

**NOTICE TO INTERESTED PERSONS**  
**REGARDING THE PROPOSED TRANSACTION INVOLVING THE**  
**WESTERN PENNSYLVANIA OPERATING ENGINEERS**  
**JOINT APPRENTICESHIP AND TRAINING PROGRAM AND**  
**THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 66**

1. You are hereby notified that a written submission, No. E-00813, has been filed on behalf of the Western Pennsylvania Operating Engineers Joint Apprenticeship and Training Program (the Fund) seeking final authorization (Final Authorization) from the United States Department of Labor (the Department) pursuant to class prohibited transaction exemption 96-62 (PTE 96-62), 61 FR 39988, July 31, 1996, as amended by 67 FR 44622, July 3, 2002, for:

- a. The proposed sale (the Proposed Transaction) by the Fund of certain unimproved real property located in the Township of Salem, Westmoreland County, Pennsylvania, identified as Parcel A-2 on that certain proposed Revised Operating Engineers Plan of Lots (the Property), to the International Union of Operating Engineers Local 66 (the Union).

**TENTATIVE AUTHORIZATION**

2. The submission has met the requirements for Tentative Authorization under PTE 96-62. The Department is now considering whether to provide Final Authorization.

3. If Final Authorization is granted by the Department pursuant to PTE 96-62, the restrictions of sections 406(a)(1)(A) and 406(a)(1)(D) of the Employee Retirement Income Security Act of 1974, as amended (ERISA) will not apply to the Proposed Transaction. The Proposed Transaction constitutes a prohibited transaction under Section 406(a)(1)(A) of ERISA, which prohibits the sale or exchange of any property between a plan and a party in interest, and Section 406(a)(1)(D) of ERISA, which prohibits the transfer to or use by or for the benefit of a party in interest of any assets of the plan.

4. Identifying information:

- a. Name of Applicant: Western Pennsylvania Operating Engineers Joint Apprenticeship and Training Program
- b. Address of Applicant: 457 Christopher Road, New Alexandria, PA 15670
- c. The Fund's Employer Identification Number: 25-1190452

5. If approved by the Department, the Final Authorization is subject to the following conditions:

- a. The sale is a one-time transaction for cash;

- b. The Fund receives the fair market value of the Property, as determined by a qualified independent appraiser (the Appraiser) as of the date of the sale;\*
- c. The Fund pays no commissions, costs, or other expenses associated with the sale;
- d. The terms and conditions of the sale are at least as favorable to the Fund as obtainable in an arm's length transaction with an unrelated third party;
- e. The Fund trustees appointed by union (the Union Trustees) have recused themselves from discussion and voting with respect to the Fund's decision to enter into the proposed sale, and from the decision to appoint the Appraiser; and
- f. The Fund trustees appointed by the employer associations (the Employer Trustees), who have no interest in the proposed sale: (i) have determined that it is in the interest of the Fund and prudent to proceed with the sale of the Property; (ii) have reviewed and approved the methodology and the valuation for the Property, as determined by the Appraiser in the appraisal report (the Appraisal Report), that is being relied upon for purposes of obtaining Final Authorization; and (iii) ensure that this methodology is applied by the Appraiser in determining the fair market value of the Property on the date of the Proposed Transaction.

## **BACKGROUND**

6. The Fund provides training and education to eligible participants located in Western Pennsylvania and Eastern Ohio. Eligible participants include apprentice and journeyman operating engineers covered by a collective bargaining agreement between the Union and the Constructors Association of Western Pennsylvania, the Master Builders Association of Western Pennsylvania, the Keystone Building Contractors Association and the Excavating Contractors Division of the Builders Association of Eastern Ohio and Western Pennsylvania (collectively, the Employer Associations).

The Fund is governed by a joint Board of Trustees consisting of 8 Union Trustees (appointed by the Union) and 8 Employer Trustees (appointed by the Employer Associations).

The Union is a labor union located in Pittsburgh, Pennsylvania which is a party in interest with regards to the Fund.

7. The Union desires to purchase an undeveloped 11.1 acre parcel of property located in the Township of Salem, Westmoreland County, Pennsylvania, identified as Parcel A-2 on that certain proposed Revised Operating Engineers Plan of Lots. After acquiring the Property, the

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\* In an appraisal report dated January 26, 2018, the Appraiser placed the fair market value of the Property at \$350,000. To the extent that the fair market value of the Property as of the date of the sale is less than \$350,000, the Union will contribute the difference to the Fund.

Union plans to build a district office which would be in close proximity to the Fund's training center.

8. The Union intends to purchase the Property from the Fund within thirty (30) days following receipt of Final Authorization from the Department. The Employer Trustees have determined that it would be in the best interest of the Fund to sell the property to the Union. The Employer Trustees and the Union negotiated a sale price that will be the fair market value of the Property as determined by the Appraiser as of the closing date. It is estimated that the sale of the Property will represent approximately 2% of the Fund's total assets.

