

aspects of the civil justice system, and to support the development of information and statistical systems at the Federal, State, and local levels.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 53 copies of a two part data collection survey will be submitted to the State Court Administrators in each state and that 99 copies of appellate court surveys will be submitted to the Intermediate Appellate Clerk and the Clerk for the Court of Last Resort in each state.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total burden hours associated with this information collection is 1,216.

*If additional information is required contact:* Brenda E. Dyer, Department Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: March 18, 2004.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, PRA, Department of Justice.*

[FR Doc. 04-6537 Filed 3-23-04; 8:45 am]

BILLING CODE 4410-18-P

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

#### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day notice of information collection under review: Semi-Annual Progress Report for STOP Violence Against Indian Women Discretionary Grant Program

The Department of Justice (DOJ), Office on Violence Against Women has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until May 24, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with

instructions or additional information, please contact Cynthia J. Schwimer, Comptroller, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

#### Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for STOP Violence Against Indian Women Discretionary Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the 165 grantees from the STOP Violence Against Indian Women Discretionary Grant Program. The STOP Violence Against Indian Women Discretionary Grants are designed to develop and strengthen tribal law enforcement and prosecutorial strategies to combat violent crimes against Indian women, as well as develop and strengthen victim services.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 165 respondents (grantees from the STOP Violence Against Indian Women Discretionary Grant Program)

approximately one hour to complete a Semi-Annual Progress Report. The Semi-Annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in with grant funds. Grantees must complete only those sections that are relevant to their activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the Semi-Annual Progress Report is 330 hours.

*If additional information is required contact:* Brenda E. Dyer, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: March 18, 2004.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, Department of Justice.*

[FR Doc. 04-6538 Filed 3-23-04; 8:45 am]

BILLING CODE 4410-18-P

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### Prohibited Transaction Exemption 2004-05; [Exemption Application No. D-10957] et al.; Grant of Individual Exemptions; John Hancock Life Insurance Company

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

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be

held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

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

- (a) The exemption is administratively feasible;
- (b) The exemption is in the interests of the plan and its participants and beneficiaries; and
- (c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

### John Hancock Life Insurance Company, Located in Boston, Massachusetts; [Prohibited Transaction Exemption 2004-05 Application No. D-10957]

#### Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to purchases and sales of farmland asset(s) (the Farmland Asset(s)), as defined in Condition 12(b), or entire farmland account(s) (the Entire Farmland Account(s)), as defined in Condition 12(n), between various account(s) (the Account(s)), as defined in Condition 12(a), that are managed by Hancock Natural Resource Group, Inc. (HNRG) or the affiliate(s) (the Affiliate(s)), as defined in Condition 12(e), of John Hancock Life Insurance Company (JHLIC).

#### Conditions and Definitions

This exemption is subject to the following conditions:

1. A plan or plans covered by the Act (the ERISA-Covered Plan(s)), as defined in Condition 12(c), may participate in a subject transaction only if each such plan has total assets in excess of \$100 million.
2. At least 30 days prior to entering a subject transaction, each affected customer (the Customer(s)), as defined

in Condition 12(l), invested in an Account participating in such transaction will be provided with information regarding the Farmland Asset(s) or the Entire Farmland Account involved and the terms of the transaction, including the purchase price and how the transaction would meet the goals and investment policies of each such affected Customer. Notice of any change in the purchase price will be provided to each affected Customer at least 30 days prior to the consummation of the transaction.

3. An independent fiduciary (an Independent Fiduciary), as defined in Condition 12(h), is appointed by JHLIC or an Affiliate as follows:

(a) One Independent Fiduciary is appointed to represent the Account(s) in which an ERISA-Covered Plan or ERISA-Covered Plans is/are invested, whether the Account(s) is/are the buyer(s) or the seller(s) in a subject transaction, where one side of such transaction involves one or more: (i) ERISA-Covered Plan(s), (ii) pooled separate account(s) (the Pooled Separate Account(s)), as defined in Condition 12(k), in which an ERISA-Covered Plan or ERISA-Covered Plans invest, and/or (iii) other Account(s) holding "plan assets" subject to the Act<sup>1</sup> and the other side of such transaction involves one or more plan(s) or other customer(s) not covered by the Act (the Non-ERISA Plan(s) or Non-ERISA Customer(s), as defined in Condition 12(d)).

