Department, telephone (202) 693–8540 (This is not a toll-free number).

Individual Retirement Accounts (the IRAs) for Ralph Hartwell, Harold Latin, Kenlon Johnson, Carol Johnson, Shanon Taylor, Michael Ball, Dianne Barkas, Roy Barkas, Harry DeWall, Alice Pike, Steven Larsen, C. Timothy Hopkins, Wayne Meuleman, Robert L. Miller, and Richard T. Scott (Collectively, the Participants), Located in Idaho Falls, Idaho, and Elsewhere

[Prohibited Transaction Exemption 2009–17; Exemption Application Numbers D–11536 through D–11550]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A),(D), and (E) of the Code, shall not apply to the cash sales (the Sales) of certain shares of closely held common stock (the Stock) of the Bank of Idaho Holding Company (the Company) by the IRAs [9] to the Participants, disqualified persons with respect to their respective IRAs, provided that the following conditions are satisfied:

(a) The Sale of the Stock by each IRA is a one-time transaction for cash;

(b) The terms and conditions of each Sale are at least as favorable to each IRA as those obtainable in an arm's length transaction with an unrelated party;

(c) Each IRA receives the fair market value of the Stock on the date of the Sale as determined by a qualified, independent appraiser; and

(d) Each IRA does not pay any commissions, costs, or other expenses in connection with each Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the text of the Notice of Proposed Exemption published in the **Federal Register** on March 26, 2009 at 74 FR 13258.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Judge of the Department, telephone (202) 693–8339 (This is not a toll-free number).

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 section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 22nd day of June, 2009.

Ivan Strasfeld,

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

[FR Doc. E9–15158 Filed 6–25–09; 8:45 am]

BILLING CODE 4510–29–P

[9] Because each IRA has only one Participant, there is no jurisdiction under 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Nos. and Proposed Exemptions; D–11432, Iron Workers Local 17 Pension Fund (the Plan); D–11483 Urology Clinics of North Texas, P.A. 401(k) Profit Sharing Plan and Trust (The Plan); and L–11451, Ford Motor Corporation and Its Affiliates (collectively, Ford), et al.]

Notice of Proposed Exemptions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (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. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____ stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: ''*moffitt.betty@dol.gov*'', or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

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 to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department. The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Iron Workers Local 17 Pension Fund (the Plan) Located in Cleveland, Ohio

[Application No. D–11432]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570 subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions in sections 406(a)(1)(A), 406(a)(1)(D), and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) and 4975(c)(1)(D) through (E) of the Code, shall not apply to the sale of a leasehold interest, which includes an office building (the Building) and certain rights pursuant to a ground lease, held by the Plan, to the Bridge, Structural and Ornamental Iron Workers Local Union No. 17 (the Union), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The terms and conditions of the sale are at least as favorable to the Plan as those that the Plan could obtain in an arm's length transaction with an unrelated party;

(b) The Plan receives the greater of $285,000 or the fair market value of the Building and lot on which the Building is located (the Lot), as of the date of the sale, as determined by a qualified, independent appraiser;

(c) The sale is a one-time transaction for cash;

(d) The Plan pays no commissions, costs, or other expenses in connection with the sale (other than fees associated with the retention of a qualified, independent appraiser and the retention of a qualified, independent fiduciary);

(e) The Board of Trustees retains a qualified, independent fiduciary, who will review and approve the methodology used by the qualified, independent appraiser, will ensure that such methodology is properly applied in determining the fair market value of the Building and Lot as of the date of the sale, and will determine whether it is prudent to go forward with the proposed transaction; and

(f) Prior to the publication of a final exemption, if granted, in the **Federal Register,** regarding the transaction that is the subject of this proposed exemption, the Union: Files Form 5330 (Return of Excise Taxes Related to Employee Benefit Plans) with the Internal Revenue Service and pays all applicable excise taxes that are due by reason of its prohibited past leasing to the Plan of the Lot on which the subject Building was constructed by the Plan; and Provides a copy of the cancelled check and other documentary evidence to the Department indicating that the taxes were correctly computed and paid.

Summary of Facts and Representations

1. The Plan is a multi-employer, defined benefit pension plan, created and maintained pursuant to collective bargaining agreements between the Union and the Construction Employers Association (CEA). The Plan is administered by a Board of Trustees (the Trustees), consisting of three trustees appointed by the Union and three, by the CEA. As of April 30, 2008, the Plan had approximately 2,180 participants and beneficiaries and total assets of approximately $115,313,797.

2. Among the assets of the Plan is its leasehold interest in a property located at 1564 East 23rd Street, Cleveland, Ohio. A one-story office building (the Building), measuring 4114 square feet, sits on a 51′ x 147′ lot belonging to the Union (the Lot) that is currently being leased to the Plan. The lease provides for an initial term of 99 years until 2084 and a rental rate of $200 per month. Under the lease terms, the Plan also has an option to terminate the lease at any time, to extend the term of the lease indefinitely at the same rental rate, or to purchase the Lot for $20,000. The Building is adjacent to, and shares a common wall with, the Union's building at 1544 East 23rd Street, Cleveland, Ohio. There is a parking lot consisting of eight parking spaces in front of the Building. The immediate neighborhood is a mixed-use commercial area.

The Building was constructed on the Lot by the Plan in 1986, pursuant to a feasibility study by Coopers & Lybrand commissioned by the Trustees; Coopers & Lybrand opined that it would be more cost-effective in the long run for the Plan to construct its own office space rather than to continue renting, as it had been doing. Subsequently, the Plan entered into a lease for the Lot with the Union, made retroactive to September 1985 but without the benefit of an administrative prohibited transaction exemption.[1]

The Plan uses the Building for administrative office space and also leases office space to its ''sister plans,'' the Iron Workers Local 17 Annuity Fund and the Iron Workers Local 17 Insurance Benefit Fund, pursuant to Prohibited Transaction Exemption (PTE) 76–1 and PTE 77–10.[2] According to the applicant, shared expenses are allocated on a pro rata basis, with the Plan consistently receiving an allocation of approximately 40% of shared expenses.

3. The Building and Lot were appraised by James P. Prosek, SRA, and Aaron Baaske, CRA, CREA, independent appraisers located in Amherst, Ohio. Mr. Prosek and Mr. Baaske are experienced real estate appraisers licensed in the state of Ohio and are members of recognized societies that award professional designations in their field. In their appraisal report, Mr. Prosek and Mr. Baaske utilized the Sales Comparison Approach and the Income Approach, with greater reliance on the former, to arrive at an estimated value of $285,000, as of November 14, 2008, for the fee simple interest of the Building and Lot (as a unified property). They then opined that the value of the Union's leased fee interest in the property, belonging to the Union as the lessor, is $20,000, or the amount specified in the Plan's option to purchase the Lot under the terms of the ground lease. To isolate the value of the Plan's leasehold interest in the property, they then subtracted $20,000 from the value of the fee simple interest

[1] The Department is not proposing any exemptive relief herein for these past prohibited transactions, whose background is described in greater detail in Facts and Representations #5, below.

[2] PTE 76–1 (41 FR 12740, March 26, 1976) is a class exemption that provides relief from sections 406(a) and 407(a) of the Act (and section 4975(c)(1)(A) through (D) of the Code), under certain conditions, for the leasing of office space by a multiple employer plan to a participating employee organization, participating employer, participating employer association, or another multiple employer plan, which is a party in interest or disqualified person with respect to the plan. PTE 77–10 (42 FR 33918, July 1, 1977) is a class exemption that provides relief from section 406(b)(2) of the Act, under certain conditions, for the leasing of office space by a multiple employer plan to a participating employee organization, participating employer (without regard to whether the office space constitutes ''qualifying employer real property''), participating employer association, or another multiple employer plan, which is a party in interest with respect to the plan or to which it is related by virtue of having common trustees. The Department expresses no opinion herein as to whether the Plan's leases to its ''sister plans'' satisfy the terms and conditions of PTEs 76–1 and 77–10.

