part 7 of the Employee Retirement Income Security Act (ERISA), and subchapter B of chapter 100 of the Internal Revenue Code (Code).

Section 102 of the No Surprises Act added Code section 9816, ERISA section 716, and PHS Act section 2799A–1, which contain limitations on cost sharing and requirements for initial payments for emergency services and for nonemergency items and services furnished by nonparticipating providers at participating health care facilities. In addition, section 103 of the No Surprises Act amended Code section 9816, ERISA section 716, and PHS Act section 2799A–1 to establish a Federal independent dispute resolution (Federal IDR) process that nonparticipating providers or facilities and group health plans and health insurance issuers in the group and individual market may use following the end of an unsuccessful open negotiation period to determine the out-of-network rate for certain services. More specifically, the Federal IDR provisions may be used to determine the out-of-network rate for certain emergency services, nonemergency items and services furnished by nonparticipating providers at participating health care facilities, where an All-Payer Model Agreement or specified State law does not apply. Finally, section 105 of the No Surprises Act created Code section 9817, ERISA section 717, and PHS Act section 2799A–2 which contain limitations on cost sharing and requirements for initial payments for air ambulance services, and allow plans and issuers and providers of air ambulance services to access the Federal IDR process.

The Federal IDR process requires a number of disclosures from plans, issuers, FEHB carriers, and nonparticipating providers or nonparticipating emergency facilities. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0169. The current approval is scheduled to expire on November 30, 2025.

II. Focus of Comments

The Department is particularly interested in comments that:

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

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

Signed at Washington, DC, this 26th day of December 2024.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2024–31607 Filed 1–3–25; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2024–05; Application No. L–12006]

Exemption for Associated General Contractors of America, San Diego Chapter, Inc. Apprenticeship and Training Fund, Located in San Diego, CA

AGENCY: Employee Benefits Security Administration, Department of 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, as amended (ERISA or the Act). The exemption permits the Associated General Contractors of America, San Diego Chapter, Inc. (the Chapter) to lease certain improved real property (the Property) located in San Diego, California to the Associated General Contractors of America, San Diego Chapter, Inc. Apprenticeship and Training Fund (the Plan or the Applicant).

DATES: *Exemption date:* This final exemption is in effect as of October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Gonzalez, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8553 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Plan requested an exemption pursuant to ERISA section 408(a) and supplemented the request with certain additional information (that is collectively, referred to as the ''Application'').[1] On July 22, 2024, the Department published a notice of proposed exemption in the **Federal Register** (the Proposed Exemption).[2]

Based on the Applicant's representations in the Application and the administrative record, the Department has determined to grant the Proposed Exemption. This exemption provides only the relief specified herein and does not provide relief from violations of any law other than the prohibited transaction provisions of ERISA.

Benefits of the Exemption: The Department is granting retroactive and prospective relief based in part on the Applicant's representations that, among other things, the lease has permitted the Plan to provide benefits more efficiently to its participants during the COVID–19 pandemic and thereafter at a monthly rental rate that saved the Plan $4,359 per month in 2020 and $6,311 per month in 2021, respectively, based on the Property's appraised monthly fair market rental value of $46,938 on October 1, 2020 and $48,890 on October 1, 2021.[3] The Plan's monthly savings will continue to increase if the appraised rental value increases subject to escalation terms of the lease that are described below. The transaction will be subject to further protection, because an independent fiduciary will be responsible for ensuring that the Plan does not pay more than fair market value rent under the Lease.

As discussed below, the Department makes the requisite findings under ERISA section 408(a) based on the Applicant's adherence to all the exemption's conditions at all times. Accordingly, affected parties should be aware that the Applicant's adherence to all conditions incorporated in this exemption is necessary for the Department to grant the relief that the Applicant requested. Absent these conditions, the Department would not have granted this exemption.

[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.

[2] 89 FR 59161.

[3] This determination is set forth in the Independent Appraiser's written report, dated December 16, 2021.

Background

1. As discussed in the Proposed Exemption, the Plan provides apprenticeship training for construction trade employees within five Southern California counties. The Plan is funded by participating employers (contributing approximately 90% of the Plan's annual funding) and the State of California (contributing approximately 10% of the Plan's annual funding). Apprentices do not contribute to the Plan. The Plan's most recent audited financial statements reflect that the Plan's total assets were $13,681,005 as of March 31, 2024.

2. The Plan's Board of Trustees (the Board) is comprised of six individual members (the Trustees) of participating construction trade employers. The Trustees make all of the Plan's administrative and investment decisions including decisions about the lease that is the subject of this exemption.

The Plan Sponsor: The Chapter

3. The Plan is sponsored by the Chapter, which is a trade organization founded in 1927 to promote the interests of employers in the construction industry located in San Diego, California. A Board of Directors comprised of construction trade employers manages the Chapter.