(b) One Independent Fiduciary is appointed to represent the buying account(s) (the Buying Account(s)), as defined in Condition 12(f), in a subject transaction, where such transaction is between two (2) or more: (i) ERISA-Covered Plans, (ii) Pooled Separate Accounts in which an ERISA-Covered Plan or ERISA-Covered Plans invest, and/or (iii) other Accounts holding "plan assets" subject to the Act, and the decision to liquidate the Farmland Asset(s) or Entire Farmland Account is the result of one or more "triggering events," as described below. A "triggering event" will exist whenever:

(1) JHLIC or an Affiliate receives a direction from a Customer to liquidate such Customer's Entire Farmland Account, and the decision to liquidate such Entire Farmland Account is outside of the control of JHLIC and its Affiliates; or

(2) JHLIC or an Affiliate receives a request by a Customer to liquidate a specified Farmland Asset or Farmland Assets held in the Customer's Account,

<sup>1</sup> See 29 CFR 2510.3-101 for the Department's definition of "plan assets" relating to plan investments.

and the decision to liquidate the Farmland Asset(s) is outside of the control of JHLIC and its Affiliates; or

(3) a liquidation of all of the Farmland Assets held in a selling account(s) (the Selling Account(s)), as defined in Condition 12(g), or an Entire Farmland Account, or a particular Farmland Asset or Farmland Assets held by such Account(s) is required under the terms of the investment contract, insurance contract, or investment guidelines governing the Account(s), and the decision to select any particular Farmland Asset(s) to be sold or the decision to sell an Entire Farmland Account is outside of the control of JHLIC and its Affiliates; and

(c) One Independent Fiduciary is appointed to represent the Buying Account(s) and one Independent Fiduciary is appointed to represent the Selling Account(s) involved in a subject transaction:

(1) where such transaction is between two (2) or more: (i) ERISA-Covered Plans, (ii) Pooled Separate Accounts in which an ERISA-Covered Plan or ERISA-Covered Plans invest, and/or (iii) other Accounts holding "plan assets" subject to the Act, and there is no "triggering event," as described above in Condition 3(b), or

(2) where such transaction is between two (2) or more: (i) ERISA-Covered Plans, (ii) Pooled Separate Accounts in which an ERISA-Covered Plan or ERISA-Covered Plans invest, and/or (iii) other Accounts holding "plan assets" subject to the Act, and one or more of the participants in such transaction is a Pooled Separate Account and/or other Account holding "plan assets" subject to the Act in which a John Hancock plan (the Hancock Plan(s)), as defined in Condition 12(m), participates.

4. With respect to each transaction requiring the participation of an Independent Fiduciary, as described in Condition 3, the purchase and sale of a Farmland Asset or Farmland Assets or an Entire Farmland Account shall not be consummated, unless the Independent Fiduciary determines that the transaction, including the price to be paid or received for each Farmland Asset or Entire Farmland Account, would be in the best interest of the particular Account(s) involved based on the investment policies and objectives of such Account(s).

5. Each Account which buys or sells a particular Farmland Asset or Farmland Assets or Entire Farmland Account pays no more than or receives no less than the fair market value of each Farmland Asset or Entire Farmland Account at the time of the transaction. For a Farmland Asset, fair market value

shall be determined by a qualified, independent real estate appraiser experienced with the valuation of farmland properties similar to the type involved in the transaction, and may include customary closing adjustments, as described in Condition 12(o).

For an Entire Farmland Account, fair market value shall be determined by a qualified, independent entity experienced in the auditing and valuation of farmland accounts similar to the type involved in the transaction and the valuation of assets or liabilities other than Farmland Assets, including but not limited to assets such as short-term investments or accounts receivable from prior crop sales or leases, and liabilities such as investment or property management fees payable or property taxes payable, and may include customary closing adjustments, as described in Condition 12(o).

