

inability to establish procedures that will minimize the time elapsing between cash advances and disbursements, OJP may terminate advance funding and require the state to finance its operations with its own working capital. Payments to the state will then be made to the state by the ACH Vendor Express method to reimburse the grantee for actual cash disbursements. It is essential that the grantee organization maintain a minimum of cash on hand and that drawdowns of cash are made only when necessary for disbursements.

VII. Monitoring

A. Office of the Comptroller

The Office of the Comptroller conducts periodic reviews of the financial policies, procedures, and records of VOCA grantees and subrecipients. Therefore, upon request, state grantees and subrecipients must give authorized representatives the right to access and examine all records, books, papers, case files, or documents related to the grant, use of administrative funds, and all subawards.

B. Office for Victims of Crime

OVC conducts on-site monitoring in which each state grantee is visited a minimum of once every three years. While on site, OVC personnel will review various documents and files such as (1) financial and program manuals and procedures governing the VOCA grant program; (2) financial records, reports, and audit reports for the grantee and all VOCA subrecipients; (3) the state grantee's VOCA application kit, procedures, and guidelines for subawarding VOCA funds; and (4) all other state grantee and subrecipient records and files.

In addition, OVC will visit selected subrecipients and will review similar documents such as (1) financial records, reports, and audit reports; (2) policies and procedures governing the organization and the VOCA funds; (3) programmatic records of victims' services; and (4) timekeeping records and other supporting documentation for costs supported by VOCA funds.

VIII. Suspension and Termination of Funding

If, after notice and opportunity for a hearing, OVC finds that a state has failed to comply substantially with VOCA, the OJP Financial Guide (effective edition), the Proposed

Program Guidelines, or any implementing regulation or requirement, OVC may suspend or terminate funding to the state and/or take other appropriate action. At such time, states may request a hearing on the justification for the suspension and/or termination of VOCA funds. VOCA subrecipients, within the state, may not request a hearing at the federal level. However, VOCA subrecipients who believe that the state grantee has violated a program and/or financial requirement are not precluded from bringing the alleged violation(s) to the attention of OVC.

Aileen Adams,

Director, Office for Victims of Crime, Office for Justice Programs.

[FR Doc. 97-3836 Filed 2-14-97; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Nos. D-10192, L-10193 through L-10196, et al.]

Proposed Exemptions ILGWU National Retirement Fund, et al. (Collectively the Plans)

AGENCY: Pension and Welfare Benefits 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 restriction 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

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this Federal Register Notice. Comments and request 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. 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 request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

ILGWU National Retirement Fund, et al. (collectively, the Plans), Located in New York, New York

[Application Nos. D-10192, L-10193 through L-10196]

Proposed Exemption

Section I—Transactions

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective July 1, 1995, to—

(A) The provision of banking services (Banking Services, as defined in section IV(C)) by the Amalgamated Bank of New York (the Bank) to certain employee benefit plans (the Plans, as defined in section IV(E)), which are maintained on behalf of members of the International Ladies Garment Workers Union;

(B) The purchase by the Plans of certificates of deposit (CDs) issued by the Bank; and

(C) The deposit of Plans' assets in money market or other deposit accounts established by the Bank; provided that the applicable conditions of Section II and Section III are met:

Section II—Conditions

(A) The terms under which the Banking Services are provided by the Bank to the Plans, and those under which the Plans purchase CDs from the Bank or maintain deposit accounts with the Bank, are at least as favorable to the Plans as those which the Plans could obtain in arm's-length transactions with unrelated parties.

(B) The interests of each of the Plans with respect to the Bank's provision of Banking Services to the Plans, the purchase of CDs from the Bank by any of the Plans, and the deposit of Plan assets in deposit accounts established by the Bank, are represented by an Independent Fiduciary (as defined in section IV(D)).

(C) With respect to each Plan, the representation of the Plan's interests by the Independent Fiduciary is authorized, and confirmed at least annually, by the Authorizing Plan Fiduciary (as defined below in section IV(A));

(D) With respect to the purchase by any of the Plans of certificates of deposit (CDs) issued by the Bank or the deposit of Plan assets in a money market account or other deposit account established at the Bank: (1) Such transaction complies with the conditions of section 408(b)(4) of the Act; (2) Any CD offered to the Plans by the Bank is also offered by the Bank in

the ordinary course of its business with unrelated customers; and (3) Each CD purchased from the Bank by a Plan pays the maximum rate of interest for CDs of the same size and maturity being offered by the Bank to unrelated customers at the time of the transaction;

(E) The compensation received by the Bank for the provision of Banking Services to the Plan is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act.

(F) Following the merger of the International Ladies Garment Workers Union with UNITE, the Independent Fiduciary made an initial written determination that (1) the Bank's provision of Banking Services to the Plans, (2) the deposit of Plan assets in depository accounts maintained by the Bank, and (3) the purchase by the Plans of CDs from the Bank, are in the best interests and protective of the participants and beneficiaries of each of the Plans.

(G) On a periodic basis, not less frequently than quarterly, the Bank provides the Independent Fiduciary with a written report (the Periodic Report) which includes the following items with respect to the period since the previous Periodic Report: (1) A listing of Banking Services provided to, all outstanding CDs purchased by, and deposit accounts maintained for each Plan; (2) a listing of all fees paid by the Plans to the Bank for the Banking Services, (3) the performance of the Bank with respect to all investment management services, (4) a description of any changes in the Banking Services, (5) an explanation of any problems experienced by the Bank in providing the Banking Services, (6) a description of any material adverse events affecting the Bank, and (7) any additional information requested by the Independent Fiduciary in the discharge of its obligations under this exemption.

(H) On a periodic basis, not less frequently than annually, the Independent Fiduciary reviews the Banking Services provided to each Plan by the Bank, the compensation received by the Bank for such services, any purchases by the Plan of CDs from the Bank, and any deposits of assets in deposit accounts maintained by the Bank, and makes the following written determinations:

(1) The services, CDs and depository accounts are necessary or appropriate for the establishment or operation of the Plan;

(2) The Bank is a solvent financial institution and has the capability to perform the services;

(3) The fees charged by the Bank are reasonable and appropriate;

(4) The services, the depository accounts, and the CDs are offered to the Plan on the same terms under which the Bank offers the services to unrelated Bank customers in the ordinary course of business;

(5) Where the Banking Services include an investment management service, that the rate of return is not less favorable to the Plan than the rates on comparable investments involving unrelated parties; and

(6) The continuation of the Bank's provision of Banking Services to the Plan for compensation is in the best interests and protective of the participants and beneficiaries of the Plan.

(I) Copies of the Bank's periodic reports to the Independent Fiduciary are furnished to the Authorizing Plan Fiduciaries on a periodic basis, not less frequently than annually and not later than 90 days after the period to which they apply.

(J) The Independent Fiduciary is authorized to continue, amend, or terminate, without any penalty to any Plan (other than the payment of penalties required under federal or state banking regulations upon premature redemption of a CD), any arrangement involving: (1) The provision of Banking Services by the Bank to any of the Plans, (2) the deposit of Plan assets in a deposit account maintained by the Bank, or (3) any purchases by a Plan of CDs from the Bank;

(K) The Authorizing Plan Fiduciary may terminate, without penalty to the Plan (other than the payment of penalties required under federal or state banking regulations upon premature redemption of a CD), the Plan's participation in any arrangement involving: (1) The representation of the Plan's interests by the Independent Fiduciary, (2) the provision of Banking Services by the Bank to the Plan, (3) the deposit of Plan assets in a deposit account maintained by the Bank, or (4) the purchase by the Plan of CDs from the Bank.

Section III—Recordkeeping

(A) For a period of six years, the Bank and the Independent Fiduciary will maintain or cause to be maintained all written reports and other memoranda evidencing analyses and determinations made in satisfaction of conditions of this exemption, except that: (a) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Independent Fiduciary and the Bank the records are lost or destroyed before the end of the six-year period; and (b) no party in interest other than the Bank and

the Independent Fiduciary shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (2) below;

(B)(1) Except as provided in section (2) of this paragraph (B) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (A) of this section III shall be unconditionally available at their customary location during normal business hours for inspection by: (a) Any duly authorized employee or representative of the U.S. Department of Labor or the Internal Revenue Service, (b) any employer participating in the Plans or any duly authorized employee or representative of such employer, and (c) any participant or beneficiary of the Plans or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in subsections (b) and (c) of subsection (1) above shall be authorized to examine trade secrets of the Independent Fiduciary or the Bank, or any of their affiliates, or any commercial, financial, or other information that is privileged or confidential.

Section IV—Definitions

(A) "Authorizing Plan Fiduciary" means, with respect to each Plan, the board of trustees of the Plan or other appropriate plan fiduciary with discretionary authority to make decisions with respect to the investment of Plan assets;

(B) "Bank" means the Amalgamated Bank of New York;

(C) "Banking Services" means custodial, safekeeping, checking account, trustee services, and investment management services involving fixed income securities (either directly or through a collective investment fund maintained by the Bank).

(D) "Independent Fiduciary" means a person, within the meaning of section 3(9) of the Act, who (1) is not an affiliate of the Union of Needletrades, Industrial & Textile Employees (UNITE) and any successor organization thereto by merger, consolidation or otherwise, (2) is not an officer, director, employee or partner of UNITE, (3) is not an entity in which UNITE has an ownership interest, (4) has no relationship with the Bank other than as Independent Fiduciary under this exemption, and (5) has acknowledged in writing that it is acting as a fiduciary under the Act. No

person may serve as an Independent Fiduciary for the Plans for any fiscal year in which the gross income (other than fixed, non-discretionary retirement income) received by such person (or any partnership or corporation of which such person is an officer, director, or ten percent or more partner or shareholder) from UNITE and the Plans for that fiscal year exceed five percent of such person's annual gross income from all sources for the prior fiscal year. An affiliate of a person is any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual. Initially, the Independent Fiduciary is U.S. Trust Company of California, N.A.