### **MERITS OF THE TRANSACTION**

9. The determination by the Employer Trustees that the sale of the Property would be in the best interest of the Fund took into account the following factors. The Property is currently undeveloped and not suitable for training purposes. The sale of the Property would reduce Fund costs and generate proceeds for the training of apprentices and journeymen. The sale to the Union allows the Fund to sell the Property at its fair market value without incurring any marketing or selling costs. The Union's erection of a district office on the Property will provide apprentices with access to a convenient and up-to-date Union district office.

10. The sale is a one-time sale of real property owned by the Fund for fair market value established by an independent appraiser that will not require continuous or future monitoring by the Department. The Fund and the Union are the only two parties involved in the Proposed Transaction. The Proposed Transaction is not part of a larger integrated transaction.

11. The Proposed Transaction poses little, if any, risk of abuse or loss to the Fund or to any of its participants because the Proposed Transaction will enable the Fund to sell the Property at its fair market value as determined by a qualified independent appraiser.

### **THE APPRAISAL**

12. The Property was appraised on January 16, 2018 by the Appraiser, Kulzer & Company, Inc., located in Pittsburgh, Pennsylvania. Specifically, Joseph A. Barack, MAI, PA State-Certified General Appraiser, undertook the duties and responsibilities of the Appraiser. Pursuant to the Appraisal Report, dated January 26, 2018, the Appraiser placed the fair market value of the Property at \$350,000 based on the sales comparison approach to valuation and the Appraiser's determination of the highest and best use of the Property. The Appraiser has derived zero (0%) percent of its current revenue on a prior year's basis from all parties in interest in the Proposed Transaction.

13. The Appraiser determined that the Property has no assemblage value for the Union. In this regard, the Appraiser has represented that assemblage value occurs where an adjoining property

is purchased to enhance the value of a contiguous property. According to the Appraiser, an example of assemblage value would be the purchase of a neighboring property to expand a building or develop a parking lot. Because the Union does not own any property adjoining the Property, but leases a small parcel of property that is in the vicinity of the Property which is more than one mile away from the Property, the Appraiser has determined that the leased property does not present any assemblage value to the Union.

## **COMPARISON OF SUBSTANTIALLY SIMILAR CASES**

As noted above, the Applicant is seeking authorization from the Department for the Proposed Transaction under PTE 96-62. Among other things, this requires that the Proposed Transaction be substantially similar to (1) two individual exemptions granted by the Department within the last 60 months or (2) one individual exemption granted by the Department within the last 120 months and one transaction authorized under PTE 96-62 within the last 60 months. The Fund is relying on the following substantially similar transactions for the purposes of this application:

**a. Prohibited Transaction Exemption 2011-24, Oregon-Washington Carpenters Employers Apprenticeship and Training Trust Fund, Application No. L-11618, 76 FR 77264 (December 12, 2011)**

In PTE 2011-24, the Department issued an individual exemption to allow a transaction that involved the sale of real property by an apprenticeship fund to a union. A comparison of the material terms to the Proposed Transaction follows.

PTE 2011-24 was a sale of real property by an apprenticeship fund to a union. The Proposed Transaction is the sale of real property by an apprenticeship fund to a union.

PTE 2011-24 was a one-time transaction for cash. The Proposed Transaction is a one-time transaction for cash.

PTE 2011-24 required the apprenticeship fund to receive the greater of (1) \$390,000, which was based on a fair market value established by a qualified independent appraiser, or (2) the fair market value of the property established by a qualified independent appraiser in an updated appraisal on the date of the sale. The terms of sale for the Proposed Transaction require that the Fund receive the greater of (1) the fair market value of the Property of \$350,000, as identified by a qualified independent appraiser, or (2) the updated appraised value of the Property to be determined by the qualified independent appraiser as of the date of the Sale.

In PTE 2011-24, the terms and conditions of the sale were no less favorable to the apprenticeship fund as those obtainable in an arm's length transaction with an unrelated

third party. In the Proposed Transaction, the terms and conditions of the sale are no less favorable to the Fund as those obtainable in an arm's length transaction with an unrelated third party.

In PTE 2011-24, the apprenticeship fund did not pay any commissions, costs or other expenses in connection with the sale of the property. In the Proposed Transaction, the Fund will not pay any commissions, costs or fees associated with the sale of the Property.

In PTE 2011-24, the apprenticeship fund trustees appointed by the union recused themselves from discussions and voting on the fund's decision to enter into an agreement to sell the real estate. In the Proposed Transaction, the Union Trustees have recused, and will recuse, themselves from all determinations in connection with the sale of the Property.

In PTE 2011-24, although initially purchased to accommodate a later expansion of its training facility, the apprenticeship fund determined that no expansion was necessary and the apprenticeship fund had no further use for the land. In the Proposed Transaction, the Property was part of the land purchased for the training facility, and the Fund has determined that the Property is not suitable for training purposes and is not needed for any expansion of the training facility.

In PTE 2011-24, the construction of union headquarters on property next to the training center would be a convenience for the participants receiving training as they are represented by the union. In the Proposed Transaction, the Fund believes that a convenient and up-to-date Union district office is beneficial for the Fund and the apprentices.