6. Each purchase or sale of a Farmland Asset or Farmland Assets or Entire Farmland Account between Accounts is a one-time cash transaction. A Buying Account may assume liabilities associated with an Entire Farmland Account, subject to valuation procedures described in Condition 5, above.

7. Each Account involved in the purchase or sale of a Farmland Asset or Farmland Assets or Entire Farmland Account pays no real estate commissions or brokerage fees relating to the transaction.

8. JHLIC or an Affiliate acts as a discretionary investment manager for the assets of the Account(s) involved in each transaction, provided that this condition will not fail to have been satisfied solely because the Customer retains the right to veto or approve the purchase or sale of a Farmland Asset or Farmland Assets or Entire Farmland Account.

9. An Account may not participate in a subject transaction, if the assets of any Hancock Plan or Hancock Plans in the Account exceed 20 percent (20%) of the total assets of the Account.

10. No purchase or sale transaction shall be designed to benefit the interests of one particular Account over another.

11. The general accounts of both JHLIC and John Hancock Variable Life Insurance Company (JHVLIC) (the General Accounts) shall not participate, directly or indirectly, in the subject transactions;

12. For purposes of this exemption:

(a) The term, "Account(s)," means a separate account or separate accounts (the Separate Account(s)), as defined in Condition 12(i), including Non-Pooled Separate Account(s), or Pooled Separate Account(s), as well as holding entities

(Holding Entities), such as: (1) a partnership, corporation, trust, or any other form of entity established and maintained by JHLIC or an Affiliate and for which JHLIC or an Affiliate serves as general partner, investment manager, or adviser; or (2) a limited liability company or any other form of entity established by pension plan investors;

(b) the term, "Farmland Asset(s)," means a fee simple in farmland (and appurtenant rights), an interest in related equipment, a farmland lease, farm improvements, contractual agreements with respect to the production and harvesting of farm products, such as crop quotas, crop receivables, or delivery contracts, stock in farm cooperatives, and direct or indirect interest in entities holding such assets. With respect to any farmland lease: (i) the underlying fee simple must be owned by a person other than JHLIC or an Affiliate or any Account at the time of sale; and (ii) the entire lease originally acquired by the Selling Account must be sold to the Buying Account;

(c) the term, "ERISA-Covered Plan(s)," means an employee benefit plan or plans as defined under section 3(3) of the Act and not excluded from coverage under section 4 of the Act;

(d) the terms, "Non-ERISA Plan(s)" or "Non-ERISA Customer(s)," mean an entity or entities or investor(s) not covered by the provisions of Title I of the Act, such as a governmental plan, a university endowment fund, or other institutional investor, whose assets are managed in an Account for which JHLIC or an Affiliate acts as investment manager;

(e) the term, "Affiliate(s)," means any person(s) directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(f) the term, "Buying Account(s)," means the Account(s) that seek(s) to purchase a Farmland Asset or Farmland Assets or an Entire Farmland Account from another Account;

(g) the term, "Selling Account(s)," means the Account(s) that seek(s) to sell a Farmland Asset or Farmland Assets or an Entire Farmland Account to another Account;

(h) the term, "Independent Fiduciary," means a person or entity with authority to both review the appropriateness of a subject transaction for an Account, that is considered to hold "plan assets" subject to the fiduciary responsibility provisions of the Act, based on the investment policy established for that Account, and to negotiate the terms of the transaction, including the price to be paid for the

Farmland Asset, the Farmland Assets, or the Entire Farmland Account. An individual or firm selected to serve as an Independent Fiduciary shall meet the following criteria:

(1) The individual or firm shall have no current employment relationship with JHLIC or an Affiliate, although a prior employment relationship would not disqualify the individual or firm;

(2) No individual or firm shall serve as an Independent Fiduciary during any year in which gross receipts received from business with JHLIC and its Affiliates for that year exceed five (5) percent of such individual's or firm's gross receipts from all sources for the prior year;

(3) The individual or firm must be an expert with respect to farmland valuations;

(4) The individual or firm must have the ability to access (itself or through persons engaged by it) appropriate farmland sales comparison data and make appropriate adjustments to the subject property, properties, or Account; and

(5) The individual or firm must not have a criminal record involving fraud, fiduciary standards, or securities laws violations.