(E) "Plans" means any of the following employee benefit plans, and their successors by reason of merger, spin-off or otherwise:

International Ladies Garment Workers Union Nation Retirement Fund;
International Ladies Garment Workers Union Death Benefit Fund;
Health Fund of New York Coat, Suit, Dress, Rainwear & Allied Workers Union, ILGWU;
Health & Vacation Fund, Amalgamated Ladies Garment Cutters Union, Local 10;
ILGWU Eastern States Health & Welfare Fund;
ILGWU Office, Clerical & Misc. Employee Retirement Fund;
ILGWU Retirement Fund, Local 102;
Union Health Center Staff Retirement Fund;
Unity House 134 HREBIU Plan Fund;
Puerto Rican Health & Welfare Fund;
Health & Welfare Fund of Local 99, ILGWU;
Local 99 Exquisite Form Industries, Inc. Severance Fund;
Local 99 K-Mart Severance Fund;
Local 99 Kenwin Severance Fund;
Local 99 Lechters Severance Fund;
Local 99 Eleanor Shops Severance Fund;
Local 99 Monette Severance Fund;
Local 99 Moray, Inc. Severance Fund;
Local 99 Petri Stores, Inc. Severance Fund;
Local 99 Netco, Inc. Severance Fund;
Local 99 Misty Valley, Inc. Severance Fund; and
Local 99 Norstan Apparel Shops, Inc. Severance Fund

(F) "UNITE" means the Union of Needletrades, Industrial & Textile Employees and any successor organization thereto by merger, consolidation or otherwise.

EFFECTIVE DATE: This exemption, if granted, shall be effective as of July 1, 1995.

Summary of Facts and Representations

1. The Plans are pension and welfare benefit plans established pursuant to collective bargaining agreements to provide benefits to active members, retired members and staff of the International Ladies Garment Workers Union (ILGWU) and its local unions. At various times prior to July 1, 1995, each of the Plans had retained and commenced to utilize the banking services of the Amalgamated Bank of New York (the Bank), a New York state-chartered commercial bank located in New York, New York. The services for which the Plans contracted with the Bank have included custodial, safekeeping, checking account, trustee, and fixed-income investment management services. The Plans have also purchased certificates of deposit issued by the Bank and utilized the Bank's money market and other deposit accounts. The Plans have used varying combinations of the services offered by the Bank. For example, as of July 1, 1995, six of the Plans were using the Bank's investment management services of a fixed-income nature; six Plans were using the Bank's custodial services, some in conjunction with the investment management services; seven Plans were using the Bank's safekeeping services; and one Plan held certificates of deposit issued by the Bank.

When these service-provision relationships between the Bank and the Plans were established, prior to July 1, 1995, all of the common stock of the Bank was held by or on behalf of the General Office of the Amalgamated Clothing and Textile Workers Union (ACTWU), local unions and joint boards of ACTWU, and individuals related to ACTWU. Prior to July 1, 1995, ACTWU and ILGWU were not related. Thus, the Bank represents that prior to July 1, 1995, the Bank was a party in interest with respect to the Plans solely by reason of the provision of services to the Plans and not by reason of any ownership of interests in the Bank by ILGWU or the Plans.

2. Effective July 1, 1995 (the Consolidation Date), ACTWU and the ILGWU merged and formed a consolidated organization, the Union of Needletrades, Industrial and Textile Employees (UNITE). Under the agreement governing the merger (the Agreement), UNITE is deemed to be a consolidation and continuation of ILGWU and ACTWU and their respective affiliates. Neither ACTWU nor ILGWU is deemed to have been

dissolved or terminated by the consolidation, and each is treated under the Agreement as a "constituent member" of UNITE. As part of the consolidation, new Bank stock was issued to UNITE and Bank stock previously held in the name of ACTWU was transferred to and registered in the name of UNITE. Pursuant to the Agreement, the president of UNITE appointed ten new members of the Bank's board of directors to reflect the participation of ILGWU in the ownership of the Bank, and all of the newly-appointed Bank directors are trustees of one or more of the Plans. The Bank represents that as a result of the consolidation pursuant to the Agreement, the Bank became more than fifty percent (50%) owned by an employee organization whose members are covered by the Plans, and therefore the Bank became a party in interest with respect to the Plans by reason of the ownership of the Bank by UNITE.