The Plan's Facilities Before October 1, 2020

4. The Applicant represents that before October 1, 2020, the Plan leased three different properties from unrelated parties comprising 11,293 square feet that it used for administrative, educational, and training purposes. According to the Applicant, the facilities on these properties lacked adequate square footage and had outdated training technology, which resulted in increased costs and wasted resources for the Plan. In addition, one of the properties was located more than three miles from the other two properties.

The Chapter's Property

5. On January 18, 2018, the Chapter and the Plan entered into a Memorandum of Understanding (MOU) documenting their shared interest in providing a ''world class apprenticeship program'' in a ''modernized facility.'' Following execution of the MOU, the Chapter acquired unimproved real property located at 10140 Riverford Road, Lakeside, California (the Parcel) from Lakeside Land Co., a California limited liability corporation (the LLC). The LLC is not a member of the Chapter, there are no common directors between the LLC and the Chapter, and no LLC directors are Plan Trustees. The LLC has neither contributed to nor participated in the Plan, nor does the LLC participate in the Plan's apprenticeship training programs.

6. In 2020, the Chapter constructed a high-ceiling training space on the Parcel comprising approximately 43,600 square feet (the Building). The Chapter's acquisition of the Parcel, and subsequent construction of the Building, was based on the Plan's intent expressed in the MOU to sign a 10-year lease to use both the Building once constructed and an unimproved exterior lot (the Property).

The Lease

7. On April 25, 2019, the Plan Trustees acting on behalf of the Plan, caused the Plan to enter into an agreement with the Chapter to lease both a portion of the Building (once constructed) and an unimproved exterior lot located in the Parcel (the Lease), subject to the review and approval of both a qualified independent fiduciary (described below, the Independent Fiduciary) and the Department.

8. The Lease's term is for 10 years, under which the Plan holds a leasehold interest to occupy and use 90 percent of the Building's rentable space (39,115 square feet of the Building's total space of 43,600 square feet) and an unimproved exterior lot along with rights to use the Property's common areas. The Chapter utilizes the remaining 10 percent of the Building's rentable space and has no present plans to change the Building's space allocation.

9. The Plan's initial base rent under the Lease is $40,000 per month or approximately $1.02 per square foot (the Base Rent). This expense during a twelve (12) month period is about 3.5 percent of the Plan's total assets as reflected in the Plan's audited financial statements for accounting year ending March 31, 2024. The Base Rent is subject to annual increases that are discussed further below.

The Independent Appraiser

10. On May 17, 2019, the Plan engaged Cushman & Wakefield Western Inc. as the Independent Appraiser to determine the Property's fair market rental value. Trevor G. Chapman, a California licensed Certified General Real Estate Appraiser, who is an employee of the Independent Appraiser, performed the appraisal.

11. Mr. Chapman represents that the Independent Appraiser has no present or prospective interest in the Property that is subject to the Lease, and no personal interest with respect to the Plan and the Chapter. In addition, Mr. Chapman represents that the Independent Appraiser's annual gross revenues derived from parties in interest with respect to the Plan represented 0.37% of its gross revenues for the 2020 tax year. Furthermore, the Independent Appraiser's agreement with the Plan does not contain any provisions that provide for the Plan to: (1) directly or indirectly indemnify or reimburse the Independent Appraiser or any other party for any failure to adhere to their contractual obligations or to State or Federal laws applicable to the Independent Appraiser's work; or (2) waive any rights, claims or remedies of the Plan or its participants and beneficiaries under ERISA, the Code, or other Federal and State laws against the Independent Appraiser with respect to the transaction(s) that are the subject of the exemption.

12. Mr. Chapman inspected the Property on July 1, 2019, to collect primary and secondary data related to the Property, investigate the general trends in the regional economy and local area, analyzed rental data where appropriate, and reviewed (i) the cost estimates based upon submitted architects' plans, and (ii) the proposed Lease using generally accepted market-derived appropriate methods and procedures. In a written report (the Independent Appraisal Report) dated October 23, 2019, Mr. Chapman determined that the Property's fair market rental rate was $44,443 per month, which represented $1.14 per square foot of the Plan's rentable space.

13. According to the Independent Appraiser, the Lease is a triple net lease, which the Independent Appraiser notes is a type of commercial lease wherein the lessee is responsible for its pro rata share of expenses for common area maintenance, taxes, and insurance.[4] Notwithstanding the types of commercial leases that may exist in any given marketplace, the Independent Appraiser informed the Department that the Property subject to the Lease is located in a market area in which commercial leases are typically written on a triple-net basis with tenants responsible for all operating expenses, including common area maintenance, taxes, and insurance. Lease terms within the Property's market are generally between 3 and 7 years for industrial

[4] Also, in addition to a base rent, tenants subject to triple net leases are often required to reimburse the landlord for certain expenses and recovery provisions for expenses range from absolutely net (whereby the tenant pays all property expenses) to fully gross (in which tenant pays no expenses). These provisions can vary by property type, locale and fall anywhere within the net to gross range.

tenants and contain annual escalations of 3.0 percent.

