

permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 FR at 27,617.

According to Mississippi statute, “except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II . . . may be dispensed without the written valid prescription of a practitioner,” and “except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV . . . shall not be dispensed without a written or oral valid prescription of a practitioner.” Miss. Code Ann. § 41–29–137(a)(1) and (b) (West 2020). Further, “a practitioner” is defined as “a physician, dentist, veterinarian, scientific investigator, optometrist . . . or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.” Miss. Code Ann. § 41–29–105(y)(1) (West 2020). Mississippi regulations define a “physician” to be “any person licensed to practice medicine, osteopathic medicine or podiatric medicine in the state of Mississippi.” 30–2640 Miss. Code R. § 1.2(C). The regulations further state that “‘prescriptive authority’ means the legal authority of a professional licensed to practice in the state of Mississippi who prescribes controlled substances and is registered with the U.S. Drug Enforcement Administration in compliance with

Title 21 CFR, Part 1301 Food and Drugs.” 30–2640 Miss. Code R. § 1.2(F).

Here, the undisputed evidence in the record is that Respondent currently lacks authority to practice medicine in Mississippi. As already discussed, a physician must be licensed to practice medicine in order to have prescriptive authority for a controlled substance in Mississippi. Thus, because Respondent lacks authority to practice medicine in Mississippi and, therefore, is not authorized to prescribe controlled substances in Mississippi, Respondent is not eligible to receive a DEA registration. Accordingly, I will order that Respondent’s application for a DEA registration be denied.

#### Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby order that the pending application for a Certificate of Registration, Control Number H17068500C, submitted by Lawrence E. Stewart, M.D., is denied, as well as any other pending application of Lawrence E. Stewart for additional registration in Mississippi. This Order is effective April 21, 2021.

**D. Christopher Evans,**

*Acting Administrator.*

[FR Doc. 2021–05845 Filed 3–19–21; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On March 11, 2021, the Department of Justice lodged a proposed Modified Consent Decree with the United States District Court for the Western District of Texas in the lawsuit entitled *United States of America and State of Texas v. San Antonio Water System* Civil Action No. 5:13–cv–00666.

The original consent decree requires the San Antonio Water System (SAWS) to implement remedial measures, including construction project, to alleviate capacity constraints on the SAWS sewer system. The proposed Modified Consent Decree extends the deadline for SAWS to complete two sewer main replacement construction projects by less than 10 months. There are no other changes from the original consent decree.

The publication of this notice opens a period for public comment on the proposed Modified Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources

Division, and should refer to *United States of America and State of Texas v. San Antonio Water System*, D.J. Ref. No. 90–5–1–1–09215. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email .....	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: <http://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$2.75 (25 cents per page reproduction cost) payable to the United States Treasury.

**Kenneth Long,**

*Acting Assistant Section Chief,  
Environmental Enforcement Section,  
Environment and Natural Resources Division.*

[FR Doc. 2021–05824 Filed 3–19–21; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Exemption Application Nos. L–12000 & L–12001]

### Proposed Exemption for Certain Prohibited Transaction Restrictions Involving the Electrical Insurance Trustees Insurance Fund and the Electrical Joint Apprenticeship and Training Trust (the Plans or the Applicants) Located in Alsip, IL

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

**ACTION:** Notice of proposed exemption.

**SUMMARY:** This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption 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).

**DATES:** If granted, the exemption will be effective as of the date the grant notice is published in the **Federal Register**. Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by May 6, 2021.

**ADDRESSES:** All written comments and requests for a hearing should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application Nos. L-12000 and L-12001 via email to [e-OED@dol.gov](mailto:e-OED@dol.gov) or online through the Federal eRulemaking Portal: <http://www.regulations.gov>. Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue NW, Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

**FURTHER INFORMATION CONTACT:** Mr. Joseph Brennan of the Department, telephone (202) 693-8456. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

**Comments**

In light of the current circumstances surrounding the COVID-19 pandemic caused by the novel coronavirus which may result in disruption to the receipt of comments by U.S. Mail or hand delivery/courier, persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully

explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing if: (1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form. **WARNING:** All comments received will be included in the public record without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but **DO NOT** submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the <http://www.regulations.gov> website is an "anonymous access" system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

**Background**

The Department is considering granting an exemption under the authority of 408(a) of the Act (or ERISA), in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 46637, 66644, October 27, 2011). If the exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(D) and 406(b)(1) and 406(b)(2) of the Act shall not apply to: (a) The sale (the Sale) by the Electrical Joint Apprenticeship and Training Trust (the EJAT Trust) of 5.11 acres of unimproved real property to the Electrical Insurance Trustees Insurance Fund (the EIT Fund), a party in interest with respect to the EJAT Trust; and (b)

the EIT Fund's granting of a right of first offer (the Right of First Offer) to the EJAT Trust, for the purchase back of the Property by the EJAT Trust from the EIT Fund, provided certain conditions are met.<sup>1</sup>

**Summary of Facts and Representations<sup>2</sup>**

*Background*

1. *The EIT Fund.* The EIT Fund is a multiemployer employee benefit plan created pursuant to a collective bargaining agreement between the Electrical Contractors' Association of the City of Chicago (the ECA) and Local Union 134, I.B.E.W. (Local 134). The EIT Fund provides medical, dental, vision, and other welfare benefits to participants who are employees of participating employers. The EIT Fund is primarily funded by employer contributions, retiree contributions, and from participants electing COBRA coverage. The EIT Fund is administered by a joint board of trustees (the Trustees) that is comprised of five representatives of the ECA and five representatives of Local 134 (the EIT Fund Board). The EIT Fund Board has ultimate and exclusive investment discretion over the assets of the EIT Fund. As of June 30, 2019, the EIT Fund covered 10,666 participants and held net assets totaling \$523,878,790.