3. The Bank is requesting an exemption to permit the continuation, after the Consolidation Date, of the Bank's provision to the Plans of the banking services which had been provided to the Plans prior to the Consolidation Date, under the terms and conditions described herein. The services which the Bank will be authorized to continue to provide to the Plans are defined in the exemption as (1) services identified in the exemption as Banking Services, consisting of custodial, safekeeping, checking account, trustee services, and investment management services involving fixed income securities (either directly or through a collective investment fund maintained by the Bank); (2) the purchase by the Plans of certificates of deposit (CDs) issued by the Bank; and (3) the deposit of Plans' assets in money market or other deposit accounts established by the Plan. Hereafter, references to Banking Services will include all three types of services provided to the Plans by the Bank.

4. Under the exemption, with respect to the proposed continuation of the Bank's provision of Banking Services to the Plan, the interests of the Plans and their participants and beneficiaries must be represented by a fiduciary which is independent of and unrelated to the Bank (the Independent Fiduciary). The exemption defines the Independent Fiduciary as a person (within the meaning of section 3(9) of the Act) who has acknowledged in writing its fiduciary capacity under the Act and who is unrelated to the Bank and UNITE other than as Independent Fiduciary under this exemption. Under the terms

of the exemption, the Independent Fiduciary is required to conduct an initial evaluation of the Banking Services to determine whether their continued provision to the Plans after the Consolidation Date is in the best interests and protective of the participants and beneficiaries of the Plans, and thereafter to monitor and oversee the relationships between the Plans and the Bank, representing the Plans' interests therein and conducting ongoing periodic evaluations and determinations as to whether the Bank's provision of Banking Services to the Plans continues to be in the best interests and protective of the Plans. The Independent Fiduciary's authority includes the ability to continue, amend or terminate, without penalty to a Plan (other than a penalty required for early redemption of a CD) any arrangement under which the Bank provides the Banking Services to any of the Plans. On a periodic basis no less frequent than annually, the Independent Fiduciary is required to review the Banking Services provided to each Plan by the Bank, the compensation received by the Bank for such services, any purchases by the Plan of certificates of deposit (CDs) from the Bank, and any deposits of assets in deposit accounts maintained by the Bank, and to make a number of written determinations, more fully described in section II(H) of the proposed exemption, constituting an analysis of whether the Bank's provision of Banking Services to the Plans continues to be in the best interests and protective of the participants and beneficiaries of the Plans. To enable the Independent Fiduciary to fulfill its obligations under the exemption, the Bank is required to provide information (listed in section II(G) of the proposed exemption) in writing to the Independent Fiduciary no less frequently than quarterly, relating to identification and description of the Banking Services and the circumstances under which they are rendered. The exemption requires that the compensation received by the Bank for the provision of services to the Plans is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act.

5. With respect to each Plan, the exemption requires that the representation of the Plan's interests by the Independent Fiduciary regarding the Bank's provision of Banking Services to the Plan is authorized and confirmed at least annually by the Plan's board of trustees or other appropriate Plan fiduciary with authority to make decisions with respect to the investment of Plan assets (the Authorizing Plan

Fiduciary). The Authorizing Plan Fiduciary of each Plan must be furnished copies of the Bank reports to the Independent Fiduciary no less frequently than annually and no later than 90 days after the period to which they apply. The exemption provides that the Authorizing Plan Fiduciary may terminate, without penalty to the Plan (other than a penalty required for early redemption of a CD), the Plan's participation in any arrangement involving the representation of the Plan's interests by the Independent Fiduciary or the provision of Banking Services by the Bank.

6. The exemption requires the Bank and the Independent Fiduciary to maintain all written reports and other memoranda evidencing analyses and determinations made in satisfaction of the conditions of the exemption. The Plans which are covered by the exemption are identified in section IV(E) of the exemption. The effective date of the exemption will be July 1, 1995, the Consolidation Date.

7. The U.S. Trust Company of California, N.A. (U.S. Trust) was appointed by the Plans (the Appointment) effective July 28, 1995 to serve in the capacity of Independent Fiduciary on behalf of the Plans with respect to the Bank's provision of the Banking Services to the Plans in accordance with the exemption, pursuant to an agreement signed and formalized on September 21, 1995 between the Plans, the Bank and U.S. Trust. With assets under management totalling approximately \$53 billion, U.S. Trust represents that it has extensive trust and management capabilities, including discretionary asset management, asset allocation and diversification, investment advice, securities trading and independent fiduciary assignments under the Act. U.S. Trust represents that immediately upon the Appointment, it undertook a review and assessment of the Banking Services and made a preliminary determination that the Banking Services were appropriate and adequate to satisfy the Plans' banking needs, until a more thorough review and assessment could be completed. U.S. Trust represents that it has completed this thorough review and assessment with the professional assistance of the consulting firm of Towers Perrin (Towers Perrin). Towers Perrin, an international firm of consultants and consulting actuaries, represents that it is a registered investment advisor under the Investment Advisors Act of 1940, providing a broad range of services for investment management evaluation and performance measurement. U.S. Trust

represents that in its review and assessment of the Bank and the Banking Services provided to the Plans, U.S. Trust gathered information from various sources, including various operations of the Bank, the Bank's legal counsel, the Plans, and Towers Perrin. U.S. Trust represents that its representatives and those of Towers Perrin met with various officers of the Bank including the Bank's Chief Executive Officer and Chief Investment Officer. U.S. Trust represents that it also utilized a written report by Towers Perrin, prepared at the request of U.S. Trust, specifically analyzing the investment management services which the Bank has provided the Plans.

