Enbridge will undertake a newly-created program to excavate and examine a minimum of ten pipe joints that are likely to contain the most severe circumferential crack features. Based upon the results of this investigation, Enbridge will attempt to pass an agreed-upon statistical test for determining whether unexcavated portions of the pipeline are likely to contain any Circumferential Cracks that require repair.

Second, the proposed Eighth Modification would revise the methods used by Enbridge for assessing whether a circumferential crack must be excavated and repaired. The new methods are tailored to address the unique threats posed by circumferential crack features, taking into account all stresses and loading conditions that may cause a circumferential crack to grow and ultimately fail. The proposed Eighth Modification would require Enbridge to apply these new assessment methods not only to circumferential crack features in Lines 1, 2, 4, and 62 that Enbridge would be required to investigate under the proposed Eighth Modification, but also those circumferential crack features in Lines 5, 6A, and 10 that Enbridge previously discovered through past ILIs but that Enbridge has not yet excavated and repaired.

Third, the proposed Eighth Modification adjusts certain requirements relating to the repair and mitigation of Circumferential Crack features. The proposed Eighth Modification allows more time for the excavation and repair of Circumferential Cracks than is generally afforded for the excavation and repair of axially-aligned cracks (*i.e.,* a crack oriented in parallel to the flow of oil through the pipeline). Further, Enbridge will not be required, in all instances, to limit operating pressure in a pipeline until such repairs are completed. Rather, Enbridge will be required to establish an interim pressure restriction only if a Circumferential Crack is growing at a rate that poses a threat to the integrity of the pipeline.

Fouth, the proposed Eighth Modification would eliminate two requirements in the Consent Decree relating to Circumferential Cracks. In contrast to axially-aligned cracks, circumferential crack features that do not require excavation and repair would not be evaluated to determine their remaining life (*i.e.,* the estimated time remaining before a feature may fail either by leaking or rupturing). In addition, the proposed Eighth Modification would not impose any requirements on Enbridge with respect to the future deployment of ILI tools to re-inspect circumferential crack features in Lines 1, 2, 4, 5, 6A, 10, and 62.

Finally, the proposed Eighth Modification would revise the Termination Section of the Consent Decree, enabling Enbridge to seek early termination of certain requirements relating to circumferential crack features. The proposed Eighth Modification would require Enbridge to incorporate the circumferential crack remedial program into its operating manual, which is enforceable by the Pipeline and Hazardous Materials Safety Administration (''PHMSA''). Once the manual is revised, Enbridge may request ''Phase 1'' Final Termination, which, upon approval by EPA, will terminate all aspects of the Consent Decree other than two discrete programs relating to circumferential cracks. Phase 2 Final Termination will occur once the United States files notice with the Court confirming that Enbridge has fully implemented these two remaining programs.

The publication of this notice opens a period for public comment on the proposed Eighth Modification of Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Enbridge Energy, Limited Partnership, et al.,* D.J. Ref. No. 90–5–1–1–10099. 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:

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

During the public comment period, the proposed Eighth Modification may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* If you require assistance accessing the proposed Eighth Modification, you may request assistance by email or by mail to the address provided above for submitting comments.

Laura A. Thoms,

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

[FR Doc. 2024–14965 Filed 7–8–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2024–03; Application Number L–11989]

Exemption for Certain Prohibited Transactions Involving the Association of Washington Business (AWB) HealthChoice Employee Benefits Trust Located in Olympia, Washington

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of exemption.

SUMMARY: This document gives notice of an individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA). The exemption permits the trustee of a plan funded by the AWB HealthChoice Employee Benefits Trust (the Arrangement), to hire entities affiliated with AWB to provide services to the Arrangement for a fee subject to conditions designed to safeguard the interests of the plan and its participants and beneficiaries.

DATES: Exemption date: This final exemption will be in effect as of July 9, 2024.

FOR FURTHER INFORMATION CONTACT: Susan Wilker, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8557 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: AWB, Forterra and ProPoint (the Applicants) requested an exemption pursuant to ERISA section 408(a) and supplemented the request with certain additional information (collectively, this information is referred to as ''the Application'').[1] On June 14, 2023, the Department published a notice of proposed exemption in the **Federal Register** at 88 FR 38896 (Proposed Exemption).

Based on the record and representations of the Applicants, the Department has determined to grant the Proposed Exemption with the modifications discussed below. This exemption provides only the relief specified herein and does not provide relief from violations of any law other

[1] The procedures for requesting an exemption are set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under the Code Section 4975(c)(2) to the Secretary of Labor. Accordingly, the Department grants this exemption under its sole authority.

than the prohibited transaction provisions of ERISA.

As discussed below, the Department makes the requisite findings under ERISA Section 408(a) based on the Applicants' adherence to all the conditions of the exemption. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken individually and as a whole, necessary for the Department to grant the relief requested by the Applicants. Absent these conditions, the Department would not have granted this exemption.