($285,000), so that the value of the Plan's interest is $265,000, as of November 14, 2008. Although the Plan does not own the whole property but only the leasehold interest, the Union is willing to pay a purchase price encompassing the fair market value of both the Building and Lot as a unified property.

Mr. Prosek and Mr. Baaske also determined that no premium is due from the Union to the Plan, as a term of the proposed sale, for any assemblage value resulting from the adjacency of the Union's building to the Plan's Building. The appraisers state, ''A study of the influence of incremental size on office property values in this market does not reveal a premium being paid, on a price per square foot basis, for larger properties. In fact, some tendency toward diminishing return on size is evident * * *.'' The report continues, ''Further, the subject building was designed and built for a single user * * *. It was not designed to be incorporated with the neighboring building and combining the two might result in a larger building that offers less than optimum utility.'' The report concludes, ''[T]he highest and best use of the subject property is a continuation of its current use as an independent office facility.''

In regard to the fair market rental value of the Building, Mr. Prosek and Mr. Baaske state, ''The observed leasing activity produces a fairly tight range of contract and asking rents, generally from about $9.00 to $12.00 per square foot of building area * * *. These leases and offerings suggest rent, assuming the described market expense structure, near $10.50 per square foot per year as appropriate for the subject space.''

4. The Trustees have retained Ms. Nell Hennessy, President and Chief Executive Officer of Fiduciary Counselors Inc. (FCI) to act as an independent fiduciary on behalf of the Plan. Ms. Hennessy has headed FCI since its incorporation in 1999. From 1993 to 1998, she served as Deputy Executive Director and Chief Negotiator of the Pension Benefit Guaranty Corporation (PBGC), the federal agency that guarantees private defined benefit pensions. Prior to Ms. Hennessy's employment at the PBGC, Ms. Hennessy was a partner in the law firm of Willkie Farr & Gallagher, where she advised clients on a wide range of benefit, investment, and corporate governance issues. Ms. Hennessy will review and approve the methodology used by the appraisers to ensure that such methodology is properly applied in determining the fair market value of the Building and Lot, to be updated as of the date of the sale. She also will determine whether it is prudent to go forward with the proposed transaction.

5. At the Department's request, the applicant provided background on the Union's past and on-going lease of the Lot to the Plan. According to the applicant, the Cincinnati Regional Office opened an investigation of the Plan in 1985, which continued until 1989. The investigator advised the Union that, because the Plan did not have separate title to the Building, use of the Plan assets to construct the Building on Union land was a prohibited transaction.

Upon the advice of counsel, the Union, on July 10, 1987, entered into a lease of the Lot located at 1564 East 23rd Street to the Plan, with a retroactive effective date of September 1, 1985, pursuant to the terms described in Facts and Representations #2, above. The Trustees represent that they were advised by counsel, at that time, that the ground lease was covered by the statutory exemption contained in section 408(b)(2) of the Act.[3] The Trustees, however, were unable to locate and produce contemporaneous written documentation of the advice from an ERISA counsel regarding the applicability of section 408(b)(2) to the lease.[4] The applicant has agreed, as a condition of this proposed exemption, to file Form 5330 and pay all applicable excise taxes that are due by reason of its prohibited past leasing to the Plan of the Lot on which the subject Building was constructed.

6. The Trustees have determined that the proposed sale to the Union of the Plan's leasehold interest, which includes the Building, a right of first refusal to purchase the Lot, a purchase option for the Lot, and an option to renew for successive terms, is in the best interests of the Plan. According to the applicant, the Plan and its ''sister plans'' have reduced the size of their respective office staffs over the past few years and thus their need for office space. Although the Plan's leasehold interest represents less than three-tenths of one percent of the Plan's assets, the Trustees believe that it is in the best interests of the Plan to divest itself of this illiquid asset. Further, the Plan will eliminate the operating and maintenance expenses associated with the Building. It is represented that the Plan will realize savings by renting the smaller amount of office space it needs rather than continuing to occupy the Building, as explained below.

All three of the Iron Workers Local 17 plans will rent nearby office space from an unrelated party following the sale of the Plan's leasehold interest to the Union. The three plans will split the monthly rental cost of $1,125 per month. Based upon the Plan's current expense allocation of 40% of the overall cost, the Plan will pay rent of $450 per month, or $5,400 per year. The Plan's expense allocation in 2007 in connection with the Building that it currently occupies (for holding costs, such as the land lease, utilities, and taxes) was $10,383 per year, the amount not offset by rent payments from the Plan's sister plans. Thus, according to the Trustees, the move to different office space will yield annual savings to the Plan of $4,983, approximately 47%.

Although the Plan owns only the leasehold interest, the Union is willing to pay the greater of $285,000 or the fair market value for the fee simple interest of the Building and Lot as a unified property (as previously stated in Facts and Representations #3, above); the fair market value is to be updated as of the date of the sale by a qualified, independent appraiser. The Plan's cost of construction for the Building was initially quoted at $231,900, but, due to cost overruns, came to a total of $321,738.[5] Nevertheless, the Trustees represent that the Plan saved approximately $16,830 in rental costs from owning the Building, which also has generated rental income for the Plan. Although the minimum $285,000 sales price will not enable the Plan to recoup its construction and holding costs of $640,631, the Trustees state that the Plan has had use of the Building for the past 22 years and the imputed value of the rental income it did not have to pay is estimated to be $367,463.

7. The Trustees represent that the subject sale will be a one-time transaction for cash and that the Plan will incur no fees, commissions, or other expenses in connection with the sale (other than fees associated with the

[3] The Department's review of correspondence with the Cincinnati Regional Office revealed that the field office had advised their counsel that the ground lease was a prohibited transaction and that an administrative prohibited transaction exemption should be sought to cover it. The regulation at 29 CFR 2550.408b–2 clarifies that section 408(b)(2) provides relief for payments by a plan for leases of office space. It also limits the scope of the exemptive relief to section 406(a) so that relief from section 406(b), which prohibits, among other things, self-dealing by plan fiduciaries, is not provided.

[4] The request for retroactive prohibited transaction relief for the ground lease was withdrawn. The Department's standard for obtaining a retroactive prohibited transaction exemption is set forth in ERISA Technical Release 85–1.

[5] The Department expresses no opinion herein as to whether the cost overruns paid by the Plan violated any of the provisions of part 4 of Title I of the Act.

retention of a qualified, independent appraiser and the retention of a qualified, independent fiduciary). The Union is also bearing the costs of the exemption application and of notifying interested persons.

8. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) The terms and conditions of the sale will be at least as favorable to the Plan as those that the Plan could obtain in an arm's length transaction with an unrelated party; (b) the Plan will receive the greater of $285,000 or the fair market value of the Building and Lot as of the date of the sale, as determined by a qualified, independent appraiser; (c) the sale will be a one-time transaction for cash; (d) the Plan will pay no commissions, costs, or other expenses in connection with the sale (other than fees associated with the retention of a qualified, independent appraiser and the retention of a qualified, independent fiduciary); and (e) the Trustees have retained a qualified, independent fiduciary, who will review and approve the methodology used by the qualified, independent appraiser, will ensure that such methodology is properly applied in determining the fair market value of the Building and Lot as of the date of the sale, and will determine whether it is prudent to go forward with the proposed transaction.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 693–8557. (This is not a toll-free number).

Urology Clinics of North Texas, P.A. 401(k) Profit Sharing Plan and Trust (The Plan) Located in Dallas, TX

[Application No. D–11483]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, will not apply to the proposed sale (the Sale) of a 2.52 percent ownership interest comprising five (5.0) Class I Units (the Units) issued by the Center for Pediatric Surgery (CPS), an unrelated party, by the individually directed account in the Plan (the Account) of David Ewalt, M.D. (Dr. Ewalt), to Dr. Ewalt, a party in interest with respect to the Plan.

This proposed exemption is subject to the following conditions:

(a) The Sale is a one-time transaction for cash;

(b) the closing of the Sale (the Closing Date) occurs within 60 days of the Department's grant of the final exemption;

(c) the Units are sold to Dr. Ewalt at the greater of the fair market value of the Units as of the Closing Date, as determined by a qualified, independent appraiser or for $441,000 for the 2.52 percent interest of ownership of CPS;

(d) in addition to the sale price described above, the Account will have received $408,954.00 in consideration for the reduction of the Account's interest in CPS as a result of an investment by Cook Children's Health Care System (Cook) in CPS;

(e) the proceeds from the Sale are credited to the Account simultaneously with the transfer of the Units' title to Dr. Ewalt;

(f) neither the Plan nor the Account pay any fees, commissions, or other costs or expenses associated with the Sale; and

(g) the terms and conditions of the Sale remain at least as favorable to the Account as the terms and conditions obtainable under similar circumstances negotiated at arm's length with an unrelated party.

Summary of Facts and Representations

1. Urology Clinics of North Texas, P.A. (the Employer) has its principal office and place of business in Dallas, TX. The Employer has 27 physician partners including Dr. Ewalt.

2. The Plan is a defined contribution profit sharing plan and has 147 participants and beneficiaries. As of December 31, 2007, the Plan's assets were valued at $20,190,735.00. The Plan's trustees consist of four physicians. Dr. Ewalt is one of the trustees of the Plan and is also a member of the Plan's administrative committee. The value of the Account as of May 8, 2009 is $1,336,000.00.

3. In 2002, the Plan purchased 4.63 percent (4.63%) interest in CPS for the benefit of the Account from the Plano Pediatric Surgery Center (Plano Center). The Plano Center was the entity that originally established CPS and it is not affiliated in any way with the Employer, the Plan or Dr. Ewalt. The Account paid $43,500 for the 4.63% interest in CPS. The acquisition of the Units occurred at the time of the original capitalization of CPS.

4. CPS was formed in 2005 as an outpatient surgery facility in Plano, Texas. Construction on CPS' facility was completed in 2006. CPS currently performs cases in the following medical specialties: GI, Dermatology, Ophthalmology, Dental Surgery, Orthopedic Surgery, ENT, General Surgery, Plastic Surgery, and Urology.

5. Since 2006, the Units have generated Unrelated Business Taxable Income (UBTI) under Code section 511. It is represented that the Plan has paid income taxes equal to $74,789 in 2006 and $58,937.00 in 2007 resulting from the UBTI. It is estimated that for the 2008 tax year, the Plan will pay $59,000 in income tax based on the UBTI. It is represented that the Account has borne the entire tax burden on behalf of the Plan. Due to the burden on the Account for paying taxes generated by the UBTI, Dr. Ewalt determined that selling the Units was in the best interest of the Account. Following the Sale, the Account would no longer be subject to UBTI liability. Because CPS is a medical provider, only physicians or entities representing physicians could purchase the Units. Moreover, the general partner of CPS must also approve any sales of the Units to any outside physicians or entities that represent physicians. Accordingly, Dr. Ewalt proposes to purchase the Units from the Account.

6. The Employer hired Vincent Kickirillo (the Appraiser) of VMG Health, LLC, to appraise the value of the Units. He is a member of the Association for Investment Management and Research, the National Association of Certified Valuation Analysts and the Dallas Society of Financial Analysts. In addition, he holds a Chartered Financial Analyst designation. Neither the Appraiser nor VMG Health, LLC have any affiliation with the Employer and less than one percent of the income received by VMG Health, LLC is generated from services rendered to the Plan or any party in interest with respect to the Plan. The Appraiser applied a minority discount to the Units of 25 percent when compared to a controlling interest stake. The Appraiser valued each one percent interest of ownership of CPS at $175,000 as of January 9, 2008. Since the Units represent a 4.63% interest in CPS, the value of the Units as of January 9, 2008 was $810,250 ($175,000 x 4.63).

7. On August 1, 2008, Cook Children's Health Care System (Cook) completed a capital investment in CPS that resulted in Cook's ownership of 51 percent of the aggregate ownership interest CPS. Cook is not a party in interest to the Plan. The Cook investment did not represent an actual purchase from the Account of any

of the Units. Instead, the Cook investment represented an injection of capital into CPS which resulted in the issuance of additional ownership units to Cook and dilution of the then existing investors of CPS.

8. Prior to the investment by Cook, individual investors, including the Account, together held an 81 percent aggregate interest in CPS, while the remaining 19 percent interest was held by Nuettera Holdings, LLC, (Nuettera) the entity providing business management services to CPS. Following the investment by Cook, the individual investors' aggregate interest in CPS has been reduced to 44 percent and the interest held by Nuettera Holdings, LLC has been reduced to five percent.[6] Due to the Cook investment and the resulting dilution and reduction of the ownership of the individual investors, the Account's aggregate interest in CPS decreased from 4.63 percent to 2.52 percent. As consideration for this dilution of their ownership interest, the previous investors received a special cash distribution from CPS. The Account's share of this cash consideration was $408,954.00. This amount was deposited in the Account and invested in accordance with Dr. Ewalt's directions. On March 30, 2009, the Appraiser updated his appraisal concerning the value of a one percent ownership interest in CPS as a result of the Cook investment. The Appraiser determined that a one percent interest in CPS is valued at $175,000. Therefore, the current value of the Units which now represent a 2.52% interest in CPS is valued at $441,000 (2.52 x $175,000).

9. In summary, it is represented that the Sale satisfies the statutory criteria for an exemption under Section 408(a) of the Act for the following reasons: (a) The Sale to Dr. Ewalt is a one-time transaction for cash; (b) the Closing Date occurs within 60 days of grant of the final exemption; (c) the Units will be sold to Dr. Ewalt at the greater of the fair market value of the Units as of the Closing Date, as determined by a qualified, independent appraiser, or $441,000; (d) In addition to the sale price described above, the Account will have received $408,954.00 from Cook in consideration for the reduction of the Account's interest in CPS; (e) the Sale proceeds from the transaction are credited simultaneously to Dr. Ewalt's Account as the transfer of the Units' title to Dr. Ewalt; (f) the Account pays no fees, commissions or other costs and expenses associated with the Sale; (g) The terms and conditions of the Sale remain at least as favorable to the Account as the terms and conditions obtainable under similar circumstances negotiated at arm's length with an unrelated party.

Notice to Interested Parties: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Employer and Department within 15 days of the date of publication of this notice of proposed exemption in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Anh-Viet Ly of the Department, telephone (202) 693–8648 (this is not a toll-free number).

Ford Motor Corporation and Its Affiliates (Collectively, Ford) Located in Detroit, MI

[Application No. L–11451]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I. Covered Transactions

If the exemption is granted, the restrictions of sections 406(a)(1)(B), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act shall not apply, effective July 13, 2006, to: (1) Monthly cash advances to Ford by the Independent Health Care Trust for UAW Retirees of Ford Motor Company (the DC VEBA), as defined in section III(f), below, of this exemption, to reimburse Ford for the estimated mitigation of certain health care expenses (the Mitigation), as defined in section III(h), below, of this exemption, and during the period from July 14, 2006 through February 28, 2007, for the payment of dental expenses incurred by participants in the DC VEBA; and (2) an annual ''true-up'' of the Mitigation payments and dental expenses against the actual expenses incurred, with the result that: (a) if Ford has been underpaid by the DC VEBA, Ford receives the balance outstanding from the DC VEBA with interest, or (b) if the DC VEBA has overpaid Ford, Ford reimburses the DC VEBA for the amount overpaid, with interest.

Section II. Conditions

This proposed exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following conditions:

(a) A committee (the Committee), as defined in section III(d), below, of this exemption, acting as a fiduciary independent of Ford, has represented and will continue to represent the DC VEBA and its participants and beneficiaries for all purposes with respect to the Mitigation process under the settlement agreement (the DC VEBA Settlement Agreement or the Settlement Agreement), as defined in section III(g), below, of this exemption.

(b) The Committee for the DC VEBA has discharged and will continue to discharge its duties consistent with the terms of the DC VEBA and the Settlement Agreement.

(c) The Committee and actuaries retained by the Committee have reviewed and approved and will continue to review and approve the estimation process involved in the Mitigation, which results in the monthly Mitigation amount paid to Ford.

(d) Outside auditors retained by the Committee, along with an administrative company that is partly owned by the DC VEBA, have audited and will audit the calculation of the true-up to determine whether there are any differences between the estimated Mitigation and actual Mitigation amounts and have made and will make such information available to Ford.

(e) Ford has provided various reports and records to the Committee concerning dental care reimbursements for the period from July 14, 2006, through February 28, 2007, which were subject to review and audit by the Committee, and Ford has provided and will continue to provide various reports and records to the Committee concerning the Mitigation required under the Settlement Agreement which were and will continue to be subject to review and audit by the Committee.

(f) The terms of the covered transactions are no less favorable and will continue to be no less favorable to the DC VEBA than the terms negotiated at arm's length under similar circumstances between unrelated third parties.

(g) The interest rate applied to any true-up payments is a reasonable rate, as

[6] Nuetttera was engaged to provide management services for the surgery center. Nuettera held an ownership interest in CPS, but that interest was represented by units of a different class (Class II units) than those held by the physician practitioners who owned the remaining interests in CPS (Class I units). When Cook acquired its interest in CPS in 2008, it acquired both Class I and Class II units. The dilution of Nuettera's interest in CPS was proportionately greater than the dilution of the physicians' interests because Cook acquired seventy-five percent (75%) of the Class II units. In contrast, the aggregate ownership of the physicians was diluted by roughly fifty-four percent (54%) following the Cook investment. The reason the relative dilution of the two groups was different was a result of the fact that the two groups owned different classes of units.

set forth in the DC VEBA Settlement Agreement, and will continue to be a reasonable rate that runs from the beginning of the year being trued up and does not and will not present a windfall or detriment to either party.

(h) The DC VEBA has not incurred and will continue not to incur any fees, costs, or other charges (other than those described in the DC VEBA and the DC VEBA Settlement Agreement) as a result of the covered transactions described herein.

(i) Ford and the Committee have maintained and will continue to maintain for a period of six (6) years from the date of any of the covered transactions, any and all records necessary to enable the persons described in section II(j), below, of this exemption to determine whether conditions of this exemption have been and will continue to be met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Ford or the Committee, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Ford or the Committee shall be subject to the civil penalty that may be assessed under section 502(i) of the Act if the records are not maintained, or are not available for examination as required by section II(j), below, of this exemption.

(j)(1) Except as provided in section II(j)(2), below, of this exemption and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in section II(i), above, of this exemption have been or will be unconditionally available at their customary location during normal business hours to:

(A) Any duly authorized employee or representative of the Department;

(B) The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the UAW) or any duly authorized representative of the UAW;

(C) Ford or any duly authorized representative of Ford; and

(D) Any participant or beneficiary of the DC VEBA, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in section II(j)(1)(B) or (D), above, in this exemption is authorized to examine the trade secrets of Ford, or commercial or financial information that is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption, the term—

(a) ''Ford'' means Ford Motor Company and its affiliates.

(b) ''Affiliate'' means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; or

(3) Any corporation, partnership or other entity of which such other person is an officer, director or partner. (For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(c) ''Class'' or ''Class Members'' mean all persons who, as of the ratification date (the Ratification Date), as defined in section I(a) of the Settlement Agreement, (*i.e.,* December 22, 2005) were: (1) Ford/UAW hourly employees who had retired from Ford with eligibility to participate in retirement in the Hospital-Surgical-Medical-Drug-Dental-Vision Program (the Original Plan), as in effect prior to the Ratification Date, or (2) the spouses, surviving spouses, and dependents of Ford/UAW hourly employees, who, as of the Ratification Date, were eligible for post-retirement or surviving spouse health care coverage under the Original Plan as a consequence of a Ford/UAW hourly employee's retirement from Ford or death prior to retirement. Active employees, as defined in section I(A) of the Settlement Agreement, are not members of the Class.

(d) ''Committee'' means the seven (7) individuals, consisting of two classes: (1) The UAW with three members, and (2) the public class with four members, who act as the named fiduciary and administrator of the DC VEBA.

(e) ''Court'' or ''Michigan District Court'' means the United States District Court for the Eastern District of Michigan.

(f) ''DC VEBA'' means the defined contribution—Voluntary Employees' Beneficiary Association trust established by Ford pursuant to the Settlement Agreement and the trust agreement (the Trust Agreement).

(g) ''DC VEBA Settlement Agreement'' or the ''Settlement Agreement'' means the agreement, dated February 13, 2006, which was entered into between Ford, the UAW, and class representatives, on behalf of a class of plaintiffs in a class action suit cited as *Int'l Union, UAW, et. al. v. Ford Motor Company* (Civil Case No. 05–74730 (E.D. Mich. July 13, 2006), *aff'd,* 497 F.3d 615 (6th Cir. 2007) (hereinafter referred to as the Hardwick I Case).

(h) ''Mitigation'' means the reduction of monthly contributions, deductibles, out-of-pocket maximums, co-insurance payments, or any other payment in accordance with section 14 of the Settlement Agreement to the extent payments from the DC VEBA are made, as directed by the Committee, to Ford and/or to providers, insurance carriers and other agreed-upon entities.

(i) ''OPEB'' means Other Post-Employment Benefits. The OPEB Valuation is an actuarially developed valuation of a company's post retirement benefit obligations, other than for pension and other retirement income plans. The OPEB Valuation is based on a set of uniform financial reporting standards promulgated by the Financial Accounting Standards Board and embodied in Financial Accounting Standard 106, as revised from time to time. The types of benefits addressed in an OPEB Valuation typically are retiree healthcare (medical, dental, vision, hearing) life insurance, tuition assistance, and legal services

(j) ''Shares'' or ''Stock'' refers to the common stock of Ford for which the par value is $.01.

(k) ''UAW'' means the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America or the United Auto Workers, if shortened.

(l) ''VEBA'' means a voluntary employees' beneficiary association.

(m) ''Defined Contribution Plan'' or ''the Defined Contribution Plan of the Independent Health Care Trust for UAW Retirees of Ford Motor Company'' means the defined contribution welfare benefit plan funded by the DC VEBA following the effective date (the Effective Date), as defined in section I(A) of the Settlement Agreement (*i.e.,* July 13, 2006), which will include the requirement to make contributions to the DC VEBA, as set forth in section 13 of the Settlement Agreement.

Effective Date: If granted, this proposed exemption will be effective as of July 13, 2006.

Summary of Facts and Representations

1. Ford is primarily engaged in automotive production and marketing operations. Ford designs, manufactures, and markets vehicles worldwide, with its largest operating presence in North America. As of December 31, 2005, Ford had approximately 131,000 active employees in the United States, of whom approximately 86,000 are represented by the UAW and other unions. Approximately 590,000 retirees and dependents in the U.S. receive

retiree health benefits from Ford, and of this total, as of January 1, 2006, approximately 170,000 are hourly retirees and spouses, surviving spouses, and eligible dependents.

Ford is a corporation organized under the laws of the State of Delaware and maintains its headquarters in Dearborn, Michigan. As of December 17, 2007, Ford had total assets of $279,264,000,000, as reported in the consolidated balance sheet in Ford's Form 10–k filed for the fiscal year ended December 31, 2007.

2. The DC VEBA Settlement Agreement, dated February 13, 2006, was entered into among Ford, the UAW, and class representatives, on behalf of plaintiffs (*i.e.,* the Class Members), in the Hardwick I Case. The Settlement Agreement was approved by the United States District Court for the Eastern District of Michigan in an order dated July 13, 2006, and was affirmed by the United States Court of Appeals for the 6th Circuit in 2007. The Hardwick I Case contested whether Ford had the right to unilaterally modify retiree welfare benefits for hourly retired Ford employees who had been represented by the UAW. The settlement of the Hardwick I Case provided Ford with the opportunity to address its retiree health care costs in an agreed-upon fashion without compromising the future rights of Ford, the UAW, and the hourly retired Ford employees.

3. Ford's spiraling retiree health care costs were at the heart of the Hardwick I Case. Ford and the UAW engaged in discussions regarding the impact of rising health care costs on Ford's financial condition. In conjunction therewith, Ford provided the UAW and the Class with extensive information as to its financial condition and its health care expenditures. Separate teams of investment bankers, actuaries, and legal experts reviewed Ford's information and provided an assessment to the UAW and to the Class as to the state of Ford's financial condition. Upon completion of such review, the UAW, the representatives of the Class, and counsel to the Class concluded that, without the Settlement Agreement, Ford's ability to provide retiree health care benefits to Class Members would be unlikely over the long term.

4. The Settlement Agreement modifies the health plan that Ford sponsors for its hourly retirees and their enrolled spouses and dependents. The modified plan imposes new cost sharing requirements with respect to retiree health benefits. Specifically, the Ford modified retiree health plan will require hourly retiree participants to make monthly contributions toward the cost of their retiree health coverage, and also imposes annual deductibles, out-of-pocket maximums, and certain co-insurance payments on participants and beneficiaries.

In order to soften the impact of these new cost sharing obligations, the Settlement Agreement created a new employee welfare benefit plan, as described in section 3(1) of the Act. The new welfare benefit plan is called the Defined Contribution Plan of the Independent Health Care Trust for UAW Retirees of Ford Motor Company (the Defined Contribution Plan). The purpose of the Defined Contribution Plan is to provide mitigation to the affected Ford retirees of the costs shifted to them and no longer to be paid by the Ford modified health plan.

5. The Defined Contribution Plan Mitigation benefits will be paid from a new voluntary employee beneficiary trust, the DC VEBA, controlled by a seven (7) member Committee which is independent of Ford. The DC VEBA qualifies as a ''voluntary employees' beneficiary association'' within the meaning of section 501(c)(9) of the Code. The DC VEBA was established on July 18, 2006, through a welfare benefit trust (the Trust), as described under section 419(A)(f)(5)(A) of the Code. The Trust was established by the Trust Agreement between State Street Bank and Trust (the Trustee) and Ford.

Under the terms of the Settlement Agreement, Ford is required to make certain contributions to the DC VEBA. In this regard, Ford is obligated to make a contribution in cash in the amount of $30 million as soon as practicable following the Effective Date (*i.e.,* July 13, 2006) of the Settlement Agreement. It is represented that on August 10, 2006, the initial cash contribution in the amount of $30 million was paid into the DC VEBA. Ford is obligated to make a second contribution in cash in the amount of $35 million on the third anniversary of the first contribution and to make a third contribution in cash in the amount of $43 million in 2011, on the anniversary of the first contribution. It is represented that Ford's obligation to make the second contribution and, if necessary, the third contribution, will be moved up to the extent necessary in order to enable the DC VEBA to continue paying mitigation at the initial mitigation level.

In addition, monthly cash contributions relating to certain wage increases and COLA amounts for active hourly employees will be diverted into the DC VEBA. Further, a series of contributions in cash (the Contribution Obligation) based on the increase in the notional value of 8,750,000 shares of common stock of Ford (the Notional Shares) will be made. Each of these cash contributions will be equal to the value of any appreciation in the share price of Ford common stock over a value based on a share price of $8.145. One third of the Notional Shares shall be taken into account on the Effective Date of the Settlement Agreement (*i.e.,* July 13, 2006); one third on the first anniversary of the Effective Date; and the final third on the second anniversary of the Effective Date. The right to such cash contributions is non-transferable, and the DC VEBA shall have no shareholder rights with respect to such cash contributions based on Notional Shares. It is represented that the calculation of such cash contribution will be based on the average price per share of Ford common stock for the five (5) consecutive trading days ending on the day preceding the applicable of the three (3) calculation dates. In the event of a special dividend issued by Ford prior to the third anniversary of the Effective Date, Ford will be obligated to make a contribution in cash equal to the per share dividend times the total number of Notional Shares minus the number of Notional Shares with respect to which Ford has already made a cash contribution based on such Notional Shares.

Under section 13.C of the Settlement Agreement, no contributions are payable by Ford to the DC VEBA, unless and until Ford has received either assurances that such contributions are covered by an exemption issued by the Department, or do not violate section 406 and 407 of the Act. In this regard, with respect to the value of the Notional Shares, as of the Effective Date of the Settlement Agreement (*i.e.,* July 13, 2006), Ford's common stock had not increased above the base value as set forth in section 13.C of the Settlement Agreement, and, as a result, no contribution was due to the DC VEBA with respect to that measurement date. As of the first anniversary of the Effective Date, (*i.e.,* July 13, 2007), Ford's common stock had increased over the base value; however, based on section 13.C of the Settlement Agreement, Ford declined to make a contribution at that time. In this regard, pursuant to section 13.C, Ford and the UAW have the option to agree upon a contribution to replace the Contribution Obligation, as set forth therein, if certain alternatives had not been satisfied by the first anniversary of the Effective Date of the Settlement Agreement. Because neither of the alternatives were satisfied by such date, Ford and the UAW agreed in the Memorandum of

Understanding on Post Retirement Medical Care, dated November 3, 2007, (the MOU) (as subsequently embodied in a settlement agreement, dated March 28, 2008, (the New Settlement Agreement), that Ford shall satisfy its Contribution Obligation, pursuant to section 13.C, by making an aggregate cash contribution of $33 million to the DC VEBA, within five (5) days of the ''Final Effective Date'' (as defined in the New Settlement Agreement) [7] in full satisfaction of Ford's obligations thereunder.

6. The Committee acts as the named fiduciary and administrator for the Defined Contribution Plan and is responsible for the administration, operation, management and interpretation of the Trust, as set forth in the Trust Agreement. In this regard, the Committee appoints (and may remove) the Trustee, the investment managers of the DC VEBA's assets, and other suitable professionals and agents to provide advice and services to the Committee or the Trust. The Committee's duties include directing the investment of the assets of the Trust, except and to the extent that the Committee has invested such authority in the Trustee or has appointed an investment manager. In addition the Trust may be amended in writing at any time and from time to time, in whole or in part, by the action of the Committee. It is represented that Ford has no right to amend the Trust at any time.

The Committee is comprised of seven individuals, consisting of two classes, the ''UAW class,'' and the ''public class.'' The UAW Class has three (3) members which are appointed by the UAW and serve at the discretion of the UAW. The members of the UAW class may be removed or replaced at any time by written notice by the President of the UAW to the members of the Committee.

The public class has four (4) members who serve terms of four (4) years, except that the initial members serve terms, as set forth in the Trust Agreement. In the event of a vacancy in the public class, whether by expiration of a term, resignation, removal, incapacity, death or otherwise, the public class will elect a new member of the public class by majority vote of the continuing public class members, excluding such member vacating his or her seat. A public class member can be removed by the affirmative vote of any five (5) other members of the Committee at any time.

One of the members of the public class serves as the Chair of the Committee. William E. Spriggs serves in the capacity as Chairman of the Committee. The Committee Chair serves for a term of two (2) years. Any successor Committee Chair will be elected by a majority vote of the Committee.

All of the members of the Committee are independent of Ford. The members of the Committee do not include any Ford representative, and Ford does not have any authority to select members of the Committee. No member of the Committee may be an affiliate of Ford, as the term, ''Affiliate,'' is defined in section III(b), above of this exemption, including a current or former officer, director or salaried employee of Ford. No member of the public class may be an active employee or retiree of the UAW, nor may any member of the public class have any financial or institutional relationship with Ford, with the Committee or any Committee member that the Committee, in its sole discretion determines to be material.

The Committee handles administrative tasks on behalf of the DC VEBA and the Defined Contribution Plan which is funded by the DC VEBA, as described in the Settlement Agreement, through Retiree Health Administration Company, LLC (RHAC). RHAC is a limited liability company set up to administer the Defined Contribution Plan on behalf of the Committee. RHAC is jointly owned by the UAW–GM VEBA and the DC VEBA. RHAC has joined and will continue to join with the Committee's outside auditors in auditing the calculation of the true-up in connection with the Defined Contribution Plan.

RHAC also administers the provision of dental coverage to eligible retirees by the DC VEBA. For the plan year beginning in July 2006 and for January and February of 2007, Ford provided dental coverage for UAW–Ford retirees and surviving spouses and their dependents, and the DC VEBA reimbursed Ford for the claims and premiums attributable to this group. From and after March 1, 2007, dental benefits are provided by the DC VEBA to eligible groups separate and apart from Ford, without Mitigation or reimbursement arrangement of any kind. The DC VEBA has contracted directly with carriers for dental services and has paid the applicable claims and premiums directly. Claims processing is contracted out to Blue Cross Blue Shield of Michigan. Maintaining eligibility records is contracted to Ford's National Employee Service Center which also provides a call center to respond to participant needs. RHAC pays the bills, negotiates and monitors outside vendor contracts, audits claims and eligibility, coordinates the activities of outside professionals, and provides for certain other needs of the Committee with respect to the provision of dental benefits.

The Committee has retained George Johnson & Company as its outside auditor responsible for the audit of the financial statements for the DC VEBA and the Defined Contribution Plan, including preparation of certain annual form filings. The Committee has also retained Plante & Morgan, L.L.P. (Plante) as its outside auditor responsible for assisting the staff of the Committee with the review of differences between estimated and actual Mitigation amounts. As such, Plante has audited the calculation of the true-up and has made and will continue to make, such information available to Ford.

The Committee has retained Milliman, Inc. (Milliman), as its actuary. The Committee and Milliman have reviewed and approved the estimation process which results in the monthly Mitigation amounts paid to Ford and will continue to do so.

7. As of December 31, 2006, the DC VEBA had cash of approximately $119 million. The DC VEBA uses its assets to mitigate the cost sharing requirements imposed on the retirees by the Settlement Agreement. Initial levels of Mitigation are set forth in the Settlement Agreement, and may be modified later by the Committee in accordance with the terms of the Settlement Agreement and the Trust Agreement.

8. The initial Mitigation levels provide for Mitigation of monthly retiree contributions down to $10 per individual and $21 per family (from $50 per individual, and $105 per family). Deductibles will be mitigated down to an annual maximum of $150 per individual (from $300 per individual) and $300 per family (from $600 per family). The out-of-pocket maximum will be mitigated so that it is capped for in-network benefits at $250 per individual per year (from $500 per individual) and $500 per family per year (from $1,000 per family), and capped for out-of-network benefits at $500 per individual (from $1,000 per individual) and $1,000 per family (from $2,000 per family). It is represented that the Mitigation provided by the Defined Contribution Plan through the DC VEBA provides a significant benefit to participants who would otherwise be

[7] It is represented that ''Final Effective Date'' means the later of the date on which the U.S. District Court enters the approval order or the date on which Ford has completed, on a basis reasonably satisfactory to Ford, its discussions with the staff of the SEC regarding certain accounting treatment with respect to the New VEBA and Ford's post-employment retiree health obligation for the covered group.

required to make these payments out of their own pockets.

In addition, dental benefits were provided from July 2006 through February 2007, pursuant to a reimbursement arrangement with Ford. Since March 1, 2007, however, the DC VEBA has been the sole source of dental benefits for eligible groups.

9. In order to reduce the administrative burden on the DC VEBA, and avoid having participants initially pay the costs and subsequently request reimbursement upon submission of documentation, the Settlement Agreement contemplates having Ford act as the conduit through which the DC VEBA will make Mitigation. Specifically, Ford will make certain payments that hourly retirees and their enrolled dependents would otherwise be required to make out of their own pockets. Ford will then accept Mitigation payments from the DC VEBA and apply such payments in accordance with the direction and instruction of the Committee for the benefit of the participants in the Defined Contribution Plan.

This reimbursement process anticipates monthly advance payments to Ford from the DC VEBA of the actuarially anticipated cost of the initial Mitigation amounts, with a true-up no later than December 23 of the following calendar year.

Specifically, the Mitigation process will work as follows: Annually, no later than May 1 of the preceding year, the Committee will inform Ford of the Mitigation levels for the following calendar year. Thereafter, no later than September 1 of the year preceding the forthcoming Mitigation year, Ford will provide the Committee with a preliminary estimate of the annual mitigation amount for the following calendar year. On December 1 of the preceding year, Ford will provide the Committee with the actuarially-determined, final estimated annual mitigation amount. Both the preliminary and final estimated mitigation amounts need to be agreed to by the Committee. Then, as of the beginning of the calendar year of Mitigation, the DC VEBA will pay to Ford on a monthly basis an amount equal to 1/12 of the final estimated annual mitigation amount.

No later than December 1 following the calendar year in which the monthly estimated mitigation payments have been made, Ford and the DC VEBA will engage in a true-up process. Ford will provide the Committee an actuarial report that determines the actual annual Mitigation amount and compares it to the estimated annual Mitigation payments that Ford received during the prior year. No later than December 23 of the year following the year being trued-up, a true-up payment either will be paid by the DC VEBA to Ford, or by Ford back to the DC VEBA. Interest for any late payments, or for any true-up payment (whether from Ford back to the DC VEBA or from the DC VEBA to Ford) will be paid at the interest rate [8] for Other Post-Employment Benefits (the OPEB), as defined in section III(i) of this exemption. In addition, Ford is required to provide detailed quarterly reports to the Committee detailing retiree health claims experience, and the Committee shall have the right to request a reasonable audit of Ford's books and records with respect to Mitigation payments made to Ford by the DC VEBA. The amount of any true-up payment will need to be approved by the Committee. If there is a dispute as to the true-up report or the amount of the true-up payment, undisputed amounts will be paid and the parties will enter into an arbitration dispute process, as set forth in the Settlement Agreement, which involves independent decision-makers who will resolve any true-up dispute.