2. *The EJAT Trust.* The EJAT Trust is a multiemployer benefit plan created pursuant to a collective bargaining agreement between the ECA and Local 134. The EJAT Trust provides training in electrical and other skills in the electrical construction industry through an apprenticeship program that consists of classroom instruction and on-the-job training. The EJAT Trust currently operates a training facility located at 6201 West 115th Street, Alsip, Illinois (the EJAT Trust Training Facility), where full-time classroom instruction is provided to approximately 325 EJAT Trust apprentices at any given time. The EJAT Trust is financed by participating employer contributions and administered by a Board of Trustees comprised of ECA and Local 134 representatives. The EJAT Trust is a tax-exempt educational labor organization under section 501(c)(5) of the Code. As of May 31, 2019, the EJAT Trust covered

<sup>1</sup> As noted below, although this proposed exemption, if granted, would permit the granting of the Right of First Offer, any sale back of the Property by the EIT Fund to the EJAT Trust would constitute a prohibited transaction that is outside the scope of this exemption.

<sup>2</sup> The Summary of Facts and Representations is based on the Applicants' representations, and does not reflect factual findings or opinions of the Department, unless indicated otherwise.

6,815 participants and held \$41,634,000 in total assets.

The EJAT Trust employees and apprentices are eligible to participate in the EIT Fund and the Related Plans after meeting certain eligibility requirements. As a result, an estimated 95% of EJAT Trust apprentices, at any given time, are also participants in the EIT Fund and the Related Plans. Additionally, although the EIT Fund Board and EJAT Trust Board are distinct entities, they share one common member. The Applicants represent that this common board member will recuse himself from all aspects of the decision-making process relating to the Sale transaction described herein.

3. *The EIT Fund Current Lease.* The EIT Fund currently leases office space located at 221 North LaSalle Street in Chicago, Illinois from an unrelated third party (the EIT Lease). The EIT Fund shares its current office space, equipment and staff with eight other related employee benefit plans administered by the Electrical Insurance Trustees (the Related Plans).<sup>3</sup> Expenses, which are shared by the EIT Fund and the Related Plans, are initially paid by one of the Related Plans and then allocated between the EIT Fund and the Related Plans based upon an estimate of time spent, space utilized, and costs incurred. This allocation of expenses between the EIT Fund and the Related Plans is based on a formula that is reviewed biannually and adjusted, as necessary, by the auditor of the EIT Fund and the Related Plans. The EIT Fund's share of these allocated expenses was \$2,994,430 and \$2,884,618 for the years ended June 30, 2019 and 2018, respectively. The EIT Fund Lease, which was originally set to expire on September 30, 2020, has been extended for eight months to May 31, 2021.

4. *EIT Fund Relocation Study.* The EIT Fund has determined that monthly lease payments under the EIT Lease are high, and that a future extension of the EIT Lease beyond May 31, 2021 would come with a higher rate that would be cost prohibitive to the EIT Fund and the Related Plans. In 2016, the EIT Fund's Board began to consider alternatives to

the EIT Lease, including a possible relocation of the EIT Fund and the Related Plans. The EIT Fund Board also began to consider a possible expansion of future EIT Fund office space to include an on-site medical clinic as an additional benefit to participants and beneficiaries, and as a means of saving on healthcare costs. In 2016, the EIT Fund's Board engaged Savills Studley (Savills), a commercial real estate advisory firm and unrelated party with respect to the Plans, to explore the feasibility of these options.

In February 2016, Savills issued an office space scenario analysis of office rental space in the downtown Chicago business district, which included the projected costs and expansion opportunities conducive to an on-site medical clinic. Based on Savills' analysis, the EIT Board concluded that the future cost of renting office space in downtown Chicago would be exceedingly expensive, offer limited opportunity for expansion, and be inconvenient and expensive to participants and beneficiaries. In April 2018, Savills conducted a follow-up study assessing possible buildings for sale in the area. Savills concluded that available buildings for sale in the area did not meet the EIT Fund's needs and that purchasing an existing building would be expensive because of the extensive work that would be required to customize any existing space to the EIT Fund's specific and unique needs for offices, as well as an onsite medical clinic.

#### *The Property and the Proposed Transaction*

5. *The Property.* The subject Property consists of an unimproved 5.105 acre parcel of land, that is a portion of a 23.66 acre parcel, located at as 6201 W 115th Street, Alsip, Illinois 60803 (the Whole Parcel). The EJAT Trust acquired the Whole Parcel in 1992, for \$1,704,385.18, from an unrelated third party for the purpose of utilizing the building on the premises as the EJAT Training Facility. The Whole Parcel is subject to financing through Standard Bank and Trust Company, a third party financial institution that is unrelated to the EJAT Trust and the EIT Fund. At present, the Whole Parcel remains subject to a mortgage but, as a condition of the proposed Sale, the Property will be transferred to the EIT Fund free and clear from all liens and encumbrances.

6. *The Purchase Agreement.* If this proposed exemption is granted, the EIT Fund will pay a cash price of \$710,000 to acquire the Property from the EJAT Trust. The acquisition price was negotiated and agreed to by the

qualified independent fiduciary for the EIT Fund (the EIT Fund Independent Fiduciary) and the qualified independent fiduciary for the EJAT Trust (the EJAT Trust Independent Fiduciary). As described in further detail below, this price was based on two, separate independent appraisals performed on the Property, with adjustments thereafter made for certain costs that the EIT Fund will incur in connection with the Sale, including the cost to construct an access road and necessary utilities, including water, electricity, and waste disposal.

In connection with the proposed transaction, the Plans will enter into a Real Estate Purchase Agreement (the Purchase Agreement) that will govern the terms of the Sale. The Purchase Agreement provides that the EIT Fund is not obligated to close on the Sale unless, by the Closing Date, the EIT Fund has obtained all development approvals required to construct the EIT Fund Facility and the access road, including approval by the Village of Alsip of the proposed design of the EIT Fund Facility, and approval for the construction of an easement access road necessary to make the Property accessible to W 115th Street.

The Purchase Agreement also provides that the EIT Fund Independent Fiduciary may exercise the EIT Fund's absolute unconditional right to terminate the Sale through the end of an "inspection period," which ends 60 days after the Department's publication of a notice granting this exemption. Thereafter, until the closing of the Sale, the Purchase Agreement provides the EIT Fund with an absolute right to terminate the Sale if the EIT Fund is unable to obtain the development approvals necessary to construct the EIT Fund Facility and access road.

7. *Construction of the Facility for the EIT Fund.* After acquiring the Property, the EIT Fund intends to construct an approximately 17,000 square foot, one-story facility consisting of office space and an onsite medical clinic that will be used by the EIT Fund and the Related Plans (the EIT Fund Facility).<sup>4</sup> The EIT Fund also intends to build an access road to connect the Property to W 115th Street. The EIT Fund estimates that the total cost to construct the EIT Fund Facility and the access road will be \$10,248,350.

<sup>4</sup> The Applicant's represent that the use of the Property by the EIT Fund and the Related Plans will adhere to the requirements of PTEs 76-1 and 77-10. Further, the exemptive relief provided herein is conditioned upon the EIT Fund and the Related Plans adhering to the terms of PTEs 76-1 and 77-10.

<sup>3</sup> The Related Plans include: (a) The Electrical Contractors' Association of the City of Chicago and Local Union 134 I.B.E.W. Joint Pension Trust of Chicago Plan No. 2; (b) the Electrical Contractors' Association of the City of Chicago and Local Union 134 I.B.E.W. Joint Pension Trust of Chicago Plan No. 5; (c) the Electrical Insurance Trustees Insurance Fund for Communication Employers; (d) the Electrical Insurance Trustees Insurance Fund for Other Participating Employers; (e) the Electrical Insurance Trustees Supplemental Unemployment Benefit Plan; (f) the Electrical Insurance Trustees Supplemental Unemployment Benefit Plan for Communication Participants; and (g) the Electrical Insurance Trustees Employees' Retirement Plan.

8. *Easement and Construction of Public Road.* Under the Purchase Agreement, the Boards of the EIT Fund and EJAT Trust are contractually bound to an easement agreement (the Easement Agreement), which provides terms and conditions governing the use, maintenance, and cost-sharing with respect to an easement for vehicular access to and from the Property. Under the Easement Agreement, the EIT Fund will bear the cost of constructing and maintaining the access road easement. The parties have adjusted the purchase price of the Property to account for the anticipated costs that the EIT Fund will incur in constructing the access road, and the necessary utilities, including water, electricity, and waste disposal.

9. *The Right of First Offer.* The Purchase Agreement provides the EJAT Trust with a right of first offer (the Right of First Offer). Pursuant to the Right of First Offer, in the event that the EIT Fund desires to sell the Property, the EIT Fund must first provide notice to the EJAT Trust of its intent to do so (the Notice to Sell). Following its receipt of the Notice to Sell, the EJAT Trust will have 14 days to inform the EIT Fund that it will exercise its Right of First Offer (the Notice to Exercise). The EJAT Trust's failure to provide the Notice to Exercise within 14 days will be considered a rejection of the EJAT Trust's Right of First Offer. Then, the EIT Fund will be free to sell the Property to an unrelated, third party buyer. If the EJAT Trust does provide its Notice to Exercise in a timely manner, the EIT Fund and the EJAT Trust will have 21 days to use commercially reasonable and good faith efforts to enter into a Purchase and Sale Agreement. If the EIT Fund and the EJAT Trust cannot mutually agree upon a purchase price within this 21 day negotiation period, then the Right of First Offer will expire.

The Department notes that the EJAT Trust's re-purchase of the Property would constitute a prohibited transaction that is outside the scope of this exemption. If the EJAT Trust seeks to re-purchase the Property, the parties may submit an exemption application, and the Department will assess the merits of the proposed transaction.

