coverage to participants and dependents who are or were covered under the group health plan upon the occurrence of specified events. A copy of the information collection request (ICR) can be obtained by contacting the office shown in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section of this notice on or before November 24, 2009.

ADDRESSES: Interested parties are invited to submit written comments regarding the information collection request and burden estimates to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210, (202) 693–8410, FAX (202) 219–4745 (these are not toll-free numbers). Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Subsection (a) of 29 CFR 2590.701–5 requires a group health plan and each health insurance issuer offering group health insurance coverage under a group health plan to furnish certificates of creditable coverage to specified individuals under specified circumstances. EBSA previously submitted an ICR concerning the requirement to provide certificates of creditable coverage to the Office of Management and Budget (OMB) for review under the PRA and received approval under OMB Control No. 1210–0103. The ICR approval is currently scheduled to expire on December 31, 2009.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submission of responses.

III. Current Action

This notice requests comments on an extension of information collections arising from the requirement under 29 CFR 2590.701–5 to provide certificates of creditable coverage. The Department is not proposing or implementing changes to the existing information collections at this time. A summary of the ICR and the current burden estimates follows:

Agency: Department of Labor, Employee Benefits Security Administration.

Title: Establishing Prior Creditable Coverage.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0103.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency of Response: On occasion.

Respondents: 2,493,046.

Responses: 16,250,284.

Total Estimated Burden Hours: 75,306.

Total Burden Cost (Operating and Maintenance): $11,456,011.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the extension of this ICR; they will also become a matter of public record.

Dated: September 21, 2009.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E9–23139 Filed 9–24–09; 8:45 am]

BILLING CODE 4510–20–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Nos. and Proposed Exemptions; D–11423, Cotter Merchandise Storage Company Defined Benefit Pension Plan (the Plan); D–11445, Unaka Company, Incorporated Employees Profit Sharing Plan (the Plan); and D–11522, State Street Bank and Trust Company, 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.

Cotter Merchandise Storage Company, Defined Benefit Pension Plan (the Plan), Located in Akron, OH.
[Application No. D–11423.]

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, shall not apply to (1) the proposed sale by the Plan to the Cotter Merchandise Storage Company (Cotter or the Applicant), the Plan sponsor and a party in interest with respect to the Plan, of certain promissory notes (the Notes) which are currently held by the Plan; and (2) the assignment, by the Plan to Cotter, of a civil judgment (the Judgment) against the Plan's former trustee, Robert Geib (Mr. Geib).

This exemption is subject to the following conditions:

(a) The terms and conditions of the proposed sale transaction 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) As consideration for the Notes, the Plan receives either (1) the greater of $372,197 or (2) the fair market of the Notes (based upon the value of the Plan's proportionate share of Mr. Geib's ownership interest in Cotter common stock), as determined by a qualified, independent appraiser on the date of the sale transaction;

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

(d) The Plan pays no fees, commissions, costs or other expenses in connection with the proposed sale;

(e) Cotter pays the Plan all recoveries resulting from the Judgment; and

(f) An independent fiduciary (1) determines that the sale is an appropriate transaction for the Plan and is in the best interests of the Plan and its participants and beneficiaries; (2) monitors the sale on behalf of the Plan; and (3) ensures that the Plan receives all future recoveries resulting from the Judgment.

Summary of Facts and Representations

1. The Plan is a defined benefit plan that was established in August 1964 by Cotter, an Ohio corporation that is located in Akron, Ohio. Cotter is a real estate holding company that owns a warehousing subsidiary, Cotter Merchandise Storage Company of Ohio, Inc. (CMSCO). Cotter's current directors and officers are Messrs. Chris Geib, John Seikel, and Ms. Tonya Bridgeland. Chris Geib also serves as the Plan trustee and he makes investment decisions on behalf of the Plan. As of December 4, 2008, the Plan had 21 participants of which 11 are retired or separated. As of June 30, 2008, the Plan had total assets of $566,444.

2. Mr. Geib, the father of Chris Geib, was formerly an officer and an owner of Cotter, as well as a Plan trustee. Between 1988 and 1990, Mr. Geib made a series of unauthorized withdrawals from the Plan, which he characterized as ''loans.'' [1] The loans were unsecured at the time of their execution and were evidenced by promissory notes. The Notes carried interest at the rate of 12% per annum and ranged from $6,000 to $100,000 in principal amounts. These Notes are set forth as follows:

Date	Loan amount
March 1, 1988	$62,000
March 7, 1988	20,000
April 16, 1990	10,000
April 19, 1990	100,000
April 20, 1990	6,000
April 30, 1990	6,000
May 19, 1990	6,500

The total principal amount of the loans was $210,500 and they each had a maturity date of January 1, 1992.

In 1988, the outstanding loan balance represented 25.3% of the Plan's assets. In 1990, the outstanding loan balance represented 37.35% of the Plan's assets. The Applicant has no record that Mr. Geib made any repayments. Moreover, all of the loans remained unpaid at their maturity and have since remained unpaid.

3. On November 2, 1990, due to mismanagement, Cotter filed a voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code. On August 29, 1991, the Bankruptcy Court appointed Mr. Seikel as the Chapter 11 Bankruptcy Trustee. Mr. Seikel subsequently discovered the Notes and reported Mr. Geib to the U.S. Department of Justice (the Justice Department).

4. On January 18, 1994, Mr. Seikel, who had also been appointed Plan trustee by the Bankruptcy Court, obtained a judgment against Mr. Geib in the amount of $272,500,[2] plus interest at the rate of 10% per annum (which had been reduced by the Bankruptcy Court from 12% per annum), as the result of the outstanding Notes. Pursuant to the Plan of Reorganization, the then existing Cotter stock was canceled and Mr. Geib was issued 1,642.2 new shares of Cotter common stock. The Plan's Judgment, along with other judgments held by Cotter and CMSCO against Mr. Geib were (and are still) secured by these 1,642.2 shares.

5. Also in 1994, the Justice Department indicted and charged Mr. Geib in the U.S. District Court for the Northern District of Ohio, Eastern Division with seven counts of bankruptcy fraud for unauthorized transfers of company funds and one count of embezzling approximately $100,000 from the Plan. On August 22, 1995, Mr. Geib entered into a plea agreement with the Justice Department (the Plea Agreement) in which he pled guilty to three counts of bankruptcy fraud and one count of embezzlement. Mr. Geib admitted in the Plea Agreement that he took $100,000 from the Plan in order to run Cotter.

[1] (According to T.C. Memo. 2000–391, 2000 WL 1899306 (U.S. Tax Ct.), the Plan allowed loans to participants subject to certain requirements. In this regard, the Plan limited loan amounts, required a Qualified Waiver of Spouse from the participant taking the loan, and stipulated that the loan be secured by the participant's entire interest in the Plan's trust. Mr. Geib's loans were made in excess of the Plan's loan limitations and without a Qualified Waiver of Spouse. Further, the loans were not adequately secured and they did not meet the requirements of the Plan document. Therefore, the loans would not satisfy the statutory exemption for participant loans under section 408(b)(1) of the Act.

[2] According to the Applicant, the March 1, 1988 Note notation was erroneously duplicated in the Plan's judgment. The correct amount of the judgment should have been $210,500.

According to the Plea Agreement, Mr. Geib could be incarcerated for up to 18 months. Ultimately, Mr. Geib was incarcerated.

6. In a letter dated January 22, 1996, the Tax Division of the Justice Department accepted an offer from Cotter's counsel to settle claims made by the Internal Revenue Service (the Service) against Cotter and CMSCO. The Justice Department found that as of June 30, 1995, the Plan had accumulated a funding deficiency equal to $368,185.00. In order to pay excise taxes under section 4971(a) of the Code triggered by the funding deficiency, the United States Treasury received a $100,000 unsecured priority claim against Cotter in the bankruptcy.

Among other things, the settlement offer was contingent upon the Service's determination that Cotter, CMSCO, and Mr. Seikel were not liable for any excise taxes due under section 4975 of the Code with respect to the prohibited loan transactions involving the Plan and Mr. Geib. Another letter, also dated January 22, 1996 but from the Service, affirmed that Cotter, CMSCO and Mr. Seikel were not liable under section 4975 of the Code with respect to the prohibited loan transactions. The Service did not provide any relief to Mr. Geib and in 2000 sued him in the U.S. Tax Court (the Tax Court).

7. On May 1, 1997, Cotter emerged from bankruptcy. In addition, Cotter asserted that it had paid off its accumulated funding deficiency with a $337,609.00 payment to the Plan. The settlement of the funding deficiency also resolved the $100,000 unsecured tax claim against Cotter.

8. On June 13, 1997, the Bankruptcy Court ordered the offset of the vested Plan benefit owed to Mr. Geib in partial satisfaction of the amounts owed to the Plan under the Notes. Mr. Geib's entire benefit under the Plan was valued at $252,890. Of this amount, Mr. Seikel applied $242,084.26 to accrued interest and $10,805.74 to principal on the Notes leaving a balance remaining of $199,194.26.

9. At each stage of the legal proceedings described above, it is the Applicant's understanding that the Service was kept apprised of and approved those actions. According to the Applicant, the Plan still holds the Notes as a plan asset and all expenses incurred in connection with the servicing or administration of such Notes have been borne by Cotter. As of March 31, 2009, Mr. Geib owed the Plan $625,282. This amount is based upon the face amount of the Notes plus all accrued but unpaid interest (for which the rate had been reduced from 12 to 10 percent interest by the Bankruptcy Court). In addition, Mr. Geib owed Cotter $447,910 and $307,866 to CMSCO as of March 31, 2009 from previous misappropriations of their funds.

10. In 2000, the Tax Court found Mr. Geib liable for excise taxes under section 4975 of the Code for the prohibited transaction arising from the Notes. Additionally, the Tax Court found Mr. Geib in violation of section 6651(a)(1) of the Code for the failure to file Forms 5330 for the prohibited transactions. These liabilities totaled $174,761.00 in 1998 and it is not evident that any payments have been made by Mr. Geib.

In a March 1, 2009 personal financial statement, Mr. Geib claimed that various creditors and other parties, including Cotter and the Plan, had obtained a total of $1,830,620.00 in judgments against him. He also claimed an annual income of $22,200, of which $16,200 was derived from Social Security. In a May 14, 2009 affidavit, Mr. Geib claimed that there had been no substantial changes to his financial position since November 1, 2008. In addition, the Applicant represents that it has no knowledge of Mr. Geib's current personal circumstances.

Based on these representations, Mr. Geib is essentially insolvent and the Plan has little expectation of ever collecting the debt. The amounts owed by Mr. Geib to the Plan cannot be retired because the Notes are secured by the Cotter stock owned by Mr. Geib. The stock, which is held in escrow, is also subject to the Judgment obtained by the Plan, Cotter and CMSCO against Mr. Geib.

11. The Applicant represents that the Plan cannot foreclose on the Notes and take legal custody of the stock collateralizing the Notes without violating the provisions of section 406(a) of the Act. In this regard, section 406(a)(1)(E) of the Act provides 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 ''acquisition, on behalf of the plan, of any employer security * * * in violation of section 407(a).''

Section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretionary control of plan assets to permit the plan to hold any employer security if he or she knows or should know that holding such security violates section 407(a).

Section 407(a)(1) of the Act states that a plan may not acquire or hold any employer security which is not a qualifying employer security. Section 407(a)(2) of the Act states further that a plan, such as a defined benefit plan, may not acquire any qualifying employer security, if immediately after such acquisition the aggregate fair market value of the employer securities held by the plan exceeds 10% of the fair market value of the assets of the plan.

Section 407(d)(5) of the Act defines the term ''qualifying employer security'' to mean an employer security which is a stock, a marketable obligation, or an interest in certain publicly traded partnerships. However, after December 17, 1987, in the case of a plan, other than an eligible individual account plan, an employer security will be considered a qualifying employer security only if such employer security satisfies the requirements of section 407(f)(1) of the Act.

Section 407(f)(1) of the Act states that stock satisfies the requirements of this provision if, immediately following the acquisition of such stock no more than 25% of the aggregate amount of the same class issued and outstanding at the time of acquisition is held by the plan, and at least 50% of the aggregate amount of such stock is held by persons independent of the issuer.

The Cotter stock does not comply with the requirements of section 407(f)(1) of the Act, because at least 50% of the stock is not held by persons ''independent of Cotter.'' In this regard, Mr. Chris Geib, who is not ''independent of the issuer,'' owns over half of the issued and outstanding 3,619.7 shares of Cotter stock.

In addition, even if the Cotter stock constituted qualifying employer securities, as provided in section 407(d)(5) of the Act, the Applicant states that the acquisition by the Plan of the Cotter stock would cause the Plan to exceed the 10% assets limitation under section 407(a)(2) of the Act. Thus, the fiduciaries of the Plan cannot permit the Plan to acquire Cotter stock without violating the Act.

12. Currently, the Plan is fully funded. In its Statement of Financial Accounting Standards (SFAS) No. 158 Statement for Fiscal Year Ended June 30, 2008 (SFAS Statement), Summit Retirement Plan Services (Summit), an actuarial consulting company located in Cleveland, Ohio, determined that as of June 30, 2008, the Plan was funded with an excess of $214,691.00 (including the Notes). The SFAS Statement applied a $448,700.00 value to the Notes based upon a 2007 independent appraisal performed by Raymond H. Dunkle, CPA, ABV, CVA, CFE, of Brockman, Coats, Gedelian & Co. (BCG) of Akron, Ohio. Accordingly, the Plan's funded status would depend on the enforceable value

of the Notes. The sale of the Notes would afford the Plan more liquidity and further ensure its funded status.

13. Cotter requests an administrative exemption from the Department in order to purchase the Notes from the Plan and to receive the Judgment from the Plan.[3] The proposed sale price for the Notes will reflect their fair market value, as determined by a qualified, independent appraiser on the date of the sale transaction. Cotter will pay the consideration to the Plan in cash and the Plan will not be required to pay any fees, commissions or incur any expenses in connection therewith in connection with the proposed sale. As a result of the sale, the Plan will surrender the Notes, while retaining the right to receive future recoveries from Cotter based on the Judgment.

14. In 2009, the Notes were reappraised by Mr. Dunkle, a qualified, independent appraiser, who is the Senior Manager of the Forensic & Valuation Services Group at BCG. Mr. Dunkle has experience in providing business advisory services, including business valuations of stock and intangible assets, economic damage calculations, forensic accounting, internal control studies, fraud investigations, fraud prevention services, financial projections and forecasts, business planning, and merger and acquisition assistance. Mr. Dunkle also has experience in providing audit, review and compilation services to clients in a variety of industries. He has certified that he has no present or prospective interest in the Notes or in the parties involved in the proposed transaction. Mr. Dunkle represents that BCG received less than 1% of its 2008 gross income from Cotter and its affiliates.

In his Valuation Report of Cotter dated May 13, 2009 (the 2009 Valuation), Mr. Dunkle placed the fair market value of Cotter common stock on a minority, non-marketable basis at $500.59 per share as of March 31, 2009, relying primarily on the Asset Approach to valuation. Based upon the 2009 Valuation, Mr. Dunkle determined that the 1,642.2 shares of Cotter common stock owned by Mr. Geib had a fair market value of $822,069 as of March 31, 2009.

Because of Mr. Geib's insolvency and the existence of combined equal priority debt of $1,381,058, Mr. Dunkle explained that the value of the Notes as of March 31, 2009 would be equal to the pro rata portion of Mr. Geib's interest in Cotter that served as collateral for such debt. The $1,381,058 total debt, which included principal and interest due to the Plan as of March 31, 2009, consists of amounts owed to the Plan ($625,282), Cotter ($447,910) and CMSCO ($307,866). According to Mr. Dunkle, the Plan's pro rata interest in this debt was 45.2756% or ($625,282/$1,381,058). Applying this percentage to the value of Mr. Geib's ownership interest in Cotter common stock ($822,069), Mr. Dunkle concluded that the Notes had a fair market value equivalent to the prorated collateral value of $372,197 ($822,069 × 45.2756%) as of March 31, 2009.

Mr. Dunkle also noted that he had not become aware of any changes to the values reported between March 31, 2009 and the May 13, 2009 date of the 2009 Valuation. He will again update the 2009 Valuation on the date of the proposed sale.

15. Pursuant to an engagement letter dated August 6, 2009, Cotter retained Summit to serve as the independent fiduciary for the Plan with respect to the proposed transactions. Summit has served as the Plan's actuary since June 1, 2001. In this capacity, Summit states that it tests and determines that the Plan has been adequately funded and that annual testing and reporting is compliant with Federal laws and regulations, such as the Act and the Code. In this regard, Summit likens its responsibilities to those of an independent third party that has had no conflicting interests with either the Plan or Cotter. As the Plan's actuary, Summit represents that it received $4,970 from Cotter and its affiliates in 2008. This amount represents less than 0.1% of Summit's gross annual revenues.

Although Summit states that it has never acted as an independent fiduciary on this type of issue, its professionals have significant experience with the Act. In this regard, Summit explains that it has three enrolled actuaries and it states that the majority of its staff have professional designations, such as CPC, CPA, CBP, QPA and QKA. In addition, Summit represents that its CEO and Chief Actuary Michael M. Spickard, EA, MAAA, MSPA, CPC, QPA was appointed by the Department of the Treasury to the Advisory Committee on Taxation—Employee Benefits Group. Further, since its inception in 1996, Summit indicates that it has serviced over 1,000 plans.

Summit states that it has reviewed the duties, responsibilities and liabilities imposed by the Act on plan fiduciaries and it has worked with outside attorneys on such matters and will retain the services of such attorneys should the need arise regarding the proposed transactions. Summit also acknowledges and accepts the duties, responsibilities and liabilities imposed by the Act on plan fiduciaries.

Summit represents that it has had knowledge of the Notes since 2001 when it began performing actuarial valuations and consulting services for the Plan. Summit represents that the proposed transactions are administratively feasible and in the best interest of the Plan, its participants and beneficiaries. Summit explains that it has had knowledge of the impact of the Notes on the Plan's investment portfolio and its liquidity requirements. Because the Notes represent approximately 67% of the Plan's assets (based upon the 2009 Valuation), Summit states that the Plan is not very diversified. Therefore, the proposed sale of the Notes by the Plan to Cotter would allow the Plan to diversify its assets.

Further, Summit explains that the proposed sale complies with the Plan's investment policies and objectives. This is because the principle behind the sale is to free the Plan of illiquid, limited marketability assets and to allow the Plan to invest in other assets having an easily ascertainable market value that can be liquidated. According to Summit, the proposed sale of the Notes will give the Plan an infusion of cash that can be used to purchase investments that are in alignment with the Plan's investment policy and objectives.

As the independent fiduciary Summit has agreed to monitor the proposed sale and ensure that any future recoveries from the Judgment that are received by Cotter will be paid to the Plan.

16. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The terms and conditions of the proposed sale transaction 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) As consideration for the Notes, the Plan will receive either (1) the greater of $372,197 or (2) the fair market value of the Notes (based upon the Plan's proportionate share of Mr. Geib's ownership of Cotter common stock), as determined by a qualified, independent appraiser on the date of the sale transaction;

(c) The proposed sale will be a one-time transaction for cash;

(d) The Plan will pay no fees, commissions, costs or other expenses in connection with the proposed sale;

[3] According to the Applicant, the Service had suggested that the Plan sell the Notes to Cotter in previous audits. However, the Applicant explains that the Plan has held the Notes for so long because the Bankruptcy Court required that Cotter meet a certain level of performance that would take Cotter at least six years to meet following its emergence from bankruptcy.

(e) Cotter will pay the Plan all recoveries resulting from the Judgment; and

(f) An independent fiduciary will (1) determine that the sale is an appropriate transaction for the Plan and is in the best interests of the Plan and its participants and beneficiaries; (2) monitor the sale on behalf of the Plan; and

(3) ensure that the Plan receives all future recoveries resulting from the Judgment.

Notice to Interested Persons

Notice of the proposed exemption will be given to interested persons within 5 days of the publication of the notice of proposed exemption in the **Federal Register**. The notice will be given to interested persons by first class mail or personal delivery. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 35 days of the publication of the notice of proposed exemption in the **Federal Register**.

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

Unaka Company, Incorporated Employees, Profit Sharing Plan (the Plan), Located in Greeneville, Tennessee.

[Application No. D–11445.]

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,[4] by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan (the Sale) to Unaka Company Incorporated (Unaka), a party in interest with respect to the Plan, of two promissory notes (the Notes) that are secured by deeds of trust on certain parcels of real property; provided that the following conditions are satisfied:

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

(b) As consideration, the Plan receives the greater of the current outstanding balance of the Notes, plus all accrued but unpaid interest to the date of the Sale (Sale Date), or the fair market value of the Notes as determined by qualified, independent appraisers in updated appraisals on the Sale Date.

(c) The Plan pays no commissions, costs, fees, or other expenses with respect to the Sale; and

(d) As soon as it is feasible following the Sale, the Plan releases the deeds of trust securing the Notes.

Summary of Facts and Representations

1. Unaka, the sponsor of the Plan and the Unaka Company, Inc. 401(k) Plan (the 401(k) Plan), are located at 1550 Industrial Road, Greenville, Tennessee. Unaka is the parent company of SOPACO, MECO and the Round Table Office Complex subsidiaries. These subsidiaries make ''Meals Ready to Eat,'' folding chairs and other items.

2. The Plan is a qualified retirement plan that was established by Unaka effective March 1, 1967. As of July 1, 2006, the Plan's Form 5500 indicated that the Plan had 903 participants and net assets of $12,865,825. Included among these assets were certain third-party notes that are described herein. Bisys Retirement Services (Bisys) serves as the Plan's third party administrator. Until January 2009, Paul Rodeford served as the Plan trustee and he exercised investment discretion over the Plan's assets. Currently, Unaka serves as the Plan trustee.

3. On March 26, 2007, Unaka merged the Plan with the 401(k) Plan. Bisys serves as the plan administrator for the 401(k) Plan. However, for unspecified reasons, Bisys did not wish to administer the subject Notes, which remain in the Plan.[5] The other assets of the Plan were transferred to the 401(k) Plan at the time of the merger. According to its Form 5500 for the plan year ending June 30, 2008, the 401(k) Plan had net assets of $15,525,162. As of the plan year ending June 30, 2008, the 401(k) Plan had 857 participants, which included all of the participants from the Plan. The trustee of the 401(k) Plan is MG Trust Company and the investment manager is Rather & Kittrell.

4. The Plan originated the first Note to Billy Joe and Kathyrn Carter for $38,000 (the Carter Note) for the purchase of residential property located at 80 Debusk Road, Greenville, TN (the Carter Property) on September 6, 1984. The Plan originated the second Note to Lloyd and Mary Weemes for $21,000 (the Weemes Note) for the purchase of residential property located at 55 Lick Hollow Road, Greenville, TN (the Weemes Property) on February 10, 1986.[6] At no time have the Carters or the Weemes been parties in interest with respect to the Plan. The Plan also did not require the Carters or the Weemes to purchase private mortgage insurance or to obtain property insurance.

5. The interest rate on the Carter Note is set annually to the prime rate as determined by the Commerce Union Bank plus 2%, with a maximum rate of 15% and a minimum floor rate of 10%. Principal and interest under the Carter Note are payable in monthly installments for a twenty five (25) year period, with interest and monthly principal payments to be adjusted on March 31 of each year. At the time of execution, the interest rate for the Carter Note was 15% per annum. The initial monthly payment was $486.72. The first payment was due on October 6, 1984 and similar monthly payments were due until March 31, 1985, at which time interest and monthly payments were recalculated. In the event of default, the Carter Note provides that the Carters would pay all collection costs, the unpaid amounts would accrue at 15% or the then current rate and the Plan could proceed at once to foreclosure. The failure to exercise the foreclosure option does not constitute a waiver of the Plan's right to foreclose on the Carter Note. The Carter Note is also non-assumable, and in the event the Carter Property is sold, the entire balance of the Carter Note becomes due and payable. The Carter Note is secured by a first deed of trust on the Carter Property and Unaka has no knowledge of any other liens against the Carter Property.

6. According to records running from June 2002 to October 2008, Mrs. Carter

[4] Unless otherwise noted herein, reference to specific provisions of the Act refer also to the corresponding provisions of the Code.

[5] The Department is expressing no opinion on whether the holding of the Notes by the Plan has violated section 403 of the Act. In pertinent part, section 403 requires that all assets of an employee benefit plan shall be held in trust by one or more trustee.