10. It is represented that the DC VEBA has made estimated Mitigation payments for health care to Ford for every month beginning with August 2006 and continuing to the present. The DC VEBA has separately reimbursed Ford for dental claims and premiums that Ford paid on behalf of the participants in the DC VEBA for the period from July 14, 2006, through February 28, 2007. As stated previously in this proposed exemption, beginning March 1, 2007, the DC VEBA has contracted directly for dental services for its participants. It is represented that the amount of the dental reimbursement payments for 2006 and 2007 do not include the monthly administrative fee paid to Ford for maintaining eligibility records and providing a call center to respond to participant needs.[9] For the period July 2006, through December 2006, the DC VEBA made total Mitigation reimbursement payments to Ford for health care and dental benefits of approximately $30,755,460 and $16,141,185, respectively. For the period January 2007, through December 2007, the DC VEBA made total Mitigation reimbursement payments to Ford for health care and dental benefits of approximately $83,900,004 and $14,891,491, respectively. For the period January 2008, through March 2008, the DC VEBA made total Mitigation reimbursement payments to Ford solely for health care benefits of approximately $22,375,000. For the period April 2008, through April 2009, the DC VEBA made total Mitigation reimbursement payments to Ford solely for health care benefits of approximately $30,873,428.

On February 7, 2008, Ford paid to the DC VEBA a 2006 true-up payment in the amount of $866,387. In addition, Ford paid to the DC VEBA interest in the amount of $74,929.91 in two (2) payments dated February 7, 2008, and April 17, 2008, of approximately $72,777 and $2,153, respectively. The total true-up payment for the year 2006, including interest, was $941,316.91. The total true-up payment for the year 2007, including interest of $46,368, was $492,305. The true-up amount for 2008 will not be determined until the fall of 2009.

11. Ford requests a retroactive administrative exemption from the Department with respect to the following transactions: (a) monthly cash advances to Ford by the DC VEBA to reimburse Ford for the estimated Mitigation of certain health care expenses and for the payment of certain dental expenses incurred by participants in the DC VEBA; and (b) an annual true-up of such Mitigation payments and such dental expenses. Further, in this regard, if Ford is underpaid by the DC VEBA, it would receive the balance outstanding from the DC VEBA, with interest. Conversely, if the DC VEBA overpaid Ford, Ford would reimburse the DC VEBA for the amount overpaid, with interest. Accordingly, Ford requests retroactive

[8] The OPEB interest rate, as defined in section 13(D) of the Settlement Agreement, is the discount rate used by Ford's health care actuaries in accordance with the Financial Accounting Standard 106 (FAS 106) actuarial valuation for the applicable period. Ford has also represented that the OPEB interest rate is the discount rate that a company uses to value ''Other Post-Retirement Employee Benefits'' for FAS 106 accounting reporting. The discount rate is based on market yields, as of a plan's annual measurement date, on high quality fixed income securities of duration similar to the benefit obligation. For purposes of Ford's retiree health obligation, its OPEB interest rate is developed each year in consultation with its outside accountants. Ford used an OPEB interest rate of 5.75% in 2005, of 5.75% in 2004, and of 6.25% in 2003 relating to retiree health.

[9] Ford relies on the relief provided by the statutory exemption, pursuant to section 408(b)(2) of the Act, in connection with Ford's providing the DC VEBA with monthly administrative services, maintaining eligibility records, and providing a call center to respond to participant needs. The Department, herein, is offering no view, as to whether the provision of such services rendered by Ford to the DC VEBA is covered by the statutory exemption provided in section 408(b)(2) of the Act and the Department's regulations, thereunder, pursuant to 29 CFR 2550.408(b)-2. Further the Department is not providing, herein, any relief with respect to the provision of such services to the DC VEBA by Ford.

relief from sections 406(a)(1)(B), and 406(a)(1)(D), respectively, because these transactions could be deemed to constitute the lending of money or extension of credit between the DC VEBA and Ford, a party in interest, or could be viewed as the use by or for the benefit of a party in interest of plan assets.

With respect to violations of section 406(b) of the Act, in the opinion of Ford, the involvement in such transactions by the Committee, a fiduciary of the Defined Contribution Plan and the DC VEBA that is independent of Ford, eliminates any issues under section 406(b) of the Act. However, to eliminate any uncertainty respecting the issue, Ford seeks retroactive relief under section 406(b)(1) and (b)(2) of the Act. If granted, the exemption would be effective as of July 13, 2006.

As discussed in paragraph 5, above of the Summary of Facts and Representations of this proposed exemption, the Settlement Agreement grants to the DC VEBA a right to receive, and obligates Ford to make contributions that are based on the increase in the notional value of 8,750,000 shares of Ford common stock. Such contributions will be non-transferable cash contributions determined on each of (i) the Effective Date of the Settlement Agreement (*i.e.,* July 13, 2006), (ii) the first anniversary of the Effective Date, and (iii) the second anniversary of the Effective Date. The Department is not providing exemptive relief herein with respect to the Contribution Obligation because, in the view of the Department, the Contribution Obligation is merely a contractual provision evidenced in the DC VEBA Settlement Agreement which is designed to determine the amount of additional cash contributions that must be made to the DC VEBA.[10]

12. It is represented that the Mitigation payments significantly benefit the interests of Ford hourly retirees and their covered dependents. Having the Mitigation paid directly from the DC VEBA would otherwise involve significant delays and out of pocket expenditures by plan participants.

13. Without an administrative exemption, Ford states that the DC VEBA would be required to establish a costly administrative scheme to reimburse participants in the DC VEBA. In this regard, Ford retirees' would be charged the full costs of the monthly contributions, co-pays, and deductibles. These retirees would then have to apply for reimbursement payments, via a claim form, from the DC VEBA or its retained third party administrator. This alternative would have the dual effect of significantly delaying payments to the retirees and placing large and expensive administrative burdens on the DC VEBA, and hardship on the retirees themselves.

14. It is represented that the proposed exemption is administratively feasible with terms clearly established in the Settlement Agreement and the Trust document. Further, implementation of the covered transactions provides the resolution to the Hardwick I Case, enabling Ford to fund the DC VEBA and provide Mitigation amounts to the retirees.

15. The proposed exemption contains sufficient safeguards in that Ford and the UAW negotiated at arm's length over the terms of the covered transaction and such terms were memorialized in a court-approved Settlement Agreement involving both the UAW and Class Counsel. In addition, the UAW, which represents the interests of the Ford hourly retirees and their dependents, fully supports the requested exemption. Further the terms of the Settlement Agreement, including the Mitigation payment process and the DC VEBA contribution rules, were subject to a fairness hearing and a judicial determination that it is fair and reasonable to Ford hourly retirees.

It is represented that the calculation of the Mitigation payments is subject to the strict scrutiny of actuaries retained by the DC VEBA and requires the ultimate approval of the Committee. The process by which the Mitigation payments are established ensures that the monthly Mitigation payments will reflect an actuarially sound estimate of the projected mitigation costs.

The Committee, acting as independent fiduciary of the Defined Contribution Plan and the DC VEBA, ensures that the cash contributions based on the value of Notional Shares are correctly calculated and timely contributed to the DC VEBA.

Finally, the interest rate used to calculate the true-up payments is a reasonable rate, as set forth in the DC VEBA Settlement Agreement and does not present a windfall or detriment to either Ford or the DC VEBA.

16. Ford and the Committee will each maintain records of covered transactions for a period of six (6) years. The Committee maintains records of payments made or received by the DC VEBA, quarterly reports, and dental claims records, but no other health benefit claims records. Ford has provided the reports required under the Settlement Agreement with respect to the estimated Mitigation and the true-up. Ford will continue to provide all reports and records concerning the Mitigation required under the Settlement Agreement, and such reports have been and will continue to be subject to review and audit by the Committee, as provided in the Settlement Agreement.