#### *The Independent Fiduciaries*

10. *Independent Fiduciary: EJAT Trust.* The EJAT Trust retained Shumaker, Loop & Kendrick LLP of Toledo, OH (Shumaker or the EJAT Trust Independent Fiduciary) to serve as an Independent Fiduciary to the EJAT Trust with respect to the Sale. Shumaker represents that the duties and obligations as the EJAT Trust

Independent Fiduciary are being carried out by Scott D. Newsom and Beth M. Eckel. Shumaker represents that Mr. Newsom has over 20 years of experience in employee benefits law and ERISA, primarily representing multiemployer benefit plans in all aspects of their maintenance and the fulfillment of fiduciary obligations. Shumaker further represents that Ms. Eckel has 10 years of experience as a real estate attorney focused on commercial real estate and financing matters.

Shumaker states that it understands, acknowledges, and accepts its duties and responsibilities under ERISA in acting as the EJAT Trust Independent Fiduciary, and that it does not have any past or ongoing relationship with the EJAT Trust. Shumaker also states that the total revenue received from the EJAT Trust in connection with its engagement as Independent Fiduciary with respect to the Sale is less than 0.02% of Shumaker's gross revenue for the 2019 income tax year.

As Independent Fiduciary to the EJAT Trust, Shumaker must prudently: (a) Represent the EJAT Trust's interests for all purposes with respect to the Sale; (b) determine that the Sale is in the interests of, and protective of, the EJAT Trust and its participants and beneficiaries; (c) review and approve the terms and conditions of the Sale; (d) engage a qualified independent appraiser (the EJAT Trust Independent Appraiser) for the purpose of valuing the Property in connection with the Sale, and ensure the independence of the appraiser; (e) review the independent appraisal report completed by the EJAT Trust Independent Appraiser (the EJAT Trust Independent Appraisal Report) to confirm that the underlying methodology is reasonable and accurate and that the valuation of the Property has been reasonably derived; (f) ensure that the EJAT Independent Appraiser renders an updated fair market valuation of the Property as of the date of the Sale; (g) determine whether it is prudent for the EJAT Trust to proceed with the Sale; and (h) ensure that it has not and will not enter into any agreement or instrument that violates section 410 of ERISA or section 2509.75-4 of the Department's regulations.<sup>5</sup> Additionally, not later than 90 days after the Sale is completed, Shumaker must submit a

<sup>5</sup> Section 410 of ERISA provides, in part, that "except as provided in sections 405(b)(1) and 405(d) of ERISA, any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning section 410(a) of ERISA] shall be void as against public policy."

written statement to the Department documenting how the Sale has met all of the requirements of this exemption.

11. *Independent Fiduciary: EIT Fund.* The EIT Fund has retained the Wagner Law Group (Wagner or the EIT Fund Independent Fiduciary) to serve as an Independent Fiduciary to the EIT Fund with respect to the Sale. Wagner has served as the appointed independent fiduciary for various entities. Stephen Wilkes, Susan Rees, and Roberta Watson, all of whom are employed by Wagner, have agreed to undertake the duties of the EIT Fund Independent Fiduciary with respect to the Sale.

Wagner states that it understands, acknowledges, and accepts its duties and responsibilities under ERISA in acting as the EIT Fund Independent Fiduciary, and that it does not have any past or ongoing relationship with the EIT Fund. Wagner also states that the percentage of its current revenue that is derived from any party in interest involved in the Sale is 0.55%.

As the EIT Fund Independent Fiduciary, Wagner must prudently: (a) Represent the EIT Fund's interests for all purposes with respect to the Sale; (b) determine that the Sale is in the interests of, and protective of, the EIT Fund and its participants and beneficiaries; (c) review and approve the terms and conditions of the Sale; (d) engage a qualified independent appraiser (the EIT Fund Independent Appraiser) for the purpose of valuing the Property in connection with the Sale, and ensure the independence of the appraiser; (e) review the independent appraisal report completed by the EIT Fund Independent Appraiser (the EIT Fund Independent Appraisal Report) to confirm that the underlying methodology is reasonable and accurate and that the valuation of the Property has been reasonably derived; (f) ensure that the EIT Fund Independent Appraiser renders an updated fair market valuation of the Property as of the date of the Sale; (g) determine whether it is prudent for the EIT Fund to proceed with the Sale; and (h) ensure that it has not and will not enter into any agreement or instrument that violates section 410 of ERISA or section 2509.75-4 of the Department's regulations. Additionally, not later than 90 days after the Sale is completed, Wagner must submit a written statement to the Department documenting that the Sale has met all of the requirements of this exemption.

#### *The Independent Appraisers*

12. *Independent Appraiser: EJAT Trust.* In its role as the EJAT Trust Independent Fiduciary, Shumaker

retained Realty Value Consultants, Inc. of Berwyn, Illinois (Realty or the EJAT Trust Independent Appraiser) to assess the fair market value of the Property. With respect to this engagement, Elizabeth A. Ritzenthaler and John H. Urubek undertook the specific duties required of Realty as the EJAT Trust Independent Appraiser. Ms. Ritzenthaler is a Certified General Real Estate Appraiser in the State of Illinois with over 25 years of experience in commercial and industrial real estate appraisal and consulting. Mr. Urubek is a Certified General Real Estate Appraiser in the State of Illinois with over 40 years of experience in real estate appraisal and consulting.

Realty states that its fee for appraisal services provided in connection with the Sale represents less than 0.5% of its annual revenues for 2014 and 2015. Realty represents that it has no present or prospective interest in the Property, that it has no personal interest with respect to the parties involved in the Sale, and that its engagement as EJAT Independent Appraiser is not contingent upon developing or reporting predetermined results. Realty further represents that the compensation it receives as the EJAT Trust Independent Appraiser is not contingent upon reporting a predetermined value, a direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of the appraisal.

Using the Sales Comparison Approach to valuation, Realty valued the Property at \$725,000, as of February 14, 2020. In preparing the EJAT Trust Independent Appraisal Report, Realty represents that it physically inspected the Property and researched appropriate market data, and that its appraisal was conducted in full conformity with professional appraisal standards and USPAP.

**13. Independent Appraiser: EIT Fund.** In its role as the EIT Fund Independent Fiduciary, Wagner engaged Colliers International Valuation & Advisory Services, LLC (Colliers or the EIT Fund Independent Appraiser) to assess the fair market value of the Property for the purposes of the Sale. With respect to this engagement, Cathrine Chimhandamba and Nancy S. Meyers of Colliers undertook the specific duties required as the EIT Fund Independent Appraiser. Ms. Chimhandamba is a Certified General Real Estate Appraiser in the State of Illinois and a Valuation Specialist with experience in the valuation of commercial properties. Ms. Myers is a Certified General Real Estate

Appraiser in the State of Illinois and serves as the Managing Director for Colliers International Valuation & Advisory Services in Chicago, Illinois.

Colliers represents that it has no present or prospective interest in the Property, and no personal interest with respect to the parties involved. Colliers further represents that it is not biased with respect to the Property or to the parties involved with this assignment, and that its engagement and compensation was not contingent upon developing or reporting predetermined results. Colliers represents that its fee for appraisal services provided in connection with the Sale represents less than 0.5% of its annual revenues for 2014 and 2015.

Colliers states that it conducted an on-site physical inspection of the Property and analyzed regional and local area economic profiles including employment, population, household income, and real estate trends. Colliers represents that it assessed the general quality and condition, and emerging development trends for the real estate market. Colliers further represents that it conducted a Highest and Best Use analysis and considered legal, locational, physical and financial feasibility characteristics of the Property. Colliers states that it confirmed and analyzed financial features of the Property, including potential entitlement issues, and tax and assessment records. Colliers represents that its selection of valuation methods was based on the identifications required in USPAP relating to the intended use, intended users, definition and date of value, relevant property characteristics and assignment conditions. On July 15, 2020, Colliers completed an addendum to its appraisal report (the Addendum) in which it waived its rights under a liability cap that was previously included in its engagement agreement with the EIT Fund. In the Addendum, Collier affirmed that the value of the Property is at least \$710,000, and that its appraisal was prepared in full conformity with professional appraisal standards and USPAP.

**14. Determining the Sale Price for the Property.** During negotiations, the Independent Fiduciaries represent that they considered certain additional factors that affected the appropriate Sale price for the Property. In this regard, the Independent Fiduciaries considered the fact that the EIT Fund would be bearing the expense of developing and maintaining the vehicular and utility access to the Property, and that the EIT Fund would incur extra costs associated with obtaining building plans necessary

to avoid disruption of the protected wetlands area on the Property. The Independent Fiduciaries also represent that they considered the fact that the EIT Fund's development of the Property represents enhanced value for the EJAT Trust Property, and that the EJAT Trust participants will enjoy the ease and accessibility of an integrated campus arrangement in which they will have access to the EIT Fund offices, and a possible on-site medical clinic.

#### *The Independent Fiduciary Reports*

**15. Independent Fiduciary Report: EJAT Trust.** In the Independent Fiduciary Report for the EJAT Trust, Shumaker concludes that the Sale at a price of \$710,000 would be in the best interests of, and protective of, the EJAT Trust and its participants and beneficiaries. Shumaker also concludes that the terms and conditions of the Sale are at least as favorable to the EJAT Trust as those it could have obtained in an arm's length transaction with an unrelated and independent party.

Shumaker states that the proximity of the Property to the EJAT Trust Training Facility will allow for the creation of an electrical industry campus which will benefit the EJAT Trust's participants and beneficiaries. In this regard, EJAT Trust participants will benefit from the ease and accessibility of a campus arrangement in which they will have access to the EIT Fund offices, and a possible on-site medical clinic, while pursuing their training and education. Shumaker notes that presently the EIT Fund offices are located in downtown Chicago, which imposes inconvenience and unnecessary costs on the EJAT Trust participants and beneficiaries.

Shumaker states that the Fund will receive \$710,000 for the Property, which in Shumaker's judgement represents that the transaction is as favorable to the EJAT Trust as the transaction that would have occurred in an arm's length transaction between independent and unrelated parties, each of whom had full knowledge of the relevant facts and were under no compulsion to buy or sell. Shumaker further states that the Sale presents an opportunity for the EJAT Trust to diversify its assets through the sale of an unused parcel of real estate for cash. Shumaker notes that the Property is a nonworking asset, and that the EJAT Trust does not consider it to be a long-term investment or strategic reserve necessary for future expansion. Shumaker states that the Sale provides the EJAT Trust with the ability to use the cash proceeds from the Sale to enhance the value of the EJAT Trust Training Facility, for the benefit of the

participants and beneficiaries of the EJAT Trust.

