collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1219–0007. The current OMB approval is scheduled to expire on May 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on January 5, 2011 (76 FR 589).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1219–0007. The OMB is particularly interested in comments that:

- Evaluate whether the proposed 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 proposed 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.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Title of Collection: Mine Accident, Injury & Illness Report and Quarterly Mine Employment and Coal Production Report.

OMB Control Number: 1219–0007.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 27,193.

Total Estimated Number of Responses: 144,450.

Total Estimated Annual Burden Hours: 210,976.

Total Estimated Annual Costs Burden: $5,832.

Dated: May 4, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–11475 Filed 5–10–11; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions From Certain Prohibited Transaction Restrictions

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). This notice includes the following: D–11528, 2011–06, Wachovia Corporation and Its Current and Future Affiliates or Successors (collectively, Wachovia or the Applicant), D–11580, 2011–07, Robert W. Baird and Co. Incorporated and its Future Affiliates and Subsidiaries (collectively, Baird); D–11621, 2011–08, Security Benefit Mutual Holding Company (MHC) and Security Benefit Life Insurance Company (SBL, and together with MHC the Applicants); and D–11635, 2011–09, The Parvin Nahvi, M.D. Inc. 401(k) Profit Sharing Trust (the Plan).

SUPPLEMENTARY INFORMATION: 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.

Wachovia Corporation and Its Current and Future Affiliates or Successors (Collectively, Wachovia or the Applicant); Located in San Francisco, California; [Prohibited Transaction Exemption 2011–06; Exemption Application No. D–11528]

Exemption

Section I. Sales of Auction Rate Securities From Plans to Wachovia: Unrelated to a Settlement Agreement

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (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), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan (as defined in Section V(e)) of an Auction Rate Security (as defined in Section V(c)) to Wachovia, where such sale (an Unrelated Sale) is unrelated to, and not made in connection with, a Settlement Agreement (as defined in Section V(f)), provided that the conditions set forth in Section II have been met.

Section II. Conditions Applicable to Transactions Described in Section I

(a) The Plan acquired the Auction Rate Security in connection with brokerage or advisory services provided by Wachovia to the Plan;

(b) The last auction for the Auction Rate Security was unsuccessful;

(c) Except in the case of a Plan sponsored by Wachovia for its own employees (a Wachovia Plan), the

Unrelated Sale is made pursuant to a written offer by Wachovia (the Offer) containing all of the material terms of the Unrelated Sale, including, but not limited to: (1) The identity and par value of the Auction Rate Security; (2) the interest or dividend amounts that are due and unpaid with respect to the Auction Rate Security; and (3) the most recent rate information for the Auction Rate Security (if reliable information is available). Notwithstanding the foregoing, in the case of a pooled fund maintained or advised by Wachovia, this condition shall be deemed met to the extent each Plan invested in the pooled fund (other than a Wachovia Plan) receives advance written notice regarding the Unrelated Sale, where such notice contains all of the material terms of the Unrelated Sale, including, but not limited to, the material terms described in the preceding sentence;

(d) The Unrelated Sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security;

(e) The sales price for the Auction Rate Security is equal to the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends;

(f) The Plan does not waive any rights or claims in connection with the Unrelated Sale;

(g) The decision to accept the Offer or retain the Auction Rate Security is made by a Plan fiduciary or Plan participant or an individual retirement account (an IRA (as defined in Section V(e)) owner who is independent (as defined in Section V(d)) of Wachovia. Notwithstanding the foregoing: (1) In the case of an IRA which is beneficially owned by an employee, officer, director or partner of Wachovia, the decision to accept the Offer or retain the Auction Rate Security may be made by such employee, officer, director or partner; or (2) in the case of a Wachovia Plan or a pooled fund maintained or advised by Wachovia, the decision to accept the Offer may be made by Wachovia after Wachovia has determined that such purchase is in the best interest of the Wachovia Plan or pooled fund;[1]

(h) Except in the case of a Wachovia Plan or a pooled fund maintained or advised by Wachovia, neither Wachovia nor any affiliate exercises investment discretion or renders investment advice within the meaning of 29 CFR 2510.3–21(c) with respect to the decision to accept the Offer or retain the Auction Rate Security;

(i) The Plan does not pay any commissions or transaction costs with respect to the Unrelated Sale;

(j) The Unrelated Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

(k) Wachovia and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Unrelated Sale, such records as are necessary to enable the persons described below in paragraph (l)(1), to determine whether the conditions of this exemption have been met, except that:

(1) No party in interest with respect to a Plan which engages in an Unrelated Sale, other than Wachovia 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 not available for examination, as required, below, by paragraph (l)(1); and

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

(l)(1) Except as provided below in paragraph (l)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (k) 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, or the U.S. Securities and Exchange Commission;

(B) Any fiduciary of any Plan, including any IRA owner, that engages in a Sale, or any duly authorized employee or representative of such fiduciary; or

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

(2) None of the persons described above in paragraphs (l)(1)(B)–(C) shall be authorized to examine trade secrets of Wachovia, or commercial or financial information which is privileged or confidential; and

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

Section III. Sales of Auction Rate Securities From Plans to Wachovia: Related to a Settlement Agreement

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (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), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan of an Auction Rate Security to Wachovia, where such sale (a Settlement Sale) is related to, and made in connection with, a Settlement Agreement, provided that the conditions set forth in Section IV have been met.

Section IV. Conditions Applicable to Transactions Described in Section III

(a) The terms and delivery of the Offer are consistent with the requirements set forth in the Settlement Agreement and acceptance of the Offer does not constitute a waiver of any claim of the tendering Plan;

(b) The Offer or other documents available to the Plan specifically describe, among other things:

(1) The securities available for purchase under the Offer;

(2) The background of the Offer;

(3) The methods and timing by which Plans may accept the Offer;

(4) The purchase dates, or the manner of determining the purchase dates, for Auction Rate Securities tendered pursuant to the Offer, if the Offer had any limitation on such dates;

(5) The timing for acceptance by Wachovia of tendered Auction Rate Securities, if there were any limitations on such timing;

(6) The timing of payment for Auction Rate Securities accepted by Wachovia for payment, if payment was materially delayed beyond the acceptance of the Offer;

(7) The expiration date of the Offer; and

(8) How to obtain additional information concerning the Offer;

[1] The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 of the Act requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, the decision to sell the Auction Rate Security to Wachovia for the par value of the Auction Rate Security, plus unpaid interest and dividends. The Department further emphasizes that it expects Plan fiduciaries, prior to entering into any of the proposed transactions, to fully understand the risks associated with this type of transaction following disclosure by Wachovia of all relevant information.

(c) The terms of the Settlement Sale are consistent with the requirements set forth in the Settlement Agreement; and

(d) All of the conditions in Section II have been met.

Section V. Definitions

For purposes of this exemption:

(a) The term "affiliate" means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term "Auction Rate Security" or "ARS" means a security: (1) that is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and (2) with an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(d) A person is "independent" of Wachovia if the person is: (1) not Wachovia or an affiliate; and (2) not a relative (as defined in section 3(15) of the Act) of the party engaging in the transaction;

(e) The term "Plan" means an individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); an employee benefit plan as defined in section 3(3) of the Act; or an entity holding plan assets within the meaning of 29 CFR 2510.3–101, as modified by section 3(42) of the Act; and

(f) The term "Settlement Agreement" means a legal settlement involving Wachovia and a U.S. state or Federal authority that provides for the purchase of an ARS by Wachovia from a Plan.

Effective Date: This exemption is effective February 1, 2008.

For Further Information Contact: Gary Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

Robert W. Baird and Co. Incorporated and Its Current and Future Affiliates and Subsidiaries (Collectively, Baird); Located in Milwaukee, Wisconsin; [Prohibited Transaction Exemption 2011–07; Exemption Application No. D–11580]

Exemption

Section I.—Transactions

The restrictions of section 406(a) 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 (D) of the Code, shall not apply, effective October 9, 2009, to the cash sale (the Sale) by a Plan (as defined in Section II(d)) of an Auction Rate Security (as defined in Section II(b)) to Baird, provided that the following conditions are met: [2]

(a) The Sale was a one-time transaction made on a delivery versus payment basis in the amount described in paragraph (b);

(b) The Plan received an amount equal to the par value of the Auction Rate Securities (the ARS or the Securities) plus accrued but unpaid income (interest or dividends, as applicable) as of the date of the Sale;

(c) The last auction for the Securities was unsuccessful;

(d) The Sale was made in connection with a written offer (the Offer) by Baird containing all of the material terms of the Sale;

(e) The Plans did not bear any commissions or transaction costs with respect to the Sale;