(i) the term, "Separate Account(s)," means a segregated asset Account or Accounts which receive premiums or contributions from Customers, including employee benefit plans subject to the Act, in connection with group annuity contracts and funding agreements, with investments held in the name of JHLIC, but where the value of the contract or agreement to the Customer (contract holder) fluctuates with the value of the investment associated with such Account;

(j) the terms, "Non-Pooled Separate Account(s)" or "Non-Pooled Account(s)," mean a Separate Account or Separate Accounts established to back a single contract issued to one Customer, which may be an employee benefit plan subject to the Act;

(k) the terms, "Pooled Separate Account(s)," or "Pooled Account(s)," mean a Separate Account or Separate Accounts established to back a group of substantially identical contracts issued to a number of unrelated Customers, including employee benefit plans subject to the Act;

(l) the term, "Customer(s)," means a person or persons or entity or entities that act as the authorized representative for the investor in an Account involved in a purchase or sale of Farmland Assets or an Entire Farmland Account, that is independent of JHLIC and its Affiliates, provided, however, that for any Hancock Plan, as defined in Condition

12(m), below, a "Customer" shall mean the Plan Investment Advisory Committee of JHLIC;

(m) the term, "Hancock Plan(s)," means an employee benefit plan or employee benefit plans sponsored by JHLIC or an Affiliate which invest(s) in an Account;

(n) the term, "Entire Farmland Account(s)," means all the assets and liabilities of an Account or Accounts, as defined in Condition 12(a), including but not limited to the Farmland Assets in such Account or Accounts; and

(o) "customary closing adjustments" for purposes of this exemption are limited to the following: management fees, taxes, assessments, water rates, assignment of amounts under leases, recording taxes, survey costs, title review and title insurance costs and premiums, due diligence costs, escrow fees, licensing fees, fuel costs, equipment leases or contracts, reimbursements and adjustments for capital expenditures by the seller, crop adjustments, adjustments for documented expenses incurred by the seller during a growing period prior to closing, and agreement that a buyer may retain a certain amount of crops upon harvest, and the seller will receive all or part of the proceeds for any crops in excess of the amount retained by the buyer.

#### Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on November 14, 2003. All comments and requests for a hearing were due by December 29, 2003.

During the comment period, the Department received no requests for a hearing. However, the Department did receive a comment letter from the applicant. In this regard, in a letter dated December 24, 2003, the applicant requested certain amendments to the conditions of the exemption, as proposed in the Notice, and various changes to the representations which according to the applicant should have been reflected in the Summary of Facts and Representations (the SFR) in the Notice, as published in the **Federal Register**.

The applicant's comments on the conditions of the exemption and on the representations in the SFR, and the Department's responses, thereto, are discussed in the numbered paragraphs below in an order that corresponds to

the appearance of the relevant language in the Notice.

1. The applicant requests modification of Condition 11 of the exemption. Condition 11, as set forth in the Notice, at 68 FR 64645, column 2, lines 45–50, reads as follows:

The general accounts (the General Accounts) of both JHLIC and John Hancock Variable Life Insurance Company (JHVLIC) shall not participate, directly or indirectly, in the subject transactions.

To make clear that references to "General Accounts," in the exemption only include the general accounts of JHLIC and its affiliates, the applicant proposes that Condition 11 be revised as follows:

The general accounts of both JHLIC and John Hancock Variable Life Insurance Company (JHVLIC) (the General Accounts) shall not participate, directly or indirectly, in the subject transactions.

The Department concurs with the applicant's request, and accordingly, has amended the language of Condition 11 in the exemption.

2. The applicant requests modification of Condition 12(a) of the exemption. Condition 12(a), as set forth in the Notice, at 68 FR 64645, column 2, lines 51–65, reads as follows:

(a) the term, "Account(s)," means a separate account or separate accounts (the Separate Account(s)), as defined in Condition 12(i), including Non-Pooled Separate Account(s), or Pooled Separate Account(s), as well as holding entities (Holding Entities), such as a partnership, corporation, or trust for which JHLIC or an Affiliate serves as general partner, investment manager, or adviser **and include entities established or maintained by JHLIC, and limited liability companies established by pension plan investors** (emphasis added).