Shumaker notes that because the Property is zoned for general manufacturing and processing activities, the marketing of the Property to unrelated buyers for an unknown purpose may be detrimental to the value of the Whole Parcel, and may interfere with the EJAT Trust's use and enjoyment of the Whole Parcel in the future.

Shumaker states that, to further ensure the protection of the EJAT Trust and its participants and beneficiaries, it will continue to monitor the Sale, enforce the final terms of the Sale, and take whatever actions are necessary to protect the interests of the EJAT Trust's participants and beneficiaries through the closing of the Sale.

Finally, as a condition of the exemption, Shumaker may not enter into, and has not entered into, any agreement, arrangement or understanding in connection with the Sale that indemnifies Shumaker, in whole or in part, or waives any liability for negligence by Shumaker or for failing to adhere to state or federal law. In addition, Realty may not enter into, and has not entered into, any agreement, arrangement or understanding in connection with the Sale that indemnifies Realty, in whole or in part, or waives any liability for negligence by Realty or for failure to adhere to professional appraisal standards.

**16. Independent Fiduciary Report: EIT Fund.** In the EIT Fund Independent Fiduciary Report, Wagner concludes that a Sale at the price of \$710,000 would be in the best interests of, and protective of, the EIT Fund and the EIT Fund participants and beneficiaries. Wagner represents that it considered many factors in its analysis, including the EIT Fund's financial position, the acquisition and development costs associated with the Sale, and the benefits to the EIT Fund of purchasing the Property and constructing the EIT Fund Facility as opposed to entering into a commercial lease of existing property with an unrelated party. Wagner represents that it reviewed all the particulars of the Property, including: (a) The appraisals; (b) the location and characteristics of the Property; (c) the existing zoning of the Property; (d) the need for, and expense of, an easement; and (e) environmental concerns associated with the Property, including the presence of wetlands.

Wagner states that the Property functionally meets the EIT Fund's needs, as it is large enough to construct an EIT Fund Office with sufficient space for a Board Room, conference room,

large reception areas, and an onsite medical clinic. Wagner further states that the Property is accessible for a significant number of EIT Fund participants and beneficiaries. In this regard, Wagner notes that the EIT Fund conducted a proximity analysis in October of 2019 which found that over 42% of current EIT Fund participants and beneficiaries live within a 15-mile radius of the Property.

Wagner states that relocating the EIT Fund's office to the Property is cost-effective and creates synergy by establishing a campus of related services for EIT Fund participants. In this regard, Wagner notes that an estimated 95% of apprentices in the EJAT Trust, at any given time, are also participants in the EIT Fund and the Related Plans. In addition, Wagner states that locating the EIT Fund Office on the Property would promote the visibility and publicity of the EIT Fund Office's services, as well as the EJAT Trust's training programs. Wagner further notes that the Property is sufficient in size to provide ample free parking for EIT Fund employees and EIT Fund participants and beneficiaries, and is conveniently located close to major highways.

With respect to the Property, Wagner states that, the location adjacent to the EJAT Trust Training Facility will provide enhanced value for the EIT Fund's participants and beneficiaries. Wagner further states that the suburban location of the Property will be convenient for the participants and beneficiaries of the EIT Fund, as well as the EIT Fund staff, who will benefit from affordable housing available in close proximity to the Property. In addition, Wagner states that the EIT Fund's purchase of the Property and construction of the EIT Fund Facility will further the EIT Fund's longterm goals of stabilizing its expenses with an updated, modernized, and fully-owned facility, and expanding its service offerings to include the medical clinic.

Wagner represents that it reviewed the methodology used by the Independent Appraiser to ensure that the methodology adhered to sound principles of valuation. Wagner states that it reached its conclusion as to an appropriate purchase price for the Property based, not on a mechanical mathematical averaging process, but by relying upon a strong framework to determine a purchase price that represents a prudent judgment as to a fair market value that is in the best interest of the EIT Fund participants, given the intended use of the Property and the value of the transaction to the EIT Fund. In reliance on this analysis, Wagner affirms that the Sale is at least

as favorable to the EIT Fund as the transaction that would have occurred in an arm's length transaction between independent and unrelated parties, each of whom had full knowledge of the relevant facts and neither of whom was under any compulsion to buy or sell.

Wagner also considered the financial condition of the EIT Fund in its analysis. In this regard, Wagner notes that, as of June 30, 2018, the EIT Fund's financial position included assets totaling \$456,536,340, which represents a 9% increase over the previous year. Wagner states that the \$710,000 purchase price will involve 0.16% of the Fund's total assets, and that the \$10,248,350 to construct the EIT Fund Facility and access road will involve about 2.24% of the EIT Fund's total assets. Thus, according to Wagner, the total cost to the EIT Fund with respect to the Sale will involve about 2.40% of the EIT Fund's total assets.

