \$10,000 per year allocated to a "Repair and Replacement Reserve," which is roughly equivalent to the scheduled repairs estimated to be required. Notwithstanding the above, the Independent Fiduciary will make any determination required by this exemption based on the most current information and assumptions available.

18. The Independent Fiduciary states that due diligence studies prepared for the Fund show that the Property is in good condition, has no environmental conditions, and is zoned properly for use as a training school. Further, the Independent Fiduciary states that the Fund can afford to purchase the Property while retaining reserves that are more than sufficient to support the operation of the Fund's programs.

19. The Independent Fiduciary notes that the Purchase Agreement requires the Union to pay all closing costs, fees, policy premiums, and taxes including legal fees related to the Purchase, whereas in Rhode Island, closing costs in arm's length transactions are customarily split between the seller and buyer. Therefore, the Independent Fiduciary notes that the Purchase will save the Fund approximately \$52,500<sup>10</sup> in expenses as opposed to purchasing a similarly priced property from a third party.

20. The Independent Fiduciary represents that that the Fund's net assets following the Purchase should be approximately \$3,643,000, which represents almost five years of operating expenses on hand for the Fund that is well above the six-month standard.<sup>11</sup> The Independent Fiduciary represents that it will review any loan commitments and proposals provided to the Fund to finance the Purchase to ensure that such financing supports the Purchase and does not include any terms which will handicap the Fund's ability to support its training mission.

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<sup>10</sup> The Independent Fiduciary estimates that the closing costs for the transfer of the Property, which are typically shared between the buyer and seller, would total \$105,000. These expenses are hypothetical and are only used as an example of what the expenses could be if closing costs were paid. According to the Independent Fiduciary, these expenses include an estimated brokerage fee of \$84,600; Rhode Island Real Estate Conveyance Tax (\$4.60 per \$1000 until September 30, 2025, and increased to \$7.50 per \$1000 on October 1, 2025); and certain additional closing costs which will be paid by the Fund alone which include lending fees of between .50% and .75%, lender legal fees at \$3,500, and the additional cost of an appraisal. The Independent Fiduciary will make any determination required by this exemption based on the most current information and assumptions available.

<sup>11</sup> The Independent Fiduciary states that every training fund should have 6 months of operating expenses on hand.

21. The Independent Fiduciary represents that its ultimate approval of the Purchase will be subject to the following post-exemption caveats: (a) a review and agreement on the terms of a final agreement for the Purchase; (b) a redetermination of the market value of the Property as of the date of the Purchase; and (c) the Independent Fiduciary's satisfaction that all conditions to closing, as set forth in the Purchase Agreement and related instruments have been satisfied.

*Other Conditions of the Proposed Exemption Include<sup>12</sup>*

22. The Fund will not incur any fees, costs, commissions, or other expenses as a result of the Purchase, other than the necessary and reasonable fees that will be paid to the Independent Appraiser, or any other party in interest. In the event the Fund finances the Purchase, it must do so with an unrelated, third-party bank and on terms that the Independent Fiduciary determines in writing are prudent and in the interest of, and protective of the rights of, the Fund. The terms and conditions of the Purchase must be no less favorable to the Fund than the terms the Fund would receive under similar circumstances in an arm's length transaction with an unrelated party, and the Purchase must not be part of an agreement, arrangement or understanding designed to benefit the Union. The parties are subject to record maintenance conditions and are required to provide the Department with records necessary to demonstrate that the conditions of this exemption have been met, within 30 days from the date the Department requests such records. Finally, all the material facts and representations set forth in the Summary of Facts and Representations must be true and accurate at all times.

*The Department's Statutory Findings*

23. Administratively Feasible. The Department has tentatively determined that the proposed exemption is administratively feasible because the Purchase will be a one-

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<sup>12</sup> This summary does not describe all the conditions set forth in the proposed exemption. To see all the conditions applicable to the Purchase, please see the Proposed Exemption section below.

time transaction for cash overseen by an Independent Fiduciary that is prudently selected by the disinterested Employer Trustees.

24. In the Interest of the Fund and its Participants and Beneficiaries. The Department has tentatively determined that proposed exemption is in the interest of the Fund and its participants and beneficiaries because: the Fund will save at least approximately \$45,000 per year in operating expenses from the Purchase; the Fund will be able to realize the benefits of real estate appreciation from ownership over time (as well as avoiding increases in rent from such appreciation); and the Union will pay all closing costs in connection with the Purchase.