Background

AWB HealthChoice Employee Benefits Trust

As described in the proposal, Association of Washington Business (AWB) members can choose to offer medical, dental, vision, and life insurance benefits to their eligible employees by participating in a fully-insured ERISA-covered employee welfare benefit plan (the Plans). The Plans are funded through multiple industry trusts (Industry Trusts) that comprise the AWB HealthChoice Employee Benefits Trust. The trustee for each Industry Trust (the Trustee) is a representative (*e.g.,* employee, officer, or director) of an employer participating in the Plan (Participating Employer) that is in a specific industry classification.[2] The Trustees are Plan fiduciaries under ERISA, responsible for performing a wide range of activities in administering the Plans, including selecting service providers.

Bona Fide Groups or Associations Under the Department's Sub-Regulatory Guidance

Under ERISA section 3(1), an employee welfare benefit plan must be established or maintained by an ''employer,'' an ''employee organization,'' or both.[3] ERISA section 3(5) defines an ''employer'' as ''. . . any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.'' The Department's guidance in this area is provided primarily in several advisory opinions it has issued over more than three decades (the sub-regulatory guidance).[4] In the sub-regulatory guidance, the Department expressed its position regarding whether a particular group or association is a ''bona fide group or association'' that is permitted to sponsor a multiple employer welfare plan on behalf of its employer members.[5] In making this determination, the Department has consistently focused on three criteria: (1) whether the group or association has business or organizational purposes and functions unrelated to the provision of benefits (the ''business purpose'' standard); (2) whether the employers share some commonality of interest and genuine organizational relationship unrelated to the provision of benefits (the ''commonality'' standard); and (3) whether the employers that participate in a benefit program, either directly or indirectly, exercise control over the program, both in form and substance (the ''control'' standard).

The Applicants represent that each Industry Trust association is an ''employer'' within the meaning of ERISA section 3(5). The Applicants further represent that the Arrangement is sponsored by ''one or more bona fide associations'' as defined in the Department's sub-regulatory guidance.'' [6] The Department has relied on these representations to grant this exemption, and this background discussion does not reflect factual findings or opinions of the Department regarding whether the Arrangement is sponsored by ''one or more bona fide associations'' or any other representations made by the Applicants.

Although this exemption was requested by AWB, Forterra and ProPoint, the prohibited transaction relief it grants only extends to the Plan Trustees; the exemption provides no relief for AWB or its affiliates. AWB, Forterra and ProPoint represent that (i) the Plans are established or maintained by the Industry Trusts associations that act indirectly in the interests of the Participating Employers, and (ii) the Trustees of the Industry Trusts have sole fiduciary authority over the selection of service providers for the Plans.

Prohibited Transactions

ERISA prohibits fiduciaries with respect to employee welfare benefit plans from engaging in certain transactions, including transactions that involve self-dealing, unless an exemption applies.[7] In this case, the Applicants represent that the Trustees are vested with fiduciary authority to select service providers for the Plans. Because of the Plans' close relationship with AWB (*e.g.,* the Plans are available only to AWB member employers, and AWB affiliates Forterra and ProPoint have provided services to the Plans since their inception), the Department is concerned that Forterra's and ProPoint's relationship with AWB could affect the Trustees' exercise of their best judgment as fiduciaries with respect to the selection of plan service providers in the absence of appropriate safeguards.

The Department has authority under ERISA section 408(a) to grant an administrative exemption from the prohibited transaction rules requested by the Applicant only if the Department finds that the exemption is (i) administratively feasible, (ii) in the interests of affected plans and of their participants and beneficiaries, and (iii) protective of the rights of such participants and beneficiaries. As discussed below, this exemption includes conditions that are designed to ensure that each Trustee is fully informed of their fiduciary obligations with respect to the Plan, possesses sole fiduciary authority over Plan service provider selection and monitoring, and exercises their authority in accordance with ERISA's fiduciary standards.

The exemption provides relief from ERISA section 406(b)(1), which prohibits fiduciary self-dealing. Each Trustee is a fiduciary, subject to the provisions of ERISA sections 403 and 404. This means that each Plan's assets must be used for the exclusive purpose of providing benefits to participants and beneficiaries covered by that Plan and defraying reasonable expenses of administering the Plan. The Trustees that are part of the Arrangement are permitted to confer with each other and collectively enter into service provider agreements or otherwise act collectively on behalf of all the Plans. However, each Trustee is a fiduciary with respect to the Plan for which it is a Trustee. Each Plan must always have a Trustee in order to satisfy the conditions of the exemption, and that Trustee may not

[2] The industry classifications are: manufacturing, professional services, retail/wholesale, hospitality, construction, agriculture, communications, technology, and transportation.

[3] ERISA section 3(1).

[4] In 2018, the Department issued a rule (29 CFR 2510.3–5), which broadened the types of groups and associations that may sponsor a single ERISA-covered group health plan. The rule was vacated by court order in 2019 (*State of New York* v. *United States Department of Labor,* 363 F.Supp.3d 109, (March 28, 2019)), and the Department recently proposed to rescind the rule (88 FR 87968 (Dec. 20, 2023)).

[5] *See, e.g.,* Advisory Opinions Nos. 94–07A (Mar. 14, 1994), 95–01A (Feb. 13, 1995), 96–25 (Oct. 31, 1996), 2001–04A (Mar. 22, 2001), 2003–13A (Sept. 30, 2003), 2003–17A (Dec. 12, 2003), 2007–06A (Aug. 16, 2007), 2012–04A (May 25, 2012), and 2019–01A (July 8. 2019). *See also* Department of Labor Publication, ''Multiple Employer Welfare Arrangements Under ERISA, A Guide to Federal and State Regulation,'' at *www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/mewa-under-erisa-a-guide-to-federal-and-state-regulation.pdf.*

[6] The Applicant made these representations in a draft trust agreement provided to the Department.

[7] *See* ERISA section 406.

permit the assets, management, or operation of any Plan to be used to benefit participants and beneficiaries of another Plan. The exemption does not provide relief from ERISA section 406(b)(2), which prohibits fiduciaries from acting on behalf of a party whose interests are adverse to the interests of the Plan. This ensures that Trustees may not act on behalf of anyone with interests adverse to a Plan and its participants and beneficiaries.

The exemption does not provide relief from ERISA section 406(a)(1)(C), which prohibits fiduciaries from engaging parties in interest as service providers. That relief is available under the statutory exemption provided in ERISA section 408(b)(2), and the Department is not determining whether the conditions of ERISA section 408(b)(2), including reasonable compensation, have been met. To the extent the Trustees fail to comply with ERISA section 408(b)(2) in connection with hiring AWB or any of its affiliates as service providers to the Plans, for example, by paying fees that exceed reasonable compensation, AWB or its affiliates may be subject to liability for knowing participation in a prohibited transaction.[8]

Written Comments Received

In the proposed exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the Proposed Exemption. All comments and requests for a hearing were due to the Department by August 14, 2023.[9] The Department received three written comments that raised several issues. One of these comments was from the Applicants who raised four technical issues involving (1) direct fees, (2) related fee increases, (3) AWB membership and (4) the disclosure required in the Proposed Exemption. The Department responds to the material issues and the material information provided in the comments below.[10]

In granting this exemption, the Department has relied on the representations of the Applicants. If any material statement in the Application, final exemption or the Applicant's comment is not, or may no longer be, completely and factually accurate, the Applicants and recipients of the exemptive relief provided herein must immediately alert the Department.[11]

Comment From the Applicant

Comment 1: Direct Fees

Section III(c)(1) of the proposed exemption would have required the Trustee to approve, in writing, all fees or other compensation paid to AWB-Affiliated Service Providers for services to the Plan, after determining that the fees and other compensation are direct payments from the Plan. Similarly, Section IV(b)(1) would have required a Trustee to contractually prohibit the AWB-Affiliated Service Provider from receiving any fees other than those paid directly by the Plan as of the first day of the first plan year after the Grant Date.

According to the Applicant, fees paid to Forterra and ProPoint no longer are paid out of trust assets. The Applicants explained in their comment that, effective April 1, 2021, Vimly, a service provider that is unaffiliated with AWB, collects contributions remitted by Participating Employers, retains a portion of the collected amount as its fee, remits fees payable to Forterra and ProPoint directly to those entities, and remits the balance to the trust.

After considering this comment, the Department is revising Sections III(c)(1) and IV(b)(1) to provide that fees and other compensation must be direct payments from, *or on behalf of,* the Plan. Adding ''on behalf of'' confirms that the exemption is available for funds paid by Vimly directly to Forterra and ProPoint from contributions remitted by Participating Employers, even if they are not contributed to the trust.

Comment 2: Related Fee Increases

The Applicants expressed concern with Section IV(b)(2) of the Proposed Exemption. This provision requires fees provided to service providers, other than any insurance broker of record that is not affiliated with AWB, to be established independently of other service provider fees, so that an increase in one fee does not directly or indirectly, cause an increased fee payment to another service provider. The Applicants requested that the Department eliminate this requirement in its entirety. Alternatively, Applicants requested that the Department revise the requirement to provide that when one service provider's fees increase, the fees paid to other service providers, other than insurance brokers of record that are not affiliated with AWB, would be contractually adjusted unless the Trustees determine, in accordance with the other conditions of the Proposed Exemption that (a) the resulting increase to the other service providers' fees does not cause those fees to exceed reasonable compensation within the meaning of ERISA Section 408(b)(2) and (b) such resulting fee increase is prudent and in the best interests of Plan participants. However, if the Department retains Section IV(b)(2) as proposed, the Applicants requested that the Department delay the effective date of the requirement until the second plan year after the Grant Date.[12]

After considering the Applicants' comment, the Department has decided to finalize Section IV(b)(2) as proposed. The exemption as a whole requires the Trustees to closely monitor all fees paid to AWB-affiliated service providers. For example, Section III(c) requires the Trustees to closely monitor all fees paid to AWB-Affiliated Service Providers by ensuring that that fees and other compensation paid to them does not exceed reasonable compensation for services that are necessary and actually rendered to the Plan, and Section IV(b)(1)(A) prohibited rates from increasing during the contract period. The Department's position is that allowing automatic increases to all service providers' fees is contrary to Trustee's responsibility.

The Department notes there are multiple ways that Applicants may satisfy Section IV(b)(2). For example, the Applicants' current method of

[8] *See Harris Trust & Savings Bank* v. *Salomon Smith Barney, Inc.,* 530 U.S. 238 (2000). The Department notes its longstanding position that the proposal or grant of a prohibited transaction exemption is not dispositive of whether a prohibited transaction has occurred or will occur.

