determined by an independent appraiser; (3) the Plan will not incur any expenses in connection with the proposed transaction; and (4) the proposed transaction will enable the Plan to diversify its assets in more liquid investments.

Notice to Interested Persons

Since Dr. Holzer is the only person affected by the proposed transaction, there is no need to distribute notice to interested persons. Comments are due 30 days after publication of this notice in the **Federal Register**.

For Further Information Contact: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Terry Segal, P.C. Retirement Plans (the Plans) Located in Boston, MA

[Application No. D-09891]

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, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) shall not apply to the proposed purchase by Terry and Harriet Segal (the Segals) of an interest (the Interest) in a limited partnership (the Limited Partnership) from Mr. Segal's individually-directed account (the Account) in the Terry Segal, P.C. Pension Plan (the Pension Plan), provided: (1) The purchase is a one-time transaction for cash; (2) the Pension Plan Account is not required to pay any fees or commissions in connection therewith; (3) the Interest is appraised by a qualified, independent appraiser; and (4) the Pension Plan Account receives an amount which reflects the fair market value of the Interest.

$Summary\ of\ Facts\ and\ Representations$

1. The Plans, which are defined contribution plans, consist of the Pension Plan and the Terry Segal, P.C. Profit Sharing Plan (the Profit Sharing Plan). At present, the Plans have two participants. They are Terry Segal, a trial attorney who maintains his offices at 210 Commercial Street, Boston, Massachusetts, and his associate, Scott Lopez. As of August 31, 1993, the Plans had total assets of \$262,919. Of this amount, the Pension Plan had assets of

\$169,858 and the Profit Sharing Plan had assets of \$93,061.

The Plans provide for participant-directed investments. Mr. Segal, who serves as the trustee, had Account balances in the Pension Plan and the Profit Sharing Plan of \$167,504 and \$90,744, respectively, as of August 31, 1993.

- 2. Among the assets in Mr. Segal's Account in the Pension Plan is a residual profits (and freely transferable) interest in a limited partnership called "Turbo Dynamix" whose underlying assets consist of machines for making frozen yogurt.⁴⁰ The Interest was purchased by Mr. Segal's Accounts in the Plans in April 1992 for the total cash consideration of \$50,000. The seller of the Interest was Turbo Dynamix Corporation of Cambridge, Massachusetts. This entity is general partner of the Limited Partnership and an unrelated party with respect to the Accounts. Following acquisition, the Interest was allocated 65 percent to Mr. Segal's Pension Plan Account and 35 percent to Mr. Segal's Profit Sharing Plan Account. This allocation arrangement continued until August 1, 1994. At that time, the allocable portion of the Interest held by Mr. Segal's Account in the Profit Sharing Plan was transferred to his Pension Plan Account. Thus, the Pension Plan Account currently holds 100 percent of the Interest.⁴¹ Aside from the Interest, Mr. Segal does not invest in the Limited Partnership on an individual basis.
- 3. When initially purchased, the Pension Plan Account and the Profit Sharing Plan Account collectively owned a 1.8249 percent profits interest in the Limited Partnership. However, because additional Limited Partnership interests were subsequently sold, by August 31, 1994 the Pension Plan Account's share of profits had decreased to 1.2452 percent. The Accounts never received any investment income for the Interest nor did they ever incur any expenses other than the \$50,000 capital contribution.
- 4. Because the Interest has not generated any investment income and due to the start-up nature of the Limited Partnership, Mr. and Mrs. Segal request an administrative exemption from the Department in order to purchase the Interest from the Pension Plan Account.

The Segals propose to pay the Pension Plan Account the fair market value of the Interest on the date of the sale. The Pension Plan Account will not be required to pay any fees or commissions in connection therewith.

6. The Interest has been appraised by Paul Kateman. Mr. Kateman is the President of Turbo Dynamix Corporation, which is the general partner of the Limited Partnership. Mr. Kateman is not an owner, director, officer or director of the sponsor of the Plans nor is he a participant or beneficiary of the Plans.

By letter dated September 6, 1994, Mr. Kateman represents that the actual value of the Interest is speculative due to the start-up nature of the Limited Partnership. In an addendum to his letter dated December 19, 1994, Mr. Kateman notes that the Limited Partnership has had no earning capacity, no products currently in the market place and has funded research and development and other business expenses by raising capital. He explains that although the Limited Partnership has been successful in raising capital since 1992 and has sold three interests for \$50,000, there is no ready market for buying and selling of such interests. He represents that the book value of the Interest was \$45,541 as of December 19, 1994. Thus, the Segals propose to pay \$45,541 for such Interest.

7. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The purchase of the Interest will be a one-time transaction for cash; (b) the Pension Plan Account will not be required to pay any fees or commissions in connection therewith; (c) the Interest has been appraised by Mr. Kateman who serves as president of the general partner of the Limited Partnership; and (d) the Pension Plan Account will receive an amount which reflects the fair market value of the Interest.

Notice to Interested Persons

Because Mr. Segal is the only participant in the Pension Plan whose Account therein will be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of pendency to interested persons. Therefore, comments and requests for a public hearing are due 30 days from the publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

⁴⁰ For purposes of the exemptive relief requested herein, the Accounts in the Plans that are held by Mr. Lopez will not be affected by the proposed transaction.

⁴¹ The Department is not proposing, nor is the applicant requesting, exemptive relief with respect to the transfer of the allocable portion of the Interest held by Mr. Segal's Account in the Profit Sharing Plan to his Account in the Pension Plan.