In the opinion of the applicant, it is unclear whether the phrase emphasized in the quotation above is intended by the Department as a further limitation on what may be defined as a Holding Entity. The applicant confirms that currently Holding Entities are limited to entities established by JHLIC and limited liability companies established by pension plan investors. However, the applicant believes it is not clear what purpose is served by limiting future use of the exemption to these entities, when pension plans may wish to establish partnerships or trusts that would qualify as Holding Entities under the exemption, but for the emphasized language. Accordingly, the applicant requests that the definition of "Account(s)," as published in Condition 12(a) of the Notice be modified to delete the phrase emphasized in the quotation above.

The Department concurs in part and disagrees in part. Specifically, the Department concurs with the applicant's request to delete the phrase, "and include entities established or maintained by JHLIC, and limited liability companies established by pension plan investors," from the definition of "Account(s)," as set forth in Condition 12(a). However, the Department believes that the reference to Holding Entities should be limited. Accordingly, the definition of "Account(s)," as set forth in Condition 12(a), as set forth in the exemption had been amended to read as follows:

(a) the term, "Account(s)," means a separate account or separate accounts (the Separate Account(s)), as defined in Condition 12(i), including Non-Pooled Separate Account(s), or Pooled Separate Account(s), as well as holding entities (Holding Entities), such as: (1) a partnership, corporation, trust, or any other form of entity established and maintained by JHLIC or an Affiliate and for which JHLIC or an Affiliate serves as general partner, investment manager, or adviser; or (2) a limited liability company or any other form of entity established by pension plan investors.

3. The applicant requests modification of Condition 12(d) of the exemption. Condition 12(d), as set forth in the Notice, at 68 FR 64645, column 3, lines 21–29, reads as follows:

(d) the terms, "Non-ERISA Plans" or "Non-ERISA Customers," mean entities or investors not covered by the provisions of Title I of the Act, such as a governmental plan, a university endowment fund, or other institutional investors, whose assets are managed in an Account for which JHLIC or an Affiliate acts as investment manager.

The applicant proposes that the terms, "Non-ERISA Plans" and "Non-ERISA Customers," be changed to "Non-ERISA Plan(s)" and "Non-ERISA Customer(s)" in order to maintain consistency with the way singular and plural terms were treated in other provisions of the exemption.

The Department concurs with the applicant's request, and accordingly, has modified the language of Condition 12(d) in the exemption to read as follows:

(d) the terms, "Non-ERISA Plan(s)" or "Non-ERISA Customer(s)," mean an entity or entities or investor(s) not covered by the provisions of Title I of the Act, such as a governmental plan, a university endowment fund, or other institutional investor, whose assets are managed in an Account for which JHLIC or an Affiliate acts as investment manager.

4. The applicant requests modification of Condition 12(o) of the exemption. Condition 12(o), as set forth in the Notice, at 68 FR 64646, column 2, lines 1–14, reads as follows:

(o) "customary closing adjustments" means adjustments that may arise where agricultural land bearing crops is sold prior to harvest and may involve an agreement between the buyer and seller that either: (1) the buyer reimburse the seller for documented expenses incurred during the growing period in the cultivation of such crops, up to the date of closing; or (2) the buyer retain a certain amount of the crops and the seller receive the proceeds for any crops in excess of the amount retained by the buyer.

The applicant confirms that this definition is consistent with the examples provided to the Department regarding the types of expenses that may be considered "customary closing adjustments." However, the applicant believes that this definition of "customary closing adjustments" could be unnecessarily restrictive. For example, additional closing adjustments for management fees, real and personal property taxes, assignment of leases, and certain capital expenditures by the seller between an agreed-upon date and the date of closing are also "customary." Accordingly, in their comment letter, dated December 24, 2003, the applicant requested that the term, "customary closing adjustments," be defined as follows:

(o) "customary closing adjustments" means those mutually agreed upon adjustments to the consideration paid or received by a party made at closing that are customary or common in similar agricultural transactions, such as, but not limited to (1) adjustments for documented expenses incurred by the seller during a growing period prior to closing, or (2) agreement that a buyer may retain a certain amount of crops upon harvest, and the seller will receive all or part of the proceeds for any crops in excess of the amount retained by the buyer.