[9] The Proposed Exemption established a July 31, 2023, deadline for the public to submit comments and requests for a hearing. However, the Department was informed that AWB had to redistribute the proposed exemption package, including the notice to interested parties, due to an incomplete first distribution. Therefore, in a **Federal Register** notice published on July 17, 2023 (88 FR 45448), the Department extended the proposed exemption's comment period until August 14, 2023, to provide additional time for interested parties to prepare and submit their comments.

[10] All information submitted by the Applicant to the Department in connection with this exemption is available through the Department's Public Disclosure Room, by referencing L–11989.

[11] The Representations stated herein are based on AWB's representations provided in its exemption application and do not reflect factual findings or opinions of the Department unless indicated otherwise. The Department notes that the availability of this exemption is subject to the express condition that the material facts and representations contained in application L–11989 are true and complete at all times, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of the change.

[12] The Applicants requested this delay because the cost of coverage has already been determined for the first plan year after the Grant Date and is in the process of being communicated to Participating Employers.

calculating service provider compensation based on rates that are determined by Premera using a generally-recognized industry method would not necessarily violate this condition.

As requested by the Applicants, the Department is extending the effective date of the condition. Therefore, while most of Section IV becomes applicable as of the first day of the first plan year after the Grant Date, Section IV(b)(2) will not become effective until the first day of the second plan year after the Grant Date. This will ensure that all parties have sufficient time to negotiate fees paid to service providers.

Comment 3: AWB Membership

As proposed, the definition of ''AWB-Affiliated Service Provider'' was AWB, Forterra, Inc., ProPoint, LLC, or any other entity providing services to the Plan that is an Affiliate. Section IV(b)(1)(B) of the proposal would have required the Trustees to contractually prohibit the AWB-Affiliated Service Providers from receiving any fees other than those paid directly by the Plan. Applicants expressed concern that, because membership in AWB is a prerequisite for participating in the Plan and requires the Participating Employers to pay a membership fee, proposed Section IV(b)(1)(B) could have been interpreted as prohibiting AWB from receiving its routine membership fees. To address this ambiguity, the Applicants requested that the Department clarify that the definition of AWB-Affiliated Service Provider only includes AWB only to the extent AWB provides services to the Plan. Rather than change the definition of AWB-Affiliated Service Provider, which could affect other exemption conditions, the Department is revising Section IV(b)(1)(B) to add ''Notwithstanding the foregoing, AWB may receive a membership fee from Participating Employers.''

Comment 4: Disclosure

Section III(d)(2)(B) of the Proposed Exemption would have required the AWB-Affiliated Service Providers to disclose to the Trustee a description of all compensation, both in the aggregate and by service, the AWB-Affiliated Service Providers and any subcontractor reasonably expect to receive from the Plan.[13]

The Applicants request that the Department provide further clarification and guidance regarding the requirement to describe compensation ''by service,'' and regarding whether any specific services listed in the disclosure would require a separate allocation of fees. Alternatively, the Applicants request that the Department provide guidance that allows specific services to be broken down into categories for which separate fees would be expressed by category.

The disclosure of all services and fees by the AWB-Affiliated Service Providers to the Trustees and the Participating Employers is paramount to the Department making its statutory findings under ERISA section 408(a) that are required for it to provide the exemptive relief provided in this final exemption. The Department's position is that providing aggregate and detailed fee information disclosing the services provided is crucial for the Trustees and the Participating Employers to meet their obligations under the Exemption, including the determination that the fees and other compensation do not exceed reasonable compensation within the meaning of ERISA section 408(b)(2).[14] The Department, however, acknowledges the exact fees for certain specific services may not be known at the time of the disclosure and the condition requires disclosure of fees that ''AWB-Affiliated Service Providers and any subcontractor reasonably expect to receive from the Plan.'' The Department expects that when the AWB-Affiliated Service Provider or any subcontractor *reasonably expects* specific fees for specific services, those fees must be disclosed. At the same time, AWB-Affiliated Service Providers must disclose all specific services associated with the aggregate fees.

Comments From the General Public

Comment on ERISA Section 514

The Department received one comment that expressed the commenter's opinion that it was ''legally impermissible'' for the Department ''to grant an exemption from the prohibited transaction restrictions to the Association of Washington Business HealthChoice Employee Benefits Trust'' because ERISA Sections 514(b)(6)(A) and (B) preclude the Department from granting any exemption to a fully insured Multiple Employer Employee Welfare Arrangement (MEWA).

The Department disagrees with the commenter's interpretation of ERISA section 514(b)(6). In general, ERISA's broad preemption of state laws contained in ERISA section 514(a) provides that ERISA's Titles I and IV supersede any state laws that relate to any ERISA-covered employee benefit plan except as provided in ERISA section 514(b). In 1983, Congress amended ERISA to add section 514(b)(6). One of the main purposes for this amendment was to protect employee benefit plan participants and beneficiaries by facilitating state regulation of MEWAs.[15] To that end, ERISA section 514(b)(6) modified the scope of ERISA's preemption of state insurance laws as they apply to employee welfare benefit plans that also are MEWAs.

