would not pay any commissions or other expenses in connection with the transaction

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because: (a) The terms and conditions of the sale would be at least as favorable to the IRA as those obtainable in an arm's-length transaction with an unrelated party; (b) the sale would be a one-time cash transaction which would allow the IRA to dispose of illiquid assets which have not been appreciating in value; (c) the IRA would receive the fair market value of the Property, as established at the time of the sale by an independent, qualified appraiser; (d) the IRA would not be required to pay any commissions, costs or other expenses in connection with the sale; and (e) Mr. Busker has determined that the proposed sale of the Properties would be in the best interests of the IRA.

NOTICE TO INTERESTED PERSONS: Because Mr. Busker is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of this notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Profit Sharing Plan for Employees of Athens Disposal Co., Ranco Leasing, Covina Disposal Co., and South Pasadena Disposal Co. (the Plan), Located in City of Industry, California

[Application No. D-10029]

## Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale on March 24, 1994, for \$300,000 (the Sale) of 7,500 shares (the Shares) of common stock issued by Garfield Bank (the Bank), chartered in California and located in Montebello, California, by the Plan to Athens Disposal Co., Inc., a party in interest with respect to the

Plan; provided that (1) the Plan experienced no loss nor incurred any expense from the Sale; and (2) the Plan received as consideration from the Sale an amount that was no less than the fair market value of the Shares on the date of the Sale.

**EFFECTIVE DATE:** If this proposed exemption is granted, the effective date of the exemption will be March 24, 1994.

Summary of Facts and Representations

1. There are three closely-held corporations that currently sponsor the Plan (the Employers) that are all incorporated in California and are wholly owned by various members of the Arakelian family. One of the three corporations that make up the Employers is the Athens Disposal Co., Inc. (the Applicant), incorporated on July 1, 1958, which is headquartered in City of Industry, California and is engaged in the business of municipal solid waste collection and disposal. The second of the Employers is the South Pasadena Disposal Co., Inc. (South Pasadena), incorporated September 5, 1992, which provides the same services as the Applicant for the City of Pasadena, California. The third member of the Employers is the Ranco Leasing Co., Inc. (Ranco), incorporated November 21, 1981, which owns rubbish collection vehicles that it leases to the Applicant and to South Pasadena and provides fleet maintenance services for the leased vehicles.9

2. The Plan is a profit sharing plan that maintains individual accounts for its 254 participants and beneficiaries with net assets of \$4,975,373, as of June 30, 1994. The Plan is intended to satisfy the qualification requirements of section 401(a) of the Code. The named fiduciary of the Plan is a committee (the Committee) currently consisting of two individuals, Messrs. Ron Arakelian and Ron Arakelian, Jr., who are controlling shareholders as well as officers and directors of the Applicant. The Committee is appointed by the Board of Directors of the Applicant and charged with the responsibility to administer the Plan, which includes among other things directing investments of Plan assets and appointing legal counsel, accountants, plan administrator, and

The Committee has employed and delegated responsibility for

administering the accounting and recordkeeping services for the Plan to Page Services Corporation, a California corporation, located in Los Angeles, California. Messrs. Ron Arakelian and Ron Arakelian, Jr. also serve the Plan as the trustees (the Trustees) of its assets.

3. During the Plan's fiscal year ended June 30, 1985, the Applicant conveyed the 7,500 Shares to the Plan as its \$300,000 funding contribution for the fiscal year. <sup>10</sup> The Shares, originally purchased by the applicant over a 10 year period at a price of \$40 per share, were determined to have a fair market value of \$40 per share on the date that they were contributed to the Plan.

While the Plan continued to hold the Shares the Bank began experiencing a poor financial performance resulting in net losses from operations for the years ended December 31, 1993 and 1994. The poor financial performance of the Bank was also manifested by limited dividend payments of the Bank to the holders of the Shares. The only dividend payments made to the Plan totalled \$1,875 for each of the years 1992 and 1993.

The Applicant represents that the Bank became the subject of examinations during 1993 by both the Federal Reserve Bank (the FRB) and the Superintendent of Banks for the State of California (the State). The State completed its examination by September 24, 1993, whereas, the FRB took an additional year to complete its examination on September 24, 1994. In preliminary letters in 1993 from both the FRB and the State, the Bank was notified, among other things, that it was in an unsafe and unsound condition with a continuing deterioration in asset quality, an inadequate loan loss reserve, and a decline in capital and liquidity. The FRB concluded that the continued deterioration in asset quality threatened the already marginal capital position of the Bank and negatively impacted on its future earnings prospects. The Applicant further represents that the FRB reclassified the Bank as significantly undercapitalized for purposes of federal regulations which resulted in restrictions (a) on the ability of the Bank to pay dividends and management fees; (b) on the growth of its total assets; and (c) on its ability to expand through acquisitions, branching, or new lines of business. According to the Applicant the State also issued an order to the Bank that its capital is considered to be impaired as of September 30, 1994, which subjects the

Ovina Disposal Co., Inc., incorporated in California on October 3, 1985, a wholly-owned subsidiary of the Applicant, had been another sponsor of the Plan, but was liquidated on June 30, 1990, and had its assets and liabilities distributed to the Applicant with its participants in the Plan absorbed by the Applicant.

<sup>&</sup>lt;sup>10</sup> The Applicant represents that the contribution of the Shares was not a prohibited transaction under the Act. The Department expresses no opinion as to whether the contribution was a prohibited transaction.