[6] It is believed that the decision to cause the Plan to make the loans and execute the Notes with the Carters and Weemes was made by two former officers of Unaka. The Department is expressing no opinion herein on whether the decision by the former Unaka officers to cause the Plan to originate the Carter and Weemes Notes or the Plan's continued holding of the Notes has violated section 404(a) of the Act. In pertinent part, section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

began to miss payments beginning with the November 2002 payment following the death of Mr. Carter. Although Mrs. Carter has missed payments for periods of up to six months, the Carter Note does not provide for any late penalties.

7. The Weemes Note, which was in the original principal amount of $21,000, carries similar interest rate terms, default terms and non-assumption provisions to the Carter Note. However, the Weemes Note has a twenty (20) year duration and the initial interest rate was set at 11½% per annum, with a monthly payment of $223.96 that commenced on March 10, 1986. In the event of default, the unpaid amounts would accrue at 15% per annum or the then current rate. The Weemes Note is secured by a first deed of trust on the Weemes Property and Unaka has no knowledge of any other liens against the Weemes Property.

8. According to records running from January 2002 to October 2008, the Weemes began to miss payments beginning with their January 2002 payment after Mr. Weemes became unemployed. Since that time, the Weemes have missed several payments for periods of up to two months before resuming payments. The Weemes Note also does not provide for any late fees.

9. Unaka has paid all costs and expenses associated with the Plan's holding of the Notes (except for real property taxes, which have been paid by the borrowers). As of March 31, 2009, the Carter Note had an outstanding balance of $30,772.10 and the Weemes Note had an outstanding balance of $9,667.01. Although the borrowers' payments on the Notes have been sporadic, Unaka represents that if it foreclosed on the Notes it is very unlikely it would recover the remaining balances. Unaka represents also that under Tennessee law, if the Plan finds the Carter and Weemes Notes in default, the Plan would have to foreclose on the Carter and Weemes Properties. Further, Unaka states that if a third party were to purchase the Weemes or the Carter properties in foreclosure, it would be for a discounted price.

10. Accordingly, Unaka proposes to purchase the Notes from the Plan and requests an administrative exemption from the Department in order to engage in the Sale. The proposed Sale will be a one-time transaction for cash. As consideration, the Plan will receive the greater of the current outstanding balance of the Notes, plus all accrued but unpaid interest to the Sale Date, or the fair market value of the Notes as determined by qualified, independent appraisers in updated appraisals on the Sale Date. The Plan will pay no commissions, costs, fees, or other expenses with respect to the Sale. Finally, as soon as it is feasible following the Sale, the Plan will release the deeds of trust securing the Notes.

11. Unaka retained Braun & Associates, Inc. of Maryville, Tennessee, to perform an independent appraisal of both properties. Specifically, Woody Fincham and his supervisor, David A. Braun, performed appraisals of the subject properties and they prepared separate appraisal reports for such properties that are dated March 5, 2009. Both Mr. Braun and Mr. Fincham are licensed as appraisers in the State of Tennessee. Mr. Braun is a certified general appraiser having both ''MAI'' and ''SRA'' designations. Both Mr. Fincham and Mr. Braun are qualified independent appraisers.

Messrs. Fincham and Braun acknowledge that their appraisal reports are being used by Unaka in connection with this exemption request. Messrs. Fincham and Braun represent that neither they nor anyone involved in the preparation of the appraisal has any present or prospective interest in the properties involved and no personal interest with respect to the parties involved. After using the Sales Comparison Approach to value the Carter and Weemes Properties, Messrs. Fincham and Mr. Braun placed the fair market value of the Weemes Property at $5,850 and the Carter Property at $37,500 as of March 5, 2009.

12. Unaka also retained Robin Carmichael, a real estate consultant who is employed by Rocky Top Realty of Knoxville Tennessee, to appraise the Notes. Ms. Carmichael states that she has 13 years of experience in the East Tennessee real estate market including knowledge in the mortgage resale business and recent foreclosures in the East Tennessee area. Ms. Carmichael also indicates that she has 11 years of experience in the mortgage lending industry. Ms. Carmichael explains that she has assessed the value of roughly 400 different properties regarding their valuation and that her valuation of the Notes combines her experience in the real estate industry with buying and selling of commercial and residential properties and her knowledge of mortgage lending. Ms. Carmichael acknowledges her appraisal will be used by Unaka in connection with this exemption request and she states that her combined income from Unaka, its principals or any parties in interest with respect to the Plan represent no more than 1% of her gross 2008 income.

In her appraisal of March 18, 2009 and addenda dated April 25, 2009 and May 13, 2009, Ms. Carmichael states that the fair market value of the Carter Note and Weemes Note should be discounted 50 to 60% against their respective MAI appraised value. She has applied a discount that takes into account such factors as a declining real estate market, the condition of the Weemes and Carter Properties, the non-transferability of the Notes, the payment histories of the borrowers, the loan to value ratio of the Notes, their interest rates and the employment status of the borrowers. Ms. Carmichael also states that the Notes do not appear to have any existing liens or encumbrances. Accordingly, Ms. Carmichael concludes that as of April 28, 2009, the midpoint value of both Notes, after taking into account, among other things, the applicable discount, is 45% of the MAI appraised value ascertained by Messrs. Fincham and Braun.

13. The outstanding balance of the Weemes Note as of March 31, 2009 was $9,677.01. This amount exceeds the fair market value of the Weemes Note as of March 5, 2009, which was $2,632.50 ($5,850 × 45%). The current outstanding principal balance of the Carter Note as of March 31, 2009 was $30,772.10. This amount exceeds the fair market value of the Carter Note, which was $16,875.00 ($37,500 × 45%) as of March 5, 2009. Unaka represents that it will pay the greater of the current outstanding balance of the Notes plus accrued but unpaid interest to the Sale Date or the fair market value of the Notes as determined by qualified, independent appraiser on the Sale Date. Thus, if the Sale had occurred on March 31, 2009, Unaka would have paid the Plan the principal balance outstanding, plus accrued but unpaid interest for both the Weemes and Carter Notes.

14. In summary, Unaka represents that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Sale will be a one-time transaction for cash.