8. U.S. Trust has made various findings and determinations with respect to the Bank and the provision of Banking Services to the Plans which are summarized as follows:

Financial condition of the Bank: U.S. Trust represents that it examined the Bank as a whole, from a financial point view. U.S. Trust states that it found the Bank's assets to be liquid and secure, with 82 percent of assets invested in AAA-rated securities and only 7.4 percent invested in loans. U.S. Trust represents that the duration positioning of the Bank's assets and liabilities is managed such that, when considered in conjunction with the liquidity of the Bank's assets, interest rate changes will have a minimal effect on the Bank's income. U.S. Trust concludes that the Bank is operated very conservatively and is very well capitalized and solvent.

Custodial and safekeeping services: U.S. Trust represents that it determined that the Bank possesses adequate capability to perform all custodial and safekeeping services needed by the Plans, utilizing both the Bank's own personnel and facilities as well as the contract services of qualified third parties for certain data processing and sub-custodial services. U.S. Trust determined that these services as provided to the Plans are offered by the Bank to the public in the ordinary course of business. U.S. Trust states that the fee schedules of the Bank for these services are reasonable, based on industry standards, and that the actual fees charged the Plans for custodial services are lower than the scheduled fees. U.S. Trust concludes that the Bank's provision of custodial and safekeeping services to the Plan is reasonable and appropriate.

Certificates of deposit (CDs), money market accounts and checking accounts: U.S. Trust determined that the Bank has the capability to offer CDs and money market and other deposit account services as needed by any of the

Plans, and that the Bank offers these same services to the general public in the ordinary course of its business. U.S. Trust states that the fees are reasonable, because no fees are charged with respect to CDs and money market accounts and the Bank customarily does not charge the Plans fees for checking accounts. U.S. Trust represents that at the time of its review, the rates of return on CDs, as published in the Wall Street Journal, were lower than the rates paid by the Bank on CDs with the same or shorter maturities. U.S. Trust states that the rate paid by the Bank on its money market account also appears to be reasonable, based on U.S. Trust's experience and investigation, although there are no indices or published rates to use in comparison. Considering all the information obtained, U.S. Trust concludes that the Plans' utilization of the Bank for CDs and money market and other deposit account services is reasonable and appropriate.

Investment Management Services: U.S. Trust represents that it reviewed and evaluated the fixed-income investment products offered by the Bank to the Plans, which are of three categories:

(1) A short-term bond fund (the Short-Term Product) with an average duration of 1.7 years in 1995, investing primarily in U.S. Treasury and government agency securities, in which four Plans have invested a total of \$111.6 million;

(2) A bond fund with an average duration of 3.4 years in 1995 (the Intermediate-Duration Product) investing primarily in U.S. Treasury and government agency securities and corporate bonds, in which one Plan has invested a total of \$2.5 million; and

(3) A bond fund designed for longer term investors (the Core Duration Product) with an average duration of 4.6 years in 1995, investing primarily in U.S. Treasury and government securities, corporate bonds, and mortgage-backed securities, in which one Plan has invested a total of \$24.1 million.

U.S. Trust represents that in its review and evaluation of these investment products, it utilized an extensive report prepared by Towers Perrin regarding the products, and attended due diligence meetings with various officers of the Bank. U.S. Trust states that it analyzed the Bank's investment process, personnel, performance results, fees, product and personnel growth, representative clients, historical portfolio characteristics and a current portfolio contents summary. U.S. Trust represents that in the course of its review it determined that the Bank

maintains the capability to provide these investment management services competently, that the services are offered by the Bank to the public in the ordinary course of business, and that the fees for the services are reasonable based on industry norms taking into account the experience and reputation of the Bank. U.S. Trust states that it determined that additional costs to the Plans, approximating \$80,000, would likely result from a decision to replace the Bank as the provider of these investment management services. With respect to each of these three categories of investment products, U.S. Trust made specific determinations regarding the rates of return provided and arrived at specific conclusions as to whether the investment products were appropriate for the Plans, summarized as follows:

(1) The Short-Duration Product has consistently outperformed its benchmark index, the Merrill Lynch 1-3 Year Treasury Index, earning 8.4 percent per year over the past seven years on an annualized basis, while being conservatively managed and maintaining a high quality of investment assets. U.S. Trust notes that the Bank has represented that the investment strategy of this product will remain unchanged. U.S. Trust has determined that the investment of assets of the Plans in the Short-Duration Product is reasonable and appropriate.

(2) The Intermediate-Duration Product's cumulative performance over the past seven years is very close to its benchmark, the Lehman Intermediate Government/Corporate Index, and U.S. Trust determined that this product is capable of generating returns above its benchmark. U.S. Trust notes that the investment parameters of this product have recently changed to include investments in corporate bonds and that it has since demonstrated an ability to enhance returns. Because this product has been managed under its current guidelines for a relatively short period of time, U.S. Trust has concluded that the selection of this product by certain of the Plans is reasonable and appropriate for one more year, after which time another year's investment results will be available for consideration and U.S. Trust will undertake a reassessment of whether this product remains reasonable and appropriate for investments by the Plans.

(3) U.S. Trust found that the Core Duration Product outperformed its benchmark, the Lehman Aggregate Index, for 1995 and that its investment parameters were recently changed to expand duration and maturity restrictions and include corporate bonds

and asset-backed securities among its investment assets. U.S. Trust concludes that the selection of this product by certain of the Plans is reasonable and appropriate for one more year, after which time another year's investment results will be available for consideration and U.S. Trust will undertake a reassessment of whether this product remains reasonable and appropriate for investments by the Plans.

Conclusion: As a conclusion to its review and analysis, U.S. Trust states that in view of the information discussed above and U.S. Trust's judgment with respect thereto, subject to the limitations discussed regarding the Intermediate and Core Duration Products, U.S. Trust believes it is in the best interests of the Plans to use the investment management and other banking services provided by the Bank.

9. In summary, the applicant represents that the proposed exemption satisfies the criteria of section 408(a) of the Act for the following reasons: (a) The interests of the Plans with respect to the Bank and its provision of services to the Plans are represented by an Independent Fiduciary, U.S. Trust; (b) The representation of each Plan's interests by the Independent Fiduciary with respect to the Bank and its provision of services is authorized annually by the Plan's Authorizing Plan Fiduciary; (c) U.S. Trust has reviewed and evaluated the entire range of services provided by the Bank to the Plans and has determined that it is in the best interests of the Plans to utilize such services; (d) The Independent Fiduciary will oversee and monitor the Bank's provision of services to the Plans and will make written determinations at least annually regarding the continuation of such provision of services; (e) At least quarterly, the Bank is required to submit a Periodic Report to the Independent Fiduciary which relates relevant details of the services provided by the Bank to any of the Plans; (f) The Authorizing Plan Fiduciary will be provided copies of the Bank's Periodic Reports to the Independent Fiduciary; (g) With respect to each Plan, the Authorizing Plan Fiduciary is authorized to terminate the representation of the Plan's interests by the Independent Fiduciary or the provision of any services to the Plan by the Bank; and (h) With respect to each Plan, the Independent Fiduciary is authorized to continue, amend or terminate the Bank's provision of any services to the Plan by the Bank.

FOR FURTHER INFORMATION CONTACT: Ron Willett of the Department, telephone

(202) 219-8881. (This is not a toll-free number.)

Hawaiian Airlines, Inc. Pilots' 401(k) Plan (the Pilots' Plan), Hawaiian Airlines, Inc. 401(k) Plan for Flight Attendants (the Attendants' Plan), and Hawaiian Airlines, Inc. 401(k) Savings Plan (the Savings Plan; collectively the Plans) Located in Honolulu, Hawaii

[Application Nos. D-10380, D-10381, and D-10382]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the past acquisition by the Plans of certain transferable stock rights (the Rights) pursuant to a stock rights offering (the Offering) to the Plans by Hawaiian Airlines, Inc. (the Employer), the sponsor of the Plans; (2) the past holding of the Rights by the Plans during the subscription period of the Offering; and (3) the disposition or exercise of the Rights by the Plans provided the following conditions are satisfied:

(A) The acquisitions and holding of the Rights by the Plans occurred in connection with the Offering made available to all shareholders of the common stock of the Employer; (B) The acquisition and holding of Rights by the Plans resulted from an independent act of the Employer as a corporate entity and all holders of the common stock of the Employer, including the Plans, were treated in the same manner with respect to the Offering; and (C) All decisions regarding the holding and disposition of the Rights by the Plans were made in accordance with provisions of the Plans for individually-directed investment of participant accounts by the individual participants of the Plans whose accounts in the Plans received Rights in connection with the Offering, including all determinations regarding the exercise or sale of the Rights received through the Offering, and if no timely instructions concerning the Rights were given by participants of the Plans, the Rights were sold.

EFFECTIVE DATE: This exemption if granted, will be effective as of August 7, 1996.