25. Protective of the Rights of the Participants and Beneficiaries. The Department has tentatively determined that the proposed exemption is protective of the rights of the Fund and its participants and beneficiaries because, among other things, the Independent Fiduciary must approve the terms and conditions of the Purchase on behalf of the Fund and take any action required to enforce the rights of the Fund.

### **Notice to Interested Persons**

Notice of the proposed exemption (the Notice) will be given to interested persons, which include Union members and Fund participants and beneficiaries, within fifteen (15) calendar days of the date of publication of the Notice in the *Federal Register*. The Notice will be provided to interested persons by first class mail, with postage prepaid. In addition, a copy of the notice will be posted on the bulletin board in the Union Hall. Such Notice will contain a copy of the 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/or request a hearing with respect to the pending exemption. The Department will not consider comments and requests for a hearing received by the

Department after forty-five (45) calendar 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 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 and in a prudent manner 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, 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), and in accordance with the Department's exemption procedures regulation 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(a)(1)(D), 406(b)(1), and 406(b)(2) will not apply to the Fund's purchase (the Purchase) of improved real property (the Property), located at 40 Western Industrial Drive, in Cranston, Rhode Island, from Local Union 99 Realty Corporation (Realty Corp), an entity that is 100% owned and controlled by IBEW Local 99 (the Union), a party in interest with respect to the Fund, provided:

(a) The Purchase is a one-time transaction for cash. In the event the Fund finances the Purchase, it will do so with an unrelated, third-party bank and on terms that a prudently-appointed independent fiduciary (the Independent Fiduciary) determines in writing are prudent and in the interest of, and protective of the rights of, the Fund;

(b) The Fund pays the lesser of either: (1) \$1,610,000; or (2) the fair market value of the Property as established by a qualified independent appraiser (the Independent Appraiser) in an appraisal report of the Property that is updated on the date of the Purchase;

(c) The terms and conditions of the Purchase are no less favorable to the Fund than the terms the Fund would receive under similar circumstances in an arm's length transaction with an unrelated party;

(d) The Fund pays no fees, costs, commissions, or other expenses, other than necessary and reasonable fees, to any party in interest in connection with the Purchase;

(e) The Purchase is not part of an agreement, arrangement or understanding designed to benefit the Union;

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

(g) A qualified independent fiduciary (the Independent Fiduciary), prudently hired by the Fund's Board of Trustees:

(1) Represents the Fund's interests for all purposes with respect to the Purchase;

(2) Determines in writing that the Purchase is in the interest of, and protective of, the Fund and the participants of the Fund, based on the most current information and assumptions;

(3) Reviews and approves the terms and conditions of the Purchase and any related transactions and takes any action necessary to enforce the rights of the Fund in connection with such transactions;

(4) Reviews the Independent Appraisal Report, confirms that the underlying methodology is reasonable and accurate, and confirms that the valuation of the Property was reasonably derived;

(5) Ensures that the Independent Appraiser renders an updated fair market valuation of the Property as of the date of the Purchase;

(6) Determines in writing whether it is prudent for the Fund to proceed with the Purchase, based on the most current information and assumptions;

(7) Prepares a final report certifying that every condition in the exemption has been met with a description of any steps taken or information verified in order to make such certifications. The report will be delivered to the Department at e-OED@dol.gov within 60 days of the date of closing of the Purchase.

(8) Has not entered into and must not enter into any agreement, arrangement, or understanding that includes any provision that provides for the direct or indirect indemnification or reimbursement of the Independent Fiduciary by the Fund 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 waives any rights, claims, or remedies of the Fund under ERISA, state, or Federal law against the Independent Fiduciary with respect to the transaction(s) that are the subject of the exemption; and

(9) Must not enter into any agreement or instrument in connection with its appointment as Independent Fiduciary that violates section 410 of ERISA or section 2509.75-4 of the Department's regulations;

(h) The Fund's Board of Trustees and the Independent Fiduciary maintain for a period of six (6) years from the date of the Purchase, 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 if, due to circumstances beyond the control of the Fund's Board of 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 Board of 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 as required by paragraph (i) below; and

(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) the Fund's Board of Trustees or any duly authorized representative of the Fund's Board of Trustees;

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

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

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

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

(k) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate at all times.

*Exemption Date:* The exemption will be in effect as of the date the final exemption is published in the *Federal Register*.

Signed at Washington, DC, this 1st day of June 2026.

**Christopher Motta,**

*Acting Director, Office of Exemption Determinations, Employee Benefits Security*

*Administration, U.S. Department of Labor*

[FR Doc. 2026-11134 Filed: 6/2/2026 8:45 am; Publication Date: 6/3/2026]