(b) The Plan will receive the greater of the current outstanding balance of the Notes, plus all accrued but unpaid interest to the Sale Date, or the fair market value of the Notes as determined by qualified, independent appraisers in updated appraisals on the Sale Date;

(c) The Plan will pay no commissions, costs, or other expenses with respect to the Sale; and

(d) As soon as it is feasible following the Sale, the Plan will release the deeds of trust.

Notice to Interested Persons

Notice of the proposed exemption will be given to interested persons within 5 days of the publication of the notice of proposed exemption in the **Federal Register**. The notice will be given to interested persons by first class mail or personal delivery. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 35 days of the publication of the notice of proposed exemption in the **Federal Register**.

For Further Information Contact: Mr. Anh-Viet Ly of the Department at (202) 693–8648. (This is not a toll-free number.)

State Street Bank and Trust Company, Located in Massachusetts.
[Application No. D–11522.]

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 32847, August 10, 1990).

If the exemption is granted, the restrictions of sections 406(a)(1)(A) and (D) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), (E), and (F) of the Code, shall not apply as of October 24, 2008, to the cash sale of certain mortgage, mortgage-related, and other asset-backed securities for $2,447,381,010 (the Sale) by stable value commingled funds and separate accounts both holding assets of employee benefit plans (the Accounts) to State Street Bank and Trust Company (State Street), the investment manager and/or trustee for the Accounts, provided that the conditions set forth below are met.

(a) The Sale was a one-time transaction for cash payment made on a delivery versus payment basis.

(b) The Accounts did not bear any commissions or transaction costs in connection with the Sale.

(c) The Accounts received as a purchase price for the securities an amount which, as of the effective date of the Sale, was equal to the fair market value of the securities, determined by reference to prices provided by independent third-party pricing sources consulted in accordance with pricing procedures used by the Accounts prior to the transaction.

(d) In connection with the Sale, State Street transferred to and allocated among the Accounts cash in the amount of $450,000,000.

(e) At the time of the transaction, State Street, as trustee of the Accounts, determined (except with respect to the State Street Salary Savings Program, an employee benefit plan maintained for employees of State Street and certain affiliates (the State Street Plan)) that the Sale was appropriate for and in the best interests of the Accounts and the employee benefit plans invested in the Accounts. An independent fiduciary determined at the time of the transaction that the Sale was appropriate for and in the best interest of the State Street Plan and its participants and beneficiaries.

(f) An independent consultant reviewed, after the Sale, the reasonableness of the prices used to purchase the securities, and concluded that the pricing methodology used by State Street provided a reasonable basis for determining the fair market value of the securities and that the methodology was reasonably applied with only immaterial deviations.

(g) In carrying out the Sale, State Street took all appropriate actions necessary to safeguard the interests of each Account and each employee benefit plan with a direct or indirect interest in an Account.

(h) State Street and its affiliates, as applicable, will maintain, or cause to be maintained, for a period of six (6) years from the date of the Sale such records as are necessary to enable the persons described below in paragraph (i)(i) to determine whether the conditions of this exemption have been met, except that—

(i) No party in interest with respect to a plan which engaged in the covered transaction, other than State Street and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained or are not available for examination as required by paragraph (i) below; and

(ii) A separate prohibited transaction shall not be considered to have occurred solely because due to circumstances beyond the control of State Street or its affiliate, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(i)(i) Except as provided below, in paragraph (ii), and notwithstanding any provisions of subsections (a)(2) and (b) of sections 504 of the Act, the records referred to in paragraph (h) above, are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, the Securities and Exchange Commission or the Federal Reserve Board;

(B) Any fiduciary of any plan that engaged in the covered transaction, or any duly authorized employee or representative of such fiduciary;

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(ii) None of the persons described above in subparagraphs (B)–(D) of paragraph (i)(i) are authorized to examine the trade secrets of State Street or commercial or financial information that is privileged or confidential.

(iii) Should State Street refuse to disclose information on the basis that such information is exempt from disclosure, State Street shall, by the close of the thirtieth (30th) day following the request, provide written notice advising that person of the reason for the refusal and that the Department may request such information.

Summary of Facts and Representations

1. State Street Bank and Trust Company (State Street), a Massachusetts trust company and a member bank of the Federal Reserve System, is a wholly-owned subsidiary of State Street Corporation, a bank holding company organized under the laws of the Commonwealth of Massachusetts. State Street is a global financial services company that provides a wide range of banking, fiduciary, and investment management services to institutional investors, including employee benefit plans subject to the Act.

2. State Street is the investment manager and/or trustee for a variety of commingled investment funds and separate accounts, including certain stable value commingled funds and separate accounts holding plan assets (the Accounts). The Accounts comprise employee benefit plans invested through one of several structures including: direct investment in commingled funds for which State Street acts as investment manager and/ or trustee; investment in separate portfolios under the Stable Fixed Income Fund for Employee Benefit

Trusts for which State Street is the investment manager and trustee; separately managed accounts appointing State Street as investment manager and directing State Street to invest plan assets in bonds and other debt securities as well as in other State Street commingled funds (where State Street acts as trustee for some of the accounts and for assets held in the accounts that are invested in State Street commingled funds); and investment in funds set up specifically for a particular plan, for which State Street acts as investment manager and trustee.

3. Certain third party financial institutions are contractually obligated to provide financial support to the Accounts under certain circumstances (the Wrap Providers). The contractual arrangements with the Wrap Providers (the Wrap Contracts) permit the Accounts to use benefit responsive accounting and to issue and redeem units at book value despite fluctuations in the market value of the Account's underlying assets.

4. The Wrap Providers are contractually committed to covering any shortfall between market and book values upon the complete redemption of the Account. However, the Wrap Providers are also contractually entitled to limit their exposure to a decline in the market value of an Account's assets either by making an immunization election (*i.e.,* an election to force the securities to be sold and replaced by a pool of Treasury, AAA-rated or similar securities with a duration managed to zero over an agreed period and being excused from providing book value protection to additional contributions to the Account) or by electing to terminate the Wrap Contract, thereby causing State Street to make an immunization election.

