

underground mine in the event of emergency. Congress considered the ready availability of mine rescue teams in the event of an accident to be vital protection for miners.

In responding to Congressional concerns, MSHA promulgated 30 CFR part 49, Mine Rescue Teams. These regulations set standards related to the availability of mine rescue teams; alternate mine rescue capability for small and remote mines and mines with special mining conditions; inspection and maintenance records of mine rescue equipment and apparatus; physical requirements for mine rescue team members and alternates; and experience and training requirements for team members and alternates.

**II. Current Actions**

This request for review consolidates all paperwork requirements related to mine rescue teams, arrangements for emergency medical assistance, and arrangements for transportation for injured persons into a single paperwork package under Office of Management and Budget (OMB) control number 1219-0078. The consolidated package includes all paperwork requirements which were formerly approved under OMB control numbers 1219-0077, 1219-0078, and 1219-0093, as well as certain paperwork requirements which are currently approved under OMB control number 1219-0049. In addition, paperwork requirements under 30 CFR

§ 49.2 which have not been approved by OMB have been included in this consolidated package to eliminate the need for an additional package.

*Type of Review:* New, extension, and reinstatement (without change).

*Agency:* Mine Safety and Health Administration.

*Title:* Mine Rescue Teams; Arrangements for Emergency Medical Assistance; and Arrangements for Transportation for Injured Persons.

*OMB Number:* 1219-0078.

*Recordkeeping:* One year.

*Affected Public:* Business or other for-profit institutions.

*Estimated Burden Hours:*

Cite/reference	Total respondents	Frequency	Total responses	Average time per responses	Burden
49.2 .....	1,285	On occasion .....	89	1.00 hour .....	89 hours.
49.3 and 4 .....	72	On occasion .....	10	2.00 hours .....	20 hours.
49.6 .....	311	Bimonthly .....	33,588	0.31 hour .....	10,263 hours.
49.7 .....	311	Annually .....	3,732	2.13 hours .....	7,931 hours.
49.8 .....	311	Annually .....	17,310	0.60 hours .....	10,452 hours.
49.9 .....	1,357	On occasion .....	98	2.00 hours .....	197 hours.
75.1713-1 .....	1,117	On occasion .....	67	2.00 hours .....	135 hours.
77.1702 .....	1,781	On occasion .....	90	2.00 hours .....	180 hours
Totals .....	3,138	.....	54,984	0.53 hour .....	29,267 hours.

*Estimated Burden Hour Cost:* \$1,007,898.

*Estimated Burden Cost (capital/startup):* \$0.

*Estimated Burden Cost (operating/maintaining):* \$559,260.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 7, 1997.

**George M. Fesak,**

*Director, Program Evaluation and Information Resources.*

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Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the notice of proposed exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration,

Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

**DEPARTMENT OF LABOR**

**Pension and Welfare Benefits Administration**

[Application No. D-09685, et al.]

**Proposed Exemptions; EBPLife Insurance Company, et al.**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the

Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

### **EBPLife Insurance Company Located in Minneapolis, Minnesota**

[Application No. D-09685]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act in accordance with the procedures set forth in 29 C.F.R. part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

#### Section I—Transaction

If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply, effective April 15, 1994, to the reinsurance of risks and the receipt of premiums therefrom by EBPLife Insurance Company (EBPLife) in connection with certain stop-loss policies (the Stop-Loss Policy or Stop-Loss Policies) issued by unrelated third party insurance carriers (the Carriers or Carrier) to employers (the Employers or Employer) any of whose employees were covered by various employee welfare benefit plans (the Plans or Plan)<sup>1</sup>, when at the time EBPLife reinsured risks and received premiums, Affiliates of EBPLife, as defined in paragraph (a) of section III below or the predecessors of such Affiliates also provided non-discretionary administrative services to such Plans for a fee, provided that the conditions set forth in section II below were satisfied.

<sup>1</sup> The Department, herein, is not proposing relief for transactions involving any plans sponsored by EBPLife or its affiliates (the Affiliates), as defined in paragraph (a) of section III below, or any predecessors of such Affiliates. In this regard, EBPLife represents that it may have issued or may issue stop-loss or other insurance contracts in connection with welfare benefit plans that cover or may have covered employees of EBPLife, its Affiliates or predecessors of such Affiliates. However, in all cases, EBPLife represents that it either satisfies the requirements of the statutory exemption provided by section 408(b)(5) of the Act, or it ensures that the insurance contracts are not "plan assets" within the meaning of the Act.

#### Section II—Conditions

This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements, as of the effective date of this proposed exemption and thereafter:

- (a) Each transaction was effected by EBPLife in the ordinary course of its business as an insurance company;
- (b) The terms of each transaction were at least as favorable to the Plans as those negotiated at arm's-length with unrelated third parties under similar circumstances;
- (c) The combined total of all fees and other consideration received by EBPLife, its Affiliates, and predecessors of such Affiliates for the provision of services to Employers and their Plans and in connection with the purchase of insurance contracts was not in excess of "reasonable compensation" within the meaning of sections 408(b)(2) and 408(c)(2) of the Act.

(d) EBPLife, its agents or Affiliates, or the predecessors to such Affiliates have not served as: (1) Trustees to any of the Plans (other than as non-discretionary trustees, as defined in paragraph (f) in section III below, who do not render investment advice with respect to any of the assets of such Plans); (2) plan administrators, within the meaning of section 3(16)(A) of the Act; (3) fiduciaries who are expressly authorized in writing to manage, acquire, or dispose of the assets of any of the Plans; or (4) employers any of whose employees are covered by any of the Plans.

(e) EBPLife, its Affiliates, or the predecessors of such Affiliates have not acted as fiduciaries in connection with the decision by the Employer to purchase Stop-Loss Policies reinsured by EBPLife;

(f) As of the effective date of this exemption, if an Employer executed an agreement (the Administration Agreement) with the Affiliates of EBPLife or with the predecessors of such Affiliates to provide services to an Employer or Plan; and such Employer also purchased or renewed a Stop-Loss Policy reinsured by EBPLife for the purpose of funding a Plan, then the fiduciaries of such Plan (the Plan Fiduciaries or Plan Fiduciary), as defined in paragraph (g) of section III below, must have received prior to the decision which resulted in the retention of Affiliates of EBPLife or the predecessors of such Affiliates to provide services and stop-loss insurance reinsured by EBPLife, a full and detailed written disclosure, including but not limited to a copy of the Administration

Agreement which, among other things, disclosed whether EBPLife reinsured risk under a Stop-Loss Policy issued to the Employer of such Plan and described all of the services provided by EBPLife, its Affiliates, or the predecessors of such Affiliates to such Plan or such Employer. Such disclosures have been provided by EBPLife or its Affiliates or by the predecessors of such Affiliates, in a form calculated to be understood by such Plan Fiduciaries who have no special expertise in insurance.

(g)(1) As of the effective date of this exemption, and prior to the execution of a transaction described in this exemption, following receipt of the disclosures, described in paragraph (f) of this section II, the Plan Fiduciary, by signing the Administration Agreement, acknowledged receipt of such disclosures and acknowledged that the decision to engage in a transaction which is the subject of this exemption was a decision made in a fiduciary capacity, and that such Plan Fiduciary approved of the subject transaction.

(2) With respect to the renewal by Employers of expired Stop-Loss Policies reinsured by EBPLife where Affiliates of EBPLife or the predecessors of such Affiliates were parties in interest with respect to a Plan by reason of the provision of services to such Plan, the written disclosures required under paragraph (f) of this section II need not have been repeated, unless—

(A) More than three years had passed since such disclosures were made with respect to the same kind of services provided by the Affiliates of EBPLife or by predecessors of such Affiliates or the same kind of reinsurance of the risk on the Stop-Loss Policies, or

(B) The reinsurance of the risk on such Stop-Loss Policies by EBPLife or the receipt of compensation for services by Affiliates of EBPLife or by predecessors of such Affiliates thereto was materially different from that for which approval described in paragraph (g) of this section II was obtained.

(h) The Plans have paid no commission with respect to the reinsurance by EBPLife of the Stop-Loss Policies.

(i) Each of the Plan Fiduciaries have not received, directly or indirectly (i.e. through any Affiliates), any compensation or other consideration for his or her own personal account from EBPLife, any of its Affiliates, any predecessors of such Affiliates, or other party dealing with any of the Plans in connection with a transaction described in this exemption.

(j) EBPLife and its Affiliates and any predecessors of such Affiliates followed

the standard claims processing practices regarding any claims submitted with respect to benefits under any of the Plans covered by any of the Stop-Loss Policies reinsured by EBPLife;

(k) The Employer had final authority regarding the payment or nonpayment of any and all claims submitted with respect to benefits under any of the Plans covered by the Stop-Loss Policies reinsured by EBPLife;

(l) EBPLife or its Affiliates or the predecessors of such Affiliates have made available upon request by the Employers of each of the Plans at no additional charge full and detailed written reports which detail any and all of the following information:

(1) The average turn-around time from the date that a claim was initially received to the date that the claim was processed for payment;

(2) The percentage of claims processed within the target period, as set forth in the Administration Agreement;

(3) The average turn-around time from the date that a claim was received to the date that a claim was actually paid; and

(4) A summary of pending claims that were received but not paid accompanied by a code indicating the reason why each claim had not yet been paid.

(m) Regarding its operations and reserves, EBPLife complied with all applicable requirements of law and insurance regulations of the State of Oklahoma, where it is domiciled and licensed to do business;

(n) EBPLife has been subject to a financial audit by the Department of Insurance of the State of Oklahoma, where it is domiciled and licensed to do business no less frequently than once every three years;

(o) The issuing Carriers of the Stop-Loss Policies are fully liable for all claims covered by the Stop-Loss Policies in excess of the applicable stop-loss limits under such Stop-Loss Policies;

(p) Where the Stop-Loss Policies are reinsured by EBPLife, EBPLife, as reinsurer, is fully liable for the payments of claims under such Stop-Loss Policies;

(q) Independent insurance consultants (the Consultants), who were unrelated to EBPLife, its Affiliates, or to the predecessors of such Affiliates, solicited bids for administrative services and/or Stop-Loss Policies on behalf of Employers and served as brokers or agents to Employers with respect to the purchase by Employers of Stop-Loss Policies reinsured by EBPLife;

(r)(1) EBPLife or its Affiliates retain or the predecessors of such Affiliates have retained for a period of six (6) years from the date of any transaction covered

by this exemption, the records necessary to enable the persons, as described in paragraph (s) of this section II, to determine whether the conditions of this exemption have been met. Such records shall include, but not be limited to, the following information:

(A) A copy of the information disclosed by EBPLife, its Affiliates, or by the predecessors of such Affiliates to the Plan Fiduciaries, pursuant to paragraph (f) of section II above;

(B) A copy of the Administration Agreement which discloses, among other things, whether EBPLife reinsures risk under a Stop-Loss Policy issued to an Employer;

(C) Any additional information or documents provided to any Plan Fiduciary with respect to a transaction covered by this exemption;

(D) Evidence of the written acknowledgment of receipt of disclosures by the Plan Fiduciary as described in paragraph (g) of this section II.

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of EBPLife, its Affiliates, or the predecessors of such Affiliates, such records were or are lost or destroyed prior to the end of the six (6) year period.

(3) No party in interest, other than EBPLife, its Affiliates, and the predecessors of such Affiliates, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, if the records are not maintained, or are not available for examination as required by paragraph (s) of this section II; and

(S)(1) Except as provided in paragraph (s)(2) of this section II and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (r) of section II above are unconditionally available for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department of Labor;

(B) Any fiduciary of each of the Plans or any duly authorized employee or representative of such fiduciary; and

(C) Any Employer of Plan participants and beneficiaries, any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary; any employee organization any of whose members are covered by a Plan.

(2) None of the persons described in paragraph (s)(1) (B) and (C) of section II shall be authorized to examine trade secrets of EBPLife, its Affiliates, or the

predecessors of such Affiliates or commercial or financial information which is privileged or confidential.

### Section III—Definitions

For purposes of this exemption:

(a) An "Affiliate" or "Affiliates" of a person includes:

(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 in any such person; and

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

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term, "relative," means a "relative" as that term is defined in section 3(15) of the Act, or a brother, a sister, or a spouse of a brother or a sister.

(e) The term "non-discretionary services" means custodial services and services ancillary to custodial services, none of which services are discretionary.

(f) The term "non-discretionary trustee" of a Plan means a trustee whose powers and duties with respect to any assets of the Plan are limited to (1) the provision of non-discretionary trust services, as defined in paragraph (e) of this section III, to the Plan, and (2) duties imposed on the trustee by any provision or provisions of the Act.

(g) The term "Plan Fiduciary" or "Plan Fiduciaries" means a person(s) who are independent of EBPLife, its Affiliates, and any predecessors of such Affiliates, are sufficiently knowledgeable with respect to administration, benefits, funding, and any matters related thereto concerning such Plan, are capable of making an informed and independent decision, and are responsible for executing the Administration Agreement and for deciding to purchase or renew the Stop-Loss Policies reinsured by EBPLife.

**EFFECTIVE DATE:** If the proposed exemption is granted, the exemption will be effective, as of April 15, 1994, the date the application was filed.

### Summary of Facts and Representations

1. Employee Benefit Plans, Inc. (EBP), incorporated under the laws of Delaware in February 1986, is a managed healthcare company headquartered in Minneapolis, Minnesota. Prior to the fall of 1995, EBP was the holding company for a number

of subsidiaries, including EBPLife and EBPHealth Plans, Inc. (EBPHealth), described more fully below. The common stock of EBP along with its subordinated debentures, are traded on the New York Stock Exchange. As of December 31, 1993, EBP and its Affiliates had aggregate assets of approximately \$200 million and provided products and services for approximately 2,600 Employers who sponsor self-funded employee welfare benefit plans nationwide.

2. EBPLife, a wholly owned subsidiary of EBP, was formed from the merger of two companies, First Security Life Insurance Company and Sooner Life Insurance Company, after such companies were acquired by EBP in 1986 and 1991, respectively. EBPLife is a life and health insurance company domiciled in the State of Oklahoma and is subject to the insurance laws and regulation of that state which requires EBPLife to maintain minimum capital and surplus ratios and minimum reserves. In addition, it is represented that EBPLife is currently licensed to sell health and life insurance in forty (40) other states and is seeking licensure in most of the remaining states in the United States.

As of December 31, 1993, EBPLife had assets of approximately \$110 million, including insurance loss reserves of approximately \$22 million. It is represented that EBPLife has received Standard and Poor's highest rating for capital adequacy. Further, EBPLife, as of December 31, 1993, maintained a level of risk-based capital percentage in excess of the amount required under rules promulgated by the National Association of Insurance Commissioners. It is represented that in July 1996, EBPLife was issued a B+ rating by the A.M. Best Company, the leading national rating organization that evaluates the financial strength of insurance companies.

As of December 31, 1993, the investment portfolio of EBPLife consisted primarily of investment grade bonds, all of which are rated A or higher by Standard & Poor's, with an average duration of 4.7 years. It is represented that the investment policy of EBPLife is generally more restrictive than that required under applicable insurance laws and regulations.

EBPLife directly issues stop-loss insurance and offers fully insured group health insurance, group term life insurance, accidental death and dismemberment insurance, and individual major medical and life

insurance conversion policies.<sup>2</sup> In addition, EBPLife reinsures Stop-Loss Policies issued by other Carriers in connection with self-funded health benefit programs offered by Employers to their employees. It is represented that all of the insurance policies issued or reinsured by EBPLife are offered for one-year periods, with annual repricing and renewals.

3. Until 1996, EBPHealth was a wholly owned subsidiary of EBPLife and a contract administrator to approximately 1,700 Employers who sponsored self-funded welfare benefit plans covering approximately 775,000 plan participants nationwide.

It is represented that the principal business of EBPHealth as contract administrator consisted of providing administrative services to Employers in connection with the establishment and operation of Plans. The administrative services provided by EBPHealth included benefit claims processing, benefit disbursement, data analysis. For its services as contract administrator, EBPHealth received a fee generally in the form of a fixed monthly amount per eligible employee. In this regard, the Employers, and not the Plans, paid directly for claims administration services provided by EBPHealth. It is represented that EBPHealth did not act as a plan administrator. In this regard, it is represented that the provisions of Administration Agreements between EBPHealth and Employers made clear that EBPHealth did not have final authority to adjudicate benefit claims.

It is represented that prior to 1996, EBPHealth had divisions operating in the western, central, northeast, and southeast regions of the United States and employed approximately 855 employees at thirteen (13) claims processing service centers in these regions. It is represented that EBPHealth processed claims for health, dental, disability, vision, and prescription drug programs in excess of \$2 billion annually for its clients.

EBPHealth also engaged in the preparation of utilization and claims experience reports, and offered to Employers the services of several computerized claims processing and reporting systems which generated statistical reports. It is represented that these reports provided information on benefit utilization, claims processing activity, and accounting data, and other

<sup>2</sup> It is represented that where EBPLife issued or issues any of these policies directly to employee benefit plans, the sale of the insurance policy is eligible for exemptive relief under PTCE 84-24. The applicant is not requesting relief for such transactions, nor is the Department, herein, proposing such relief.

summary and detailed information for use by Employers. In addition, EBPHealth developed a computerized database system that permitted customers who elected to participate, among other things, to review preliminary benefit eligibility determinations and to create reports comparing health claims expenditures with other statistical data maintained by EBPHealth.

It is represented that EBPHealth maintained a separate training and claims auditing staff which conducted routine internal audits of claims examiners and monitored and updated claims processing methods and procedures consistent with industry standards. In addition, EBPHealth was subject to audit by Employers and the Carriers whose Stop-Loss Policies are reinsured by EBPLife.

4. It is represented that in 1995 and 1996, EBP, EBPLife, and EBPHealth were the subjects of several mergers and acquisitions. In this regard, on October 19, 1995, First Financial Management Corporation (FFMC), a Georgia corporation, acquired EBP and its Affiliates, EBPLife and EBPHealth. As a result of this merger, EBP became a wholly-owned subsidiary of FFMC, while EBPLife and EBPHealth remained wholly-owned subsidiaries, respectively, of EBP and EBPLife.

Subsequently, through a stock merger approved by shareholders on October 25, 1995, FFMC and its Affiliates, EBP, EBPLife, and EBPHealth, were acquired by First Data Corporation (FDC). FDC, a Fortune 100 company, is engaged in over 102 countries in providing a variety of services, including information and financial transaction processing services, health claims administration, data imaging and information management.

As a result of the merger on October 25, 1995, FFMC became a wholly-owned subsidiary of FDC, while EBP and EBPLife, and EBPHealth remained subsidiaries of FFMC. As of November 21, 1995, it was estimated that FFMC and FDC had combined annual earnings of more than \$400 million and employed approximately 36,000 persons. It is represented that, as of December 12, 1996, FDC has assets in excess of \$12.2 billion.

It is represented that prior to the mergers described above that FFMC had a subsidiary known as First Health Strategies (TPA), Inc. (First Health), a Utah corporation which was formerly known as Alta Health Strategies, Inc. (ALTA).<sup>3</sup> First Health from its corporate

<sup>3</sup> It is represented that ALTA and ALTA Reinsurance Company (ALTA RE) were granted

headquarters in Salt Lake City, Utah, and from a number of separate processing centers around the country, employs sophisticated technology to integrate claims administration, data analysis, medical case management, and other services. Subsequent to the mergers described above, FDC converted all of EBPHealth's clients to the integrated and automated claim and administration computer system provided by First Health. It is represented that the conversion required the execution of new Administration Agreements between First Health and Employers. In addition, as a result of the conversion, EBPHealth's clients became eligible to participate in all of the health-related services and benefits offered by First Health. Accordingly, upon completion of the conversion in 1996, EBPHealth was formally merged into First Health and ceased to operate as a third party administrator.

It is represented that after the conversion and the two mergers were completed, the new corporate structure of FDC consisted of a new health services group comprised of: (1) GENEX Services, Inc., a workers' compensation managed care company; (2) VIPS, Inc., an information systems development and consulting company; (3) First Health, a provider of integrated health care cost management services to private, self-funded, and government markets; and (4) EBPLife, a risk-bearing organization through which stop-loss insurance products, group life insurance products, and other health-related insurance products are provided to clients of First Health.

Notwithstanding the changes that resulted from the conversion and mergers, as described above, it is represented that EBPLife did not change its name nor its domicile. EBPLife intends to maintain its headquarters in Minneapolis, Minnesota and will continue to maintain its underwriting, contracts, compliance, premium and billing, finance and accounting, and insurance claim processing departments separate from the claim administration functions maintained by First Health.

5. It is represented that Employers who sponsor self-funded Plans<sup>4</sup> often

<sup>4</sup> Prohibited Transaction Exemption 89-75 (PTE 89-75; 54 FR 35959, Aug. 30, 1989; proposed 54 FR 26266, June 22, 1989) by the Department for certain reinsurance transactions involving stop-loss insurance.

<sup>4</sup> It is represented that Plans involved in the transactions which are the subject of this exemption are maintained by Employers unrelated to EBPLife, its Affiliates, or the predecessors of such Affiliates. In this regard, however, the applicant represents that it could not supply a list of Plans or any specific information on such Plans in the application, because the Employers and the Plans

choose to limit exposure to claims by purchasing stop-loss insurance. Some such stop-loss insurance may be issued by unrelated Carriers, may be issued directly by EBPLife, or may be issued by Carriers with which EBPLife has an active reinsurance arrangement.<sup>5</sup> It is represented that where EBPLife is the issuing carrier, the acquisition of the stop-loss insurance is eligible for exemptive relief under PTCE 84-24, to the extent such relief is required.<sup>6</sup> If stop-loss insurance is issued by a Carrier with which EBPLife has an active reinsurance arrangement, EBPLife may choose to reinsure all or a major portion of the risk under such policy under two circumstances: (1) Where EBPLife is not licensed to issue such insurance directly in the state where an Employer does business; or (2) where the Carrier has greater name recognition. It is represented that often simultaneous with the purchase or renewal of Stop-Loss Policies insured or reinsured by EBPLife, Employers have chosen Affiliates of EBPLife or have chosen predecessors of such Affiliates to provide services to their Plans. In this regard, it is represented that, as of August 2, 1994, approximately 70 percent (70%) of the clients of EBPHealth purchased Stop-Loss Policies which were insured or reinsured by EBPLife. Further, it is represented that, as of the same date, approximately 55 percent (55%) of the Stop-Loss Policies reinsured by EBPLife were sold to Employers who sponsored Plans with respect to which EBP or its Affiliates were retained to provide claims administration or other services, although EBP or its Affiliates might not have been providing such services at the time such Stop-Loss Policy was reinsured by EBPLife.

6. It is represented that prior to the mergers described above, EBP focused on selling products and services to

change from time to time, and because of the large number of Employers and Plans nationwide for which EBPLife, its Affiliates provide products or services or for which the predecessors of such Affiliates have provided products or services.

<sup>5</sup> It is represented that the unaffiliated insurance Carriers with whom EBPLife, as of December 12, 1996, had reinsurance arrangements are Insurance Company of North America, and the CNA Insurance Companies. It is further represented that in the past EBPLife has also had reinsurance arrangements with ITT/Hartford Insurance Company, and Fortis Benefits Insurance Company.

<sup>6</sup> The applicant states that because PTCE 84-24 covers the purchase of any "insurance or annuity contract" from an insurance company, the purchase of Stop-Loss Policies by the Employers should be eligible for exemptive relief thereunder where EBPLife is the issuing carrier of such a policy. The Department is expressing no opinion, herein, whether such transaction satisfies the conditions as set forth under PTCE 84-24, nor is the Department, herein, proposing any relief for such transaction.

smaller Employers. For this purpose, EBP employed a sales force of approximately fifty (50) employees who marketed products and services offered by EBPLife and by EBPHealth primarily to unaffiliated Consultants who served as brokers or agents to such Employers. These Consultants received as compensation for the sale of a Stop-Loss Policy a commission based on a percentage of gross premiums. In addition, these Consultants may have received a fee from the Employer for services performed on behalf of such Employer.

The products and services offered by EBP or its Affiliates included benefit plan design and consulting, claims administration and processing, data analysis and reporting, medical cost containment programs, and underwriting of insurance coverage, including Stop-Loss Policies issued directly by EBPLife and Stop-Loss Policies issued by other Carriers but reinsured by EBPLife. It is represented that EBPLife reinsured the risk under the Stop-Loss Policies, pursuant to the terms of a reinsurance agreement between the Carrier and EBPLife which provided that the Carrier issuing the Stop-Loss Policy cede to EBPLife all or most of the balance of the premiums paid to the Carriers after various fees, commissions, and taxes had been paid. In this regard, it is represented that EBPLife paid the issuing Carrier a fee ranging from one percent (1%) to three and a half percent (3½%) of the applicable premium.

7. After the conversion and mergers described above, it is represented that First Health focused on selling products and services to larger Employers, generally companies with over 250 employees. In this regard, almost all of the Employers who were interested in maintaining a self-funded Plan retained Consultants to advise them on the purchase of services and products necessary to maintain such Plans. Once retained by the Employer, these Consultants who were independent of First Health put together a request for proposal (RFP) for submission to multiple vendors of services and products, including stop-loss insurance, for self-funded Plans. It is represented that First Health may have been one of these vendors.

Upon receipt of a RFP, First Health sales representatives determined the appropriate pricing for administrative and managed care services offered through First Health. These services included claims administration, preferred provider networks, medical utilization management programs, pharmacy card benefits, and disability

management services. In addition, First Health sales representatives may have contacted several stop-loss insurers for quotations for stop-loss coverage. In this regard, Employers or their Consultants could have identified an insurance company from which they wished First Health to obtain a quotation as part of First Health's proposal. The quotations collected by First Health may often have included Stop-Loss Policies directly issued by EBPLife; may have included Stop-Loss Policies issued by Carriers with which EBPLife had a reinsurance relationship; or may have included Stop-Loss Policies issued by insurance companies completely unrelated to EBPLife. In addition, Consultants were free to obtain quotations themselves from any other insurance company.

Once First Health sales representatives received stop-loss premium quotations from insurers, it reviewed these quotations for price as well as other policy variables, such as limitations on coverage. Depending on these variables, it is represented that Stop-Loss Policies issued or reinsured by EBPLife may or may not have been included in a proposal by First Health. If First Health's proposal included a quote for a Stop-Loss Policy reinsured by EBPLife, it is represented that such information was disclosed in the proposal.

It is represented that Consultants reviewed the proposals provided by First Health, by other vendors, by third party administrators, or by other insurers. Based on this review, the Consultants advised Employers in selecting an insurance company to provide stop-loss coverage, as well as other products and services. In this regard, the Consultants may have recommended a different vendor to provide each service and product. In the event an Employer determined to purchase administrative services from First Health, the Administration Agreement included a disclosure of the relationship, if any, between First Health and the issuer of the Stop-Loss Policy purchased by the Employer. It is further represented that no employees of First Health received commissions as a result of the reinsurance arrangement between EBPLife and an issuing Carrier where an Employer for which First Health provided services also purchased a Stop-Loss Policy reinsured by EBPLife.

8. It is represented that subsequent to the mergers described above, instances in which First Health deals directly with an Employer accounts for less than one percent (1%) of all sales of EBPLife's products. In this regard, it is represented that any direct dealing with

Employers usually involved one of First Health's larger clients. First Health maintains that it did not have an opportunity to influence any Employer's decision to purchase a Stop-Loss Policy reinsured by EBPLife, because First Health did not offer Stop-Loss Policies reinsured by EBPLife in any instance in which it dealt directly with an Employer.

9. EBPLife requests retroactive exemptive relief, effective April 15, 1994, to ensure that the purchase by Employers of Stop-Loss Policies reinsured by EBPLife, as of such effective date, have not resulted in a prohibited use of "plans assets" for the benefit of parties in interest.<sup>7</sup> The purchase by the Employer of a Stop-Loss Policy reinsured by EBPLife may have constituted a prohibited use of the assets of such Plans for the benefit of EBPLife, as described in section 406(a)(1)(D), because under a reinsurance arrangement all or most of the balance of the premiums after various fees were subtracted were paid to EBPLife, as reinsurer.

It is represented that neither EBPLife nor its Affiliates, including First Health, have acted as fiduciaries, nor have the predecessors of such Affiliates acted as fiduciaries in connection with the decision by any Employer to purchase a Stop-Loss Policy reinsured by EBPLife. Moreover, it is represented that First Health has not had discretionary authority, nor has EBPHHealth had any discretionary authority over the funds of the Employers or the funds of the Plans. For this reason, EBPLife maintains that none of the concerns addressed by the prohibitions of section 406(b) of the Act have arisen, nor will such prohibitions arise under the circumstances as described, and no relief from section 406(b) of the Act is requested by the applicant.<sup>8</sup>

10. It is represented that prior to the conversion and the mergers, described above, EBP and its Affiliates had implemented procedures designed to

<sup>7</sup>In this regard, it is represented that FDC and FFM have been parties in interest, respectively, by reason of direct or indirect ownership of First Health. While it is represented that prior to the conversion and mergers in 1995 and 1996, as described above, EBPLife was also a party in interest by reason of its direct ownership of EBPHHealth, after the corporate restructuring, the applicant maintains that EBPLife is not a party in interest with respect to the Plans for which First Health provided services, because EBPLife and First Health are related solely through a brother-sister controlled group relationship not described in section 3(14) of the Act.