Subsequently, in response to the Department's concern that the requested amendment to the definition of "customary closing adjustments" did not specifically list such adjustments, the applicant, in a letter, dated March 4, 2004, proposed the following revised language for the definition:

(o) "customary closing adjustments" means those mutually agreed upon adjustments to the consideration paid or received by a party made at closing that are customary or common in similar agricultural transactions including management fees, taxes, assessments, water rates, assignment of amounts under leases, recording taxes, survey costs, title review and title insurance costs and premiums, due diligence costs, escrow fees, licensing fees, fuel costs, equipment leases or contracts, reimbursements and adjustments for capital expenditures by the seller, crop adjustments, adjustments for documented expenses incurred by the seller during a growing period prior to closing, and agreement that a buyer may retain a certain amount of crops

upon harvest, and the seller will receive all or part of the proceeds for any crops in excess of the amount retained by the buyer.

The Department believes that the applicant's revisions to the definition of "customary closing adjustments" are too open-ended. In this regard, the Department believes that the definition of "customary closing adjustments" for purposes of the exemption should be limited to a list of potential adjustments clearly enumerated. Accordingly, the Department has determined that Condition 12(o) in the exemption should read as follows:

(o) "customary closing adjustments" for purposes of this exemption are limited to the following: management fees, taxes, assessments, water rates, assignment of amounts under leases, recording taxes, survey costs, title review and title insurance costs and premiums, due diligence costs, escrow fees, licensing fees, fuel costs, equipment leases or contracts, reimbursements and adjustments for capital expenditures by the seller, crop adjustments, adjustments for documented expenses incurred by the seller during a growing period prior to closing, and agreement that a buyer may retain a certain amount of crops upon harvest, and the seller will receive all or part of the proceeds for any crops in excess of the amount retained by the buyer.

5. The applicant requests a change to the language in the SFR, describing "customary closing adjustments," as set forth in the Notice, at 68 FR 64648, column 3, lines 57–68 and at 68 FR 64649, column 1, lines 1–2. Specifically, the applicant requested that the description of "customary closing adjustments," in the SFR conform to the applicant's requested modification of the language of Condition 12(o).

As the Department did not concur with the applicant's requested modification to the language of Condition 12(o), the Department does not agree to the change requested by the applicant to the description of "customary closing adjustment," as set forth in the SFR, at 68 FR 64648, column 3, lines 57–68 and at 68 FR 64649, column 1, lines 1–2. It is the Department's view that, the definition of "customary closing adjustments," as set forth in Condition 12(o) of this final exemption, should supercede the description of "customary closing adjustments" in the SFR, as set forth in the Notice.

6. The applicant requests that changes should have been made to the language in various locations in the SFR, as set forth in the Notice. Specifically, the applicant states that: (a) the word, "Account(s)," should have been used instead of the phrase, "Farmland Separate Account(s)," and (b) the word, "Account's," should have been used

instead of the phrase, "Farmland Separate Account's," or the phrase, "Farmland Account's," in the following locations:

- a. in paragraph 7, 68 FR 64647, column 2, lines 7–8, 10–11, 36, 46–47, 51–52, 56–57, 57–58, and 61–62;
- b. in paragraph 8, 68 FR 64647, column 3, lines 16–17, 25–26, 29–30, 32, 36, 42–43, 45, 48, 52, 57–58 and 64;
- c. in paragraph 8, 68 FR 64648, column 1, lines 10–11, 11–12, and 23;
- d. in paragraph 10, 68 FR 64648, column 1, lines 59–60;
- e. in paragraph 12, 68 FR 64648, column 2, line 46;
- f. in paragraph 18, 68 FR 64649, column 1, lines 64–65;
- g. in paragraph 18, 68 FR 64649, column 2, lines 23–24; and
- h. in paragraph 19, 68 FR 64649, column 2, line 55.