The Independent Fiduciary

14. On October 27, 2019, the Plan Trustees retained the services of Prudent Fiduciary Services, LLC (PFS) of Los Angeles, California, to serve as the Plan's Independent Fiduciary with respect to the Lease. Specifically, Mr. Miguel Paredes, a principal with PFS, was appointed to undertake the duties and responsibilities on behalf of PFS in its role as the Plan's Independent Fiduciary to ensure that the Lease arrangement complied with ERISA.

15. The Independent Fiduciary represents that neither Mr. Paredes nor PFS had a pre-existing relationship with the Plan or the Chapter. The Independent Fiduciary also represents that for year 2019 Mr. Paredes and PFS expect to derive approximately 0.55 percent of their combined annual gross revenues from the Plan and parties in interest with respect to the Plan.[5] The Independent Fiduciary's agreement with the Plan did not contain any provisions that violate ERISA section 410 or the Department's Regulations codified at § 2509.75–4;[6] and did not contain any provision requiring the Plan or any other party to (1) directly or indirectly indemnify or reimburse the Independent Fiduciary for any failure to adhere to its contractual obligations or to State or Federal laws applicable the Independent Fiduciary's work, or (2) waive any rights, claims, or remedies under ERISA, State, or Federal law against the Independent Fiduciary with respect to the transaction(s) that are the subject of the exemption.

16. The Independent Fiduciary examined whether the Lease would be reasonable, prudent, and in the interest and protective of the Plan and its participants and beneficiaries. To perform this examination, the Independent Fiduciary: (a) reviewed various documents, such as the Independent Appraisal Report, trust agreements, IRS Forms 990, financial statements, written policies, guidelines, and procedures, lease agreements, applicable laws and guidance, and the Plan Trustees' meeting minutes; (b) interviewed and/or held discussions with representatives of the Plan; (c) conducted an in-person site visit to the Property; and (e) considered the Plan Trustees' decision-making process with respect to entering into the Lease.[7]

17. In a report dated October 28, 2019 (the Independent Fiduciary Report), the Independent Fiduciary noted that the Property allows for onsite heavy equipment operator training, which was not an option in the Plan's former location due to space constraints. The new location also represents an upgrade in size and quality compared to the current property, which should translate into better training programs. The Independent Fiduciary stated that having the classrooms and apprenticeship/training offices in the same location as the Chapter offices potentially improves the operation and efficiency of the training programs because the Chapter's oversight and resources are nearby. The Independent Fiduciary also noted that the Plan and Chapter share an interest in providing high quality apprenticeship and continuing training education programs because the Plan would be better able to provide benefits to its participants and beneficiaries and the Chapter would be able to use the training programs to promote its membership.

18. The Independent Fiduciary reviewed the Independent Appraiser's specific qualifications, including his education, prior experience, and professional licenses, memberships, and affiliations. Based upon its review, the Independent Fiduciary determined that the Independent Appraiser possessed the appropriate training, experience, and facilities to provide a qualified appraisal report on behalf of the Trust Fund regarding the subject property.

19. The Independent Fiduciary next examined the Independent Appraiser's independence. The Independent Fiduciary represents that it did not find any relationship between Chapman or Cushman, or any affiliates, to the parties that would be engaging in the transaction contemplated by the Lease Agreement. The Independent Fiduciary's review also did not reveal any other information that would call into question the Independent Appraiser's independence.

20. The Independent Fiduciary next determined whether the payments from the Plan to the Chapter under the Lease would be reasonable. To perform this task, the Independent Fiduciary reviewed the methodology provided by the Independent Appraiser to calculate the fair market rent, which included comparing comparable rental properties, having discussions with local brokers, and testing the Independent Appraiser's conclusions through a return on cost analysis. The Independent Fiduciary adjusted the Lease's base rent of $1.02 per square foot upwards by $0.07 per square foot to account for the Plan's additional $2,579 monthly payments to a Capital Replacement Reserve Fund (the Reserve Fund), which is described in more detail below, and determined that even with the adjusted rate, the Lease's adjusted monthly rent of $1.09 per square foot is less than its appraised fair market value of $1.14 per square foot. Additionally, the Independent Fiduciary noted that leases in the Property's subject market are typically written on a triple net basis, which is consistent with the structure of the Lease. The Independent Fiduciary stated that it also reviewed the properties and key lease information used in the Independent Appraisal Report analysis of rental activity for comparable space in similar properties in the Property's subject market and found that the selected comparable properties were appropriate and reasonably similar. The Independent Fiduciary noted how other lease terms, such as rent escalation clauses, duration, and tenant improvement allowances contained in the comparable leases that the Independent Appraiser identified compared to those in the Lease. For the reasons set forth above, the Independent Fiduciary determined that the arrangements provided under the Lease are necessary for the operation of the Plan and that the compensation to be paid by the Plan to the Chapter is reasonable. It also determined that entering into the Lease was reasonable, prudent, and in the Plan's interest.