5. The Accounts are managed in accordance with investment guidelines approved by both the plans and the Wrap Providers that permit, subject to diversification and credit limitations, investment in a broad range of fixed income securities. Prior to October 2008, the assets in the Accounts included certain mortgage, mortgage-related and other asset-backed debt securities. As a result of disruptions in the market for fixed income securities that began in 2007 and became more pronounced in 2008, the assets experienced significant liquidity and pricing issues, contributing to a decline in the market-to-book value ratio of the Accounts and creating a continuing risk of further decline.

6. Throughout 2008, State Street engaged in active dialogue with the Wrap Providers regarding market conditions and the potential impact of the fixed income markets and the composition of the Accounts' portfolios on the potential risk exposure of the Wrap Providers. State Street also was engaged in negotiations relating to the decision by one Wrap Provider to exit the business of providing benefit responsive contracts, and, as a result, to terminate its Wrap Contracts with the Accounts.

7. State Street believed that immunization would be harmful to Plans and their participants both in the short term, as assets are sold to comply with the immunization investment guidelines, and over the longer term, as crediting rates are adjusted to reflect reinvestment in lower yielding assets and to amortize the market-to-book differential over the duration of the immunization period. In State Street's judgment, a forced sale of all of the assets in the portfolios at distressed prices attributable to illiquidity in the markets would likely result in greater losses to plans and their participants than if the markets were given a chance to recover.

8. In May 2008, State Street retained an independent consulting firm, Oliver Wyman, a management consulting subsidiary of Marsh & McLennan Companies, to evaluate the economic performance of the Accounts. Oliver Wyman's initial analysis focused both on credit performance and projections for both market-to-book and crediting rates at the individual fund level.

9. Oliver Wyman's initial credit analysis identified three distressed asset classes that had a negative impact on stable value fund performance and recommended that State Street consider removing these securities from the portfolios. The securities identified consisted of all of the sub prime and Alt-A mortgage securities, and all non-agency prime adjustable rate mortgage (ARM) securities in the portfolio. In the aggregate, the total book value of these securities was approximately $1.96 billion.

10. State Street shared Oliver Wyman's analysis of the portfolio and the potential impact of an immunization election with the Wrap Providers as part of its ongoing dialogue. While, in the Applicant's view, the analysis supported State Street's favorable credit view of the assets, it did not eliminate the Wrap Providers' concerns about the risk characteristics of the Accounts. As part of its portfolio review, State Street also evaluated measures that it could take to provide financial support to the Accounts; however, banking, ERISA and accounting issues, among others, resulted in there being no clearly executable means of supporting the Accounts.

11. State Street then entered into discussions with two potential purchasers of its stable value business. Both purchasers concurred in the need to remove the securities identified from the stable value portfolios in order to mitigate potential downside price risk to the portfolios. In addition, they proposed removing $1.1 billion of additional securities, consisting of all non-ARM securities in the non-agency prime category, all auto loan asset-backed securities and certain other non-mortgage asset-backed securities, and all securities held through the passively managed Asset Backed Index Fund. The expanded list of securities (the Selected Assets) had a total book value of approximately $3.1 billion.

12. State Street explored a variety of measures to address the risk to the Accounts presented by the Selected Assets. It determined to address the risk to the Accounts presented by the Selected Assets outside the context of the transfer of its stable value business, having concluded that a transaction could not be arranged in a timeframe that would prevent immunization by one or more of the Wrap Providers. In addition, after exploring a variety of possible sale transactions with respect to all or a portion of the Selected Assets, it concluded that there was no likelihood of finding a third party to purchase the Selected Assets at prices State Street believed to represent fair value to the Accounts. Therefore, State Street determined, based on a variety of factors including discussions with the Department, that it would be prudent and in the best interests of the investing plans for State Street to purchase the Selected Assets from the Accounts, as described below.

13. State Street purchased the Selected Assets from the Accounts before the opening of the U.S. financial markets on Monday, October 27, 2008 (the Sale). The aggregate consideration paid for the Selected Assets was $2,447,381,010, which was the market price of the securities on the previous trading day, Friday, October 24, 2008.

14. The Sale was a one-time transaction for cash payment made on a delivery versus payment basis. The Accounts did not bear any commissions or transaction costs in connection with the Sale.

15. The consideration paid for each security was the market price for such security determined by reference to prices provided by an independent third-party pricing service, Interactive Data Corporation (IDC), consulted in accordance with pre-established pricing

procedures. For a small number of securities for which no IDC price was available, a hierarchy of alternative third-party pricing sources was used, also in accordance with pre-existing pricing procedures. The existing hierarchy was: (1) IDC; (2) Bear Stearns (now part of JPMorgan); and (3) other broker quotations provided through State Street's Data Management & Pricing Group.

16. Securities held through certain commingled funds were purchased at prices determined by independent third-party pricing sources in accordance with the same hierarchies as were used for such commingled funds prior to the transaction. That hierarchy was different for assets of different types. For mortgage-backed and asset-backed securities the hierarchy was: (1) Lehman Brothers (now owned by Barclays Global); (2) Bear Stearns (now part of JPMorgan); (3) IDC; and (4) other broker quotations. For other fixed income securities (such as U.S. corporate bonds) the hierarchy was: (1) Lehman Brothers (now owned by Barclays Global); (2) IDC; (3) Bear Stearns (now part of JPMorgan); and (4) other broker quotations.

17. In connection with the Sale, State Street deposited and allocated among the Accounts cash equal to $450,000,000 (the Cash Infusion). As of the date of the transaction, the Cash Infusion improved the average market-to-book ratio across all Accounts to 96.6% on a total account basis. Although market data on stable value accounts is limited, State Street believes that the market-to-book value ratios of the Accounts immediately after the Cash Infusion were generally consistent with industry averages.[7] The Cash Infusion was allocated among the Accounts systematically, according to a predetermined mathematical formula. Oliver Wyman verified that the allocation method had been properly applied.[8]

18. In connection with the Sale and the Cash Infusion, State Street also entered into agreements with the Wrap Providers that provided the Accounts certain assurances with respect to the exercise of immunization and termination rights by the Wrap Providers and included a release by the Wrap Providers with respect to State Street.

19. At the time of the transaction, State Street, as trustee of the Accounts, determined (except with respect to the State Street Salary Savings Program, an employee benefit plan maintained for employees of State Street and certain affiliates (the State Street Plan)) that the Sale was appropriate for and in the best interests of the Accounts.