Specifically, if an employee welfare benefit plan that is also a MEWA is not fully insured, then ERISA section 514(b)(6)(A)(ii) provides that any state law that regulates insurance may apply to the MEWA to the extent state law is not inconsistent with ERISA. If, on the other hand, an employee welfare benefit plan that also is a MEWA is fully insured, ERISA section 514(b)(6)(A)(i) provides that only those state laws that regulate the maintenance of specified contribution and reserve levels may apply to the MEWA.[16]

The commenter seems to misunderstand several aspects of ERISA section 514(b)(6). Contrary to the commenter's assertion that ''ERISA Section 514(b)(6) provides specific criteria that must be met before ERISA title I provisions can be applied'' to a MEWA, section 514(b)(6) prescribes circumstances when state laws that otherwise would be preempted by ERISA section 514(a) can be applied to MEWAs that are employee welfare benefit plans *in addition to* ERISA Title I, which governs the operation of these plans. In other words, section 514(b)(6) permits state insurance laws to apply rather than automatically being preempted by ERISA, but it does not eliminate the applicability of Title I enforcement provisions to MEWAs. In fact, section 514(b)(6) only is relevant

[13] In the proposal, the Department noted ''[t]his is broader than the statutory language in ERISA section 408(b)(2)(B)(iii)(III), which requires a description of all direct compensation 'either in the aggregate or by service.' '' However, the requirements of this condition are specific to this Arrangement and this exemption. The Department is not providing guidance on the statutory language.

[14] In granting this exemption, the Department is taking no position on whether the fees described in Applicant's comment are reasonable. That determination must be made by the Trustee based on all facts and circumstances.

[15] DOL Advisory Opinion 2011–01A.

[16] ERISA section 514(b)(6)(D) provides, in turn, that a MEWA will be considered fully insured for purposes of ERISA section 514(b)(6) only if the terms of the arrangement provide for benefits the amount of all of which the Secretary determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, ''qualified to conduct business in a State.''

for plans that are covered by title I of ERISA, because it provides an exception to ERISA's preemption of all State laws that apply to ''employee benefit plans'' described in ERISA section 4(a) that are not exempt by ERISA section 4(b).

Furthermore, the commenter asserts that ''the Department is barred from issuing any exemptions that mandate that Title I of ERISA is applicable to a fully insured MEWA.'' To support its assertion, the commenter relies on the language in ERISA section 514(b)(6)(B) which states: ''The Secretary may, under regulations which may be prescribed by the Secretary, exempt from subparagraph (A)(ii), individually or by class, multiple employer welfare arrangements *which are not fully insured.*'' (emphasis in the comment). However, the commenter fails to realize that this provision is completely irrelevant to this exemption because this exemption provides relief from ERISA section 406, not ERISA section 514(b)(6)(A)(ii).

Based upon the Applicants' representation that the Arrangement is a bona fide association as defined in the Department's sub-regulatory guidance, and is a Plan MEWA that provides fully-insured welfare benefits subject to ERISA (including the prohibited transaction provisions in ERISA section 406), the Department has authority to grant this exemption.

Comment on ERISA Section 408(a)

Another commenter claimed that the proposed exemption violates ERISA section 408(a) due to the Department's failure to ''demonstrate to the public that it properly determined that the specific 'rights of participants' of a plan that is subject to ERISA Title I are being protected.''

The Department fully understands and takes very seriously its responsibility to adhere to the mandate in ERISA section 408 that requires the Department to find that the exemption is (1) administratively feasible, (2) in the interests of affected plans and of their participants and beneficiaries, and (3) protective of the rights of participants and beneficiaries of such plans before granting this exemption. The Department made its preliminary statutory findings in the Proposed Exemption and confirms such findings in this Notice of Granted Exemption based on its review of the entire record and the requirement that the Applicants fully comply with the exemption conditions at all times. The record and the Department's findings are based in part on representations made by the Applicants, one representation of which is that the Arrangement is a bona fide association as defined in the Department's sub-regulatory guidance and a Plan MEWA that provides fully-insured welfare benefits subject to ERISA. As stated in the Proposed Exemption and this Notice of Granted Exemption, the availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction that are the subject of the exemption and the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of determining whether the transaction is in fact a prohibited transaction. If any representation made by the Applicants is not accurate or there are any material changes to those representations the exemptive relief provided in this exemption would not be valid.

Comment From the Department

This final amendment makes minor ministerial changes, such as spelling out numbers and moving clauses within a sentence.

The complete application file (L–11989) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. 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, please refer to the notice of proposed exemption published on June 14, 2023, at 88 FR 38896.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) does not relieve a fiduciary or other party in interest from certain requirements of other ERISA provisions, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with ERISA section 404(a)(1)(B).

(2) As required by ERISA section 408(a), the Department hereby finds that the exemption is (1) administratively feasible, (2) in the interests of affected plans and of their participants and beneficiaries, and (3) protective of the rights of participants and beneficiaries of such plans;

(3) The exemption is supplemental to, and not in derogation of, any other ERISA provisions, 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 determining whether the transaction is in fact a prohibited transaction; and

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

Accordingly, the following exemption is granted under the authority of ERISA Section 408(a) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011):

Exemption

Section I. Definitions

(a) ''*AWB*'' means the Association of Washington Business.