21. On July 28, 2020, the Independent Fiduciary issued an addendum and supplement to the Independent Fiduciary Report. In the addendum, the Independent Fiduciary agreed to perform the following additional duties on behalf of the Plan: (a) monitor the terms of this exemption on an ongoing basis and take all actions that are necessary and proper to enforce the Plan's rights under the Lease to protect the Plan's participants and beneficiaries; (b) review and approve the material

[5] Furthermore, the Department notes that section II(c)(1) of the exemption requires that the Independent Fiduciary must not be directly or indirectly controlled by or through one or more intermediaries, or under common control with either the Chapter, the Plan, or any related employers' members.

[6] ERISA section 410 provides, in part, that "except as provided in ERISA Sections 405(b)(1) and 405(d), 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 part 4 of title I of ERISA] shall be void as against public policy."

[7] The Independent Fiduciary represents that the Trustees appeared to have undertaken a reasonable and thorough process before making this decision. The Independent Fiduciary represents that the Trustees had explored other alternatives and real estate properties in the area. Specifically, starting in year 2015, the Trustees began searching for new facilities. The Trustees evaluated 12 real properties, comprised of six existing buildings, three parcels of open land for building, two properties for operating engineer usage, and the additional annex near the then current facility.

terms and conditions of the Lease and make any adjustments thereto; (c) engage the Independent Appraiser and/or other service providers as it reasonably deems necessary; (d) monitor the Lease, including during any subsequent renewal period; and (e) ensure that all conditions of this exemption are met. The obligations in the addendum have been added to the Independent Fiduciary conditions for the exemption below.

22. The exemption requires the Independent Fiduciary to engage a qualified independent appraiser to perform an independent appraisal of the Property following the beginning date of the Lease on a periodic basis as prudence requires to ensure the Plan does not pay more than fair market value rent under the Lease. The Independent Fiduciary must regularly evaluate the prudence of the Plan's continued participation in the Lease and ensure that its participation in the Lease remains in the interest and protective of the interests of the Plan's participants and beneficiaries. The Plan's ongoing participation in the Lease requires the ongoing approval and consent of the Independent Fiduciary. The Independent Fiduciary is responsible for selecting the independent appraiser, the frequency of appraisals, and the assessment of the reliability of the appraisals in determining fair market value rent. The Plan may continue to participate in the Lease during any period only to the extent the Independent Fiduciary has affirmatively determined that participation in the Lease remains in the interest and protective of the Plan and its participants and beneficiaries. The amounts that the Plan has paid or will continue to pay under the Lease may not exceed fair market value rent.

23. In the July 28, 2020, supplement to the Independent Fiduciary Report, the Independent Fiduciary stated that the Plan needed more space to comply with social distancing requirements and guidelines in the COVID–19 environment and to enable the Plan to offer sufficient classes in a manner compliant with State Division of Apprenticeship Standards Guidelines. In the supplement, the Independent Fiduciary confirmed that the Plan's entering into the Lease was reasonable, prudent, and in the interest of the Plan.

24. On October 1, 2020, the Plan moved into the Building under the terms of the Lease stating that it urgently needed larger space due to the then COVID–19 health pandemic. Subsequent to the Plan moving into the Building, the Independent Appraiser conducted another appraisal of the Property and determined that the Property's fair market monthly rental value was $46,938 as of October 1, 2020 and $48,890, as of October 1, 2021.[8] Therefore, the Department notes that the Lease's monthly payment terms that require the Plan to pay a base rent of $40,000 and $2,579 into the Reserve Fund saves the Plan $4,359 and $6,311 on a monthly basis for Lease years 2020 and 2021 compared to the Property's appraised fair market rental value for those years.[9] Additionally, on January 14, 2022, the Independent Fiduciary represented to the Department that for the period beginning on October 1, 2020, the Lease's terms, including the base monthly rent of $40,000 per month, were in the interest of and of, the Plan and its participants and beneficiaries and reflected a below fair market rent for the subject premises.

Other Duties of the Independent Fiduciary

25. The Independent Fiduciary must ensure that the Lease is in the interest and protective of the Plan and its participants and beneficiaries, including with respect to any amendment or renewal of the Lease. Further, the Independent Fiduciary must take all necessary and proper steps to ensure that the Plan and its participants and beneficiaries are protected in connection with the Lease, which include approving any amendment or renewal thereof. Beginning on the day that the notice of exemption is published in the **Federal Register**, the Independent Fiduciary must ensure that the Plan's total payments under the Lease during a twelve (12) month period do not exceed ten (10) percent of the Plan's total assets as reflected in the most recently issued report from the independent accounting firm responsible for auditing the Plan's financial statements.

In order to ensure that the Lease and its terms continue to be in the interest of Plan and its participants and beneficiaries, this exemption requires the Independent Fiduciary to provide prior written notice to the Department's Office of Exemption Determinations at least 60 days before the Lease is amended, modified, or extended, unless such delay would cause imminent harm to the Plan in which case the notice must be provided immediately. The notification must include a complete description of the amendment, modification, or extension, including all material terms.[10] Additionally, the Independent Fiduciary must notify the Chapter of the Plan's intention to extend the Lease beyond the initial 10-year term, and any subsequent renewal must not exceed five-years.

The Independent Fiduciary while acting on the Plan's behalf with respect to the Lease, must not be directly or indirectly controlled by or through one or more intermediaries or under common control with either the Chapter, the Plan, or any related employers' members.

26. The Independent Fiduciary has not entered into and must not enter into any agreement or instrument that violates either ERISA section 410 or the Department's Regulations codified at § 2509.75–4; and has not entered and must not enter into any agreement, arrangement, or understanding that includes any provision that provides for the direct or indirect indemnification or reimbursement of the Independent Fiduciary by the Plan or other party for any failure to adhere to its contractual obligations or to State or Federal laws applicable the Independent Fiduciary's work, or that waives any rights, claims, or remedies of the Plan under ERISA, state, or Federal law against the Independent Fiduciary with respect to the transaction(s) that are the subject of the exemption.

Other Lease Terms

27. The Lease defines the formula to be used in determining annual increases to the Base Rent as follows:

> Beginning on the date that is one (1) year after the Commencement Date [Lease's start date], and on each successive one-year anniversary thereof (each an 'Adjustment Date') throughout the [t]erm, the Base Rent shall be increased by the amount of increase in the CPI . . . [s]uch increase shall be calculated by multiplying the then-current Base Rent by a fraction, the numerator of which shall be the CPI for the Adjustment Date and the denominator of which shall be the CPI for the previous Adjustment Date (or the CPI for the Commencement Date in case of the adjustment for the first Adjustment Date). If there is no increase in CPI, or a decrease in CPI, the Base Rent shall remain unchanged.'' [11]

[8] This determination is set forth in the Independent Appraiser's written report, dated December 16, 2021.

[9] As described below, the Plan was required to pay, in addition to $40,000 per month, an additional $2,579 into a Reserve Fund for certain maintenance expenses, which is considered an additional component of rent.

[10] Because the exemption provides retroactive exemptive relief, within 60 days of the date of publication of the notice of exemption in the **Federal Register** (the Publication Date), the Independent Fiduciary will provide a summary of all amendments, modifications, or extensions of the Lease made between October 1, 2020, and the Publication Date.

[11] CPI means the Consumer Price Index; the Department's Bureau of Labor Statistics publishes the CPI. The Lease also provides that ''. . . [t]he CPI

28. Notwithstanding the Lease's CPI Base Rent annual increases provision discussed above, and as further described below, the Independent Fiduciary must ensure that the total amount paid by the Plan in connection with the Lease does not exceed the fair market rental value.

29. In addition to the Base Rent, the Lease requires the Plan to pay certain operating expenses (the Operating Expenses).[12] The Operating Expenses are subject to both an annual reconciliation process (the Annual Reconciliation) and the Plan's exercise of audit rights, because of the Building's 90/10 allocation ratio between the Plan and the Chapter. The computation of the Operating Expenses must be made in accordance with fair and reasonable accounting principles customarily applied by owners of similar properties located in San Diego, California.[13]

30. The Lease requires both the Plan and the Chapter to make pro rata monthly payments to the Reserve Fund based on their space utilization. The Lease requires the Chapter to pay $136 per month for occupying 4,485 square feet while the Plan must pay $2,579 per month for occupying 39,115 square feet.[14] The Reserve Fund's monthly amounts will remain the same throughout the Lease's duration, including extensions.

31. The Reserve Fund is intended to segregate payments for future replacement needs and its calculations are based on reasonable life expectancy [15] and anticipated replacement costs of the Reserve Fund Items; as such, the Reserve Fund is not subject to the Annual Reconciliation provision.

32. The Reserve Fund may only be used for the replacement of certain items (such as roofing, doors, frames and hardware, flooring, asphalt and concrete paving and resealing, fencing and gates, etc.) that are listed in the Lease's addendum. The Reserve Fund may not be used for any other purpose unless agreed to by both the Chapter and the Plan, subject to the Independent Fiduciary's approval.[16]

33. Further, the Lease requires the Chapter to keep the Property, including interior and exterior walls, roof, and common areas, in good condition and repair except that the Plan is responsible for day-to-day maintenance and repairs to the interior of its allocated rented space to the extent such cost is attributable to causes beyond normal wear and tear. The Lease requires the Chapter to retain funds held in the Reserve Fund in a restricted account that may not be used for any purpose other than to fund the replacement of the items described above. Amounts paid by the Plan into the Reserve Fund constitute a portion of the Plan's overall consideration paid to the landlord, and once the amounts are paid into the Reserve Fund, the Plan has no legal right to such amounts beyond what is described in the Lease. The Lease's termination ends the Plan's right under the Lease. [17]

Prohibited Transactions

34. Absent an administrative exemption, the Lease would violate ERISA section 406(a)(1)(A), which prohibits a fiduciary from causing a plan to enter into transaction involving a sale, exchange, or lease, of any property between a plan and a party in interest. The Chapter is a party in interest with respect to the Plan under ERISA section 3(14)(D) because it is an employee organization whose members are covered by the Plan. Therefore, the Lease would violate ERISA section 406(a)(1)(A).

35. Additionally, the Lease would violate ERISA section 406(a)(1)(D), which prohibits a fiduciary from causing the plan to enter into transaction involving the transfer to or use of any plan assets by or for the benefit of a party in interest of a plan. Because the Lease requires monthly cash payments from the Plan's assets to the Chapter, the payments would be considered a transfer of Plan assets to a party in interest in violation of ERISA section 406(a)(1)(D).

36. Finally, the Lease would violate ERISA section 406(b)(2), which prohibits a plan fiduciary from acting in its individual capacity or in any other capacity in a transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or its participants or beneficiaries. Because both the Trustees and the Board are comprised of individuals representing participating employers who are the Chapter's members, these individuals are involved on both sides of the Lease in violation of ERISA section 406(b)(2).

37. The Department notes that in addition to the protections described above, this exemption includes protective conditions that allows the Plan to retroactively lease the Property from the Chapter to utilize its office space, classroom space, and training facilities to continue carrying out the Plan's goal of providing apprenticeship training that is related to the construction trade.

Written Comments Received Regarding the Proposed Exemption

38. In the Proposed Exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to such notice, which comment period ended on September 5, 2024. The Department received one comment that was immediately

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for any Adjustment Date shall be the CPI for the most recent month for which it is published before the Adjustment Date (or before the Commencement Date, as the case may be).'' The Department understands such Base Rent increase calculation to mean that the Base Rent may increase annually based on the published CPI for the applicable period.

[12] The Lease defines Operating Expenses as additional rent for costs that the Chapter incurs, which include the following: (1) operation, repair, maintenance, and replacement of the common areas; (2) trash disposal, janitorial and security services; (3) any service provided by the Chapter that is an operating expense under the Lease; (4) the cost of the premiums for the liability and property insurance policies required to be maintained by the Chapter under the Lease; (5) the cost of water, sewer, gas, electricity, solar panels, and other publicly mandated services; (6) labor, salaries and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the premises, and accounting and management fees attributable to the operation of the premises; (7) replacing and/or adding improvements mandated by any governmental agency and any repairs or removals necessitated thereby; (8) replacements of equipment or improvements, as amortized over such equipment or improvements' useful life for depreciation purposes according to federal income tax guidelines; (9) reserves set aside for maintenance, repair and/or replacement of common area improvements and equipment as set forth in the Lease's Addendum ; (10) environmental damages and earthquake coverage to the extent not recovered by Chapter directly from any tenants; and (11) all taxes, assessments and charges levied on or with respect to the facility, or any personal property of the Chapter used in the operation thereof and payable by the Chapter.

[13] The Independent Fiduciary's duties include reviewing and approving the Lease's Operating Expenses provisions.

[14] As noted above, the Independent Fiduciary determined that these payments had the effect of adjusting the Lease's base rent of $1.02 per square foot upward by $0.07 per square foot.

[15] The Lease provides a life cycle costs analysis for the Reserve Fund Items, which considers all costs of acquiring, operating, maintaining, and disposing of a building component or system.

[16] The Reserve Fund includes the following additional items: backflow preventers on site utilities; casework and countertops; sheet metal, caulking, joint sealants; roofing maintenance and re-roofing; doors, frames, and hardware; operable walls in classroom; coiling service doors; glass and glazing storefront system; ceramic tile; flooring carpet replacement and base; paint and coatings; elevator; plumbing; HVAC equipment; electrical and site lighting; and fire alarm and security system.

[17] As described in more detail above, the Independent Fiduciary determined that the aforementioned Lease terms, including the Reserve Fund provision, were prudent, and in the interest of the Plan. Moreover, this exemption prohibits the Plan's participants from paying any Plan operating expenses, including amounts paid into the Reserve Fund.

withdrawn and did not receive any hearing requests.

The complete application file (L–12006) 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 reachable by telephone at (202) 693–8673. 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 July 22, 2024, at 89 FR 59161.

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 or disqualified person from certain other provisions of ERISA and/or the Code, 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 participants and beneficiaries of the plan 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 the Plan and of its participants and beneficiaries, and (3) protective of the rights of the participants and beneficiaries of the plan;

(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 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 are true and complete at all times, and that the Application accurately describes all material terms of the transaction which is the subject of the exemption.

Accordingly, after considering the entire record developed in connection with the Applicant's exemption application, the Department has determined to grant the following exemption under the authority of ERISA section 408(a) in accordance with the Department's exemption procedures regulation.[18]

Exemption

Section I. Covered Transaction

The restrictions of ERISA sections 406(a)(1)(A), (D), and 406(b)(2) shall not apply, effective October 1, 2020, to the leasing of office, classroom, and training facilities (the Lease) located on an improved parcel of real property (the Property) by the Associated General Contractors of America, San Diego Chapter, Inc. Apprenticeship and Training Fund (the Plan) from the Associated General Contractors of America, San Diego Chapter, Inc. (the Chapter) to provide construction trade apprenticeship training to Plan participants if the conditions set forth in section II are met at all times.

Section II. General Conditions

(a) The Plan has paid, and will continue to pay, no more than the fair market rental value in connection with the Lease;

(b) The Plan's participants do not contribute to the Plan;

(c) A qualified independent fiduciary (the Independent Fiduciary) represents the Plan's interests in all respects to the Lease, including by approving the Lease and, if warranted, any amendment to or renewal of the Lease. Additionally, the Independent Fiduciary, acting on the Plan's behalf with respect to the Lease:

(1) Must not be directly or indirectly controlled by or through one or more intermediaries, or under common control with either the Chapter, the Plan, or any related employers' members;

(2) Reviewed the Lease, including the terms and conditions, and determined that the Lease was reasonable and in the interest of and protective of the Plan and its participants and beneficiaries in accordance with ERISA's fiduciary duties of prudence and loyalty;

(3) Confirmed that the initial base rent did not exceed the current fair market rental value of the Property by reviewing an appraisal performed by a qualified independent appraiser (the Independent Appraiser) both when the Plan entered into the Lease, and when the Plan began occupying the Property;

(4) Determined in advance of the Plan's entering into the lease for the Property, that the Lease is reasonable, prudent, in the interest and protective of the Plan and its participants and beneficiaries in accordance with ERISA's fiduciary duties of prudence and loyalty;

(5) Must engage a qualified independent appraiser to perform an independent appraisal of the Property following the beginning date of the Lease on a periodic basis as prudence requires to ensure the Plan does not pay more than fair market value rent under the Lease. The Independent Fiduciary is responsible for the selection of the Independent Appraiser, the frequency of appraisals, and the assessment of the reliability of the appraisals in determining fair market value rent;

(6) Must regularly evaluate the prudence of the Plan's continued participation in the Lease and ensure that participation in the Lease remains in the interest and protective of the interests of the Plan's participants and beneficiaries;

(7) Must monitor the parties' compliance with the terms and conditions of the exemption and take all necessary and proper steps to ensure that the Plan and its participants and beneficiaries are completely protected throughout the Lease's term and any related transactions (including any renewal thereof);

(8) Must review and approve the Lease's operating expenses on an ongoing basis, including but not limited to ensuring that the Plan undergoes both an annual reconciliation for such accrued expenses and it exercises its audit rights when prudently needed.

(9) Must provide prior written notice to the Chapter of the Plan's intention to extend the Lease beyond its initial 10-year term;

(10) Has not entered into and must not enter into any agreement or instrument that violates either ERISA section 410 or the Department's Regulations codified at 29 CFR 2509.75–4;[19] and

(11) Has not entered into and must not enter into any agreement, arrangement, or understanding that includes any provision that provides for the Plan or other party to: (i) directly or indirectly indemnify or reimburse the Independent Fiduciary for any failure to

[18] 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.

[19] ERISA section 410 provides, in part, that ''except as provided in ERISA Sections 405(b)(1) and 405(d), 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 part 4 of ERISA] shall be void as against public policy.''

adhere to its contractual obligations or to State or Federal laws applicable to the Independent Fiduciary's work, or (ii) waives any rights, claims, or remedies of the Plan under ERISA, State, or Federal law against the Independent Fiduciary with respect to the transaction(s) that are the subject of the exemption;

(d) The Plan's ongoing participation in the Lease requires the continuing approval and consent of the Independent Fiduciary, and the Plan may continue to participate in the Lease during any period only to the extent the Independent Fiduciary has affirmatively determined that participation in the Lease remains in the interest and protective of the Plan and its participants and beneficiaries;

(e) Any adjustments to the base rent under the Lease must be linked to the Consumer Price Index for All Urban Consumers for the San Diego, California area, as published by the Department's Bureau of Labor Statistics;

(f) Any renewal of the Lease's initial 10-year term must be made solely at the Plan's discretion subject to approval by the Independent Fiduciary and if the Lease is renewed, the Lease term must not exceed five-years;

(g) The Independent Appraiser must not have entered into, and must not enter into, any agreement, arrangement, or understanding that includes any provision that provides for the direct or indirect indemnification or reimbursement of the Independent Appraiser by the Plan or any other party for any failure to adhere to its contractual obligations or to State or Federal laws applicable to the Independent Appraiser's work, or that waives any rights, claims or remedies of the Plan or its participants and beneficiaries under ERISA, the Code, or other Federal and State laws against the Independent Appraiser with respect to the transaction(s) that are the subject of the exemption;

(h) The exemption does not cover any type of service that is otherwise covered under an administrative class exemption or a statutory exemption from ERISA's prohibited transaction provisions;

(i) Beginning on the day that the notice of exemption is published in the **Federal Register**, the Plan's total payments under the Lease during any given twelve (12) month period must not exceed ten (10) percent of the Plan's total assets as reflected in the most recently issued report from the independent accounting firm that audited the Plan's financial statements;

(j) The terms and conditions of the Lease are at least as favorable to the Plan as those which the Plan could obtain in a comparable lease from an unrelated party in an arm's-length transaction;

(k) All of the material facts and representations provided by the Applicant and set forth in the Proposed Exemption are true and accurate; and

(l) Within 60 days after publication date of this notice of exemption in the **Federal Register** (the Publication Date), the Independent Fiduciary will provide a summary of all amendments, modifications, or extensions of the Lease made between October 1, 2020, and the Publication Date. After the Publication Date and on an ongoing basis, the Independent Fiduciary must inform the Department's Office of Exemption determinations if the Lease is amended, modified, or extended at least 60 days before the amendment, modification, or extension unless such delay would cause imminent harm to the Plan in which case the notice must be provided immediately. The notification must include a complete description of the amendment, modification, or extension, including all material terms thereof.

Exemption Date: The exemption is in effect as of October 1, 2020.

Signed at Washington, DC.

George Christopher Cosby,

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

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DEPARTMENT OF LABOR

Employment and Training Administration

Revised Schedule of Remuneration for the Unemployment Compensation for Ex-Servicemembers (UCX) Program That Reflects the Military Pay Increase Effective January 1, 2025

AGENCY: Employment and Training Administration, U.S. Department of Labor.

ACTION: Notice.

Each year, the Department of Defense issues a Schedule of Remuneration used by states for UCX purposes. States use the schedule to determine Federal military wages for UCX ''first claims'' only when the Federal Claims Control Center (FCCC) responds to a request for information indicating that there is no Department of Labor copy of the Certificate of Release or Discharge from Active Duty, commonly known DD Form 214 (DD214) for an individual under the social security number provided. A response from the FCCC that indicates ''no DD214 on file'' will prompt the state to start the affidavit process and to use the attached schedule to calculate the Federal military wages for an unemployment insurance or UCX monetary determination.

The schedule applies to UCX ''first claims'' filed beginning with the first day of the first week that begins on or after January 1, 2025, pursuant to the UCX program regulations (see 20 CFR 614.12(c)). States must continue to use the 2024 schedule (or other appropriate schedule) for UCX ''first claims'' filed before the effective date of the revised schedule. Below is the 2025 Federal Schedule of Remuneration recently released by the Department of Defense.

2025 FEDERAL SCHEDULE OF REMUNERATION

[20 CFR 614.12(d)]

Pay grade	Monthly rate	Weekly (7/30th)	Daily (1/30th)
1. Commissioned Officers:			
O–10	24,259.71	5,660.60	808.66
O–9	24,259.71	5,660.60	808.66
O–8	24,126.29	5,629.47	804.21
O–7	21,806.52	5,088.19	726.88
O–6	19,001.34	4,433.65	633.38
O–5	15,996.69	3,732.56	533.22
O–4	13,742.88	3,206.67	458.10
O–3	10,914.71	2,546.77	363.82