In addition, Wagner represents that the EIT Fund will not require a loan or other financing to acquire the Property and construct the EIT Fund Facility and access road. Wagner notes that the EIT Fund has represented that it will be able to meet its obligations to pay benefits under the Fund and will not need to obtain financing to support its acquisition of the Property. Wagner concludes that the purchase of the Property and construction of the EIT Fund Facility is in the best interest of the EIT Fund participants and will not negatively affect the EIT Fund's overall financial health.

Moreover, Wagner notes that the EIT Fund, its engineers, design consultants, and professional advisors have met with the Village of Alsip regarding the purchase of the Property, the subdivision and easement, the Fund's intended use of the Property, and various necessary zoning, building, and easement construction permits. According to the EIT Fund representatives, all indications from the Village of Alsip are that development approvals will be granted once the EIT Fund's formal applications are filed.

Wagner states that, to further ensure the protection of the EIT Fund and its participants and beneficiaries, it will continue to monitor the process, enforce the final terms of the Sale, and take whatever actions are necessary to protect the interests of the EIT Fund participants and beneficiaries up to and coincident with the closing date of the Sale.

Finally, Wagner may not enter into, and has not entered into, any agreement, arrangement or understanding in connection with the Sale that indemnifies Wagner, in whole or in

part, or waives any liability for negligence by Wagner or for failing to adhere to state or federal law. In addition, Colliers may not enter into, and has not entered into, any agreement, arrangement or understanding in connection with the Sale that indemnifies Colliers, in whole or in part, or waives any liability for negligence by Colliers or for failing to adhere to state or federal law.

#### *The EIT Fund's Environmental Study of Property*

17. *Phase I Environmental Study.* To further examine the appropriateness of the Property as a site for the EIT Fund Facility, the EIT Fund engaged Pioneer Engineering & Environmental Services, LLC of Chicago, Illinois (Pioneer) to conduct a Phase I Environmental Site Assessment of the Property. On October 18, 2019, Pioneer completed its assessment (the Environmental Assessment) which revealed no evidence of any Recognized Environmental Conditions in connection with the Property. Pioneer will update its Environmental Assessment of the Property prior to the Closing Date of the Sale.

#### *Exemptive Relief*

18. *Exemptive Relief Requested and Analysis.* Section 406(a)(1)(A) of the Act prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale of any property between a plan and a party in interest. The EJAT Trust Board and the EIT Fund Board are fiduciaries under section 3(14)(A) of the Act. The EIT Fund is a party in interest with respect to the EJAT Trust under section 3(14)(C) of the Act because it is an employer whose employees participate in the EIT Fund. Therefore, the Sale would violate section 406(a)(1)(A) of the Act.

In addition, section 406(a)(1)(D) of the Act prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of the income or assets of the plan. The EJAT Trust's sale of the Property to the EIT Fund, and the EIT Fund's corresponding purchase of the Property from the EJAT Trust, and the granting of the right of first offer, constitute a prohibited transfer of assets (*i.e.*, the exchange of the Property for cash between the Plans) in violation of section 406(a)(1)(D) of the Act.

Section 406(b)(1) of the Act prohibits a plan fiduciary from dealing with the

assets of the plan in his or her own interest or for his or her own account. Section 406(b)(2) of the Act prohibits a plan fiduciary, in his or her individual or in any other capacity, from acting in any transaction involving the plan on behalf of a party whose interests are adverse to the interests of the plan or the interests of the plan's participants or beneficiaries.

The EJAT Trust Board and the EIT Fund Board share one trustee, Mr. Donald Finn, who is the business manager and financial secretary with respect to the Local 134. Mr. Finn will recuse himself with respect to the transactions described in this proposal. However, in the Department's view, Mr. Finn remains in a position of influence with respect to the Local 134 Trustees. The EJAT Trust Board and the EIT Fund Board may be deemed as engaging in a prohibited act of self-dealing in violation of section 406(b)(1) of the Act with respect to the Sale and the granting of the right of first offer. In addition, each Board may have divided loyalties regarding the Sale and the granting of the right of first offer, in violation of section 406(b)(2) of the Act.

#### *Statutory Findings*

19. "*Administratively Feasible.*" The Department has tentatively determined that the Sale is administratively feasible because it is a one-time transaction for cash overseen Independent Fiduciaries. Furthermore, Independent Fiduciaries will represent the interests of the Plans for all purposes with respect to the Sale, and ensure that the Property is sold for fair market value.

20. "*In the Interests of.*" The Department has tentatively determined that the proposed exemption is in the interest of each Plan. With regard to the EIT Fund, relocating the EIT Fund's office to the Property may stabilize the EIT Fund's expenses and create synergies by establishing a campus of related services between the EIT Fund and EJAT Trust. With regard to the EJAT Trust, the Sale presents an opportunity for the EJAT Trust to diversify its assets through the sale of an unused parcel of real estate. The Sale will allow the EJAT Trust to use the cash to enhance the value of the EJAT Trust Training Facility for the benefit of the participants and beneficiaries of the EJAT Trust.

21. "*Protective of.*" The Department has tentatively determined that the proposed exemption is protective of the rights of the Plans' participants and beneficiaries. In this regard, an Independent Fiduciary will represent its respective Plans for all purposes with respect to the Sale. Among other things,

the Independent Fiduciaries will review and confirm that the methodologies used by the Independent Appraisers adhere to sound principles of valuation, and affirm that the terms of the Sale are at least as favorable as would be obtainable in an arm's length transaction with unrelated and independent parties, each of whom who had full knowledge of the relevant facts, and neither of whom was under any compulsion to buy or sell.