**b. FAN 2016-01E, Indiana/Kentucky/Ohio Regional Council of Carpenters Joint Apprenticeship and Training Fund (March 7, 2016)**

In FAN 2016-01E, the sale of real property by an apprenticeship fund to a union was authorized by the Department under PTE 96-62. A comparison of the material terms to the Proposed Transaction follows.

FAN 2016-01E was a sale of real property by an apprenticeship fund to a union. The Proposed Transaction is the sale of real property by an apprenticeship fund to a union.

FAN 2016-01E was a one-time transaction for cash. The Proposed Transaction is a one-time transaction for cash.

FAN 2016-01E required the apprenticeship fund to receive the greater of (1) the fair market value of \$105,000, as identified in the appraisal of the qualified independent appraiser, or (2) the updated appraised value to be determined by the appraiser as of the date of sale. The terms of sale for the Proposed Transaction require that the Fund receive the greater of (1) the fair market value of the Property of \$350,000, as identified by a qualified independent appraiser, or (2) the updated appraised value of the Property to be determined by the qualified independent appraiser as of the date of the Sale.

In FAN 2016-01E, the terms and conditions of the sale were no less favorable to the apprenticeship fund than the terms as obtainable in an arm's length transaction with an unrelated third party. In the Proposed Transaction, the terms and conditions of the sale are no less favorable to the Fund as those obtainable in an arm's length transaction with an unrelated third party.

In FAN 2016-01E, the apprenticeship fund did not pay any commissions, costs or other expenses in connection with the sale to any real estate professional or any other individual. In the Proposed Transaction, the Fund will not pay any commissions, costs or fees associated with the sale of the Property.

In FAN 2016-01E, the apprenticeship fund trustees who were union members recused themselves from all determinations in connection with the sale of the property. In the Proposed Transaction, the Union Trustees have recused, and will recuse, themselves from all determinations in connection with the sale of the Property.

In FAN 2016-01E, the apprenticeship fund trustees determined that the sale of the property would be in the best interest of the apprenticeship fund as the sale proceeds could be used to pay plan expenses or invested in a fashion that would permit greater returns than any returns that could be realized through retention of the property. In the Proposed Transaction, the Fund Trustees determined that the sale of the Property would be in the best interest of the Fund, because (among other reasons) the Property is not suitable for training purposes, and its sale would reduce costs and generate proceeds for the training of apprentices and journeymen.

In FAN 2016-01E, the apprenticeship fund trustees reviewed and approved the methodology used by the appraiser to ensure that such methodology was properly applied in determining the fair market value of the property, updated as of the date of the sale, and determined it was prudent to go forward with the proposed transaction. In the Proposed Transaction, the Fund Trustees have reviewed and approved the methodology used in the appraisal that is being relied upon for the sale of the Property and will ensure

that the same methodology is applied to determine the fair market value of the Property on the date of sale.

In FAN 2016-01E, although the predecessor apprenticeship fund intended to use the entire parcel of land to construct a training facility and retain the rest to accommodate a later expansion of its training facility, the apprenticeship fund determined that no expansion was necessary and the apprenticeship fund had no useful purpose for the land being sold. In the Proposed Transaction, the Property was part of the land purchased for the training facility, and the Fund has determined that the Property is not suitable for training purposes and is not needed for any expansion of the training facility.

In FAN 2016-01E, the apprenticeship training trust and the local union found that having the union hall and training facilities in close proximity created “certain synergies”. In the Proposed Transaction, the Fund believes that a convenient and up-to-date Union district office is beneficial for the Fund and the apprentices.

In FAN 2016-01E, no other parties had approached the apprenticeship fund to purchase the land prior to the proposed sale to the local union. In the Proposed Transaction, no other willing buyer has approached the Fund to purchase the Property prior to the Union expressing interest in the Property.

## **RIGHT TO COMMENT**

As a person who may be affected by the Proposed Transaction, you have the right to submit comments to the Department on the Tentative Authorization. If you decide to do so, you should submit your comments to the following address:

### By mail (USPS):

Employee Benefits Security Administration  
Office of Exemption Determinations  
U.S. Department of Labor  
200 Constitution Avenue, N.W., Suite 400  
Washington, D.C. 20210  
Attn: Anna Vaughan

### By private carrier (FedEx, UPS, etc.):

Employee Benefits Security Administration  
Office of Exemption Determinations  
U.S. Department of Labor  
122 C St. N.W., Suite 400

Washington, DC 20001-2109  
Attn: Anna Vaughan

Comments may also be submitted by facsimile to 202-693-8474 or by e-mail to Vaughan.Anna@dol.gov

Furthermore, please direct any questions regarding this Notice or the Proposed Transaction to Anna Vaughan at 202-693-8565 (this is not a toll-free number).

The comment period will close on January 23, 2019. Final Authorization will not occur until the Department reviews all comments received in response to this notice.

Be sure to refer to the submission number which is E-00813. Comments must be received by the Department of Labor no later than January 23, 2019. All comments will be made available to the public.

The Proposed Transaction will only be consummated after the issuance of a Final Authorization. If the Department of Labor authorizes the transaction, the approximate date on which the transaction will occur is within 30 days after such Final Authorization.

**Warning:** Do not include any personally-identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed.