PLACE: The Hilton Garden Inn, 815 14th Street, NW., Washington, DC 20005.

STATUS: Open.

MATTERS TO BE CONSIDERED: Welcome New Advisory Board Members; NIC Orientation; Briefing on NIC Strategic Plan; Public Health and Corrections briefing; Prison Rape Elimination Act; Board Business Issues.

FOR FURTHER INFORMATION CONTACT: Larry Solomon, Deputy Director, (202) 307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 04–20561 Filed 9–10–04; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11220]

Notice of Proposed Individual Exemption Involving the ARINC Incorporated Retirement Income Plan (the Plan); Located in Annapolis, MD

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of proposed individual exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). If granted, the proposed exemption would permit: (1) The in-kind contribution of the property described as the 27.5 acre headquarters of ARINC Incorporated (ARINC or the Applicant) situated in Annapolis, MD or the ownership interests of a special purpose entity (SPE) whose only asset is this property (collectively, the Property) to the Plan by ARINC, the plan sponsor and a party in interest with respect to the Plan (the Contribution); (2) the holding of the Property by the Plan; (3) the leaseback of the Property by the Plan to ARINC (the Lease or Leaseback); (4) the repurchase of the Property by ARINC (the Repurchase) pursuant to (a) a right of first offer to ARINC should the Plan wish to sell the Property to a third party or (b) a voluntary agreement under which the Plan agrees to sell the Property to ARINC at any time during the Lease; and (5) any payments to the Plan by ARINC made pursuant to a make whole obligation as specified below (the Make Whole Payment or Obligation) (collectively, the Exemption Transactions). If granted, the proposed exemption would affect participants and beneficiaries of, and fiduciaries with respect to, the Plan.

DATES: Written comments and requests for a public hearing should be received by the Department on or before October 20, 2004.

Effective Date: This proposed exemption, if granted, will be effective as of September 7, 2004.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (Attention: Exemption Application Number D–11220).

Interested persons are also invited to submit comments and/or hearing requests to the Department by the end of the scheduled comment period either by facsimile to (202) 219–0204 or by electronic mail to *moffitt.betty@dol.gov.* The application pertaining to the proposed exemption (Application) and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: This document contains a notice of pendency before the Department of a proposed individual exemption from the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act, and from the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code.

FOR FURTHER INFORMATION CONTACT: Wendy M. McColough of the Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

Summary of Facts and Representations

1. The Applicant. ARINC represents that it was founded in 1929 and provides transportation communications and systems engineering solutions to the defense industry and the airline industry. ARINC maintains 84 offices worldwide and serves more than 3,000 customers in more than 140 countries. ARINC confirms that its products and services generated approximately $636 million in annual revenues in 2003. Ninety-six percent of the voting shares of ARINC are owned by the six major United States airlines: American Airlines, Delta Airlines, Continental Airlines, Northwest Airlines, United Airlines, and U.S. Airways.

The Independent Fiduciary retained to represent the Plan in connection with the exemption request, Independent Fiduciary Services, Inc. (IFS), submitted a report to the Department on June 18, 2004 (the IFS Report). The IFS Report provides that ARINC is a leading provider of mission-critical communications and IT services to the global aviation industry (45% of revenues) and engineering services to the U.S. military and other government agencies (55%). The Federal Communications Commission has granted ARINC the exclusive right to manage and license the radio frequencies used by the airlines, and ARINC networks carry more than half of all air-ground messages in the world between commercial aircraft and airline operation centers. Other commercial transportation products include airport check-in and boarding systems, flight display and information systems, commuter rail control and information systems, and mobile private digital networks and ground communications systems. ARINC also provides engineering services such as systems engineering, acquisition and program management, operational support, and life-cycle support for defense aviation systems, with offices located at every U.S. Air Force base. ARINC also provides onsite technical and training support for complex electronic systems for all branches of the military, and provides integration of new navigational, communications, and command and control systems for defense and other government agencies.

2. The Property and the Qualified Independent Appraiser. ARINC has its headquarters in Annapolis, Maryland, where it occupies a six building office complex situated on 27.6 acres. The Applicant represents that this Property will be unencumbered at the time of the transaction and is a marketable and substantial asset appraised by Deloitte & Touche LLP (Deloitte) at $49,000,000 as of June 30, 2004 (The Appraisal). IFS appointed Deloitte, a nationally recognized, qualified, independent appraiser to appraise the Property. The Appraisal also estimated the prospective market value of the leased fee interest in the Property at the end of a 23-year lease to be $83,000,000. In a June 17, 2004 letter to IFS, Deloitte represents that, in accordance with the guidelines set out

by the Appraisal Institute, Deloitte is independent of IFS, ARINC and the Plan. Deloitte represents that it has no current or prospective financial interest in the appraised asset (the Property) and that the fee for the Appraisal is in no way dependent upon or influenced by the result of Deloitte's analysis.

Deloitte is an international accounting and consulting firm that provides, among other things, real estate financial advisory services, with personnel who have extensive experience providing valuation and appraisal services for real estate similar to the Property (office and industrial space) in the relevant geographic area (central Atlantic coastal region, including Maryland). Its personnel have earned professional designations from the organizations that accredit appraisers. For a more detailed description of the Property and the Appraisal, see the IFS Report paragraph below.

3. The Plan. ARINC sponsors and maintains a defined benefit pension plan. The formal name of the Plan is the ''ARINC Incorporated Retirement Income Plan.'' The number of participants and beneficiaries in the Plan as of December 31, 2003, is 3,975. The plan administrator for the Plan is a Committee designated by the ARINC Board of Directors (the Committee or the Pension Committee). ARINC, through either its Board of Directors or through the Committee, has the power to appoint and remove Plan trustees, investment managers, and other service providers. Under the terms of the Plan, the Committee is the named fiduciary and has discretion with respect to the investment of the Plan's assets. Pursuant to its authority under the Plan, the Committee has appointed investment managers to manage plan assets. ARINC represents that with respect to the proposed transactions and the possible Monetization, the Committee will appoint an independent fiduciary to act as an investment manager with the authority and discretion to acquire, hold, lease, monetize, and dispose of the Property. No other Plan fiduciary will exercise investment discretion over the assets involved in the proposed transactions.

4. Plan Contributions. Contributions required to fund the Plan are made to and held under a single master trust, the ARINC Incorporated Defined Benefit Master Trust (the Master Trust). The Master Trust holds the assets of the Plan in separate sub-accounts, a non-union employee sub-account and a union employee sub-account. The Trustee of the Master Trust is Mellon Bank, N.A. The IFS Report states that as of December 31, 2003, the Plan was approximately 82% funded, with $252 million in assets and $308 million in liabilities measured on an accumulated benefit obligation basis (ABO) under Financial Accounting Standard (FAS) No. 87, *Employers' Accounting for Pensions.*[1] ARINC notes that, as recently as 2000, the Plan was overfunded and that the Plan has become underfunded due to three consecutive years of negative investment returns (2000 through 2002) and record low interest rates. Despite these conditions, ARINC states that it is committed to fully funding the Plan. Toward that goal, the company plans to make cash contributions for Plan Year 2003 totaling $18 million, well above its $8 million required contribution for Plan Year 2003. In addition, ARINC also plans to make a cash contribution in excess of the minimum requirement for Plan Year 2004. ARINC expects that, when combined with the contribution of the Property, its cash contribution for Plan Year 2004 will accomplish the goal of fully funding the Plan to the ABO level.

ARINC represents that the proposed contribution would be a voluntary contribution in excess of ARINC's minimum funding obligations under section 412 of the Code. Absent the contribution of the Property, ARINC will continue to make the required minimum contributions, but the Plan probably will not be fully funded in the near future. Thus, ARINC concludes that the contribution is very much in the interest of the Plan and its participants.

5. The Transfer Agreement and the Contribution. On March 25, 2004, ARINC submitted a draft transfer agreement dated March 24, 2004 (Draft Transfer Agreement). The Draft Transfer Agreement governs the terms upon which the Property will be contributed to and held by the Plan and is between ARINC (the Transferor), Aeronautical Radio, Inc. (ARI), a wholly-owned subsidiary of ARINC, and the Plan through its agent, IFS (the Transfer Agreement).

The Draft Transfer Agreement states that ARI is the owner of fee simple title in the Property. Subject to the terms and conditions set forth in the Draft Transfer Agreement, ARINC and ARI agree to transfer to the Plan, and the Plan agrees to acquire and assume, the Property. ARINC (and, to the extent applicable, ARI) shall retain all of its rights and obligations under and pursuant to any and all contracts (and amendments thereto) relating to the ownership, management, leasing, parking, operation, maintenance and/or repair of the Property (collectively, the Contracts). The Draft Transfer Agreement notes that consideration for the transfer of the Property by ARINC to the Plan, a voluntary contribution in excess of ARINC's minimum funding requirements under ERISA Section 302 and Code Section 412, is the improvement of the funded status of the Plan. As a result, ARINC's future required contributions will be reduced. Furthermore, the transfer of the Property by ARINC to the Plan will resolve or substantially resolve the underfunded status of the Plan.

The Plan shall have a period (the Review Period) commencing on the date of execution of the Transfer Agreement (Effective Date) and ending at 5 p.m. Eastern Standard Time on the date that is sixty (60) days after the Effective Date (the Review Period Expiration Date), to undertake a review and examination of all aspects of the Property, including the use and operation thereof. ARINC and ARI shall permit the Plan and IFS, and their respective agents, employees and contractors to enter upon the Property at any time and from time to time upon reasonable prior notice to Transferor to examine and/or test any aspect thereof.

If the Plan, in the Plan's sole discretion, is dissatisfied with the results of any examination of the Property or any studies or investigations as permitted herein or any matter set forth in the Property documents or for any other reason, the Plan shall have the right to terminate the Transfer Agreement at any time prior to the Review Period Expiration Date by providing written notice thereof to ARINC. Upon the giving of such notice, the Transfer Agreement shall terminate and all rights, obligations and liabilities of the parties hereunder shall be released and discharged, except under those provisions that expressly survive termination of the Transfer Agreement.

The Draft Transfer Agreement provides that all transactions involving the Plan in connection with the contribution of the Property to the Plan will be conducted and completed on terms no less favorable to the Plan than similar terms in arms length transactions involving unrelated parties. No commissions, fees, costs, charges or other expenses will be borne by the Plan in connection with the transfer of the Property to the Plan.

The Form of Property Transfer

Although the Application originally requested relief for the transfer of the fee interest in the Property directly from ARINC to the Plan, ARINC subsequently determined that a direct transfer of the fee interest to the Plan may subject

[1] The ABO is based on a 6.75% discount rate.

ARINC to a substantial Maryland state recordation tax. ARINC believes that this tax can be avoided if the fee interest is first transferred to a newly created single purpose entity (SPE) (which could be a Delaware corporation, an unincorporated business trust or a limited liability company), which would be a wholly owned subsidiary of ARINC or ARI, and then the interests in that SPE are transferred to the Plan. As a result, the Transfer Agreement provides that ARINC will cause ARI to either contribute the property directly to the Plan or first transfer the property to a newly created SPE one hundred percent (100%) owned by ARINC or ARI and then ARINC or ARI, as the case may be, will transfer one hundred percent (100%) of the interests in the SPE to the Plan.

ARINC asserts that the Exemption Transactions remain identical in economic substance to the transactions described in the Application, notwithstanding that it may take the form of a transfer of the ownership interests in the SPE. The Plan would hold one hundred percent (100%) of the ownership interest in the Property and the Plan would have the ordinary rights of the owner (subject to the terms of the Lease). ARINC adds that the Transfer Agreement includes specific provisions to protect the Plan's interests in connection with this change, including ARINC's representation that the SPE will have no obligations or liability unrelated to the property at the time of transfer. In addition, IFS, on behalf of the Plan, will review and approve the form of entity which is created and whose interests are transferred to the Plan. Finally, ARINC intends to establish the subsidiary entity just prior to closing so as to limit any possibility that the new entity would have any liability unrelated to the property.

BearingPoint Lease

ARINC informed the Department that on January 26, 2004, ARINC entered into a 1-year lease with BearingPoint Inc., a global business consulting firm (BearingPoint). The lease is renewable at BearingPoint's option for one subsequent 1-year term. Under the lease, BearingPoint leases 27,360 square feet, all of it on one floor of Building One on the Property. ARINC decided to lease this space since it is currently not needed by ARINC and it provides ARINC with a source of additional revenue. With the involvement and approval of IFS, the lease between ARINC and BearingPoint specifically provides that the BearingPoint lease will convert to a sublease if the Property is contributed to the Plan and leased back to ARINC. Thus, ARINC will lease all of the Property from the Plan and will sublease the current space occupied by BearingPoint to BearingPoint.

Environmental Laws

A Draft Transfer Agreement provision concerning ARINC's representations and warranties includes a paragraph on environmental laws and states that to ARINC's knowledge: (A) No portion of the Property is in violation of any applicable Environmental Law; (B) there is no presence or release of, nor has there been a release of, Hazardous Substances on or from the Property or Improvements, except as disclosed in writing to the Plan in the following reports: (i) Phase One Environmental Site Assessment for 2551 Riva Road, Annapolis, Maryland, prepared by Custer Environmental, Inc. (undated), and such presence or release, if any, has been fully remedied in accordance with all applicable Environmental Laws to the extent remediation is required; (C) no investigation, administrative order, consent order and agreement, litigation, or settlement with respect to any ''Hazardous Substances'' as defined by the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*), as amended (CERCLA) [2], is pending or threatened in writing with respect to the Property and Improvements; and (D) no aboveground or underground storage tanks on the Property are in violation of any applicable Environmental Law. Neither ARINC nor ARI have received any notice, and neither have knowledge, of any Hazardous Substances located on any property adjacent to the Property which could reasonably be expected to migrate to, or have a material adverse effect on, the Property.

6. The Lease Agreement. The Applicant submitted a draft lease term sheet, as revised on June 11, 2004, that provides the terms and conditions of the proposed lease agreement between ARINC and the Plan acting by and through IFS (Lease or Lease Agreement) to the Department (Draft Lease Term Sheet). On July 9, 2004, ARINC stated that this Draft Lease Term Sheet was agreed to by IFS and includes the material terms and conditions of the Lease Agreement. ARINC represents that these terms and conditions will be reflected in the final Lease Agreement.

According to the Draft Lease Term Sheet, the Plan may form a limited liability company (LLC) or other entity in which the Plan will be the sole member or owner and IFS will be the manager, which LLC or other entity will own the Property and be the lessor under the Lease. The term ''Lessor'' in the Draft Lease Term Sheet provisions discussed below refers to the Plan and the LLC or other entity in which the Plan is the member or owner and IFS is the manager. In an August 4, 2004 letter to the Department, ARINC notes that this is the typical way to hold interests in commercial real estate and this structure protects the Plan from potential liability associated with claims involving the Property. If ARINC, as expected, transfers the Property as interest in an SPE, the Plan, at its option, could elect to hold the stock in the SPE in a newly established LLC. Alternatively, the Plan may elect to convert the SPE to an LLC. Either way, ARINC asserts that prospective claims would lie against the LLC rather than the Plan.

Transaction Description

The Draft Lease Term Sheet states that ARINC will, or will cause its wholly owned subsidiary ARI, to contribute its right, title and interest in and to its headquarters property and all improvements thereon located at 2551 Riva Road in Annapolis, Maryland (the Property) to the Plan, acting by and through IFS as independent fiduciary. Simultaneously, ''the Plan will lease the Property back to ARINC under a ''true'' tax, operating lease, the structure of which will be 'bondable' until the earlier of (i) the end of the first 10 years of the lease term or (ii) the date on which the Property is sold to a third party or transferred to a lender secured by the Property or the rental stream from the Property'' (the Monetization), at which point the lease structure will convert to a traditional triple-net, ''non-

[2] For purposes hereof, the term ''Environmental Law'' shall mean: (i) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*), as amended; (ii) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), as amended; (iii) the Emergency Planning and Community Right to Know Act (42 U.S.C. 11001 *et seq.*), as amended; (iv) the Clean Air Act (42 U.S.C. 7401 *et seq.*), as amended; (v) the Clean Water Act (33 U.S.C. 1251 *et seq.*), as amended; (vi) the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*), as amended; (vii) the Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*), as amended; (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*), as amended; (ix) the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), as amended; (x) any state, county, municipal or local statutes, laws or ordinances similar or analogous to the federal statutes listed in parts (i)–(ix) of this definition; (xi) any amendments to the statutes, laws or ordinances listed in parts (i)–(x) of this definition in effect as of the Effective Date; (xii) any rules, regulations, guidelines, directives, orders or the like adopted pursuant to or to implement the statutes, laws, ordinances and amendments listed in parts (i)–(xi) of this definition; and (xiii) any other law, statute, ordinance, amendment, rule, regulation, or order relating to environmental, health or safety matters.

bondable'' lease (the bondable and non-bondable structures are more particularly detailed below), with an initial term of 20 years and one 3-year extension option. If IFS desires to sell or convey the Property or any interest therein during the term of the Lease, ARINC shall have the right of first offer to purchase or otherwise acquire the Property or such interest therein (Right of First Offer or ROFO).

Lease Term

The Lease provides for an initial term of 20 years with one 3-year renewal period. ARINC asserts that the longer lease term is favorable to both parties, providing the Plan with a long-term favorable investment return (*i.e.*, the lease payments) on the Property and ARINC with stability and security for its headquarters location. The specific 23-year period was chosen to provide the longest lease term and still have the lease qualify as a true tax lease, which is necessary to ensure that the contribution is deductible by ARINC. The Draft Lease Term Sheet provides that all of the Plan's reasonable and actual out-of-pocket costs, as well as other reasonable fees and expenses, associated with the proposed transaction will be paid by ARINC whether or not the proposed transaction should close.

Bondable/Triple Net Lease Structure

The initial 10-year period of the Lease will be a ''bondable'' lease. ARINC believes that a ''bondable'' lease is even more favorable to the Plan than a traditional ''triple net'' lease. Under the bondable lease structure, the rent payable by ARINC to the Plan remains payable under all circumstances and all costs related to the Property, including taxes, insurance, utilities and non-capital maintenance, repair and capital improvements, are the responsibility of ARINC as lessee. Under a traditional triple-net lease, the Plan, not ARINC, would bear the responsibility to pay capital expenditures.

Additionally, the Draft Lease Term Sheet specifies that the Lease shall contain a commercially reasonable standard for determining whether capital improvements (repair or replacement) are required for the Property during the bondable period of the Lease. On August 19, 2004, ARINC informed the Department that the Lease Agreement will specify that in the event the parties disagree as to whether such capital improvements are required, the determination will be made by a neutral third-party arbitrator. ARINC asserts that it will not be able to preclude capital improvements from being made that the Plan desires if the arbitrator determines the same to be required. ARINC states that although the parties continue to work out the details in the Lease, the process and ultimate determination by a neutral third-party in connection with a dispute will remain in place.

ARINC notes that the purpose of the ''bondable'' lease structure is to facilitate the Plan's ability to ''monetize'' (sell) the stream of lease payments that ARINC will make during the first 10 years of the lease to a third party (as described below). The Lease will remain ''bondable'' until the earlier of (i) the end of the first 10 years of the lease, or (ii) the date on which the property is sold or transferred to a third party. The Lease will then convert to a traditional triple net lease under which ARINC will pay rent, taxes, insurance, utilities, non-capital maintenance and repair, but the Plan will be responsible for capital expenditures.

Rental Rate

The Draft Lease Term Sheet provides that the rental rate shall be fair market value determined in connection with the Appraisal of the Property. The Draft Lease Term Sheet further provides that the rental rate shall increase when the Lease shifts from bondable to a traditional triple net lease to reflect the Plan's obligation to make capital improvements at that time. ARINC represents that ARINC and IFS will agree to specific rental rates, including annual increases, for the entire 20-year period at the time the parties sign the full Lease Agreement. The rental rate during the 3-year renewal term will be the then-prevailing fair market rental rate as determined in accordance with the Lease. ARINC expects that the Lease will generate an estimated $4 million to $4.5 million in annual lease income for the Plan.

In a June 30, 2004 letter to the Department, ARINC noted that under the terms of the proposed Lease between the Plan and ARINC, the annual base rent for the Property as a whole for the first year of the Lease is expected to be $12.40 per square foot under the bondable structure and $14.65 per square foot under the non-bondable structure. Both rates will increase at 2.5% per year, compounded.[3]

Additionally, ARINC provided the Department a table showing the expected annual rental amounts for years 1 through 20 of the lease under both the bondable and non-bondable structure. On July 7, 2004, ARINC informed the Department that ARINC will pay $4,290,189 in lease payments to the Plan in year 1 of the lease. ARINC's lease payments will increase to $8,103,000 in year 20 (reflecting the 2.5% per year annual increase and the change from bondable to non-bondable after year 10). ARINC will make total lease payments during the 20-year term of the lease equal to $120,755,549.

The Right of First Offer

If the Plan desires to sell or convey the Property or its interest therein during the Lease term, the Draft Lease Term Sheet provides a Right of First Offer to ARINC. The Plan shall first offer ARINC the right to purchase or otherwise acquire the Property or such interest therein (a) on such terms and conditions as the Plan proposes to market the Property or such interest therein for sale (Soliciting Offer), which terms and conditions shall reflect the Plan's good faith determination of market conditions and the fair market value for the Property; provided, however, that with respect to any right of first offer hereunder triggered from and after the fifteenth (15th) anniversary of the commencement date of the Lease, the Plan's offer to ARINC shall reflect a fair market value (FMV) purchase price that is determined by a 3-appraiser method (if the parties are unable otherwise to so agree) or (b) on such terms and conditions as are contained within an unsolicited bona fide offer from an unaffiliated third party that the Plan desires to accept (Unsolicited Offer). The parties shall negotiate in good faith the terms and conditions of any purchase based on a Soliciting Offer for a period of thirty (30) days following (i) the Plan's notice to ARINC (if prior to the 15th anniversary of the Lease commencement date) or (ii) the establishment of the FMV purchase price (if from or after the 15th

[3] In an August 4, 2004 letter to the Department, ARINC stated that under a commercial lease, there generally are two ways to seek to ensure that rental payments remain fair market value rental payments over time. The first is by setting a fixed periodic rental adjustment, and the second is by tying the rental payments to periodic increases in the consumer price index (CPI). Setting a fixed periodic rental adjustment is a more customary way to ensure fair market value rental payments than is a method that ties rental payments to CPI. ARINC asserts that this is true even for long term leases, such as the 20-year lease contemplated in this transaction.

The independent appraiser, Deloitte, examined annual rent escalations used in conventional leases in the relevant market area. Deloitte concluded that annual rent escalations ranging from 2% to 3% are typical, and concluded on a 2.5% annual growth rate as representative of market terms. ARINC notes that IFS considered this conclusion in its assessing the prudence of the proposed transaction and that IFS expects that this adjustment will ensure that the rental payments to the Plan over the life of the Lease will account for a presumed rate of inflation.

anniversary of the Lease commencement date). In all events, ARINC shall exercise such right, if at all, upon notice to the Plan within the thirty (30) day period described above with respect to a Soliciting Offer or within thirty (30) days after notice to ARINC of an Unsolicited Offer. If ARINC fails to exercise such right to purchase, the Plan is free to sell the Property (*i.e.*, close on the transfer) to a third party on such terms for the next 360 days, however, the Plan shall not have the right to sell to a third party at a lower effective purchase price or on any other materially more favorable term than the effective purchase price and terms proposed by the Plan to ARINC without first re-offering the Property to ARINC at such lower effective purchase price or other more favorable term, nor to sell on any terms following the expiration of such 360-day period, without first re-offering the Property to ARINC. The right of first offer shall terminate upon the commencement of the exercise by the Plan of its remedies under the Lease as the result of a monetary event of default by ARINC that continues uncured following notice and the expiration of applicable cure periods (and a second notice and cure period provided fifteen (15) days before the loss of such right on account of such default).

The IFS Report and ARINC note that ARINC will lose the ROFO in the event of an uncured monetary default under the Lease. In the event that ARINC is in monetary default under the Lease and the Lease terminates, the ROFO will terminate and the Plan would be free to sell the Property without offering the Property to ARINC. In addition, the terms on which the Property is to be offered to ARINC under the ROFO are to be set by the value of an Unsolicited Offer that the Plan decides it wishes to accept or, in the absence of an Unsolicited Offer, at fair market value. For the first 14 years of the lease, the Plan is authorized to set that fair market value and beginning with year 15, that value will be set by agreement of the parties (using an alternate dispute resolution method if the parties cannot agree on that value). ARINC will have only 30 days to decide whether to accept the offer on those terms and, if ARINC declines, the Plan may sell to any third party on the offered terms or better without giving ARINC any further opportunity to purchase the Property.

In an August 4, 2004, letter to the Department, ARINC states that at no time during the Lease will the Soliciting Offer be established by ARINC. Rather, as described in the Draft Lease Term Sheet, during the first 14 years of the Lease, the Property will be offered to ARINC on such terms and conditions as the Independent Fiduciary on behalf of the Plan proposes to market the Property or the Plan's interests in the Property for sale. These terms and conditions are set exclusively by the Plan and will reflect the Independent Fiduciary's good faith determination of market conditions and the fair market value for the Property, subject to challenge by ARINC only for lack of good faith. Beginning in the 15th year of the Lease, the Independent Fiduciary on behalf of the Plan will propose terms and conditions for the soliciting offer to ARINC. If the parties do not agree to the terms proposed by the Independent Fiduciary, the fair market value price will be determined by a three appraisal method.

ARINC believes the ROFO is only a modest encumbrance on the Plan since the Plan will establish the fair market value price at which the Property is offered and ARINC must respond to the Plan's offer promptly, after which time the Plan can offer the Property to the public. While a modest restriction, it is important to ARINC to have this right since the Property is its headquarters campus. ARINC represents that Deloitte, the Plan's independent appraiser, believes that the right of first offer will have little, if any, impact on value. ARINC states that it understands that such rights are common in commercial, arm's-length sale-leaseback transactions.

The Make Whole Obligation (MWO)

The Draft Lease Term Sheet provides that, if on the earlier of the date of a sale of the Property by the Plan or the date that is five years from the date of the closing under the Transfer Agreement (the Make-Whole Date), the Actual Return to the Plan, as defined according to several specific situations, is less than the sum of the contribution value plus a return equal to an annual rate of five percent (5.00%) compounded on the contribution value of the Property (the Minimum Return), then ARINC will contribute to the Plan, within 180 days of the Make-Whole Date, a cash payment in the amount of any such difference (Make-Whole Payment). The Draft Lease Term Sheet provides various situations, whether the rental income is monetized and whether the Property is sold, that will determine the value of the Actual Return but in all cases, expenses applicable to the Lease and the sale shall not include any costs of monetization and prepayment of monetization.[4]

ARINC represents that as a result of the negotiations between ARINC and IFS, the Make Whole Payment provision safeguards the Plan's interests in significant ways. First, the provision has been modified such that it provides for a make whole determination not only

[4] If the Plan does not monetize any portion of the rental income and the Property is sold, the Actual Return to be compared to the Minimum Return shall be the sum of (i) the proceeds received from the fair market value sale net of selling costs plus (ii) the rental income received by the Plan under the Lease up to the Make-Whole Date, less expenses incurred by the Plan with respect to the Property and the Lease.

If the Plan does not monetize any portion of the rental income and the Property is not sold, the Actual Return to be compared to the Minimum Return shall be the sum of (i) the fair market value of the Property on the Make-Whole Date, as determined by a three appraiser method (if the parties are unable to otherwise agree) plus (ii) the rental income received by the Plan under the Lease up to the Make-Whole Date, less expenses incurred by the Plan with respect to the Property and the Lease.

If the Plan monetizes any portion of the rental income, the Property is sold, and the monetization is repaid or prepaid in full prior to or concurrent with the closing on that sale, then the Actual Return to be compared to the Minimum Return shall be the sum of (i) the proceeds received from the fair market value sale net of selling costs, plus (ii) the rental income that the Plan actually received prior to and/or after monetization, plus (iii) rental income the Plan would have received under the Lease had monetization not occurred (Deemed Rent) up to the Make-Whole Date, less expenses incurred by the Plan with respect to the Property and the Lease.

If the Plan monetizes any portion of the rental income, the Property is not sold, but the monetization is repaid prior to the Make-Whole Date, then the Actual Return to be compared to the Minimum Return shall be the sum of (i) the fair market value of the Property on the Make-Whole Date, as determined by a three appraiser method (if the parties are unable to otherwise agree) plus (ii) the rental income that the Plan actually received prior to and/or after monetization, plus (iii) Deemed Rent up to the Make-Whole Date, less expenses incurred by the Plan with respect to the Property and the Lease.

If the Plan monetizes any portion of the rental income, the Property is sold, and the monetization continues beyond the Make-Whole Date, then the Actual Return to be compared to the Minimum Return shall be the sum of (i) the proceeds received from the fair market value sale net of selling costs, plus (ii) the present value of the remaining monetization debt service payments discounted at the monetization implicit interest rate plus (iii) the rental income that the Plan actually received prior to monetization, plus (iv) Deemed Rent up to the Make-Whole Date, less expenses incurred by the Plan with respect to the Property and the Lease.

If the Plan monetizes any portion of the rental income, the Property is not sold, and the monetization continues beyond the Make-Whole Date, then the Actual Return to be compared to the Minimum Return shall be the sum of (i) the fair market value on the Make-Whole Date of the Property (giving full recognition to the effect of the remaining monetization obligation on future rental income), as determined by a three appraiser method (if the parties are unable to otherwise agree) subject to the monetization obligation, plus (ii) the present value of the remaining monetization debt service payments discounted at the monetization implicit interest rate, plus (iii) the rental income that the Plan actually received prior to monetization, plus (iv) Deemed Rent up to the Make-Whole Date, less expenses incurred by the Plan with respect to the Property and the Lease.

upon a sale of the Property by the Plan within the first five years, but also at the end of the first five years if the Plan does not sell during such period. The Plan is also guaranteed a minimum 5% rate of return on its investment in the Property. Thus, any Make Whole Payment triggered in the event of either a sale or at the end of the five-year period ensures a positive minimum annual return to the Plan of 5%. Finally, the provision will apply whether or not there is a Monetization.

The IFS Report describes the Make Whole Payment as a ''make whole'' obligation. ARINC will guarantee a minimum return of 5% to the Plan by agreeing that if (a) the combination of the proceeds from a sale of the Property (or the change in the value of the Property if the Plan continues holding it) plus the Plan's net income on the Property under the Lease prior to the sale (or over the full five years) is less than (b) the Property's value as of the date of the Contribution plus a 5% compounded rate of return on that value plus the costs of holding and maintaining the Property, then (c) ARINC will contribute to the Plan the difference necessary to provide the 5% return. The calculation of the Make Whole Payment will take into account the status of any Monetization of the lease payments as of the time of the sale or five-year anniversary of the Contribution. For the IFS opinion on the make whole obligation, see the IFS Report below.

The Draft Lease Term Sheet specifies further that, notwithstanding the above provision, if a Make-Whole Payment is due and if, for the taxable year of ARINC in which the Make-Whole Payment is to be made, such Make-Whole Payment (A) would not be deductible under section 404(a)(1) of the Code or (B) would result in the imposition of an excise tax under section 4972 of the Code, such Make-Whole Payment shall not be required to be made until the next taxable year of ARINC for which the Make-Whole Payment will be deductible under section 404(a)(1) of the Code and will not result in an excise tax under section 4972 of the Code.

ARINC represents that its tax adviser, PriceWaterhouseCoopers (PWC), has determined that the five-year time limitation on the Make Whole Payment provision is necessary to ensure the deductibility of the contribution of the property. PWC advises that in the event that the Internal Revenue Service (IRS) questions the deductibility of the contribution of the Property to the Plan (the deduction available to ARINC may also be subject to limitation under section 404 of the Code), one of the key elements they would likely review is whether there was an actual transfer of the Property.

In a June 3, 2004 memorandum from PWC to ARINC and submitted to the Department by ARINC, PWC concluded that ''if the IRS were to question the deductibility of the contribution to the Plan, the inclusion of the 'Make-Whole' provision creates additional risk that the IRS would assert that no transfer of property had occurred.'' PWC notes that although a make-whole provision is generally evidence that an actual transfer has not occurred, all of the facts and circumstances must be considered before a determination can be made. In this regard, the longer the term of the make-whole provision, the more negatively it will be viewed and conversely, the shorter the term of the make-whole provision, the less detrimental. This consideration is another reason, PWC continues, that it recommends eliminating or alternatively making the term of the make-whole provision as short as possible.

The Applicant asserts that because it is an important economic aspect of the transaction from ARINC's perspective, there is a substantial likelihood that ARINC would not proceed with the transaction unless ARINC is assured that the contribution is deductible. ARINC represents that, if ARINC does not go forward, the Plan would be denied the benefit of a voluntary, excess contribution that is being made on top of its minimum funding requirement and is not in lieu of cash contributions. Moreover, the proposed transaction is the only means by which the Plan will likely become fully funded in the near term.

Indemnification

The Draft Lease Term Sheet provides that ARINC will indemnify, defend and hold harmless the Lessor and their respective officers, directors, principals, fiduciaries (including officers, directors and shareholders of such fiduciaries), shareholders, members, partners, employees, agents and attorneys (each, a Lessor Indemnified Person) from all losses, claims, liabilities and damages (other than those caused by the negligence or willful misconduct of any such Lessor Indemnified Person and other than consequential damages and indirect losses) related to (i) ARINC's renovation, use, repair, management, lease, sublease, maintenance, or operation of the Property, (ii) during the bondable period of the Lease, violation of any environmental laws, the Americans with Disabilities Act (ADA) and other health/safety laws applicable to the Property, and during the nonbondable period of the Lease, violation of the same only to the extent resulting from acts or omissions of ARINC or any sublessee or assignee during the Lease Term, and (iii) any default by ARINC under the Lease.

The Lessor will indemnify, defend and hold harmless ARINC and its officers, directors, principals, shareholders, members, partners, employees, agents and attorneys (each, a Lessee Indemnified Person) from all losses, claims, liabilities and damages (other than those caused by the negligence or willful misconduct of any such Lessee Indemnified Person and other than consequential damages and indirect losses) related to (a) the Lessor's acts or omissions in or about the Property, (b) violation of any environmental laws, the ADA, or other health/safety laws caused by an act or omission of the Lessor, and (c) any default by the Lessor under the Lease. The liability of the Lessor shall be limited to its interest in the Property (and any insurance proceeds or condemnation awards related thereto).

The foregoing indemnifications shall survive the expiration or earlier termination of the Lease Term. The Draft Lease Term Sheet notes that should any terms in these indemnifications conflict with terms in the IF Agreement (as described below), the terms in the IF Agreement will control.

Events of Default

The Draft Lease Term Sheet provides the following events of party default.

ARINC Default

(a) ARINC shall fail to pay any Rentals or other amounts due under the Lease within 5 business days of its receipt of written notice that the same is past due;

(b) ARINC shall fail to maintain the insurance specified in the Lease;

(c) ARINC shall fail to perform any other obligations or covenants under the Lease and such failure is not cured within 30 days following receipt of written notice thereof, or if the failure cannot reasonably be cured within such 30-day period, then such longer time as is reasonably necessary under the circumstances provided that ARINC commences the cure within such 30-day period and diligently and continuously pursues the cure; and

(d) Certain acts of bankruptcy or insolvency occur on the part of ARINC.

The Lease shall contain commercially reasonable provisions regarding late fees and default interest, to be reasonably agreed between the Plan and IFS and ARINC. The Lessor shall have the right,

following a default by ARINC that remains uncured following notice and the expiration of applicable cure periods, to cure such failure and charge ARINC the costs incurred in connection therewith as additional rent, in which event ARINC's timely payment of 110% of such amounts shall constitute cure of such failure provided, however, that with respect to the third (and any succeeding) default in any 12 month period that costs more than $250,000, as increased by any increases in the consumer price index from the date of transfer of the Property (or the ownership interests in the entity owning the Property) to the Plan and IFS to the date of the applicable default, to cure (singly, and not in the aggregate), such payment shall not constitute a cure of such failure, but shall prevent Lessor from terminating the Right of First Offer in connection with such failure and ARINC's failure to timely pay such amounts shall constitute a monetary default under the Lease. It is expressly agreed that disputes concerning the foregoing cure mechanism shall be subject to the dispute resolution provisions of the Lease.

Lessor Default

(a) Lessor shall fail to pay any amounts due under the Lease within 5 business days of its receipt of written notice that the same is past due;

(b) Lessor shall fail to perform any other obligations or covenants under the Lease and such failure is not cured within 30 days following receipt of written notice thereof, or if the failure cannot reasonably be cured within such 30-day period, then such longer time as is reasonably necessary under the circumstances provided that the Plan commences the cure within such 30-day period and diligently and continuously pursues the cure; and

(c) Certain acts of bankruptcy or insolvency occur on the part of the Lessor.

During the non-bondable period of the Lease, in the event of Lessor's default that continues uncured following notice and the expiration of applicable cure periods, ARINC shall have rights of self-help and, following Lessor's failure to pay ARINC therefor and a judgment against Lessor requiring payment of the same, the right to offset the costs incurred in connection therewith against the rent payable under the Lease.

7. The Monetization. In its Application, ARINC noted that if it is deemed more advantageous to the Plan by the qualified independent fiduciary and at the qualified independent fiduciary's discretion, ARINC proposes that the Plan may, at the time of the contribution and leaseback or soon thereafter, enter into an agreement to sell the stream of lease income for the initial ten years of the lease to a third party for cash (the Monetization).[5] ARINC believes that the Monetization would provide further protection to the Plan and participants by reducing the Plan's exposure to investment in a single parcel of employer real property and by providing the Plan with a large influx of cash, which may be reinvested immediately. The Monetization is not a transaction for which the Applicant seeks exemptive relief. Pursuant to the Monetization, ARINC believes that the Plan could agree to enter into a transaction to sell to the third party the initial ten-year stream of lease income, which the Applicant expects to be worth approximately $28 million to $32 million in cash. Following the Monetization, ARINC represents that the Plan, instead of holding employer real property worth approximately $49 million (or 15% of the Plan's total assets), would hold approximately $28 million to $32 million in cash related to the real estate transaction and employer real property with a residual value that is substantially less than 10% of total plan assets.

Since the Application was submitted, ARINC has informed the Department that IFS has conducted significant due diligence in determining the feasibility of monetizing the stream of lease payments the Plan will receive from the property. At this point, IFS believes it is unlikely that it will be able to obtain a monetization arrangement that is in the Plan's interests. Of chief concern is a significant unrelated business income tax (UBIT) issue that is created if the Plan enters into a secured loan arrangement (with the property as collateral) with a monetization lender. However, absent such a security interest, monetization is less attractive to potential lenders. Nevertheless, IFS does not want unnecessarily to constrain the possibility of achieving in the future a favorable monetization arrangement.

8. ARINC's Request for Exemptive Relief. ARINC requests exemptive relief for (a) the in-kind contribution to the Plan of the Property (the Contribution); (b) the holding of the Property by the Plan; (c) the Plan's Leaseback of the Property to ARINC (the initial ten-year period of the lease will be a ''bondable'' lease and will then convert to a traditional triple net lease); (d) the Repurchase of the Property; and (e) any payments to the Plan by ARINC made pursuant to the Make Whole Payment.

ARINC requests exemptive relief because of its belief that the contribution of the Property by ARINC to the Plan and the Plan's holding, leasing and potential future sale of the Property to ARINC would not meet the requirements for the acquisition, lease or sale of ''qualifying employer property'' under section 408(e) of the Act. Similarly, the Department notes that if the fee interest in the Property is first transferred to a newly created SPE and then the interests in that SPE are transferred to the Plan, this would also raise issues regarding the requirements for the acquisition or sale of ''qualifying employer securities'' under section 408(e).

ARINC believes that the contribution of ARINC's headquarters property may violate sections 406 and 407(a) because it would not constitute ''qualifying employer real property'' since the Property is a single parcel and since the fair market of the Property immediately after acquisition would constitute greater than 10% (percent) of the fair market value of the Plan's assets. ARINC expects that the fair market value of the Property immediately after the contribution will constitute approximately 16% of the Plan's assets, based upon the Plan's current assets. In this regard, the Department believes that for purposes of the proposed exemption, it would not be practical to develop a maximum percentage limitation that would continue to apply to the Contribution of the Property to the Plan over time in view of the potential changes in value of the real property and the other investment of the Plan's assets over the possible twenty-three year period of the Lease. The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Section 404(a)(1)(C) further requires that a fiduciary diversify the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. Accordingly, it is the responsibility of the Independent Fiduciary of the Plan to determine the continued appropriateness of the Plan's investment in the Property, based on the particular facts and circumstances, consistent with its responsibilities under section 404 of the Act.

If the proposed exemption is granted, ARINC requests that September 7, 2004

[5] ARINC provides that this transaction could be structured as a sale of the stream of lease payments to a third party or a loan from a third party to be repaid by the stream of lease payments.

be the effective date of the exemption since this will allow ARINC about a one-week period to close the Contribution of the Property prior to September 15, 2004. The Department agrees and has determined to propose a September 7, 2004 effective date. If this is done, a Pension Benefit Guaranty Corporation (PBGC) variable-rate premium payment of approximately $910,000 will be avoided since no payment is required under the Act if by September 15, 2004, ARINC contributes to the Plan the Property whose value is greater than the amount necessary for the Plan's full funding limit that is due for the 2003 plan year.

9. Reasons for Entering Into the Exemption Transactions. ARINC believes that the relief requested in its Application offers significant potential benefits both to the Plan and to ARINC. ARINC asserts that the Exemption Transactions are in the interest of the Plan and its participants and beneficiaries because: (a) The contributions represent a voluntary excess contribution which will be made in addition to all required cash contributions, (b) the Plan is expected to be fully funded after the planned cash contributions and the contribution of the Property, (c) the Plan will receive a valuable investment property that is likely to appreciate over time, and (d) the Plan will receive an estimated $4 million to $4.5 million a year in lease income for the ten years of the initial lease, or if the qualified independent fiduciary approves the Monetization, the Plan will immediately receive approximately $28 million to $32 million in cash and the Plan's exposure to a single parcel of employer real property will be reduced to less than 10% of the fair market value of the Plan's assets.

ARINC adds that the transactions will have additional benefits to ARINC's employees and the company. First, ARINC depends on a highly skilled workforce and knows that sound pension funding is important in attracting and retaining a quality workforce. Second, due to accounting disclosures of other comprehensive income (OCI) required by FAS No. 132, *Employers' Disclosures about Pensions and Other Retirement Benefits,* the underfunded status of the Plan lowers ARINC's reported net worth. Similarly, under the requirements of FAS No. 87, the underfunded status of the Plan creates a significant added annual expense. By fully funding the Plan, such FAS No. 132 and FAS No. 87 issues will be mitigated, and the Plan and its participants will benefit from ARINC's strengthened financial position.

ARINC believes the proposed exemption is administratively feasible because the transactions would be carried out under the supervision and direction of a qualified independent fiduciary and would be similar to other exemptions previously granted by the Department. ARINC asserts that the proposed transactions would be protective of the rights of the Plan and its participants and beneficiaries since they would be entered into at the discretion of a qualified independent fiduciary and the contribution value would be established with the assistance of a qualified independent appraiser.

10. The Independent Fiduciary.[6] For purposes of the proposed Exemption Transactions and the possible Monetization, IFS has been retained as the qualified independent fiduciary. ARINC represents that the Plan shall enter into each of the Exemption Transactions only at the discretion of the qualified independent fiduciary. The valuation of the Property as an asset of the Plan, if the contribution of the Property is accepted, will be determined by the qualified independent fiduciary based on an appraisal by a qualified independent appraiser. The qualified independent fiduciary will also be responsible for enforcing the Plan's rights and interests with respect to the Lease and any sale of the Property and performing other fiduciary functions on behalf of the Plan as owner of the Property.

The qualifications of IFS to serve as the Independent Fiduciary for these transactions are set forth in the IFS Proposal to ARINC for serving as independent fiduciary dated November 7, 2003 (IFS Proposal). The IFS Proposal states that from its formation in January 1987 until October 1, 1996, IFS was a wholly owned subsidiary of The Bear Sterns Companies Inc. and an affiliate of Bear, Sterns & Co. Inc. On that date, ownership transferred to officers of the firm and the name changed to Independent Fiduciary Services, Inc. IFS believes it is qualified to perform the evaluations and make the decisions involved with the ARINC transaction because of its staff's corporate, financial, investment management, analytical, and ERISA regulatory expertise. IFS states that it has acted as independent fiduciary on many transactions involving prohibited transaction applications, including several for real property transfers and it has longstanding expertise in leaseback transactions between companies and their pension plans. IFS also states that it has experience with employers and benefit plans involved in the aviation industry.

The IFS Report further state that IFS specializes in acting as an independent fiduciary to ERISA-covered plans. The firm is highly experienced as a fiduciary in making and evaluating investment decisions. IFS has served and continues to serve as an independent fiduciary in connection with numerous pension funds and investment transactions, involving substantial issues under the fiduciary responsibility provisions of ERISA. An SEC-registered investment adviser, IFS has acted in a variety of independent fiduciary roles, including independent fiduciary, named fiduciary, investment manager and adviser or special consultant.

IFS also serves as an ongoing investment consultant to ERISA plans with assets valued at approximately $15 billion. In that part of its business, IFS routinely evaluates matters of investment policy, diversification across asset classes and expected risk and return.

The staff of IFS includes professionals experienced with the management and disposition of portfolio assets, as well as ERISA lawyers sensitive to fiduciary responsibilities involving investment activities. With offices in Washington, DC and Newark, New Jersey, IFS has coordinated and deployed a wide variety of specialized professionals on prior projects involving real estate sale-leasebacks, mergers and acquisitions, ERISA assets managed by banks and insurance companies, publicly-traded securities and private assets, valuation and financial restructuring.

In a July 20, 2004 letter to the Department, IFS represents that it does not control ARINC and is not controlled by or under common control with ARINC. IFS represents that the fees it will receive from ARINC in connection with its engagement as Independent Fiduciary to the Plan for any year of its

[6] The Department notes that the Act's general standards of fiduciary conduct would apply to the transactions permitted by this proposed exemption, if granted. In this regard, section 404 of the Act requires, among other things, a fiduciary to discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, an independent plan fiduciary must act prudently with respect to: (1) The decision to enter into the transactions described herein; and (2) the negotiation of the terms of such a transaction, including, among other things, the specific terms by which the Plan will acquire, hold, lease and sell the Property. The Department further emphasizes that it expects the independent plan fiduciary, prior to authorizing the acquisition and leaseback of the Property and any sale of such Property, to fully understand the benefits and risks associated with such transactions. In addition, the Department notes that such plan fiduciary must periodically monitor, and have the ability to so monitor the Property.

engagement, when aggregated with any other fees or compensation it receives from ARINC or any affiliate of ARINC for that same year, will comprise less than 5% of its annual gross revenue from all sources for its prior tax year.

The IF Agreement

In a December 8, 2003 letter agreement between IFS, ARINC, and the Pension Committee of the Plan, the Committee, in its role as named fiduciary to the Plan, agreed to the engagement of IFS as the Independent Fiduciary (The IF Agreement). The IF Agreement describes the initial function of IFS to decide on behalf of the Plan whether and on what terms to agree on behalf of the Plan to the Contribution/Leaseback and, if applicable, the Monetization Transaction. In making such decisions, IFS will review the Plan's financial and actuarial condition, asset allocation, investment portfolio, investment policy statement and other material relevant to a determination as to the suitability of engaging in the transactions within the context of the Plan's overall assets.

The IF Agreement provides that, if IFS decides to agree to the Contribution/Leaseback, IFS will provide a written report (IFS Report) to the Department outlining its conclusions and summarizing the analysis and considerations it took into account in reaching such conclusions. The IFS Report's conclusions shall include IFS's views as to whether the Contribution/Leaseback satisfies the criteria set forth in sections 404 and 408(a) of ERISA.

The IF Agreement states that if the proposed exemption is granted and the transactions entered into, the IFS will negotiate the specific terms of and closing of the Contribution/Leaseback and, if applicable, the Monetization Transaction; and determine on behalf of the Plan the value of the assets obtained by the Plan by virtue of the consummation of the Contribution/Leaseback and, if applicable, the Monetization. The ongoing functions of IFS are to: (a) Monitor and enforce the Plan's rights and interests with respect to the Property and any lease or other agreements with ARINC regarding use of such Property; (b) propose, negotiate and decide whether to enter into any agreements to amend the Lease; (c) evaluate and decide whether to grant requests for waivers of lease terms; (d) arrange for such appraisals of the Property as may be necessary to satisfy the Plan's responsibilities under ERISA and the exemption to establish and report the Property's value; (e) report annually to the Committee concerning the physical and financial condition of the Property; (f) determine whether continued ownership of the Property is in the interests of the Plan's participants and beneficiaries and whether, when and on what terms to seek prudently to sell the Property in accordance with provisions of any contract between the Plan and ARINC; and (g) in the event IFS determines to sell or otherwise dispose of the Property, negotiating the terms and conditions of, and consummating the sale or disposition.

The IF Agreement notes that in performing these functions, IFS agrees that it shall act for the exclusive benefit and in the sole interest of the Plan and its participants and beneficiaries; with the care, skill, prudence and diligence that a prudent person acting in a like capacity and in similar circumstances and familiar with such matters would exercise; and otherwise in accordance with the applicable fiduciary responsibility provisions of ERISA. IFS represents that it will act as a qualified professional asset manager (QPAM) as defined in PTE 84–14 with respect to the Monetization or a sale of the Property to a third party if relief from ERISA section 406(a) is necessary.

Amendment and Addendum to the IF Agreement

On July 30, 2004, the Department was informed that the ARINC Pension Committee, ARINC and IFS agreed to an amendment and addendum to the IF Agreement that expands the role of IFS to include the ongoing review of the Plan for any diversification issue that may be presented by the Plan's investment in the Property. As part of IFS's ongoing duty to determine whether continued ownership of the Property is in the Plan's interest, IFS will specifically consider the nature and diversification of the Plan's overall investment portfolio, cash flow and liquidity needs and actuarial condition. ARINC will supply IFS with added information so that it can appropriately carry out this function. The purpose of these expanded duties will be to ensure that IFS determines on an ongoing basis that the Plan's holding of the Property does not pose an undue risk to the Plan of an over concentration of Plan assets in the Property. The following changes were added to the IF Agreement:

- In considering whether and on what terms to seek prudently to sell the Property, IFS shall consider the nature, value and other relevant aspects of the Property in isolation, as well as the nature and diversification of the Plan's overall investment portfolio. Insofar as IFS determines that continued ownership of the Property poses undue risk to the Plan of over concentration from an investment perspective, IFS shall determine and take appropriate action to seek prudently to reduce such risk.
- The initial and ongoing functions of IFS shall not include any Plan assets other than Property assets, provided that IFS shall consider the nature and diversification of the Plan's overall investment portfolio pursuant to its function to determine whether continued ownership of the Property is in the interests of the Plan's participants and beneficiaries and whether and on what terms to sell the Property.
- At the request of IFS, the Committee and/or ARINC shall specifically provide information regarding the nature and diversification of the Plan's overall investment portfolio, its cash flow and liquidity needs, and its actuarial condition.
- ARINC acknowledges that it is a party to the IF Agreement and is subject to the obligations imposed on ARINC therein.

Termination of the IF Agreement

The parties to the IF Agreement are ARINC, the Plan Committee and IFS. The IF Agreement provides that any party to the IF Agreement may terminate it at any time by giving written notice to that effect to the other parties, and such termination shall become effective no less than 30 days thereafter, provided, however, that ARINC pays IFS and its agents all of their respective fees and expenses through the effective date of termination. In the event of termination, IFS shall cooperate with any successor independent fiduciary and shall promptly deliver all relevant documents and information in connection with the transactions to such successor independent fiduciary. IFS will not assign its obligations to perform services hereunder to any other party without the prior written consent of the Committee.

The Department notes that if any party to the IF Agreement terminates the IF Agreement or if IFS decides to assign its obligations to perform services, the parties to the IF Agreement shall notify the Department within 15 days of any decision regarding the resignation, termination or change in control of the Independent Fiduciary. Any replacement or successor Independent Fiduciary must be acceptable to the Department and must assume its responsibility prior to the effective date of the removal of the predecessor Independent Fiduciary.

11. The IFS Report. IFS provided the IFS Report to the Department on June 18, 2004. The IFS Report states that ARINC has advised IFS that the

Contribution and Leaseback (the Proposed Transaction) is the only funding strategy under formal consideration by ARINC that would render the Plan fully funded on an ABO basis in the near term, and that if the Proposed Transaction proceeds, ARINC intends to make an additional cash contribution to the Plan in 2004 in an amount (estimated at $9 million) sufficient to achieve that objective, absent unexpected deterioration in the Plan's funded status due to unforeseen investment losses. Without the Proposed Transaction, minimum required contributions totaling more than $97 million would leave the Plan underfunded by between $52 million and $77 million on an ABO basis through 2008. With the Proposed Transaction and accompanying additional cash contribution in 2004, no minimum funding contributions would be required until 2008, and the underfunding would range from only $12 million to $41 million.

The IF Report summarizes that the Proposed Transaction includes the following features, which are protective of the interests of the Plan's participants and beneficiaries:

- The bondable nature of the triple net lease during its first ten years means that ARINC, not the Plan, will bear during that time not only the ordinary maintenance, tax and insurance expenses associated with a triple net lease but also all capital expenses associated with the Property. In addition, during the bondable portion of the lease, ARINC will not have a tenant's typical right to rent abatement in the event the Property suffers a casualty and cannot be occupied.
- ARINC relinquished its demand for an option to purchase the Property at the end of the lease, so the Plan will have an unencumbered right to sell or lease the Property to anyone when ARINC's lease expires.
- ARINC relinquished its demand for a right of first refusal during the term of the lease, and has now accepted a far less restrictive right of first offer (ROFO). That right is subject to forfeiture in the event of ARINC's uncured monetary default.
- ARINC relinquished its demand that the ROFO ''run with the land,'' so it will be extinguished if ARINC declines to exercise the right and the Plan sells the Property to a third party
- ARINC has agreed to provide the Plan a minimum rate of return on the Property as of the fifth anniversary of the contribution or an earlier sale of the Property by the Plan. This will take the form of ARINC's payment of an additional ''make-whole'' contribution to the Plan in the amount of the shortfall, if any, in the Plan's actual return on the Property against a minimum return of five percent compounded. The calculation of the make-whole contribution will take into consideration any monetization of the lease payments.
- The Property the Plan would receive is an attractive, well-maintained corporate campus in the desirable real estate market of Annapolis, Maryland. The Property's configuration, combined with its location, renders it readily marketable to parties other than ARINC in the event the lease is terminated. Indeed, ARINC recently leased a portion of the Property to a third party (BearingPoint), which confirms the Property's attractiveness to users other than ARINC.
- In addition to improving the Plan's actuarial condition, both immediately and into the future, the Proposed Transaction will render the Plan less dependent on ARINC's cash flow in view of the substantial reduction in the Plan's minimum funding requirements if the Proposed Transaction occurs. Moreover, since the Plan does not currently own any real estate, the Proposed Transaction should improve the overall diversification of the Plan's portfolio in view of the low expected correlation of the investment returns on the Property with the publicly traded equity and fixed income securities in which the Plan's assets are currently invested. Applying its capital market assumptions to the Plan's portfolio both with and without the Property included, IFS has determined that the expected risk-adjusted return on the Plan's assets will increase significantly if the Proposed Transaction takes place.

The IFS report concludes that the Proposed Transaction is appropriate and in the interest of the Plan's participants and beneficiaries. IFS reaches this conclusion based upon the considerations summarized above and explained more thoroughly below, and its significant due diligence as also described more completely below. Based on IFS' experience and due diligence in reviewing the Proposed Transaction, IFS believes that the terms of the Proposed Transaction, taken as a whole, are consistent with an arm's length negotiation between a Seller and Buyer with the respective goals of ARINC and the Plan. This conclusion reflects, *inter alia,* IFS' consideration of the likely effect of the ROFO provisions in the context of the overall Proposed Transaction. ARINC has made it clear to IFS that, as a business judgment, ARINC simply will not contribute the Property to the Plan without the ROFO, which preserves for ARINC a limited right to buy its corporate headquarters back if the Plan were to decide to sell it during the term of the lease. Given the significant and beneficial impact of the Proposed Transaction on the Plan's funded status, the limitations on the ROFO that ARINC has accepted, its withdrawal of its earlier demands for far more restrictive right of first refusal and purchase option provisions, the ''make-whole'' obligation and the other aspects of the transaction, IFS concludes that the Plan would be in a better overall position with the Property on the terms of the Proposed Transaction than without it. The Proposed Transaction is designed to produce significant value for the Plan, even with a limited ROFO, so that proceeding with the Proposed Transaction is in the Plan's interest.

Although IFS has attorneys with extensive experience counseling ERISA-governed benefit plans in issues related to plan investments in general, and real estate and employer asset transactions in particular, IFS has engaged the firm of Reed Smith, at ARINC's expense, to advise it with respect to the legal issues raised by the Proposed Transaction. Reed Smith attorneys have participated actively in the negotiation of the terms of the Proposed Transaction and assisted in the analysis of the Proposed Transaction for purposes of the IFS report. IFS has also identified other independent professionals to assist it (also at ARINC's expense), including an engineering firm and an environmental testing firm, all as detailed below.

The Property and Appraisal

The IFS Report states that Deloitte was well qualified to conduct the appraisal, and that the firm's knowledge of the Property (by virtue of a preliminary appraisal of the Property for the Plan which Deloitte conducted at ARINC's request in the fall of 2003) would facilitate the process for completing the appraisal. IFS requested proposals from five other firms it considered likely also to have the qualifications and experience to conduct the appraisal, but only one of these responded; the others declined. IFS determined that Deloitte was in a better position to conduct the appraisal due to its equal or superior qualifications and its familiarity with the Property.

Although Deloitte had previously entered into a contract with ARINC to appraise the Property for the benefit of the Plan, IFS required that Deloitte enter into a new agreement with the Plan on significantly different terms. IFS obtained changes to the engagement letter document proposed by Deloitte

with regard to the scope of the engagement, specifying additional issues regarding the Property to address in the appraisal report that would be relevant to IFS' analysis of the Proposed Transaction. There were extensive negotiations over several other key points. First, IFS successfully demanded that the agreement with Deloitte contain no indemnification obligation on the part of the Plan. Next, IFS persuaded Deloitte to restrict the limitations on Deloitte's liability typically included in Deloitte's agreements with appraisal clients. Third, IFS required that Deloitte agree to an exception to Deloitte's standard confidentiality provisions to allow IFS to disclose and use the Deloitte appraisal report as necessary and appropriate in connection with the Application. A final engagement letter was executed in late March 2004. Under its terms, ARINC, not the Plan, is to pay the costs of the Deloitte appraisal.

The IFS Report states that the information about the Property is derived largely from Deloitte's Appraisal. In addition, two IFS employees (including IFS's Chief Financial Officer) visited the Property on May 5, 2004 and toured the grounds and the various buildings accompanied by two representatives from Deloitte's appraisal staff and three ARINC employees. The Property is located at 2551 Riva Road, Anne Arundel County, Maryland, just outside the city of Annapolis, the capital of Maryland and the county seat. The site, identified as Parcel 2000–9003–8018, consists of approximately 27.595 acres, between Riva Road and Spruill Road and divided by Admiral Cochrane Drive. It is zoned W–1, Parole Town Growth Management Area. This zoning allows a diverse mix of office, retail, hotel, services, R&D, light industrial and similar uses. The Property reportedly conforms to minimum zoning requirements.

Site improvements consist of six buildings, five configured for office use and one as office and light industrial, plus several small support structures. Total gross area is approximately 359,283 square feet, with 345,983 net rentable square feet. The oldest two buildings were constructed in 1964; the newest in 1989 and expanded in 2001. In addition, buildings were renovated between 1996 and 2002, with a capital plan in place for additional renovations over the next several years. Buildings on either side of Admiral Cochrane Drive are interconnected by covered surface passageways, permitting movement among sets of buildings in a weatherproof environment. There are currently 1,367 paved surface parking spaces. ARINC reported that the site is zoned and situated to permit the construction of an additional approximately 140,000 square feet.

The Property's overall arrangement and appearance presents a well-maintained office campus environment. The buildings are attractive and appear to be in good condition and well maintained. As Deloitte reported, grounds were well landscaped and maintained. Parking lots appeared in good condition and clearly marked. The public road (Admiral Cochrane Drive) bisecting the Property allows easy access, yet security at the buildings was thorough. Generally, the Property appeared to be fully occupied and actively used in ARINC's business.

One floor of Building One, consisting of 27,630 square feet, is currently leased on a short-term basis to BearingPoint. BearingPoint has its own separate access and security. BearingPoint's willingness to rent the Property supports the proposition that the Property is attractive and marketable to users other than ARINC.[7]

The neighborhood surrounding the Property consists of a mix of similar use structures, retail, and hotel properties. Many structures appear of recent construction or renovation, and at least one hotel is currently under construction. The Property is convenient to major highways providing connections to Annapolis, Baltimore and Washington; it is easily accessible from Route 50 and Aris T. Allen Boulevard (Route 665).

Valuation of the Property

Deloitte was engaged to determine the market value of the Property and its fair rental value using the definitions and methods generally accepted in such appraisals. Standard practice in appraising real estate similar to the Property is to establish value using each of three approaches (cost, sales comparison and income) to the extent that each approach is applicable, and to apply appropriate weightings to the three resulting values to reach a single conclusion. The cost approach estimates the market value of the land as if vacant and the cost to replace the improvements less depreciation to their current conditions. The sales comparison approach estimates the market value based on sales and listings of similar properties. The income approach estimates value by capitalizing the net income the property is capable of generating at market rates. Deloitte determined that all three approaches were applicable to the Property.

IFS reviewed a preliminary draft of the appraisal, which Deloitte delivered on April 19, 2004. The IFS team identified several key issues requiring further analysis and explanation. For example, IFS questioned the draft's assumptions regarding the capital expense reserves, the key element in calculating the differential in fair market rent as between the bondable and non-bondable structures. IFS also requested that Deloitte further review and explain the suitability of the comparable transactions relied upon in the draft, as well as the market and economic considerations underlying the capitalization rate and other variables. IFS also sought input from ARINC, which resulted in corrections of the draft's property measurements and descriptions of the equipment and facilities located on the Property. ARINC staff also contributed to the clarification of Deloitte's assumptions and inputs. These and other issues were discussed with Deloitte on May 5 at the conclusion of the tour of the Property described above.

Deloitte submitted a second draft dated May 25, 2004. This draft addressed a number of the issues IFS had raised in response to the first draft. The second draft also added a valuation using a modification of the income approach to reflect the evolving terms of the Proposed Transaction, including the ten-year bondable lease period and the parties' respective responsibilities and cash flow obligations under the proposed lease. The May 25 draft presented the following estimates of value:

Cost Approach	$46,500,000
Sales Comparison Approach	46,000,000
Income Approach, NNN Direct Cap	45,300,000
Income Approach, NNN DCF	45,000,000
Income Approach, Bondable DCF	52,000,000
Overall Conclusion	52,000,000
Initial Rent, NNN	14.65
Initial Rent, Bondable	13.35

IFS evaluated the May 25 draft and discussed with Deloitte the cash flow and other assumptions and concluded that the differentials in value and fair rent between the NNN market rate and the bondable/NNN structure overstated the differentiating factors of responsibility for capital expenditures

[7] At IFS' insistence on behalf of the Plan, the lease between ARINC and BearingPoint explicitly provides that it will convert into a sublease if the Proposed Transaction occurs. In the event that ARINC defaults under the lease with the Plan while the BearingPoint sublease remains in effect, and the building occupied by BearingPoint requires capital repairs, the Plan can avoid that expense by relocating BearingPoint to a different building on the Property. The sublease contains other provisions protective of the Plan in contemplation of the Proposed Transaction.

and risk of casualty or other rent abatement.

Deloitte's final report sets forth the values listed below. IFS is satisfied that the Deloitte report satisfactorily addresses the concerns IFS raised in response to all of the earlier drafts and may be relied upon as the basis for IFS' conclusions regarding the Proposed Transaction as set forth in this Report. The values determined by Deloitte are:

Cost Approach	$46,900,000
Sales Comparison Approach	46,000,000
Income Approach—Capitalization	46,600,000
Income Approach—DCF	46,800,000
Reconciled Market Value	46,500,000
Bondable/NNN Lease Structure	49,000,000
Final Reconciled Value	49,000,000

Deloitte concluded that the final reconciled value should be the fair value based on the actual terms of the proposed lease, including the actual distribution of responsibility and cost for capital maintenance, and not on a more generalized market value based on market standard lease terms. IFS agrees with this view.

As a component of determining value under the income approach, as well as a requirement of the engagement, Deloitte developed an estimate of the fair rent for the Property, given the substantive terms of the Lease, including the bondable and non-bondable character of the rent obligation, as described in II(C), above.

Deloitte determined the fair rent based on competitive gross rents for similar properties in the area, reduced for reasonable costs and allowances that a landlord would incur in managing such a property and renting it under a similar lease structure to an unrelated tenant. This resulted in a triple net lease fair rental rate of $14.65 per rentable square foot. Deloitte then estimated the cost reserve applicable to the capital maintenance of the Property, the vacancy risk and other factors in order to determine the difference between the triple net and the bondable lease rental rates, and arrived at a bondable fair rental value rate of $12.40 per rentable square foot. Finally, Deloitte determined that fair market leases contain annual escalation in base rent of 2.50 percent.

IFS concluded that the final values Deloitte has calculated benefit the Plan in several ways, relative to their earlier draft values. The reduction in value from $52 million to $49 million reduces the amount of the contribution to the Plan that the Property will constitute. This will be offset, however, by an increase in the additional cash contribution ARINC intends to make to fully fund the Plan on an ABO basis if the Proposed Transaction proceeds. The lower property value also reduces the extent to which the Plan's overall portfolio is concentrated in a single asset, the Property. Additionally, because the contribution value is closer to the value under more typical terms (*i.e.*, a non-bondable triple-net lease), the risk of a value reduction if the Property is sold or leased to a different tenant is reduced. IFS notes that although the rent on the Property per square foot and, therefore, the total annual rent the Plan will receive are lower in the final appraisal than in the earlier draft, the value of the Property and thus the value of the contribution, are also lower. Accordingly, the resulting cash on contribution yield (*i.e.*, rent divided by contribution value) in the final appraisal is essentially the same as in the draft appraisal since both the numerator and the denominator in the yield calculation are lower. In other words, the income yield on the property, measured by rental income as a percentage of property value, is essentially unchanged.

Deloitte also evaluated the marketability of the Property and its fitness for multiple uses within the overall area and market in which it is located. Factors affecting this include the strength and growth patterns of the region and the physical structure as well as the permitted uses of the Property.

The Contribution

IFS notes that the Transfer Agreement provides for a 60-day Review Period during which the Plan may conduct final due diligence concerning the Property. The Plan, by IFS as independent fiduciary, may terminate the Transfer Agreement at any time during the Review Period, in which event the Proposed Transaction will not be consummated and the Contribution will not take place. During the Review Period, IFS may, on behalf of the Plan, conduct such inspections and surveys as to title, zoning, insurance, engineering, environmental and other matters as it sees fit. ARINC is obligated to pay all of the costs, including attorneys' fees, which IFS incurs on behalf of the Plan in connection with the Proposed Transaction, including the fees of the consultants and experts IFS retains on behalf of the Plan to assist it in the due diligence process. IFS engaged Deloitte and is prepared to contract with environmental, engineering and insurance experts to advise it. ARINC, not the Plan, is paying their fees, as well as Reed Smith's fees.

The closing is contingent upon, in addition to standard conditions, the Department's issuance of a prohibited transaction exemption. In addition, ARINC and ARI are required under the Transfer Agreement to certify at closing that their representations and warranties concerning the Property and other matters made in the Transfer Agreement are still accurate. If the Contribution is consummated, IFS will determine the value of the Property to be recorded on the Plan's books, taking into account the results of the appraisal performed by Deloitte.

The Lease

The IFS Report states that upon the Contribution, the Plan will lease the Property back to ARINC; indeed, execution of a lease between the Plan (or the SPE) and ARINC is a condition to a closing of the Contribution. The terms of the proposed lease (the Lease) are set forth in a detailed term sheet (the Draft Lease Term Sheet). As explained below, the Lease will be a triple net lease (*i.e.*, the base rental shall not include real estate taxes, utilities and insurance, as well as certain costs for the operation, maintenance, management, repair and replacement of the Property, all of which costs shall be paid by ARINC as tenant) throughout its term, and will be ''bondable'' for the first ten years unless the Property is sold during that time.

The Lease shall start as a ''bondable'' lease, in which ARINC's obligation to pay rent to the Plan will be absolute and unconditional and the rental payments will be exclusive of all costs related to the Property, including real estate taxes, utilities and insurance, which ARINC will pay. ARINC will bear the costs of capital improvements and all other costs to operate, maintain, repair and replace in good condition the systems and structural and non-structural components of the buildings on the Property, all in a manner befitting office buildings in Annapolis, Maryland that are comparable to the buildings on the Property and in accordance with all applicable laws. The Lease shall contain a commercially reasonable standard for determining whether repair or replacement is necessitated. All such maintenance, repair and replacement work shall be performed by ARINC. This bondable character of the Lease remains in effect until the earlier of (i) the end of the first 10 years of the Lease Term or (ii) the date on which the Property is sold to a third party or transferred to a Lender, at which time the Lease shall convert to a ''non-bondable'' lease (as more particularly described immediately below).

During the ''non-bondable'' term of the Lease, ARINC will continue to be

responsible for real estate taxes, utilities and insurance, and all ordinary, commercially reasonable, non-capital costs of operating, repairing and maintaining the Property. (This type of arrangement is commonly called a ''triple net'' lease, or—in shorthand—''NNN''). The Plan shall be responsible only for all capital repairs and replacements and other costs incurred in connection with the Property that customarily are the responsibility of owners of real property leased under triple net, non-bondable leases, all in a manner befitting office buildings in Annapolis, Maryland that are comparable to the buildings on the Property, and in accordance with all applicable laws. The Lease will reallocate responsibility for various obligations effective upon the conversion to a non-bondable structure, including all such capital maintenance, repair and replacement work. ARINC shall continue to perform such work upon the Plan's approval, subject to reimbursement, as applicable, by the Plan. In addition, ARINC will have rights of abatement and termination for casualty, condemnation and failure of utilities and services, as described in the Draft Lease Term Sheet and to be defined more precisely in the Lease.

IFS states that the rental payments under the Lease are to be set at fair market rates. Subject to final due diligence and the approval of the Independent Fiduciary, the annual base rent for the Property as a whole is expected to be based on the current fair market rental value identified in the Appraisal, $14.65 per square foot under the non-bondable structure and $12.40 under the bondable structure. Both rates will increase at 2.50 percent per year, compounded. ARINC will pay the bondable rate as long as the Property is leased under the bondable conditions, after which the rent will increase to the non-bondable triple net rate then in effect (*i.e.*, reflecting the annual increases). Any subletting profits during the bondable period will be retained by ARINC, but the Plan will receive 50% of such profits during the non-bondable term.

If ARINC exercises the option to renew the Lease for three years, the rent for that additional term will be equal to the then prevailing fair market rental, and no lower than the rent paid during the last year before the renewal period starts, with disputes concerning the rent for the renewal period to be resolved by a three-appraiser method. During negotiations, IFS obtained ARINC's agreement that the renewal right cannot be exercised if there have occurred during the 18-month period preceding the election date more than three material monetary defaults that continued uncured following notice and the expiration of applicable cure periods.

The Make Whole Obligation

The IFS Report concludes that the fact that the Make Whole Obligation will not extend beyond the first five years will not adversely affect the Plan absent a catastrophic decline in the Property's value. This is because the rental income under the Lease significantly exceeds the 5% threshold. The IFS Report presents an analysis of the make whole provision on a break-even basis. The actual accumulated rental income is compared to the guaranteed value at the end of each year (*i.e.*, the initial contribution value of $49 million plus five percent minimum return). The difference is the minimum property value (sale price or appraised value) necessary for the actual return to equal the guaranteed 5% return. The value of the Property at the end of year five (when the make whole will be calculated assuming the Property has not been previously sold) can be as low as $39,987,251 to achieve the guaranteed five percent return. This value is 81.6 percent of the initial contribution value, meaning that the Property would have to lose at least 18.4 percent of its value over the first five years in order to trigger a make whole contribution at the end of the five years to provide the Plan with the guaranteed five percent return, and the loss would have to increase thereafter for the Plan to fail to achieve the 5%.

The Monetization

The IFS Report states that IFS has been exploring various proposals to monetize the stream of lease payments in order to convert them into an immediate cash payment and reduce the Plan's allocation of assets to the Property. IFS has held extensive discussions with several prospective counterparties and investment bankers about alternative proposals that would enable the Plan to receive a lump sum payment in exchange for a counterparty receiving the cash flow associated with the lease payment stream. IFS notes that in general, structuring the transaction as a financing creates the risk that the transaction will subject the Plan to unrelated business income taxes. Conversely, structuring the transaction as an outright sale raises more credit risk issues and costs with the counterparties, and effectively reduces the value to the Plan. At present, no counterparty appears willing to proceed with an outright purchase of the lease stream. IFS notes that while they continue to engage financial institutions in discussions of various proposals, they do not expect that a monetization transaction will occur.

Analysis and Determination by IFS

The Impact of the Proposed Transaction on the Plan's Funding Status

In order to evaluate the impact of the Proposed Transaction on the Plan's financial and actuarial condition over the next five years, IFS reviewed the Plan's asset allocation target, as well as actuarial projections provided by ARINC's actuary, Watson Wyatt. The IFS Report tables below compare the status of the Plan under two scenarios: (1) The Proposed Transaction proceeds and ARINC makes an additional $9 million cash contribution to the Plan in 2004 and minimum contributions after that; (2) the Proposed Transaction does not proceed and ARINC makes only the minimum required contributions.

	2004	2005	2006	2007	2008
Plan Assets at November 30 of prior year ($ millions)					
With transaction and minimum future cash contributions	243.6	305.8	307.4	308.5	309
Without transaction (minimum cash contributions only)	243.6	244.3	242.3	269.2	298.2
Funded Status [8] ($ millions) at November 30 of prior year					
With transaction and minimum future contributions	(64)	0.4	(11.6)	(25.4)	(41)
Without transaction (minimum contributions only)	(64)	(61.1)	(76.7)	(64.7)	(51.8)

	2004	2005	2006	2007	2008
Funding Standard Account credit balance at January 1 ($ millions)					
With transaction and minimum future cash contributions	19.5	56.1	33.9	3.0	0
Without transaction (minimum cash contributions only)	10.5	0	0	0	0
Plan Funding Contributions, Property and Cash ($ millions)					
With transaction and minimum future cash contributions	62.5	0	0	0	27.4
Without transaction (minimum cash contributions only)	4.5	2.5	30.4	31.1	29.1
Cash flow from ARINC to the Plan ($ millions)					
With transaction (minimum contribution plus rent)	11.1	4.3	4.5	4.6	32.1
Without transaction (minimum cash contributions only)	4.5	2.5	30.4	31.1	29.1

[8] Market value of plan assets less Accumulated Benefit Obligation.

Based on this analysis, IFS believes that the Proposed Transaction would place the Plan in a better actuarial and financial position over the five years, with a higher funding percentage and a larger funding standard account credit balance, with lower cash contributions from ARINC. The last chart shows that even when ARINC's rent is taken into account, the Plan will be less reliant on ARINC's ability to generate cash for payments to the Plan. IFS adds that more generally, since the Property is a marketable asset with value independent of ARINC as the lessee, the Proposed Transaction would reduce the Plan's reliance on ARINC's creditworthiness.

The Plan's Investment Portfolio

Investment Policy

IFS notes that the Plan's investment policy statement currently permits investments in equities (domestic and international), fixed income, real estate, immediate participation guarantee contracts issued by insurers and cash equivalents. The Plan's current target asset allocation is:

30% large cap domestic equity
30% small cap domestic equity
10% international equity
27.5% domestic fixed income
2.5% cash

The actual asset allocation as of March 31, 2004 was 64% U.S. stocks, 11% international stocks, 24% U.S. fixed income, and 1% cash. The Plan currently owns no real estate, and owns no employer securities.

Asset Allocation Analysis/Expected Risk and Return

The IFS Report states that if the Proposed Transaction proceeds and the Property becomes an asset of the Plan valued at $49 million, and if ARINC makes the additional cash contribution of $9 million to achieve ABO full funding, the Property will represent approximately 16% of the Plan's assets. Assuming no reallocation of the Plan's other assets after the Contribution, the Plan's target asset allocation would become:

25% large cap domestic equity
25% small cap domestic equity
16% real estate
9% international equity
23% domestic fixed income
2% cash

IFS expects that adding a real estate asset like the Property to a portfolio of publicly traded securities should enhance overall portfolio diversification. The expected correlation of returns of institutional quality real estate relative to public equities is only approximately 0.20, and relative to publicly traded fixed income, it is also only approximately 0.20.

ERISA Section 404(a)(1)(C)

In light of the diversification requirement set forth in ERISA Section 404, IFS has considered the fact that if the Proposed Transaction proceeds, approximately 15% of the Plan's assets would be invested in a single asset, the Property. As a preliminary matter, IFS's diversification analysis recognizes that the Plan currently holds no real estate assets—its other assets consist entirely of marketable equity and fixed income securities. Less than 25% of the current assets of the Plan are fixed income investments. IFS notes that it is well recognized that real estate leased to a creditworthy tenant enhances an institutional investor's portfolio diversification in view of the low correlation of returns (0.20 as discussed above) as between real estate and other asset classes such as the equity and fixed income securities in which the Plan's assets are currently invested and that diversification can be expected to improve the Plan's risk adjusted returns.

Attorneys from Reed Smith, led by Donald J. Myers and Michael B. Richman, experienced practitioners in matters requiring prohibited transaction exemptions, have assisted IFS in the analysis of this important issue. Based on the advice IFS received from Reed Smith, IFS is satisfied that the Proposed Transaction would not cause the Plan to fail to satisfy the statute's diversification requirement.

Due Diligence Regarding the Property

As indicated above, IFS representatives have physically inspected the Property. In addition, IFS represents that it intends to use the Review Period under the Transfer Agreement to analyze thoroughly the condition of the Property and the safeguards available to protect the Plan if the Proposed Transaction proceeds. In anticipation of the commencement of the Review Period, IFS has identified experts to assist in the due diligence process.

IFS sent requests for proposals to two consulting firms, URS Corp. and EBI Consulting, to perform a property condition assessment (PCA). The purpose of this PCA will be to assess the physical condition of the Property and to document any defects. The building components and systems evaluated will include site development; building structure and envelope; building exteriors; roofs and facades; building interiors; vertical transportation systems; mechanical, HVAC, electrical, plumbing, conveyance, and life safety

and fire protection systems; and accessibility for disabled persons. While both firms appeared qualified to perform the work, URS was selected because of favorable recommendations from firms active in the real estate business. IFS is finalizing a formal contract with URS. The firm has agreed to conduct its PCA in general conformance with the American Society of Testing and Materials (ASTM) guidelines for property condition assessments.

Separately, IFS will contract with Custer Environmental, a respected environmental consultant, to provide an environmental site assessment (ESA) of the Property. Custer was selected because the firm is well qualified for the work and familiar with the Property, having conducted a Phase I ESA in March 2002. The assessment to be performed will follow the ASTM standards and provide an update to the 2002 Phase I ESA. Custer will conduct follow-up interviews with various governmental agencies that have site-specific knowledge; review documentation pertaining to soil and groundwater contamination; conduct an investigation to determine the presence of hazardous materials, underground storage tanks, and other potential hazards related to ground water contamination; perform a background investigation of the site and adjacent property histories; and inspect the buildings for suspected asbestos-containing materials.

IFS also expects to contract with an expert in insurance issues pertinent to the ownership of real estate similar to the Property. We anticipate that this insurance expert will evaluate the adequacy of the insurance coverages ARINC currently maintains on the Property and, if appropriate, recommend changes in or additions to those coverages.

ARINC's Creditworthiness and Financial Condition

The IFS Report states that in mid-January 2004, Moody's and Standard & Poor's issued initial public ratings of ARINC's proposed $200 million senior secured credit facilities. Moody's assigned a rating of ''Ba3'' to the proposed credit facility and ''B1'' to ARINC as the issuer. S&P assigned its ''BB'' corporate credit rating to ARINC and the proposed credit facility. These ratings place the ARINC debt one level below what is considered investment-grade quality. IFS not only reviewed the ratings reports but also discussed them with the rating agencies' personnel.

IFS notes that a credit rating reflects the rating agency's opinion of the relative default risk over the life of a debt issue, incorporating an assessment of all future events to the extent they reasonably can be anticipated. Such ratings reflect both the likelihood of default and any financial loss that may reasonably be anticipated in the event of default. Investment grade obligations are rated Aaa, Aa, A, and Baa by Moody's and AAA, AA, A, and BAA by S&P. The next two levels of ratings, Ba and B (Moody's) and BB and B (S&P), imply that the rating agency believes the obligations to have speculative elements and are subject to substantial credit risk. Moody's Ba3 rating of the credit facility placed it at the lowest of three rankings within the ''Ba'' category, while S&P's B1 rating places ARINC at the highest ranking in the ''B'' category.

S&P also gave ARINC a rating ''outlook'' of ''Stable.'' A rating outlook assesses potential for change and is assigned as an ongoing component of all long-term ratings. Outlooks have a long time horizon, and incorporate trends or risks with less certain implications for credit quality. Outlooks may be ''positive,'' indicating a rating may be raised, or ''negative,'' indicating a rating may be lowered. ''Stable'' is the outlook assigned when ratings are not likely to be changed. The time frame for an outlook generally is up to two years.

S&P's credit rating of ARINC is derived from ARINC's small equity base, limited financial flexibility, and the weak domestic commercial aviation market, offset somewhat by ARINC's leading positions in aviation communications markets and the positive outlook for defense spending. S&P believes ARINC's leading niche market positions, steady defense business, and, significantly, its efforts to address its underfunded pension plan should offset its exposure to the commercial aviation market and somewhat higher debt levels. Moody's ratings considered ARINC's relatively stable and diversified revenue base, with more than 65% represented by contractual revenue from governmental agencies, its dominant market position in air-to-ground communication services to airlines worldwide, and its solid track record of revenue growth and stable margins.

Since ARINC received ratings below investment grade and its outlook was deemed ''Stable,'' IFS considered the impact on the Property's value to the Plan if ARINC were to default on its obligations under the Lease. That analysis is discussed immediately below.

Value of the Property as a Marketable Asset

IFS believes that a critical aspect of the process of determining whether the Proposed Transaction will be in the interest of the Plan and its participants and beneficiaries involves consideration of not just the abstract value of the Property as determined in the Appraisal but a realistic assessment of the marketability of the Property to parties other than ARINC in the event the Lease is terminated and ARINC no longer will occupy the Property, whether by choice or due to a default under the Lease (which would likely indicate that ARINC is experiencing financial difficulties). While the Property is currently occupied almost exclusively (except for ARINC's tenant BearingPoint) by a single tenant primarily as a corporate headquarters office complex, a number of factors indicate that it is suitable for use by potential occupants other than ARINC, so the value of the Property can be realized independent of ARINC's long range prospects and plans.

The site improvements consist of two sets of buildings, clearly divided by a public road. This physical separation would allow, at a minimum, the Property to be leased or sold in two parts. The individual buildings, although interconnected, can be easily separated for separate tenant occupancy. For example, IFS understands that BearingPoint, which occupies one floor of one of the buildings, has a separate entrance and separate access security. The Property, although primarily built out for general office use, is adaptable for other uses as well. One building is designed and currently used for light industrial purposes, primarily for prototype fabrication.

IFS concludes that, given the economic vibrancy of the Annapolis region, the attractiveness of the Property's location as described in the Appraisal, the physical condition and layout of the Property and its improvements, and the diverse legally permitted uses, there should be multiple opportunities for sale or rental of the Property to one or more unrelated users.

The Terms of the Proposed Transaction

The IFS Report represents that the provisions of the Transfer Agreement, including the Draft Lease Term Sheet setting forth in detail the key terms of the Lease, were the product of extensive negotiation between IFS and ARINC. IFS asserts that IFS senior personnel were directly and intensively active in the negotiations. IFS also was represented by counsel from Reed Smith

experienced in both real estate transactions in the Annapolis area and the representation of benefit plans subject to ERISA engaging in transactions requiring exemptive relief from the Department. IFS states that in light of IFS' experience and due diligence, they believe that the terms of the Proposed Transaction set forth in the documents are commercially reasonable and consistent with the terms that unrelated parties bargaining at arms length would agree to in a similar transaction.

The IFS Report notes that the economic terms of the Proposed Transaction provide fair value to the Plan. The rental payments are to be made at rates, including annual escalations, equal to fair market value as determined by the independent appraiser, Deloitte. IFS believes that the Proposed Transaction would not appear to place a financial burden on ARINC that would jeopardize its ability to satisfy its obligations to the Plan. The anticipated annual rent under the Lease, $4.3 million, represents only 8.1% of the cash generated by ARINC's operations in 2003 as reported in its financial statements. And as shown above, the total of minimum funding contributions and rent that ARINC will have to pay the Plan if the Proposed Transaction occurs is less than the contributions the Plan would require if it does not. IFS states that this reduction in ARINC's Plan-related costs improves ARINC's financial position, rendering it a more reliable source of future contributions to the Plan. IFS concludes that the bondable structure of the Lease's first ten (10) years provides additional assurance that the rent will be paid and also relieves the Plan during that period of any obligation to expend Plan assets on the Property for any purpose, including repairs, administration and capital improvements, absent a default by ARINC.

IFS asserts that it has carefully considered whether and to what extent the ROFO will materially impair the Plan's ability to sell the Property for fair value during the term of the Lease. As described above, the ROFO is the only restraint on sale that ARINC is requiring as a condition for contributing the Property to the Plan, despite IFS' extensive efforts to persuade ARINC to drop its demand for the provision. (By contrast, after considerable negotiations, ARINC withdrew its proposals for a purchase option and a right of first refusal.) As structured, IFS believes that the ROFO will not bar the Plan from marketing the Property for sale at fair market value since the ROFO is exercisable only at that value (or the value of an unsolicited offer), and the Plan may sell to a third party if ARINC declines to buy at that value. Accepting another of IFS' objections to the terms as originally proposed, ARINC has agreed that if it declines to exercise its ROFO and the Plan sells the Property, the purchaser will not have an ROFO obligation to ARINC because the ROFO will not run with the land. Moreover, since the ROFO is also extinguished in the event of an uncured monetary default of ARINC's obligations to the Plan as tenant, the ROFO serves as an inducement to ARINC to meet its financial obligations to the Plan under the Lease.

IFS believes that ARINC's Make Whole Obligation significantly mitigates the effect of the ROFO. If the Property is sold within the first five years, the Plan will achieve at least a 5% per annum compounded return on the Property's value as contributed. Even after the five year guarantee expires, the flow of rental payments at a yield of more than five percent generates a reduced minimum sale price that still results in a five percent compound return over the lease term except under conditions of catastrophic loss of value. IFS notes that for example, at the end of ten years, the Property could be sold at 65 percent of contribution value ($31.75 million) and still achieve the five percent minimum return; after 20 years, the minimum price to achieve the five percent return is below 19 percent of contribution value ($9.26 million).

IF Report Conclusion

IFS believes that the Proposed Transaction will immediately improve the Plan's funding, improve the Plan's overall portfolio of assets in terms of anticipated risk-adjusted return and reduce the Plan's reliance on future cash contributions from ARINC. The Plan will receive an attractive, marketable parcel of real estate, fully leased to a reasonably credit-worthy tenant obligated to pay rent at fair market value with regular annual increases. The terms of the Lease relieve the Plan of any exposure to the cost of capital improvements for the first ten years after the Property is contributed to the Plan, and are triple-net throughout its term. Accordingly, and for all the reasons set forth above, IFS concludes, as independent fiduciary to the Plan, that the Proposed Transaction is prudent and in the interest of the Plan's participants and beneficiaries.

12. Duties of the Independent Fiduciary. The Department notes that the appointment of an independent fiduciary to represent the interests of the Plan with respect to the transactions that are the subject of the exemption request is a material factor in its determination to propose exemptive relief. The Department believes that it would be helpful to provide its views on the responsibilities of an independent fiduciary in connection with the in-kind contribution, directly or indirectly, of property to an employee benefit plan.

As noted in the Department's Interpretive Bulletin, 29 CFR 2509.94–3(d) (59 FR 66736, December 28 1994), apart from consideration of the prohibited transaction provisions, plan fiduciaries must determine that acceptance of an in-kind contribution is consistent with ERISA's general standards of fiduciary conduct. It is the view of the Department that acceptance of an in-kind contribution is a fiduciary act subject to section 404 of ERISA. In this regard, section 404(a)(1)(A) and (B) of ERISA requires that fiduciaries discharge their duties to a plan solely in the interests of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable administrative expenses, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. In addition, section 404(a)(1)(C) requires that fiduciaries diversify plan investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. Accordingly, the fiduciaries of a plan must act ''prudently,'' ''solely in the interest'' of the plan's participants and beneficiaries, and with a view to the need to diversify plan assets when deciding whether to accept an in-kind contribution. If accepting an in-kind contribution is not ''prudent,'' not ''solely in the interest'' of the participants and beneficiaries of the plan, or would result in an improper lack of diversification of plan assets, the responsible fiduciaries of the plan would be liable for any losses resulting from such a breach of fiduciary responsibility, even if a contribution in kind does not constitute a prohibited transaction under section 406 of ERISA.

The selection of an independent qualified appraiser to determine the value of an in-kind contribution and the acceptance of the resulting valuation are fiduciary decisions governed by the provisions of Part 4 of Title I ERISA. In discharging its obligations under section 404(a)(1), the independent fiduciary must take steps calculated to obtain the most accurate valuation available. In

addition, the fiduciary obligation to act prudently requires, at a minimum, that the independent fiduciary conduct an objective, thorough, and analytical critique of the valuation. In conducting such verification, the independent fiduciary must evaluate a number of factors relating to the accuracy and methodology of the valuation and the expertise of the independent qualified appraiser. Reliance solely on the valuation provided by the appraiser would not be sufficient to meet this prudence requirement.

In considering whether to accept the Contribution and to engage in transactions involving the Leaseback of the Property by the Plan to ARINC and any renewal of the Lease, the Repurchase of the Property, any Make Whole Payment or Monetization, the Independent Fiduciary's responsibilities include the following:

1. The Independent Fiduciary must prudently determine the fair market value of the Property as of the date it is contributed to the Plan. In determining the fair market value of the Property, the Independent Fiduciary must obtain an appraisal by a qualified independent appraiser, and must ensure that the appraisal is consistent with sound principles of valuation.

2. The Independent Fiduciary must ensure that the appraisal, at a minimum, includes the following elements:

(a) A summary of the appraiser's qualifications to evaluate the Property,

(b) A statement that the appraiser is independent of ARINC and that the appraiser has no interest in the Property.

(c) A statement that the appraisal is being conducted to determine the fair market value of the Property, which is defined as the price at which the Property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, and both parties are able, as well as willing, to trade and are well informed about the Property and the market for the Property,

(d) A statement of the Property's value, the methodologies used in determining the value, the reasons for the valuation in light of the methodologies, and the reasons that the appraiser chose to apply particular valuation methods rather than others,

(e) A statement that the appraisal is being conducted to determine the fair market rental value of the leased Property, which is defined as the price at which the Property would change hands between a willing lessee and a willing lessor when the parties are not under any compulsion to lease, and both parties are able, as well as willing, to transact and are well informed about the Property and the market for the leased Property,

(f) A statement of the Property's rental value, the methodologies used in determining the value, the reasons for the valuation in light of the methodologies, and the reasons that the appraiser chose to apply particular valuation methods rather than others,

(g) A statement of the relevance or significance accorded to the valuation methodologies taken into account,

(h) The effective date of the valuations,

(i) A description of the nature of ARINC's business and history,

(j) A description of the economic outlook in general, and of the condition and outlook of the local real property market and rental market in particular,

(k) An analysis of the Property's condition and future value,

(l) A description of all of the factors taken into account in making the valuation, including any restrictions, understandings, agreements or obligations limiting the Plan's ability to dispose of the Property,

(m) A statement of past transactions involving the Property, including dates, amounts, price, and whether the transactions were at arms-length, as well as a description of any attempts to buy or sell the Property over the last five years, including a description of any previous plans for such transactions as described in the Application,

(n) An analysis of the market price of similarly situated properties,

(o) An analysis of the marketability, or lack thereof of the Property, with specific reference to any restrictions, understandings, agreements, or obligations limiting the Plan's ability to dispose of the Property, and

(p) Any other factors necessary for a prudent determination of the market value of the Property.

3. The Independent Fiduciary must investigate the facts and assumptions underlying the appraisal to ensure that the Property contribution is not valued at more than fair market value. The Independent Fiduciary must not simply defer to the conclusions reached by the appraiser, but rather will take appropriate action to ensure:

(a) That the appraisal is based upon complete, accurate, and current data;

(b) That the appraiser is appropriately qualified to conduct the valuation;

(c) That the valuation methodologies are appropriate and adequately explained and that the appraiser has adequately justified its decision not to use alternative methodologies;

(d) That the property's value is calculated with appropriate discounts for any transfer restrictions;

(e) That the appraisal's reasoning and assumptions are consistent, logical, and supported by appropriate financial and economic data and that any calculations are accurate;

(f) That the valuation is based on complete and accurate appraisals, which have been properly analyzed;

(g) That the assumptions underpinning the valuation are properly identified, and a careful analysis is performed of the impact of changes in those assumptions on the value of the Property;

(h) That the valuation has appropriately considered ARINC's financial condition in valuing the Property, as well as the impact of an ARINC bankruptcy or a decision to move the headquarters to a different location on the value of the Property; and

(i) That the fair market value of the Property has been determined by way of a prudent investigation.

Lastly, the Department notes that the above described responsibilities to be undertaken by the Independent Fiduciary will be material factors in whether the Department determines to grant a final exemption.

13. Summary of Conditions. ARINC represents that the requested exemption would be subject to the following general terms and conditions:

- With respect to the Contribution, the Leaseback, the Repurchase, the sale of the Property, as well as any future Plan transactions involving the Property, the Plan will be represented by a qualified independent fiduciary who will determine that the Contribution, Leaseback (and any renewal of the Lease), and sale/Repurchase transactions are appropriate for and in the interests of the Plan and its participants;
- The contribution value of the Property is the fair market value of the Property as determined by a qualified independent fiduciary in conjunction with a qualified independent appraiser;
- The initial 10-year period of the twenty-year Lease with one 3-year renewal period is a bondable lease (ARINC pays for capital expenditure) with the remainder of the lease term as a triple net lease under which ARINC, as lessee, pays, in addition to the base rent, all normal operating expenses of the Property, including taxes, insurance, maintenance, repairs, and utilities;
- If approved by the qualified independent fiduciary upon its determination that it is in the interest of, and protective of, the Plan and its

participants, the Plan's agreement to enter into a transaction to sell the initial ten-year stream of lease income on the Property to a third party for cash (the Monetization);

• IFS has ongoing responsibilities with respect to the Plan's holding of the Property. As part of its ongoing duty to determine whether continued ownership of the Property is in the Plan's interest, IFS will specifically consider the nature and diversification of the Plan's overall investment portfolio, cash flow and liquidity needs and actuarial condition. ARINC will supply IFS with any necessary information so that it can appropriately carry out this function. The purpose of these ongoing duties will be to ensure that IFS determines on an ongoing basis that the Plan's holding of the Property does not pose an undue risk to the Plan of an overconcentration of Plan assets in the Property;

• All terms and conditions of the Contribution, Lease (and the one 3-year renewal period), and potential Repurchase or sale transactions involving the Plan will be at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party;

• No commissions, fees, costs, charges or other expenses will be paid by the Plan in connection with the acquisition of the Property, including expenses associated with the contribution, leasing, or monetizing transactions. This condition does not preclude the Plan from paying the ongoing costs attributable to the holding of the Property once the Contribution has been approved and accepted;

• Subject to ARINC's Right of First Offer, the Plan retains the right to sell or assign, in whole or in part, any of its Property interests to any third party purchaser; and

• ARINC indemnifies the Plan with respect to all liability for hazardous substances released on the Property prior to the execution and closing of the Contribution.

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 section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and 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 require, among other things, that a fiduciary discharge his or her 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 requirements of section 401(a) of the Code that the plan 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 section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. 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) This proposed exemption, if granted, will be subject to the express condition that the material facts and representations set forth in the Application are true and complete, and that the Application accurately describes all material terms of the transactions that are the subject of the proposed exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the Federal Register. All comments will be made a part of the record. Comments received will be available for public inspection with the Application at the address set forth above.

Notice to Interested Persons

Within seven (7) calendar days of publication of the Notice of Proposed Exemption (the Notice) in the **Federal Register**, ARINC shall provide notice to all participants of the Plan (including active employees, separated vested participants and retirees) by mailing first class a photocopy of the Notice, plus a copy of the supplemental statement (Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2). ARINC shall also provide the same notice by first class mailing to the representatives of the unions that represent employees of ARINC who currently participate in the Plan.

Proposed Exemption

Based on the facts and representations set forth in the Application, 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).

Section I. Covered Transactions

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(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to:

(a) The transfer of the property described as the 27.5 acre headquarters of ARINC Incorporated (ARINC) situated in Annapolis, MD or the ownership interests of a special purpose entity (SPE) whose sole asset is this property (collectively, the Property) to the Plan through the in-kind contribution of such Property by ARINC, the plan sponsor and a party in interest with respect to the Plan (the Contribution);

(b) The holding of the Property by the Plan;

(c) The leaseback of the Property by the Plan to ARINC (the Lease or Leaseback);

(d) The repurchase of the Property, by ARINC (the Repurchase) pursuant to (1) a right of first offer as specified in the Lease should the Plan wish to sell the Property to a third party or (2) a voluntary agreement under which the Plan agrees to sell the Property to ARINC at any time during the Lease; and

(e) Any payments to the Plan by ARINC made pursuant to the make whole obligation as specified in the Lease (Make Whole Payment) (collectively, the Exemption Transactions).

Section II. Conditions

This proposed exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following requirements:

(a) A qualified independent fiduciary (the Independent Fiduciary) acting on behalf of the Plan, represents the Plan's interests for all purposes with respect to the Contribution and determines, prior to entering into any of the Exemption Transactions described herein, that each

such transaction is in the interests of the Plan;

(b) The Independent Fiduciary negotiates and approves the terms of any of the transactions between the Plan and ARINC that relate to the Property;

(c) The Independent Fiduciary manages the holding, leasing, and disposition of the Property and takes whatever actions it deems necessary to protect the rights of the Plan with respect to the Property;

(d) The terms and conditions of any transactions between the Plan and ARINC concerning the Property are no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties;

(e) The contribution value of the Property is the fair market value of the Property as determined by the Independent Fiduciary on the date the Property is contributed to the Plan. In determining the fair market value of the Property, the Independent Fiduciary obtains an updated appraisal from a qualified, independent appraiser selected by the Independent Fiduciary, and ensures that the appraisal is consistent with sound principles of valuation;

(f) The Lease has an initial term of twenty years, with a three-year renewal term. The Lease is a bondable lease for the first ten years of the Lease (or such earlier date specified in the Lease as agreed to between the Lessor and ARINC). During the bondable period ARINC, as lessee, pays, in addition to the base rent, all costs associated with the Property, including capital expenditures. After the bondable period expires, the Lease shall convert to a traditional triple net lease under which ARINC, as lessee, pays, in addition to the base rent, all normal operating expenses of the Property, including taxes, insurance, maintenance, repairs, and utilities, but does not pay capital expenditures;

(g) The Independent Fiduciary has sole authority to determine if it is in the interest of the Plan to enter into a transaction to sell the stream of lease income on the Property to a third party for cash (the Monetization);

(h) The Independent Fiduciary determines on an ongoing basis that the amount of plan assets invested in employer real property and employer securities, including its interests in the Property, complies with ERISA;

(i) At the earlier of: (i) The date the Plan sells the Property for fair market value or (ii) the date five years from the date of the Contribution, ARINC will transfer to the Plan a Make Whole Payment, as described below, in order to guarantee the Plan a minimum rate of return of 5% compounded per annum on the initial contributed value of the Property; provided that, if a Make Whole Payment is due and if, for the taxable year of ARINC in which the Make Whole Payment is to be made, such Make Whole Payment (i) would not be deductible under section 404(a)(1) of the Code or (ii) would result in the imposition of an excise tax under section 4972 of the Code, such Make Whole Payment would not be made until the next taxable year of ARINC for which the Make Whole Payment is deductible under section 404(a)(1) of the Code and does not result in an excise tax under section 4972 of the Code;

ARINC will guarantee a minimum return of 5% to the Plan by agreeing that if (i) the combination of the proceeds from a sale of the Property (or the change in the value of the Property if the Plan continues holding it over the full five years) plus the Plan's net income on the Property under the Lease prior to the sale (or over the full five years) is less than (ii) the Property's value as of the date of the Contribution plus a 5% compounded rate of return on that value plus the costs of holding and maintaining the Property, then (iii) ARINC will contribute to the Plan the difference necessary to provide the 5% return. The calculation of the Make Whole Payment will take into account the status of any Monetization of the lease payments as of the time of sale or five-year anniversary of the Contribution.

(j) If the Plan desires to sell or convey the Property or its interest therein during the Lease Term, the Plan must first offer ARINC the right to purchase or otherwise acquire the Property or such interest therein on such terms and conditions as the Plan proposes to market the Property or such interest therein for sale (the Right of First Offer). If ARINC fails to exercise such right to purchase, the Plan generally is free to sell the Property to a third party. The right of first offer shall terminate upon the commencement of the exercise by the Plan of its remedies under the Lease as the result of a monetary event of default by ARINC as described in the Lease that continues uncured following notice and the expiration of applicable cure periods (and a second notice and cure period provided fifteen (15) days before the loss of such right on account of such default);

(k) The Plan pays no commissions or fees in connection with the Contribution, the Lease, the Repurchase, or the Monetization of the Property. This condition does not preclude the Plan from paying the ongoing costs associated with the holding of the Property that are not the responsibility of ARINC under the Lease;

(l) Subject to ARINC's Right of First Offer, the Plan retains the right to sell or assign, in whole or in part, any of its Property interests to any third party purchaser; and

(m) ARINC indemnifies the Plan with respect to all liability for hazardous substances released on the Property prior to the execution and closing of the Contribution of the Property.

Section III. Definitions

(a) The term ''Independent Fiduciary'' means a fiduciary who is:

(1) Independent of and unrelated to ARINC or its affiliates, and

(2) Appointed to act on behalf of the Plan for all purposes related to, but not limited to (i) the in-kind contribution of the Property by ARINC to the Plan, and (ii) other transactions between the Plan and ARINC related to the Property.

For purposes of this proposed exemption, a fiduciary will not be deemed to be independent of and unrelated to ARINC if:

(1) Such fiduciary directly or indirectly controls, is controlled by or is under common control with ARINC,

(2) Such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this proposed exemption; except that an Independent Fiduciary may receive compensation for acting as an Independent Fiduciary from ARINC in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decision, and

(3) The annual gross revenue received by such fiduciary, during any year of its engagement, from ARINC and its affiliates exceeds 5 percent (5%) of the fiduciary's annual gross revenue from all sources for its prior tax year.

(b) The term ''affiliate'' means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Signed at Washington, DC, this 7th day of September 2004.

Ivan L. Strasfeld,

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

[FR Doc. 04–20538 Filed 9–10–04; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering—(1115).

Date and Time: October 22, 2004; 8 a.m. to 3:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Gwen Barber-Blount, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington, VA 22230. Telephone: (703) 292–8900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the Assistant Director/CISE on issues related to long-range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Report from the Assistant Director; discussion of education, diversity, workforce issues in IT; cyberinfrastructure; long-range funding outlook and proposal success rates.

Dated: September 7, 2004.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 04–20562 Filed 9–3–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–25]

Foster Wheeler Environmental Corporation; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding a Proposed Exemption

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.102(f)(1) to Foster Wheeler Environmental Corporation (FWENC or applicant). The requested exemption would allow FWENC to use a probabilistic approach along with considerations of risk to establish the design earthquake (DE) ground motion levels at the Idaho Spent Fuel (ISF) Facility, instead of the deterministic methodology of 10 CFR 100, Appendix A. FWENC submitted the exemption request as part of its November 19, 2001, license application for the ISF Facility, an independent spent fuel storage installation (ISFSI) to be located at the Idaho National Engineering and Environmental Laboratory (INEEL).

Environmental Assessment (EA)

Identification of Proposed Action: The applicant requested an exemption from the requirement in 10 CFR 72.102(f)(1) which states that, ''The design earthquake (DE) for use in the design of structures must be determined as follows: (1) For sites that have been evaluated under the criteria of Appendix A of 10 CFR Part 100, the DE must be equivalent to the safe shutdown earthquake (SSE) for a nuclear power plant.'' The regulation at 10 CFR 72.102(b) requires that, for sites west of the Rocky Mountains, such as the ISF Facility site, seismicity must be evaluated using the techniques of 10 CFR Part 100, Appendix A. The requested exemption would allow the applicant to calculate the DE for the proposed facility using an alternate method.

The proposed action before the Commission is whether to grant this exemption pursuant to 10 CFR 72.7.

Need for the Proposed Action: The applicant has requested a license to construct and operate the ISF Facility, as described in its license application, dated November 19, 2001, on behalf of the Department of Energy (DOE). FWENC will be the license holder for the ISF Facility, which would be the second NRC-licensed ISFSI at the INEEL. The proposed facility will be adjacent to the existing ISFSI for the TMI–2 fuel debris, and close to the DOE facilities currently storing the spent fuel to be moved to the ISF Facility. The ISF Facility represents an additional milestone in the 1995 settlement agreement among DOE, the U.S. Navy, and the State of Idaho regarding the disposition of spent nuclear fuel at INEEL.

The exemption would allow the applicant to use risk-informed methods including a probabilistic seismic hazards analysis (PSHA) to define the design earthquake for the ISF Facility. This DE is a critical assumption for the design of the facility structures, systems, and components (SSCs) important to safety. These SSCs must be designed to withstand the effects of natural phenomena, including earthquakes, without impairing their capability to perform their safety functions. For sites west of the Rocky Mountains, including the ISF Facility site, 10 CFR 72.102(b) requires that seismicity be evaluated using techniques set forth in Appendix A of 10 CFR Part 100 for nuclear power plants. In applying that appendix, the applicant would be required to define the DE as the most significant earthquake postulated to occur at that site, irrespective of its frequency, or the estimated time the facility would be operational. This would result in unwarranted conservatism in the design and construction of the facility, placing an unnecessary burden on the applicant, increasing overall project costs and delaying implementation of this phase of the settlement agreement between DOE and the State of Idaho.

The NRC staff has evaluated the proposed exemption in its preliminary safety evaluation report (SER) for the ISF Facility, dated July 29, 2004. In the SER, the staff concludes that there are sufficient technical and regulatory bases to grant an exemption to 10 CFR 72.102(f) at the time a license is issued for the ISF Facility. These bases are that: (i) The probability and risk-informed analyses performed by the applicant demonstrate that the SSCs important to safety will maintain their capability to protect public health and safety, even considering earthquake ground motions more severe than the proposed DE; (ii) the applicant's exemption request is similar to previous exemption requests found acceptable by the NRC staff for the TMI–2 ISFSI and the Private Fuel Storage Facility; and (iii) the applicant's methods and analyses are consistent with the probabilistic approach and corresponding design earthquake values allowed under the recently added regulations in 10 CFR 72.103, as described in the associated regulatory guidance in NRC Regulatory Guide 3.73.

Environmental Impacts of the Proposed Action: The NRC staff previously evaluated the environmental impacts resulting from the construction, operation and decommissioning of the ISF Facility, and determined that such impacts would be acceptably small. The staff's conclusions are documented in the ''Environmental Impact Statement for the Proposed Idaho Spent Fuel Facility at the Idaho National Engineering and Environmental Laboratory in Butte County, Idaho (Final Report), NUREG–1773,'' issued in