(f) The decision to accept the Offer or retain the Auction Rate Security was made by a Plan fiduciary or Plan participant or an individual retirement account (an IRA (as defined in Section II(d)) owner who is independent (as defined in Section II(c)) of Baird. Notwithstanding the foregoing, in the case of an IRA which is beneficially owned by an employee, officer, director or partner of Baird, the decision to accept the Offer or retain the Auction Rate Security may be made by such employee, officer, director or partner if all of the other conditions of this Section I have been met;

(g) The Plan does not waive any rights or claims in connection with the Sale;

(h) The Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest with respect to the Plan;

(i) If the exercise of any of Baird's rights, claims or causes of action in connection with its ownership of the Securities results in Baird recovering from the issuer of the Securities, or any third party, an aggregate amount that is more than the sum of:

(1) The purchase price paid to the Plan for the Securities by Baird; and

(2) The income (interest or dividends, as applicable) due on the Securities from and after the date Baird purchased the Securities from the Plan, at the rate specified in the respective offering documents for the Securities or determined pursuant to a successful auction with respect to the Securities, Baird will refund such excess amount promptly to the Plan (after deducting all reasonable expenses incurred in connection with the recovery);

(j) Neither Baird nor any affiliate exercises investment discretion or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the decision to accept the written Offer or retain the Security (unless the Sale involves an IRA whose owner is an employee, officer, director or partner of Baird);

(k) Baird and its affiliates, as applicable, 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 person described below in paragraph (l)(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 engages in a Sale, other than Baird and its affiliates, 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 not available for examination, as required, below, by paragraph (l)(i);

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

(l)(i) Except as provided, below, in paragraph (l)(ii), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in paragraph (k) 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, or the Securities and Exchange Commission;

(B) Any fiduciary of any Plan that engages in the covered transactions, 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 IRA owner, participant or beneficiary of a Plan that engages in the Sale, or duly authorized representative of such IRA owner, Plan participant or beneficiary;

(ii) None of the persons described, above, in paragraph (l)(i)(B)–(D) shall be authorized to examine trade secrets of

[2] For purposes of this exemption, references to section 406 of ERISA refer as well to the corresponding provisions of section 4975 of the Code.

Baird, or commercial or financial information which is privileged or confidential; and

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

Section II—Definitions

(a) The term "affiliate" of another person means: Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "Auction Rate Security" means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) with an interest rate or dividend that is reset at specific intervals through a "Dutch Auction" process.

(c) The term "Independent" means a person who is not Baird or an affiliate (as defined in Section II(a)).

(d) The term "Plan" means an individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); or an employee benefit plan as defined in section 3(3) of the Act.

Effective Date: This exemption is effective October 9, 2009.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 19, 2011 at 76 FR 3165.

Notice to Interested Persons: Baird represents that it was unable to comply with the notice to interested persons requirement within the time frame set forth in its application. However, Baird has represented that it notified all interested persons, in the manner agreed upon between Baird and the Department, by February 9, 2011. Interested persons were notified that they had until March 14, 2011, to submit comments to the Department with respect to the proposed exemption. No comments were received by the Department.

For Further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

Security Benefit Mutual Holding Company (MHC) and Security Benefit Life Insurance Company (SBL, and Together With MHC, the Applicants); Located in Topeka, Kansas; [Prohibited Transaction Exemption 2011–08; Exemption Application No. D–11621]

Exemption

Section I. Covered Transaction

The restrictions of section 406(a) 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 (D) of the Code,[3] shall not apply, effective July 30, 2010, to the receipt of cash or policy credits (Policy Credits), by or on behalf of a policy owner of SBL (Policyholder) that is an Eligible Member, which is an employee benefit plan or retirement arrangement that is subject to section 406 of the Act and/or section 4975 of the Code (a Plan), other than a Plan maintained by MHC and/or its affiliates, in exchange for the extinguishment of such Eligible Member's membership interest in MHC, in accordance with the terms of a plan of demutualization and dissolution (the D&D Plan), adopted by MHC and implemented in accordance with Kansas Insurance Law.

This exemption is subject to the general conditions set forth below in Section II.

Section II. General Conditions

(a) The D&D Plan was implemented in accordance with procedural and substantive safeguards that were imposed under the laws of the State of Kansas and was subject to review, approval, and supervision by the Kansas Commissioner of Insurance (the Commissioner).

(b) The Commissioner reviewed the terms that were provided to Eligible Members as part of the Commissioner's review of the D&D Plan, and the Commissioner approved the D&D Plan following a determination that such D&D Plan was fair and equitable to all Eligible Members.

(c) Each Eligible Member had an opportunity to comment on the D&D Plan at the Commissioner's public comment meeting or evidentiary hearing on the D&D Plan.

(d) Each Eligible Member had an opportunity to vote to approve the D&D Plan after full written disclosure was given to the Eligible Members by MHC.

(e) Pursuant to the D&D Plan, an Eligible Member generally received cash, except that an Eligible Member received or will receive Policy Credits, and not cash, to the extent that—

(1) Consideration was allocable to the Eligible Member based on ownership of a Tax-Qualified Contract; or

(2) SBL made an objective determination that payment of Consideration in the form of cash would be disadvantageous to such Eligible Member in respect of applicable income or other taxation provisions.

(f) Any determination made by SBL under Paragraphs (e)(1) or (e)(2) above was based upon objective criteria that was applied consistently to similarly situated Eligible Members.

(g) Any act or determination undertaken by an Eligible Member that was a Plan with respect to attending and/or submitting comments for the Commissioner's public comment meeting and/or evidentiary hearing, attending MHC's special meeting to consider the D&D Plan, and/or voting on the D&D Plan, was made by one or more Plan fiduciaries that were independent of SBL and its affiliates, and neither SBL nor any of its affiliates provided investment advice within the meaning of 29 CFR 2510.3–21(c) or exercised investment discretion with respect to such act or determination.

(h) All Eligible Members that were Plans participated in the demutualization of MHC (the Demutualization) on the same basis as all other Eligible Members that were not Plans.

(i) No Eligible Member paid any brokerage commissions or fees in connection with the receipt of Policy Credits.

(j) All of SBL's Policyholder obligations remained in force and were not affected by the D&D Plan.

(k) The terms of the Demutualization were at least as favorable to the Plans as the terms of an arm's length transaction between unrelated parties.

(l) Any Plan Eligible Member whose Consideration was placed in a trust, escrow account, or other similar arrangement (the Escrow Arrangement), pursuant to the D&D Plan, will receive a distribution of such Consideration from the Escrow Arrangement, and will not forfeit such Consideration.

(m) SBL maintains or causes to be maintained, for a period of (6) six years, the records necessary to enable the persons described in paragraph (n)(1) of this section to determine whether the applicable conditions of this exemption have been met. Such records are readily available to assure accessibility by the persons identified in paragraph (n)(1) of this section.

[3] For purposes of this exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(n)(1) Notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (m) of this section are unconditionally available at their customary location for examination during normal business hours by—

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

(B) Any fiduciary of an Eligible Member that is a Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any Eligible Member that is a Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any Eligible Member that is a Plan, or any duly authorized representative of such participant or beneficiary.

(2) A prohibited transaction is not deemed to have occurred if, due to circumstances beyond the control of SBL, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than SBL is subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (n)(1) of this section.

(3) None of the persons described in paragraphs (B)–(D) of section (n)(1) are authorized to examine the trade secrets of SBL or commercial or financial information which is privileged or confidential.

(4) Should SBL refuse to disclose information on the basis that such information is exempt from disclosure, SBL 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.

Section III. Definitions

For purposes of this exemption:

(a) The term "MHC" means Security Benefit Mutual Holding Company, and any affiliate of MHC, as defined below in Section III(b).

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such entity (for purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual); and

(2) Any officer of, director of, or partner in such person.

(c) The "Adoption Date" refers to March 2, 2010, the date that MHC's Board of Directors adopted the D&D Plan.

(d) The term "Consideration" means the cash or Policy Credits receivable by an Eligible Member in exchange for the extinguishment of such Eligible Member's membership interest in MHC, in accordance with the terms of the D&D Plan.

(e) The "D&D Plan" means the plan of demutualization and dissolution adopted by MHC and implemented in accordance with Kansas Insurance Law, dated as of March 2, 2010.

(f) The term "Eligible Member" means a person, other than MHC or its subsidiaries, who, as reflected in the records of SBL or other relevant entities, is the owner of one or more Eligible Policies on the Adoption Date.

(g) The term "Eligible Policy" or "Eligible Policies" means a policy that, as reflected in the records of SBL or other relevant entities, is in force on the Adoption Date, unless the policy is excluded pursuant to the D&D Plan.

(h) The term "Policy Credit" means consideration to be paid in the form of an increase in cash value, account value, dividend accumulations or benefit payment, as appropriate, depending upon the policy.

(i) The term "SBL" means Security Benefit Life Insurance Company and any affiliate of SBL, as defined in Section III(b).

(j) The term "Tax-Qualified Contract" means an Eligible Policy in one of the following forms, that is held, other than through a trust, on the date that Consideration is distributed—

(1) An annuity contract that qualifies for the treatment described in section 403(b) of the Code;

(2) An individual retirement annuity within the meaning of section 408(b) of the Code;

(3) An individual annuity contract or an individual life insurance policy issued directly to a Plan participant pursuant to a Plan qualified under section 401(a) or section 403(a) of the Code;

(4) A group annuity contract issued to an employer, designed to fund benefits under a Plan sponsored by the employer that qualifies under section 401(a) or section 403(a) of the Code;

(5) An annuity contract issued in connection with a Plan established by a governmental entity that qualifies for the treatment described in section 457 of the Code; or

(6) Any other form of contract MHC determines must receive Policy Credits in order to retain the contract's tax-favored status.

Section IV. Effective Date

This exemption is effective as of July 30, 2010.

Written Comments

The Department invited all interested persons to submit written comments with respect to the notice of proposed exemption on or before March 4, 2011. During the comment period, the Department received 30 telephone inquiries, 1 e-mail inquiry, and 2 written comments from Policyholders. Furthermore, the Department received a written comment from the Applicants, which supported the exemption and requested certain modifications and/or clarifications regarding the Summary of Facts and Representations (the Summary) in the notice of proposed exemption.

Following is a discussion of the aforementioned comments, including the responses made by the Applicants or the Department to address the issues raised therein. Any capitalized terms herein not otherwise defined have the meanings ascribed to them in the Summary.

Policyholder Comments and Applicants' Responses

The majority of Policyholder inquiries and/or written comments concerned the commenters' difficulties in understanding the notice of proposed exemption or the effect of the proposed exemption on such Policyholders' policies. The Department also received written comments from two Eligible Members which generally concerned the benefit of the Covered Transaction to Policyholders and whether there were adequate protections for Plan Eligible Members.

A. First Commenter

The first commenter questioned the benefit of the proposed exemption to Policyholders as compared to the benefit to the Applicants. In response, the Applicants state that holders of Eligible Policies will benefit more from the Department's grant of the proposed exemption than from denial of it. The Applicants explain that, if the proposed exemption is granted, the Policyholders that are Plan Eligible Members will receive the Consideration allotted to them and now held in the Escrow Arrangement in the form of cash or Policy Credits. If, however, the proposed exemption is denied, (1) the Policyholders that are Plan Eligible Members will be unable to receive the Consideration allotted to them in the

Escrow Arrangement; and (2) the Applicants will be unable to distribute such Consideration to such Plans because of the risk of committing a prohibited transaction. Instead, the Applicants state, the Consideration will be paid to, and will add to the capital of, SBL.[4] Furthermore, the Applicants suggest that, although enhancing SBL's capital may have some benefit to the Policyholders, such capital ultimately belongs to the Applicants' shareholders. Thus, the Applicants state that payment of the Consideration to the Policyholders would be more beneficial to them.

B. Second Commenter

The second commenter suggested that the proposed exemption does not adequately protect the interests of Plan Eligible Members. In this regard, the second commenter inquired about (1) How Plan Eligible Members' financial interests would be protected; (2) what assurances exist that SBL's policies would not be changed as a result of the exemption; (3) what prudent measures would new management undertake to ensure SBL's future; and (4) what other courses of action are available to protect Plan Eligible Members that would also benefit SBL's long-term survival.

In response to the second commenter's inquiry about the protection of Plan Eligible Members' financial interests, the Applicants state that MHC's Board of Directors believed its approval of MHC's (1) sale of SBC to Guggenheim and (2) concurrent Demutualization and dissolution (cumulatively, the Transaction) to be in the best interests of SBL's Policyholders, as it expected the Transaction to provide SBL with a significantly improved financial condition that would allow SBL to mitigate liquidity and regulatory concerns and permit SBL to operate with a stronger capital position, better prospects, higher financial strength ratings and thus greater assurance it would fulfill its obligations to its Policyholders. The Applicants note that, as had been anticipated, S&P improved its financial strength rating for SBL upon announcement of the Transaction, again upon completion of the Interim Recapitalization, and yet again, as the Department noted in Footnote 4 of the Summary, immediately following the closing of the Transaction. In contrast, the Applicants point out that, without the Transaction, MHC's Board of Directors could not, given the condition of SBL, guarantee that the Kansas Insurance Department (KID) would refrain from taking regulatory action that could adversely affect the Policyholders of SBL.

Furthermore, the Applicants emphasize that the Transaction was monitored from its inception by the KID and, as part of the KID's approval process for the D&D Plan, the Commissioner determined that the D&D Plan was fair and equitable to Eligible Members and Policyholders. The Applicants note that the Commissioner's order approving the Transaction found that the evidence established that the D&D Plan would not unjustly enrich any director, officer, agent, or employee of SBL.[5] The Applicants also relate that Policyholders, as Members of MHC, likewise demonstrated their support for the Transaction, noting that approximately 90% of the Eligible Members voting at the May 26, 2010 meeting voted in favor of the D&D Plan.

In response to the second commenter's inquiry regarding guarantees that the Transaction would not change the policies of SBL to the detriment of the Policyholders, the Applicants note that the preamble of the D&D Plan, which was distributed to Eligible Members with the MIB, provides that: "[t]he Transaction will not, in any way, change premiums or reduce policy benefits, values, guarantees or other policy obligations of SBL to its Policyholders." Further, the Applicants note that the Commissioner determined that the evidence established that the Investor had no plans to make any "material change in [SBL's] business or corporate structure or management that would be unfair and unreasonable to SBL's Policyholders and not in the public interest."[6] The Applicants also stress that SBL's actions with respect to Policyholders' policies continue to be subject to oversight and regulation by the KID and, as binding contractual agreements, such policies cannot be unilaterally changed by SBL except as expressly permitted pursuant to the terms thereof.

In response to the second commenter's inquiry regarding the ability to ensure future prudent operational practices of management, the Applicants reiterate that SBL remains subject to oversight and regulation by the KID. Moreover, according to the Applicants, SBL's new owners, whose representatives now comprise a majority of the board of directors of Security Benefit Corporation (SBC), SBL's parent, have a substantial investment in SBL, indirectly through SBC,[7] and thus a significant financial interest in SBL being well operated and managed lest they lose on their investment.

Finally, in response to the second commenter's inquiry regarding other courses of action available to protect Policyholders and benefit the long term survival of SBL, the Applicants suggest that, as the Transaction closed on July 30, 2010, there are currently no alternative courses of action available. However, the Applicants stress that MHC's Board of Directors, the Commissioner and an overwhelming majority of Eligible Members supported the D&D Plan. In addition, the Applicants note that MHC's Board of Directors previously considered possible alternatives and determined that the Transaction was in the best interests of Policyholders. The Applicants state further that it is in the best interests of the Policyholders for the exemption to be granted by the Department so that the Consideration can be distributed to the Plan Eligible Members in accordance with the D&D Plan.

The Applicants' Comment

The Applicants also delivered a written comment to the Department which was meant to clarify some of the information provided in the Summary. The comment generally clarifies the status of Consideration held in the Escrow Arrangement, the corporate structure of SBL and SBC, the timing of certain key events in the Transaction, developments in the allocation of

[4] As stated in Representation 36 of the Summary, the Department views the mechanism in the D&D Plan whereby Consideration in the Escrow Arrangement allotted to Plan Eligible Members is returned to SBL if no exemption is received by June 30, 2011 (the failsafe mechanism), as contrary to the protections afforded to plan assets and the parties who are entitled to such assets under the Act. Moreover, the Department believes that the failsafe mechanism is violative of Section II(h) of the exemption, which provides that Plan Eligible Members that participated in the Demutualization be treated in the same manner as Eligible Members that were not Plans, and Section II(l) of the exemption, which prohibits the forfeiture of Consideration.

[5] See In re Security Benefit Mutual Holding Company, Docket No. 4103–DM, paragraphs 91–92.

[6] See In re Security Benefit Mutual Holding Company, Docket No. 4103–DM, paragraph 77.

[7] The Applicants note that approximately $350 million of the $400 million paid by the Investors to acquire SBC was contributed by SBC as equity capital to SBL, and the Investors are limited by law in their ability to remove such capital from SBL. In this regard, the Applicants explain that section 40–3306(f) of the Kansas Insurance Code prevents a Kansas life insurer from paying a dividend to its shareholders without the prior approval of the Commissioner if the dividend is more than (A) 10% of its surplus as regards Policyholders as of December 31 immediately preceding; or (B) the net gain from operations of such insurer, not including realized capital gains for the 12-month period ending December 31 immediately preceding.

Consideration pursuant to the D&D Plan, and the description of the failsafe mechanism employed in the D&D Plan.

A. Distribution of Consideration Held in the Escrow Arrangement

Section II(e) of the proposed exemption provides that pursuant to the D&D Plan, an Eligible Member generally received cash, except that an Eligible Member received Policy Credits, and not cash, to the extent that (1) Consideration was allocable to the Eligible Member based on ownership of a Tax-Qualified Contract; or (2) SBL made an objective determination that payment of Consideration in the form of cash would be disadvantageous to such Eligible Member in respect of applicable income or other taxation provisions. The Applicants explain that while Section II(e) of the proposed exemption uses the past tense to describe the Eligible Members' receipt of Consideration pursuant to the D&D Plan, a portion of available Consideration, payable in Policy Credits, continues to be held in the Escrow Arrangement, as described in Representations 29 though 36 of the Summary, and will not be distributed until the exemption is granted.

In response to the Applicants' comment, the Department has revised Section II(e) of the operative language by including the phrase "or will receive" after the word "received" and before the term "policy credits." Section II(e) of the exemption now reads, in relevant part, as follows:

> (e) Pursuant to the D&D Plan, an Eligible Member generally received cash, except that an Eligible Member received or will receive Policy Credits, and not cash, to the extent that * * *

In addition, the Department notes corresponding revisions to Representations 29–36 of the Summary.

B. Corporate Structure of MHC and SBC

In Representation 1 and Footnote 3 of the Summary, the Applicants suggest certain technical corrections to clarify their corporate structure. In this regard, the Applicants suggest that the first sentence in Representation 1 of the Summary should be revised to read "MHC, which is no longer in existence, was the Topeka, Kansas-based, former parent of Security Benefit Corporation (SBC), which in turn was the parent corporation of Security Benefit Life Insurance Company (SBL)." Furthermore, the Applicants state that "Security Distributors, Inc." should be removed from the list of entities in Footnote 3 because it is a subsidiary of SBL rather than SBC, and "Security Benefit Academy, Inc." should be inserted in its place. The Department takes note of the foregoing clarifications and revisions to Representation 1 and Footnote 3 of the Summary.

C. Timing of Key Events in the Transaction

In Representation 17 of the Summary, the Applicants suggest that the date on which the MIB was mailed to Eligible Members be changed to more accurately reflect the timing of the mailing of the MIB. Thus, the Applicants state that "April 5, 2010" be inserted in place of "March 31, 2010," so that the first sentence of Representation 17 now reads, "On or before April 5, 2010, at least 20 days in advance of the Public Comment Meeting to be held by the Commissioner, MHC provided each Eligible Member with a copy of the Security Benefit Member Information Booklet (MIB), describing in detail the transactions described herein."

Representation 30 of the Summary explains that the Escrow Arrangement was necessary to protect Plan Eligible Members from adverse consequences in the event that the exemption or IRS Rulings were not received by the time Consideration was payable to such Policyholders. The Applicants note that while delivery of Consideration to certain members was conditioned upon the grant of the exemption, the Transaction itself was not. Thus, the Applicants suggest that in the penultimate sentence of Representation 30 of the Summary, the phrase "delivery of Consideration to Eligible Members" be replaced with the word "Transaction," to reflect that the Transaction was not contingent upon the receipt of the exemption or the IRS Rulings and proceeded to closing on July 30, 2010. The Department takes note of the foregoing clarifications and revisions to Representations 17 and 30 of the Summary.

D. Allocation of Consideration Pursuant to the D&D Plan

As described in the Summary, the D&D Plan provides that Consideration was generally paid to Eligible Members in cash; however, Consideration was paid by the crediting of Policy Credits to each Eligible Member whose Eligible Policy was held in a Tax-Qualified Contract. The Applicants suggest a new footnote to be added to Representation 32, which clarifies that, as a result of the allocation process, it was determined that all of the Eligible Members holding ERISA Contracts will receive Policy Credits, because the ERISA Contracts are all also Tax-Qualified Contracts. Thus, the suggested footnote would read, "SBL determined during the allocation process that (1) all of the ERISA Contracts held by Eligible Members were Tax-Qualified Contracts and (2) the Consideration allocable to such ERISA Contracts would consist solely of Policy Credits." The Department concurs and takes note of the Applicants' clarification and update to the Summary.

E. Description of the Failsafe Mechanism in the D&D Plan

Representation 33 of the Summary characterizes the December 31, 2010 deadline for receipt of the IRS Rulings or the exemption as the "failsafe" mechanism. The Applicants suggest a technical correction to Representation 33 to clarify that the failsafe mechanism was not just the December 31, 2010 deadline for receipt of the IRS Rulings and the exemption, subject to extension by the Commissioner, but also the associated release of the amounts remaining in the Escrow Arrangement to the general account of SBL for the benefit of all Policyholders. Thus, the first sentence of Representation 33, as modified, would read as follows:

> According to the Applicants, the December 31, 2010 deadline for receipt of the IRS Rulings or the exemption, following which the amounts remaining in the Escrow Arrangement would be released to the general account of SBL in the absence of, as applicable, the IRS Rulings only, the exemption only or both of the IRS Rulings and the exemption, constitutes a "failsafe" mechanism, in that it is designed to protect Plans from potential adverse tax consequences or disqualification in the event that Consideration is paid to Eligible Members holding Tax-Qualified Contracts or ERISA Contracts without the requisite regulatory approvals.

The Applicants also suggest a technical correction to the penultimate sentence in Representation 33 which would clarify that the Applicants believed that there was a "possibility," not a "probability," that only the exemption or the IRS Rulings would be approved (but not the other). Thus, the sentence, as modified, would read, "Furthermore, the Applicants claim that there was a possibility that only the exemption or the IRS Rulings would be approved (but not the other), thereby creating a "catch-22" where Consideration could neither be paid to Eligible Members nor kept in the Escrow Arrangement indefinitely." The Department takes note of the Applicants' clarifications and concurs with the foregoing revisions of Representation 33.

Finally, the Department notes that, due to a publication error, the reference to the date of issuance of the IRS Rulings in Footnote 17 of the Summary

erroneously refers to "Footnote 13," and that such reference should be re-designated as "Footnote 14."

After giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption, as described above. The complete application file is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, US Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the proposed exemption published in the **Federal Register** on January 19, 2011 at 76 FR 3167.

FOR FURTHER INFORMATION CONTACT: Warren Blinder of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

The Parvin Nahvi, M.D., Inc. 401(k) Profit Sharing Trust (the Plan); Located in Templeton, CA; [Prohibited Transaction Exemption 2011–09; Exemption Application No. D–11635]

Exemption

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, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, in connection with the cash sale by the Plan (the Sale) of a parcel of improved real property (the Property), to Dr. Parvin Nahvi and Dr. Javad Sani (the Applicants), the 100% owners of the Plan sponsor, Parvin Nahvi, M.D., Inc. (the Employer), and parties in interest with respect to the Plan; provided that:

(a) All 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's obligations with respect to the remaining principal balance of a loan (the Loan) on the Property that is secured by a first deed of trust (the Deed of Trust) with Santa Lucia Bank, an unrelated lender, are:

(1) satisfied in full out of the proceeds of the Sale, or

(2) assumed in full by the Applicants, who indemnify and hold the Plan harmless for any further payment on, or any claims arising in connection with, the Loan;

(c) The Plan receives an amount in cash, equal to the greater of:

(1) the original purchase price paid by the Plan for the Property, plus additional contributions or expenses paid by the Plan relating to the holding of the Property, less any income generated by the Property and paid to the Plan, less the Loan principal assumed by the Applicants pursuant to Section (b)(2), or

(2) the Property's appraised value of $1,825,000, which represents the fair market value of the Property, less the Loan principal assumed by the Applicants pursuant to Section (b)(2);

(d) The fair market value of the Property has been determined by a qualified independent appraiser (the Appraiser) and is updated by such appraiser on the date the Sale is consummated;

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

(f) The Plan incurs no real estate fees, or commissions, in connection with the Sale; and

(g) The Plan fiduciaries (1) Determine whether it is in the interest of the Plan to proceed with the Sale, (2) review and approve the methodology used in the appraisal that is being relied upon, and (3) ensure that such methodology is applied by the Appraiser in determining the fair market value of the Property on the date of the Sale.

After giving full consideration to the entire record, the Department has decided to grant the exemption, as described above. The complete application file is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, US Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the proposed exemption published in the **Federal Register** on February 17, 2011, at 76 FR 9370.

FOR FURTHER INFORMATION CONTACT: Warren Blinder of the Department, telephone (202) 693–8553. (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 describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC this 5th day of May, 2011.

Ivan Strasfeld,

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

[FR Doc. 2011–11440 Filed 5–10–11; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request (ICR) for the Impact Evaluation of the YouthBuild Program; Comment Request

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department or DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that required data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and