17. It is represented that ultimately, the DC VEBA will be terminated and its assets transferred to a new VEBA (the New VEBA). However, several steps will occur before this happens. These steps were first described in the MOU, dated November 3, 2007, and agreed to by Ford and the UAW. The terms of the MOU were subsequently embodied in the New Settlement Agreement between Ford and the UAW, and the Class representatives, on behalf of the applicable class in: (a) The class action of *Int'l Union, UAW, et. al.* v. *Ford Motor Company,* Civil Action No. 07–14845 (E.D. Mich. filed Nov. 9, 2007) and/or (b) the class action of the Hardwick I Case. The New Settlement Agreement resolves and settles any and all claims for Ford contributions to the DC VEBA, and provides for the termination of the DC VEBA and the transfer of all assets and liabilities of the DC VEBA to the New VEBA. In the event of an inconsistency between the New Settlement Agreement and any prior agreements or documents, including the MOU, the New Settlement Agreement will control.

In the negotiations leading to the MOU and the New Settlement Agreement, Ford advised the UAW of its intent to terminate the Hardwick I Case Settlement Agreement in accordance with its terms in 2011 and exercise its right to terminate and/or modify retiree health coverage for all UAW retirees and their dependents, and the UAW reasserted its position that post-retirement medical coverage for current UAW retirees is vested and unalterable.

The New Settlement Agreement provides that as of the day following the ''Implementation Date'' (as defined in the New Settlement Agreement), the ''New Plan'' (as defined in the New Settlement Agreement) and the New VEBA shall be the employee welfare benefit plan and trust that are exclusively responsible for all retiree medical benefits for which Ford, the Ford Retiree Health Plan (as defined in the New Settlement Agreement), and any other Ford entity or benefit plan

[10] The Department further believes that the Contribution Obligation is not an ''employer security: Within the meaning of section 407(d)(1) of the Act. Since it appears that the Contribution Obligation does not result in the acquisition or holding by the DC VEBA of an ''employer security,'' the Department has not proposed separate exemptive relief herein with respect to such obligation.

formerly would have been responsible with regard to the class and covered group.

With regard to the DC VEBA, section 12.C of the New Settlement Agreement states that the ''Approval Order'' (as defined in the New Settlement Agreement) shall direct the Committee and the Trustee of the DC VEBA to transfer all assets and liabilities of the DC VEBA to the New VEBA and terminate the DC VEBA within fifteen (15) days after the Implementation Date. This transfer of assets and liabilities shall include, but not be limited to, the transfer of all rights and obligations granted to or imposed on the DC VEBA under section 14.C of the Settlement Agreement. Further, Ford agrees that, on the day following the Implementation Date, the New VEBA shall be substituted for the DC VEBA for such purposes. The Approval Order shall further provide that the DC VEBA shall be terminated after this payment is made.

In addition, the New Settlement Agreement makes certain provisions with respect to the wage and COLA deferrals and other contributions payable to the DC VEBA, and further provides that Ford shall satisfy the Contribution Obligation, set forth in section 13.C of the Settlement Agreement by making an aggregate cash contribution of $33 million to the DC VEBA within five (5) days of the Final Effective Date in full satisfaction of its obligations thereunder.

18. In summary, Ford represents that the transactions have satisfied and will continue to satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Committee, acting as a fiduciary independent of Ford, has represented and will continue to represent the DC VEBA and its participants and beneficiaries for all purposes with respect to the Mitigation process under the Settlement Agreement.

(b) The Committee for the DC VEBA has discharged and will continue to discharge its duties consistent with the terms of the Settlement Agreement.

(c) The Committee and actuaries retained by the Committee have reviewed and approved and will continue to review and approve the estimation process involved in the Mitigation, which results in the monthly Mitigation amount paid to Ford.

(d) Outside auditors retained by the Committee, along with an administrative company that is partly owned by the DC VEBA, have audited and will audit the calculation of the true-up to determine whether there are any differences between the estimated Mitigation and actual Mitigation amounts and have made and will make such information available to Ford.

(e) Ford has provided various report and records to the Committee concerning dental care reimbursements for the period from July 14, 2006 through February 28, 2007, which were subject to review and audit by the Committee, and Ford has provided and will continue to provide various reports and records to the Committee concerning the Mitigation required under the Settlement Agreement which were and will continue to be subject to review and audit by the Committee.

(f) The terms of the covered transactions are no less favorable and will continue to be no less favorable to the DC VEBA than the terms negotiated at arm's length under similar circumstances between unrelated third parties.

(g) The interest rate applied to any true-up payments is a reasonable rate, as set forth in the DC VEBA Settlement Agreement, and will continue to be a reasonable rate that runs from the beginning of the year being trued up and does not and will not present a windfall or detriment to either party.

(h) The DC VEBA has not incurred and will continue not to incur any fees, costs or other charges (other than those described in the DC VEBA and the DC VEBA Settlement Agreement) as a result of the covered transactions described herein.

(i) Ford and the Committee have maintained and will continue to maintain for a period of six (6) years from the date of any of the covered transactions, any and all records necessary to determine whether conditions of this exemption have been and will continue to be met.

Notice to Interested Persons

Ford will provide notice of the proposed exemption to: (1) The UAW; and (2) persons who on or after December 22, 2005, and prior to the date of the filing of the application for exemption (*i.e.,* November 27, 2007) were: (a) Ford/UAW hourly employees who had retired from Ford with eligibility to participate during retirement in the Ford health plan, or (b) spouses or surviving spouses of Ford/UAW hourly employees, who on or after December 22, 2005, were eligible for post-retirement or surviving spouse health care coverage from Ford (collectively, Interested Persons) within twenty (20) calendar days of the publication of the notice of proposed exemption in the **Federal Register**. Such notice will be provided to Interested Persons by first-class mail, at the last known mailing address of such Interested Persons and will include a photocopy of the notice of proposed exemption as published in the **Federal Register** as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing. Comments and requests for a hearing with respect to the proposed exemption are due within fifty (50) calendar days of the publication of this pendency notice in the **Federal Register**. If you decide to submit written comments to the Department, your comments should be limited to the transactions described in this proposed exemption. However, if you have concerns about your retiree health benefits or any other administrative issues relating to your benefits, you should contact NESC, by phone at 1–800–248–4444, by mail P.O. Box 6214, Dearborn, MI 48121, or by e-mail at *nesc@ford.com.*

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, at e-mail address *ford@dol.gov,* or at telephone number 202–693–8547 (This is not a toll-free number.)

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 section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code 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 section 408(a) of the Act and/or section 4975(c)(2) of the Code, 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 exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act 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 exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 22nd day of June, 2009.

Ivan Strasfeld,

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

[FR Doc. E9–15159 Filed 6–25–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,922]

Seton Identification Products, Inc., Branford, CT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 15, 2009 in response to a petition filed on behalf of workers at Seton Identification Products, Inc., Branford, Connecticut. The workers are engaged in activities related to the production of signs, tags and labels.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 26th day of May 2009.

Richard Church

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15221 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,921]

Newport Corporation, Irvine, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 15, 2009 in response to a worker petition filed by the State Workforce Office on behalf of workers at Newport Corporation, Irvine, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of May 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15220 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,920]

Toyal America, Inc., Lockport, IL; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 15, 2009 in response to a petition filed by a company official on behalf of workers of Toyal America, Inc., Lockport, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 18th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15219 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,913]

Performance Powder Coatings LLC, Kokomo, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 12, 2009 in response to a worker petition filed by a company official on behalf of workers at Performance Powder Coatings, LLC, Kokomo, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 22nd day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15218 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,912]

L and L Products, Romeo, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 12, 2009 in response to a petition filed on behalf of workers of L and L Products, Romeo, Michigan.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 15th day of May 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15217 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,908]

DJ Fashions, LLC, New York, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 11, 2009 in response to a petition filed by a company official on behalf of the workers at DJ Fashions, LLC, New York, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.