

(2) the non-cash assets are specifically described in writing as part of the settlement and valued at their fair market value, as determined in accordance with section 5 of the Voluntary Fiduciary Correction (VFC) Program, 71 FR 20262, 20270 (Apr. 19, 2006). The methodology for determining fair market value, including the appropriate date for such determination, must be set forth in the written agreement;

(3) Benefits enhancements are specifically described in writing as part of the settlement. Benefits enhancements may be included as part of the settlement without an independent appraisal. In deciding whether to approve the release of a claim in exchange for benefits enhancements, the Authorizing Fiduciary shall take into account all aspects of the settlement, including the cash or other assets to be received by the plan, the solvency of the party in interest, and the best interests of the class of participants harmed by the acts that are the subject of the plan's claims;

(4) The Authorizing Fiduciary, or another independent fiduciary, acts on behalf of the plan and its participants and beneficiaries for all purposes related to any property, including employer securities as defined by 407(d)(1) of the Act, received by the plan from the employer as part of the settlement. The Authorizing Fiduciary or another independent fiduciary continues to act on behalf of the plan and its participants and beneficiaries for the period that the plan holds the property, including employer securities, received from the employer as part of the settlement. The Authorizing Fiduciary or another independent fiduciary shall have sole responsibility relating to the acquisition, holding, disposition, ongoing management, and where appropriate, exercise of all ownership rights, including the right to vote securities, except that, in the case of an individual account plan which permits participant direction, the Authorizing Fiduciary or other independent fiduciary may delegate to the individual participants to whose accounts the assets have been allocated, the decision to hold, exercise ownership rights, or dispose of the assets;

(j) The plan does not pay any commissions in connection with the acquisition of the assets;

(k) The Authorizing Fiduciary acting on behalf of the plan has acknowledged in writing that it is a fiduciary with respect to the settlement of the litigation on behalf of the plan;

(l) The plan fiduciary maintains or causes to be maintained for a period of

six years the records necessary to enable the persons described below in paragraph (m) to determine whether the conditions of this exemption have been met, including documents evidencing the steps taken to satisfy section II (c), such as correspondence with attorneys or experts consulted in order to evaluate the plan's claims, except that:

(1) if the records necessary to enable the persons described in paragraph (m) to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of the plan fiduciary, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest, other than the plan fiduciary responsible for record-keeping, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (m) below;

(m)(1) Except as provided below in paragraph (m)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (l) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of the plan or any duly authorized employee or representative of such fiduciary;

(C) Any contributing employer and any employee organization whose members are covered by the plan, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of the plan or the duly authorized employee or representative of such participant or beneficiary.

(2) Nothing in this exemption supersedes any restriction on the disclosure of trade secrets or other commercial or financial information which is privileged or confidential and this exemption does not authorize any of the persons described in paragraph (m)(1)(B)–(D) to examine trade secrets or such commercial or financial information.

#### Section III. Definition

For purposes of this exemption, the terms “employee benefit plan” and “plan” refer to an employee benefit plan described in section 3(3) of ERISA and/

or a plan described in section 4975(e)(1) of the Code.

For purposes of this exemption, the term “employer security” refers to employer securities described in section 407(d)(1) of ERISA.

#### IV. Effective Dates

This amendment to the class exemption is effective for settlements occurring on or after the date of publication of the final exemption in the **Federal Register**. For settlements occurring before the date of publication of the final exemption in the **Federal Register**, see the original grant of the Class Exemption for Release of Claims and Extensions of Credit in Connection with Litigation, 68 FR 75632 (Dec. 31, 2003).

Signed at Washington, DC, this 14th day of November, 2007.

**Ivan L. Strasfeld,**

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

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#### DEPARTMENT OF LABOR

##### Employment and Training Administration

[TA–W–62,411]

##### **A.O. Smith Electrical Products Company, Scottsville, KY; Notice of Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 5, 2007 in response to a petition filed by a company official on behalf of workers at A.O. Smith Electrical Products Company, Scottsville, Kentucky.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 14th day of November 2007.

**Linda G. Poole,**

*Certifying Officer, Division of Trade  
Adjustment Assistance.*

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