(b) ''*AWB-Affiliated Service Provider*'' means AWB, Forterra, Inc., ProPoint, LLC, or any other entity providing services to the Plan that is an Affiliate.

(c) An ''*Affiliate*'' is a person that is:

(1) Controlling, controlled by, or under common control with AWB;

(2) An officer, director, partner, or employee of AWB; or

(3) A corporation or partnership of which AWB is an officer, director, partner, or employee.

For purposes of this definition, ''*control*'' means the power, direct or indirect, to exercise a controlling influence over the management or policies of a person other than an individual;

(d) The ''*Grant Date*'' is the date the final exemption is published in the **Federal Register**.

(e) ''*Participating Employer*'' means any of the member employers of AWB who provides medical, dental, vision, and life insurance benefits to their employees through the Plan.

(f) ''*Plan*'' means any plan that is funded by the AWB HealthChoice Employee Benefits Trust, including through an Industry Trust.

(g) A ''*Trustee*'' is a person elected in accordance with Section III(a)(3).

Section II. Covered Transactions

The exemption provides relief to the Trustees for their selection of an AWB-Affiliated Service Provider to provide services to the Plans for a fee, if the

conditions of Sections III and IV are met, subject to the definitional terms in Section I. The exemption would provide relief only from the restrictions of ERISA section 406(b)(1).

Section III. General Conditions

The following conditions apply for each Plan as of the Grant Date, as defined in Section I(d).

(a) Plan Structure

(1) The Plan is a fully-insured employee welfare benefit plan.

(2) The Plan is established or maintained by an employer within the meaning of ERISA section 3(5).

(3) The Trustee with respect to the Plan is:

(A) A trustee, employee, officer, director, or owner of a Participating Employer in the industry classification associated with the Plan;

(B) Nominated by a Participating Employer in the industry classification associated with the Plan and elected by a majority vote of Participating Employers in the industry classification;

(C) Independent of AWB and its Affiliate, which means the Trustee (1) is not an Affiliate of AWB or a trustee, employee, officer, director, member or agent of any Affiliate of AWB, and (2) does not have a relationship with or an interest in AWB or any of its Affiliates that might affect the exercise of the person's best judgment in connection with transactions described in Section II of this exemption; and

(D) Not an employee, officer, director, member or agent of a Participating Employer that is also a service provider to any Plan.

(4) The Participating Employers in each industry classification have the sole authority to:

(A) Remove the Trustee with respect to the Plan associated with that industry classification, with or without cause, by majority vote; and

(B) Dissolve or amend the Plan associated with that industry classification by majority vote.

(5) Each person who is nominated to serve as a Trustee to the Plan undergoes fiduciary training before their decision to serve as a Trustee, if elected, and annually thereafter. The fiduciary training is provided by a professional who has appropriate technical training and proficiency with ERISA and who has been prudently selected by the board of Trustees and covers, at a minimum, ERISA compliance, fiduciary duties, the conditions of the exemption, and the consequences of failing to comply with the conditions (including any loss of exemptive relief provided herein). Existing Trustees as of the Grant Date must receive this training within three (3) months of the Grant Date.

(6) Neither the Plan nor any Participating Employer indemnifies AWB or its Affiliates for any reason.

(7) Legal counsel for the Plan does not also represent AWB or any Affiliate.

(b) Selection of Service Providers

(1) The Trustee has and exercises sole fiduciary authority to select service providers for the Plan. The Trustee exercises their fiduciary authority in accordance with ERISA section 404 to prudently and loyally select service providers and document the selection process and considerations, including whether an AWB-Affiliated Service Provider and its personnel have the qualifications and capability to perform such services; whether the fees to be charged reflect arm's-length terms; and whether the arrangements are reasonable, compared with similarly qualified service providers. The documentation must provide sufficient context and detail and be written in a manner to ensure that any party authorized to review the records under Section III(e) can understand the reasoning for the selection.

(2) Before entering into or renewing any services contracts with an AWB-Affiliated Service Provider on behalf of the Plan, the Trustee determines that the services are necessary to the operation of the Plan and documents the reasons for the determination.

(3) Contracts (including renewals) between the Plan and an AWB-Affiliated Service Provider:

(A) Are limited to no more than three years' duration; and

(B) Allow the Trustee to terminate the contract any time without penalty to the Plan by providing thirty (30) days' written notice.

(4) The AWB-Affiliated Service Provider may be compensated by the Plan for its services as an insurance broker of record to a Participating Employer only if:

(A) The Trustee selects the AWB-Affiliated Service Provider in accordance with Section III(b)(2);

(B) The Trustee obtains the Participating Employer's written certification that it has received a disclosure from the Trustee that includes descriptions of:

(i) the nature of the affiliation (as described in Section I(c)) between the AWB-Affiliated Service Provider and AWB;

(ii) the services that will be provided by the AWB-Affiliated Service Provider; and

(iii) the amount of fees that the AWB-Affiliated Service Provider will receive, provided that if the fee is disclosed as a percentage of another amount, it is accompanied by an example of the calculation expressed in dollars; and

(C) The Trustee ensures the Plan pays the AWB-Affiliated Service Provider for its services as broker of record no more than the lowest commission paid to an unaffiliated broker of record.