20. An independent fiduciary, Fiduciary Counselors, Inc. (Fiduciary Counselors), reviewed the terms of the participation in the Sale by the State Street Plan and determined that the transaction was in the best interests of the State Street Plan and its participants and beneficiaries. In making this determination, Fiduciary Counselors reviewed the IDC prices as of October 24, 2008, interviewed personnel from State Street and Oliver Wyman, examined the agreements with the Wrap Providers, and reviewed State Street's calculations of the amount due to the State Street Plan. Fiduciary Counselors determined that the transaction would, among other things: Eliminate most of the difference between book and market values in the State Street Plan's stable value fund; significantly improve the average quality of the underlying investments; and reassure all Wrap Providers that continuing coverage for the State Street stable value funds does not provide unacceptable risks.

21. Following the Sale, State Street engaged Capital Market Risk Advisors (CMRA), a risk management advisory firm, to independently review the reasonableness of prices used to purchase the Securities. CMRA was engaged to assess whether the pricing methodology used by State Street provided a reasonable basis for determining the market value of the assets acquired in the Sale and whether the methodology was appropriately implemented.

22. To determine the reasonableness of the market values used by State Street, CMRA reviewed a listing of bonds sold for each Account, the prices at which they were sold and the source of such prices, as well as additional pricing sources and quotes. CMRA also reviewed copies of State Street's applicable valuation hierarchies and documents submitted to the Department in connection with the exemption request. CMRA then undertook a three-pronged review consisting of (A) a portfolio level analysis of the reasonableness of prices obtained from the pricing sources utilized by State Street in the aggregate as compared to prices obtained by utilizing alternative pricing sources in the aggregate; (B) a more detailed assessment of the reasonableness of prices utilized by State Street compared to prices obtained through CMRA's independent valuation of a selected sample of twenty-one securities (the Independently Valued Securities); [9] and (C) a review of methodologies utilized by State Street for each Account to determine whether such methodologies were consistent with applicable hierarchies.

23. CMRA concluded that: (1) The pricing methodology used by State Street was reasonable; (2) the prices used by State Street were reasonable in the aggregate; (3) the prices used by State Street with respect to the Independently Valued Securities were within a reasonable range in all but three instances; two of which were, in CMRA's opinion, unreasonably high and one of which was unreasonably low. Had all of the Independently Valued Securities been priced within CMRA's reasonable range, there would have been a net decrease of $7.1 million or approximately 1% of the amount paid by State Street for the Independently Valued Securities or 0.29% of the total amount paid by State Street in connection with the Sale; and (4) the methodologies used by State Street varied to a minor extent from State Street's stated methodologies in that the applicable hierarchy of pricing sources was not always followed, but the overall effect of this deviation was immaterial.[10] Had the prescribed hierarchy been followed in every instance, there would have been a net decrease of $12.1 million or approximately 0.5% of the amount paid by State Street in connection with the Sale. Accordingly, CMRA determined that the pricing methodology used by State Street provided a reasonable basis for determining the market value of the

[7] State Street conducts a separate business as a wrap provider to the accounts of third party investment managers. Its estimates of industry averages for market-to-book value ratios were based upon an evaluation of the accounts to which it provides benefit responsive contracts, discussions with the Wrap Providers, and the limited amount of market data available from third party consulting sources.

[8] As the participating plans did not give anything of value in connection with or in exchange for the Cash Infusion, in the Department's view, no question of a prohibited transaction would arise in connection with the Cash Infusion or its allocation because the plan has not engaged in a transaction with a party in interest prohibited under section 406 of the Act. *See e.g.*, preamble to the Proposed Class Exemption for the Release of Claims and Extensions of Credit in Connection with Litigation (68 FR 6953, February 11, 2003) (granted as PTE 2003–39 (68 FR 75632, December 31, 2003)).

[9] To create this sample, CMRA focused on the largest bond positions for which there were significant variations in price between and among the different pricing sources, and on position size. The Independently Valued Securities were all non-agency residential mortgage-backed securities backed by sub prime, Alt-A and prime mortgage loans. CMRA's independent valuation was performed seven months after the Sale; however, CMRA made every effort to limit its inputs to information actually known at the time of the Sale.

[10] According to CMRA, the valuation methodology used by State Street for the managed accounts was completely consistent with the applicable hierarchy. For the commingled funds, it varied to a minor extent.

securities and that the methodology was reasonably applied.

24. According to the Applicant, the Sale and Cash Infusion were intended to protect the plans and their participants by increasing the assets available to meet benefit payment obligations and redemption requests and by reducing certain risks inherent in each Account's portfolio resulting from market conditions, thereby eliminating or reducing the Wrap Providers' incentives to exercise their contractual termination or immunization rights. State Street represents that it took all appropriate actions necessary to safeguard the interests of each Account and each employee benefit plan with a direct or indirect interest in an Account.

25. In summary, the Applicant represents that the statutory criteria of section 408(a) of the Act and section 4975 of the Code are satisfied because:

(a) The exemption is administratively feasible, as the transaction is already completed and all relevant details have been fully disclosed;

(b) The transaction, if covered by an exemption, is in the interest of the participating plans and their participants and beneficiaries because the transaction will reduce the likelihood that the Wrap Providers will exercise their immunization and termination rights, which would adversely affect the plans and their participants;

(c) The exemption is protective of the rights of participants and beneficiaries of the plans, because: (i) The assets sold were identified for disposition in arm's length negotiations between State Street and two bidders for the acquisition of State Street's stable value business, (ii) independent pricing services were used to value and price the assets sold to State Street, and (iii) no commissions or transaction costs were charged in connection with the sale of the assets.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd of the Department, at (202) 693–8554. 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 21st day of September, 2009.

Ivan Strasfeld,

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

[FR Doc. E9–23168 Filed 9–24–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Grant of Individual Exemptions and Prohibited Transaction Exemptions Involving: M&T Bank Corporation Pension Plan, PTE 2009–26; Bank of New York Mellon Corporation, PTE 2009–27; and Ford Motor Company and Its Affiliates (Collectively, Ford), PTE 2009–28

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) 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).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, 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 proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

M&T Bank Corporation Pension Plan, Located in Buffalo, NY.

[Prohibited Transaction Exemption 2009–26

Exemption Application No. D–11470]