Summary of Facts and Representations

1. The Employer, a Hawaii corporation since 1929, is located in Honolulu, Hawaii. It is primarily in the scheduled transportation of passengers, cargo, and mail over a route system that services the six major islands of Hawaii and Las Vegas and four cities on the west coast: Los Angeles, San Francisco, Seattle, and Portland. In addition, the Employer provides the only direct service from Hawaii to PagoPago, American Samoa and Papeete, Tahiti. Also, the Employer provides charter service from Honolulu to Las Vegas. The Employer operates a fleet of thirteen DC-9 aircraft and eight DC-10 aircraft.

The common stock of the Employer is listed and traded on both the American Stock Exchange and the Pacific Stock Exchange.

2. The Plans are defined contribution plans intended to satisfy the requirements of section 401(a) of the Code. The Pilots' Plan and the Attendants' Plan are collectively bargained profit sharing plans with cash or deferred arrangements under section 401(k) of the Code.

Both the Air Line Pilots Association, International (the ALPA) and the Association of Flight Attendants (the AFA) separately bargain with the Employer for their own members over the terms of the Pilots' Plan and the Attendants' Plan, respectively. The Employer appoints two members to each Retirement Board for both the Pilots' Plan and the Attendants' Plan, respectively, and the ALPA and the AFA each appoints two members to the respective Plans of which their members are participants. The four members of each of the Retirement Boards select investment options for their respective participants, and resolves disputes concerning the application, interpretation, or administration of each of the Plans. As of August 2, 1996, the Pilots' Plan had total assets of \$8,960,644 and 333 participants and the Attendants' Plan had total assets of \$26,305,738 and 602 participants. The Savings Plan covers mostly non-collectively and some collectively bargained employees, represented by the International Association of Machinists, and is a profit sharing plan with a cash or deferred arrangement under section 401(k) of the Code. Since September 1, 1993, the Savings Plan requires Employer contributions and provides that contributions from participants are optional. The Employer solely appoints the three members to the Retirement Board for the Savings Plan. The Retirement Board for the Savings Plan selects investment options for

participants and resolves disputes concerning the application, interpretation, or administration of the Savings Plan. As of August 2, 1996, the Savings Plan had total assets of \$11,171,947 and 1,408 participants.

Pursuant to a trust agreement with the Employer, Vanguard Fiduciary Trust Company (Vanguard), a Pennsylvania corporation located in Malvern, Pennsylvania, is the trustee for the Plans. Vanguard acts for the Plans upon investment instructions from participants of the Plans and upon directions from the respective Retirement Boards of the Plans. In addition, Vanguard provides the Plans with different investment options or combinations thereof that have been selected by the different Retirement Boards for the participants of the Plans to direct investments for their respective accounts in the Plans.¹

3. On December 8, 1995, in order to increase its working capital, the Employer, with approval of its shareholders, entered into an investment agreement with Airline Investors Partnership, L.P. (AIP), whereby the Employer during January 1996 issued and sold to AIP 18,181,818 shares of its common stock at \$1.10 per share for a total purchase price of \$20 million. At the same time, the Employer also issued and sold four shares of its Class B Special Preferred Stock to AIP for a total purchase price of \$4.40.

AIP, formed in November 1995 to invest in the Employer, is a Delaware limited partnership whose general partner is AIP General Partner, Inc., a Delaware corporation with its principal office in New York City. By its investment in four shares of the Class B Special Preferred Stock of the Employer, AIP has the right to nominate six of the eleven individuals elected to the board of directors of the Employer. Currently the president and a vice president of the general partner of AIP and four other nominees of AIP have six of the seats on the board of directors of the Employer.

The price AIP agreed to pay for its common stock investment in the Employer in January 1996 was substantially discounted from the common stock's closing market price of $2\frac{1}{16}$ on December 8, 1995. In recognition of the dilutive effect of the AIP acquisition, the investment agreement with AIP contained a provision for an offering of subscription rights to all shareholders of the

Employer, including the Plans but excluding AIP, to purchase an aggregate of up to 8,151,000 shares of common stock during the 30-day offering. The applicant represents that the objective of the Offering was to permit non-AIP shareholders an opportunity to purchase the stock of the Employer at a discount price. Also, it was represented by the applicant that an additional motivation for the Offering was to raise additional working capital above the investment by AIP in order to meet the goal of the Employer of improving its financial liquidity.²

4. Pursuant to the terms of the Offering, each shareholder, excluding AIP, received one Right for each share of common stock held as of the record date at the close of business on August 7, 1996 (the Record Date).³ As of the Record Date, the Plans held a total of 1,488,703 shares and received the same number of Rights pursuant to the Offering. Each Right entitled a holder to purchase one share of the common stock issued by the Employer for the exercise price of \$3.25. The exercise price was determined by the Employer after consultation with its independent financial advisor prior to the Offering. The Rights were traded on the American and Pacific Stock Exchanges until the expiration date of the Offering. The Rights held by the Plans required participants to communicate their directions to Vanguard, the trustee for the Plans, by September 5, 1996, in order that the directions from the participants of the Plans could be properly and correctly processed by Vanguard. The applicant represents that prior to the effective date of the Offering, the trustee, Vanguard, sent each participant in the Plans written information regarding the Offering and the Rights. During the effective period of the Offering Vanguard provided each participant in the Plans the opportunity

² Rights were distributed in the Offering to two different groups: (i) all shareholders as of August 7, 1996, including the Plans but excluding AIP, and (ii) all employees of the Employer, other than members of senior management, who were employed at any time during 1995 and on the record date, August 7, 1996, without regard to their indirect shareholder status as participants in the Plans. Also, participants of the 1994 Stock Option Plan of the Employer were granted options to purchase common stock from the Employer for \$3.25 per share. The Employer also entered into stock purchase agreements with certain institutional investors, high net worth individuals, and non-employee directors which the investors agreed to purchase common stock from the Employer at \$3.25 per share. The applicant represents that a total of 12,085,000 shares of common stock were issued during the Rights Offering to the above persons.

³ The Department notes that the Rights do not constitute "qualifying employer securities" within the meaning of section 407(d)(5) of the Act.

to independently decide whether to exercise the Rights or to sell them. Also, the participants were informed that if Vanguard did not receive timely instructions, or received no instructions, Vanguard would sell the Rights. The applicant represents that all Rights received by the Plans were either exercised or sold.

Approximately 153,929 Rights issued to the Plans were exercised for the total sum of \$500,269, and the Plans netted approximately \$118,345.52 from the sale of the remaining Rights. As of the day preceding the Record Date, the price of the common stock of the Employer at the closing of the American Stock Exchange was \$3.75.

5. The applicant represents that the terms of the offering can be verified by the documents filed with the Securities and Exchange Commission and with the American and Pacific Stock Exchanges. Also, prices of the common stock and the Rights can be verified by examining the trading activity as published in the various newspapers. In addition, the applicant represents that participants and beneficiaries of the Plans had the opportunity to exercise independent decision-making authority with respect to the Rights in their accounts. Furthermore, the applicant represents that the Plans were given the Rights at no cost to the Plans, thus enabling the participants to enhance their respective account balances that were holding Employer common stock by either exercising the Rights at prices below the market price or by selling the Rights.

The applicant represents that the Employer has borne all costs associated with the Rights Offering to the Plans and the costs associated with the exemption application.

6. In summary the applicants represent that the transactions satisfied the statutory criteria of section 408(a) of the Act for the following reasons: (a) the acquisition of the Rights by the Plans resulted from an independent act by the Employer as a corporate entity and all holders of the common stock of the Employer were treated in a like manner, including the Plans; (b) all decisions with respect to the rights were controlled by involved participants in accordance with provisions of the Plans for individually-directed investments of such accounts; (c) the Rights and the common stock of the Employer were both traded on the American and Pacific Stock Exchanges with current price information readily ascertainable as were the terms of the offering from the public documents distributed to the holders of the common stock and filed with the Securities and Exchange Commission and the Exchanges; (d)

¹ The Department expresses no opinion as to whether or not the provisions of the Plans satisfy the requirements of section 404(c) of the Act and regulations thereunder with respect to the various investment options offered the participants of the Plans.

there were no expenses incurred by the Plans or its participants or beneficiaries from the Offering and the resulting transactions; and (e) if no instructions were received by the Plans trustee, the Rights were sold.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219-8881. (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 of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the

exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 12th day of February, 1997.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.*

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[Prohibited Transaction Exemption 97-12; Exemption Application No. D-10014, et al.]

Grant of Individual Exemptions; Wells Fargo Bank, N.A. (Wells Fargo), et al.

AGENCY: Pension and Welfare Benefits 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).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) 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 exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Wells Fargo Bank, N.A. (Wells Fargo)
Located in San Francisco, CA

[Prohibited Transaction Exemption (PTE) 97-12; Exemption Application No. D-10014]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective October 1, 1995, to the purchase or redemption of shares by an employee benefit plan (the Plan), in certain mutual funds that are either affiliated with Wells Fargo (the Affiliated Funds) or are unaffiliated with Wells Fargo (the Third Party Funds)*, in connection with the participation by the Plan in the Wells Fargo Portfolio Advisor Program (the Portfolio Advisor Program).

In addition, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (E) and (F) of the Code, shall not apply, effective October 1, 1995, to the provision, by Wells Fargo, of asset allocation services to an independent fiduciary of a participating Plan (the Independent Fiduciary) or to a participant (the Directing Participant) of a Plan covered under the provisions of section 404(c) of the Act (the Section 404(c) Plan) which may result in the selection of portfolios by the Independent Fiduciary or the Directing Participant in the Portfolio Advisor Program for the investment of Plan assets.

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

Section II. General Conditions

(a) The participation by each Plan in the Portfolio Advisor Program is

* The Affiliated Funds and the Third Party Funds are collectively referred to herein as the Funds.