(5) The Trustee monitors the AWB-Affiliated Service Provider's performance of services and compliance with the applicable conditions of this exemption prudently and loyally in accordance with ERISA section 404.

(c) Fees

The Trustee approves, in writing, all fees or other compensation paid to AWB-Affiliated Service Providers for services to the Plan, after determining that the fees and other compensation:

(1) are direct payments from, or on behalf of, the Plan;

(2) are for services that are necessary and actually rendered to the Plan; and

(3) do not exceed reasonable compensation within the meaning of ERISA section 408(b)(2).

(d) Disclosure

(1) The Trustee distributes the following disclosures to Participating Employers at initial enrollment and at each annual renewal thereafter:

(A) A description of the relationship between AWB and any other AWB-Affiliated Service Provider that the Trustee has selected;

(B) A statement that that the Trustee is a fiduciary with respect to the Plan and that before entering into or renewing any services contracts with an AWB-Affiliated Service Provider on behalf of the Plan, the Trustee exercised their fiduciary authority in accordance with ERISA section 404 to prudently and loyally select service providers; and

(C) A statement that the Participating Employers, directly or indirectly through the Trustees, have control over the Plan, including the authority and control to select alternative service providers to AWB or AWB-Affiliated Service Providers.

(2) The Trustee receives the following disclosure from the AWB-Affiliated Service Providers, and reviews, approves and distributes the disclosures to Participating Employers at initial enrollment and at each annual renewal thereafter:

(A) A description of the services that are to be provided by any AWB-Affiliated Service Provider to the Plan;

(B) A description of all compensation, both in the aggregate and by service, the AWB-Affiliated Service Providers and any subcontractor reasonably expect to receive from the Plan;

(C) A description of any compensation that will be paid among the AWB-Affiliated Service Providers or a subcontractor, if such compensation is set on a transaction basis (such as commissions, finder's fees, or other similar incentive compensation based on business placed or retained). The AWB-Affiliated Service Provider must identify the services for which such compensation will be paid and identify the payers and recipients of such compensation (including the status of a payer or recipient as an Affiliate or a subcontractor) regardless of whether such compensation also is disclosed pursuant to paragraph (E) or (F), below;

(D) A description of any compensation that the AWB-Affiliated Service Provider, an affiliate, or a subcontractor reasonably expects to receive in connection with termination of the contract or arrangement, and how any prepaid amounts will be calculated and refunded upon such termination; and

(E) a description of the manner in which the compensation described in clause (B) through (D), as applicable, will be received.

(e) Recordkeeping

(1) The Trustee maintains for a period of six (6) years, in a manner that is reasonably accessible for examination, the records necessary to enable the persons described in paragraph (2) below to determine whether the conditions of this exemption have been met, except that:

(A) If such records are lost or destroyed due to circumstances beyond the control of the Trustee, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(B) No party in interest other than the Trustee will be subject to the civil penalty that may be assessed under ERISA section 502(i) if the records are not maintained or are not available for examination as required below:

(2)(A) Except as provided in paragraph (B) below, and notwithstanding any provisions of ERISA section 504(a)(2) and (b), the records referred to in Section III(d)(1) are reasonably available at their customary location for examination during normal business hours by:

(i) Any authorized employee or representative of the Department;

(ii) Any Participating Employer or fiduciary of a Plan, or any authorized employee or representative of these entities; or

(iii) Any individual participant or beneficiary of a Plan or any authorized representative of the participant or, beneficiary; and

(B) None of the persons described in paragraph (e)(2)(A)(ii) or (iii) of this Section above are authorized to examine records that are confidential, privileged trade secrets, or privileged commercial or financial information.

(C) If the Trustee refuses to disclose information on the basis that the information is exempt from disclosure under subsection (B), the Trustee must provide a written notice advising the requestor of the reasons for the refusal and that the Department may request such information by the close of the thirtieth (30th) day following the request.

(3) The Trustee must provide sufficient information necessary to demonstrate that the exemption conditions have been met over the prior six-year period. The Trustee must maintain and retain such records in a manner that ensures it would be able to provide the information to the Department within 30 calendar days of a request.

(f) Material Facts and Representations

All the material facts and representations provided by the Applicants are true and accurate at all times.

Section IV. Phase-In Conditions

Except as otherwise noted in section IV(b)(2), the following additional conditions apply as of the first day of the first plan year after the Grant Date.

(a) Plan Documents and Contracts

(1) Plan documents and disclosures:

(A) accurately describe the role and fiduciary status of the Trustee;

(B) do not include any disclaimers of fiduciary status for any party, including AWB and any Affiliate; and

(C) do not indicate, in any way, including on a website, that AWB or its Affiliates are the sponsor of the Plan.

(2) The insurance contract is held in the name of the Plan.

(3) AWB-Affiliated Service Providers contractually agree that all information they provide to the Trustee, Participating Employers and prospective Participating Employers regarding their services to the Plan and related fees is materially accurate at the time it is provided.

(b) Fees

(1) Before entering into any contract for services with an AWB-Affiliated Service Provider on behalf of the Plan, the Trustee:

(A) Negotiates the rate of fees to be paid for services to the Plan and ensures that the rate does not increase during the contract period; and

(B) Contractually prohibits the AWB-Affiliated Service Provider from receiving any fees other than those paid directly by, or on behalf of, the Plan. Notwithstanding the foregoing, AWB may receive a membership fee from directly Participating Employers. The membership fee may be a prerequisite for participation in the Plan, but the membership fee may not be compensation for any services provided to the Plan.

(2) As of the first day of the second plan year after the Grant Date, fees for service providers, other than any insurance broker of record that is not Affiliated with AWB, are established independently of other service provider fees, so that an increase in one fee does not cause, directly or indirectly, an increased payment to another service provider. For purposes of this condition, a service provider fee does not include an insurance premium (*i.e.,* fees may be calculated as percentages of premiums paid to the insurance company).

(3) Fees collected from Participating Employers and Plan participants are based on actual, rather than estimated, amounts due to service providers.

(c) Disclosure

(1) The disclosure described in Section III(d)(1) includes the following additional information:

(A) A description of any compensation that the AWB-Affiliated Service Provider, or any subcontractor, reasonably expects to receive in connection with termination of a contract or arrangement with the Plan and how any prepaid amounts will be calculated and refunded upon such termination; and

(B) A description of the methodology by which AWB-Affiliated Service Provider fees are calculated, including examples with dollar amounts.

(2) The Plan documents require the AWB-Affiliated Service Provider to furnish, upon written request, any information the Trustee reasonably requests, within 30 days after the request unless the disclosure cannot be provided due to extraordinary circumstances beyond the control of the AWB-Affiliated Service Provider, in which case the information must be provided as soon as reasonably practicable and the AWB-Affiliated Service Provider must provide the Trustee with a notice explaining why they cannot meet the 30-day deadline.

(d) Monthly Billing Statements

The Trustees provide to Participating Employers a monthly billing statement that includes:

(1) *The following statement:* ''The amounts you pay each month for health insurance coverage include fees for administrative services, including fees paid to service providers affiliated with the Association of Washington Business (AWB). A description of the services provided by each AWB affiliate is provided to you at the time of your initial enrollment and at each annual renewal. You can also contact [NAME, phone number, email address] for additional copies.''

(2) A chart accurately listing all service providers and the fee percentages or other amounts they receive. If any administrative services fees are expressed as a percentage of the insurance premium, the disclosure must also include an example showing how fees would be calculated based on a $1,000 insurance premium; and

(3) A point of contact, including a phone number and email address, for copies of disclosures or for additional information.

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

Signed at Washington, DC, this 2nd day of July 2024.

George Christopher Cosby,

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

[FR Doc. 2024–14959 Filed 7–8–24; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Agency Information Collection Activities; Request for Public Comment

AGENCY: Employee Benefits Security Administration (EBSA), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act, provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before September 9, 2024.

ADDRESSES: U.S. Department of Labor, Employee Benefits Security Administration, Office of Research and Analysis, Attention: PRA Officer, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210, or *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Current Actions

This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transaction exemptions described below. This action is not related to any pending rulemakings and the Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Bank Collective Investment Funds, Prohibited Transaction Class Exemption 1991–38.

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

OMB Number: 1210–0082.

Affected Public: Private sector, Businesses or other for-profits, Not-for-profit institutions.

Respondents: 9,332.

Responses: 9,332.

Estimated Total Burden Hours: 1,555.

Estimated Total Burden Cost (Operating and Maintenance): $0.

Description: Prohibited Transaction Class Exemption (PTE) 91–38 provides an exemption from the restrictions of sections 406(a), 406(b)(2) and 407(a) of ERISA and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A), (B), (C), or (D) of the Code for certain transactions between a bank collective investment fund in which an employee benefit plan has invested assets and persons who are parties in interest to the employee benefit plan, as long as the interest of the plan together with the interests of any other plans maintained by the same employer or employee organization in the collective investment fund does not exceed 10% of the total assets in the collective investment fund. In addition, the bank managing the common investment fund must not itself be a party in interest to the participating plan, the terms of the transaction must be at least as favorable to the collective investment fund as those available in an arm's length transaction with an unrelated party, and the bank must maintain records of the transactions for six years and make the records available for inspection to specified interested persons (including the Department and the Internal Revenue Service).

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0082. The current approval is scheduled to expire on April 30, 2025.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: PTE 1990–1; Insurance Company Pooled Separate Accounts.

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

OMB Number: 1210–0083.

Affected Public: Private sector, Business or other for profits.

Respondents: 108.

Responses: 1,080.

Estimated Total Burden Hours: 108.

Estimated Total Burden Cost (Operating and Maintenance): $0.

Description: Prohibited Transaction Exemption (PTE) 90–1 provides an exemption from the restrictions of ERISA section 406 and Code section 4975, in part, for certain transactions between insurance company pooled separate accounts and parties in interest to plans that invest assets in the pooled separate accounts. PTE 90–1 provides an exemption for certain transactions between a party in interest with respect to a plan and an insurance company pooled separate account in which the plan has an interest or any acquisition or holding by the pooled separate account of employer securities or employer real property, provided that the party in interest is not the insurance company (or an affiliate of the insurance company) which holds the plan assets in its pooled separate account or any other separate account of the insurance company and that the amount of the