The Department concurs.

7. Paragraph 8 of the SFR contains a description of the operation of HAIG's investment queue procedures in the event that a Farmland Asset or Entire Farmland Account would be an appropriate investment for more than one Account. In this regard, paragraph 8 of the Notice, as set forth at 68 FR 64647, column 3, 51–55, reads:

In the event that two or more Farmland Separate Accounts have objectives and constraints that are sufficiently similar, HAIG implements its investment queue procedures.

The applicant notes that one condition of participation in the investment queue is that an investor have assets awaiting investment in farmland. Accordingly, the applicant proposes that the quotation, as set forth in the Notice, should have read as follows:

In the event that two or more Accounts have objectives and constraints that are sufficiently similar and have assets awaiting investment in farmland, HAIG implements its investment queue procedures.

The Department concurs.

8. The applicant points out a typographical error in the SFR, as set forth in the Notice. In this regard, it appears that the word, "is," is missing, in paragraph 13 of the Notice, as set forth at 68 FR 64648, column 2, line 66. The applicant indicates that the word, "is," should have been inserted before the word, "between."

The Department concurs.

Accordingly, the SFR, as set forth in the Notice, at paragraph 13, 68 FR 64648, column 2, line 66, should have read as follows:

Where a transaction is between ERISA-Covered Plans and a triggering event has occurred, the fee for the services of the Independent Fiduciary will be charged as an

acquisition expense to the Buying Account(s).

9. In order to maintain consistency with the language in the rest of the Notice, the applicant requests that certain changes should have been made to the language of the SFR, as set forth in the Notice. Specifically, in paragraph 14, at 68 FR 64648, column 3, line 34, the reference to "proposed transactions," should have referred instead to "subject transactions."

The Department concurs. Accordingly, the language in the SFR in paragraph 14 of the Notice, at 68 FR 64648, column 3, line 34, should have read as follows:

In this regard, participation in the subject transactions by ERISA-Covered Plans is limited to plans having total assets in excess of \$100 million.

After giving full consideration to the entire record, including the written comments from the applicant, the Department has decided to grant the exemption, as described, amended, clarified, and concurred in above. In this regard, the comment letter submitted by the applicant to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N-1513, 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 refer to the Notice of Proposed Exemption published on November 14, 2003, at 68 FR 64643.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena C. Le Blanc of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

**Painters District Council No. 4 Apprenticeship, Upgrading & Retraining Trust Fund (the Plan) Located in Cheektowaga, New York [Prohibited Transaction Exemption No. 2004-06; [Application No. L-11190] Exemption**

The restrictions of section 406(a) of the Act shall not apply to a lease (the Lease) of certain space (the Leased Premises) in a building (the Building) owned by the Plan to Lipsitz, Green, Fahringer, Roll, Salisbury & Cambria, LLP (the Applicant), a party in interest with respect to the Plan. This exemption is conditioned upon the adherence to the material facts and representations

described herein and upon the satisfaction of the following requirements:

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

(b) The decision by the Plan to enter into the Lease will be made by the trustees of the Plan (the Trustees); and

(c) The fair market rental amount for the Lease will be determined by an independent, qualified appraiser as of the date of the commencement of the Lease; and

(d) After commencement of the Lease, an additional fair market rental appraisal of the Leased Premises will be performed by an independent, qualified appraiser every thirty months with the rental rate being adjusted accordingly.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on December 17, 2003 at 68 FR 70310.

**FOR FURTHER INFORMATION CONTACT:** Khalif Ford of the Department, telephone (202) 693-8540 (this is not a toll-free number).

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that

the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of March, 2004.

**Ivan Strasfeld,**

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

[FR Doc. 04-6583 Filed 3-23-04; 8:45 am]

**BILLING CODE 4510-29-P**

**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

[Application No. D-11132, et al.]

**Proposed Exemptions; Landerholm, Memovich, Lansverk & Whitesides, P.S. 401(k) Profit Sharing Plan (the Plan)**

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

**ACTION:** Notice of Proposed Exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. \_\_\_\_\_, stated in each Notice of Proposed