#### **Notice to Interested Persons**

Those persons who may be interested in the publication in the **Federal Register** of the notice of proposed exemption (the Notice) include participants and beneficiaries of the EJAT Trust and participants and beneficiaries of the EIT Fund. The Applicants will provide notification to interested persons by electronic mail, and first-class mail within fifteen (15) calendar days of the date of the publication of the Notice in the **Federal Register**. The mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise the interested persons of their right to comment and to request a hearing.

The Department must receive all written comments and requests for a hearing no later than forty-five (45) days from the date of the publication of the Notice in the **Federal Register**.

All comments will be made available to the public.

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

#### **General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under 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 exemption, 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 exemption, 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.

### Proposed Exemption

#### Section I. Proposed Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A) and (D), and 406(b)(1) and (b)(2) of the Act shall not apply to: (a) the sale (the Sale) by the Electrical Joint Apprenticeship and Training Trust (the EJAT Trust) of 5.11 acres of unimproved real property to the Electrical Insurance Trustees Insurance Fund (the EIT Fund), a party in interest with respect to the EJAT Trust; and (b) the EIT Fund's granting of a right of first offer (the Right of First Offer) to the EJAT Trust, for the purchase back of the Property by the EJAT Trust from the EIT Fund, provided the conditions in Section II are met.

#### Section II. Conditions

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

(b) The terms and conditions of the Sale are at least as favorable to the EJAT Trust and the EIT Fund as the terms and conditions they would have received in an arm's length transaction between unrelated and independent parties, each of whom had full knowledge of the

relevant facts, and neither of whom were under any compulsion to buy or sell;

(c) The EJAT Trust Independent Fiduciary prudently:

(1) Represents the EJAT Trust's interests for all purposes with respect to the Sale;

(2) Determines that the Sale is in the interest of, and protective of, the EJAT Trust and the participants of the EJAT Trust;

(3) Reviews and approves the terms and conditions of the Sale;

(4) Engaged the EJAT Trust Independent Appraiser and ensured the Appraiser's independence;

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

(6) Ensures that the EJAT Trust Independent Appraiser renders an updated fair market valuation of the Property as of the date of the Sale;

(7) Determines whether it is prudent for the EJAT Trust to proceed with the Sale; and

(8) Ensures that it has not and will not enter into any agreement or instrument that violates section 410 of ERISA.

(d) The EIT Fund Independent Fiduciary prudently:

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

(2) Determines that the Sale is in the interest of, and protective of, the EIT Fund and the participants of the EIT Fund;

(3) Reviews and approves the terms and conditions of the Sale;

(4) Engaged the EIT Fund Independent Appraiser for the Sale and ensured the Appraiser's Independence;

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

(6) Ensures that the EIT Fund Independent Appraiser renders an updated fair market valuation of the Property as of the date of the Sale;

(7) Determines whether it is prudent for the EIT Fund to proceed with the Sale; and

(8) Ensures that it has not and will not enter into any agreement or instrument that violates section 410 of ERISA.

(e) The Sale is not part of an agreement, arrangement, or understanding designed to benefit any party other than the EJAT Trust and the EIT Fund;

(f) Any use of the Property by the EIT Fund and the Related Plans that is

described in PTEs 76-1 and 77-10 complies with the conditions of those exemptions;

(g) Not later than 90 days after the Sale is completed, the EJAT Trust Independent Fiduciary and the EIT Fund Independent Fiduciary each submit a written statement to the Department documenting that the Sale has met all of the requirements of this the exemption;

(h) The EIT Fund Independent Fiduciary may not enter, and has not entered, into any agreement, arrangement or understanding regarding the Sale that indemnifies the EIT Fund Independent Fiduciary, in whole or in part, or waives any liability for negligence or for violation of state or federal law by the EIT Fund Independent Fiduciary;

(i) The Independent Appraiser selected by the EIT Fund Independent Fiduciary may not enter, and has not entered, into any agreement, arrangement or understanding regarding the Sale that indemnifies the EIT Fund Independent Appraiser, in whole or in part, or waives any liability for negligence or for any violation of state or federal law by the Independent Appraiser;

(j) The EJAT Trust Independent Fiduciary may not enter, and has not entered, into any agreement, arrangement or understanding regarding the Sale that indemnifies the EJAT Trust Independent Fiduciary, in whole or in part, or waives any liability for negligence or for any violation of state or federal law by the EJAT Trust Independent Fiduciary;

(k) The Independent Appraiser that is selected by the EJAT Trust Independent Fiduciary may not enter, and has not entered, into any agreement, arrangement or understanding regarding the Sale that indemnifies the Independent Appraiser, in whole or in part, for negligence or for any violation of state or federal law by the Independent Appraiser; and

(l) The EJAT Trust may not repurchase the Property from the EIT Fund absent an individual exemption granted by the Department.

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

Signed at Washington, DC, this 15th day of March 2021.

**Christopher Motta,**

*Chief, Division of Individual Exemptions, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department Of Labor.*

[FR Doc. 2021-05843 Filed 3-19-21; 8:45 am]

**BILLING CODE 4510-29-P**