<sup>8</sup>The Department is proposing relief, pursuant to section 408(a) of the Act, only for those transactions described herein and expresses no opinion whether fiduciary violations of section 406(b) of the Act may arise, or have arisen, under the circumstances.

ensure that, where exemptive relief was needed, full and detailed written disclosures had been provided by EBP or its Affiliates to the Consultants, where such Consultants who solicited bids for services and insurance were retained as agents by the Employer. In this regard, such disclosure, included but was not limited to information concerning the services provided by EBP and its Affiliates to the Employer and the Plan, the Carriers which issued the Stop-Loss Policies and, if applicable, the reinsurance arrangements between such Carriers and EBPLife. Further, EBP encouraged Consultants to disclose to Plan Fiduciaries the commissions and fees to be earned by such Consultants in a manner consistent with the terms and conditions as set forth in PTCE 84-24. In addition EBPLife provided Employers with information required to be reported on the Schedule A filed as part of the form 5500 Series.

Subsequent to the conversion and mergers, First Health and EBPLife have provided to the independent Consultant or broker a complete description of all services, commissions, and fees paid by the Plan or by the Employer. In addition, First Health and EBPLife have disclosed the relationship between EBPLife and the issuing Carrier, if any. Specifically, EBPLife represents that it has disclosed any reinsurance arrangements and its affiliation with First Health in each stop-loss insurance proposal. Further, First Health also has disclosed these relationships in each Administration Agreement. It is represented that the proposal and the Administration Agreement are provided to the broker or the Consultant in every case where a prospective client has retained such parties. In these cases, EBPLife represents that it confirmed in writing with the broker or the Consultant that such parties have delivered information outlining the disclosure of EBPLife's relationship to First Health and any and all reinsurance arrangements to the prospective client prior to the making of a decision to purchase services performed by First Health and any Stop-Loss Policy reinsured by EBPLife. It is represented that this written record has been and will be kept in EBPLife's files for at least six (6) years.

11. It is represented that the proposed exemption is subject to a number of conditions that protect the interests of the Plans. In this regard, the Plan Fiduciaries must have acknowledged in writing receipt of the information, required to be disclosed by EBPLife and its Affiliates, or required to have been disclosed by predecessors of such Affiliates, and must have approved any

transaction which is the subject of this exemption. In this regard, because the disclosures were made in writing in the Administration Agreement, if a Plan Fiduciary signed such agreement, such Plan Fiduciary will be deemed to have acknowledged receipt of such disclosures and have acknowledged that, as of the effective date of this exemption, the decision to engage in transactions which are the subject of this exemption was a decision made in a fiduciary capacity, and that, as of the effective date of this exemption, such Plan Fiduciary approved of the subject transaction. It is represented that the Plan Fiduciaries were independent of EBPLife and its Affiliates, and were independent of predecessors of such Affiliates, and were sufficiently knowledgeable with respect to administration, benefits, funding, and any matters related thereto concerning the Plans. Further, it is represented that the Plan Fiduciaries were capable of making informed and independent decisions on matters affecting the Plans and were responsible for deciding whether to hire Affiliates of EBPLife or have been responsible for hiring predecessors of such Affiliates to provide non-discretionary administrative services to Plans where such fiduciaries have also purchased or renewed Stop-Loss Policies reinsured by EBPLife.

Where Affiliates of EBPLife or predecessors of such Affiliates provided services to an Employer or Plan, in the event Employers purchased Stop-Loss Policies reinsured by EBPLife after the initial purchase of such a policy or renewed expired Stop-Loss Policies reinsured by EBPLife, the written disclosures initially required need not have been repeated, unless—more than three (3) years had passed since such disclosures were made or unless the services, products, or compensation involved were materially different from that for which approval was originally obtained.

12. In addition to the safeguards discussed in paragraph eleven (11) above, the exemption is conditioned upon the satisfaction of various additional requirements. First, each transaction must have been effected by EBPLife in the ordinary course of its business as an insurance company on terms that were at least as favorable to Plans as those obtainable in an arm's length transaction with an unrelated party. Second, the combined total of all fees and other consideration which was received by EBPLife and its Affiliates and by predecessors of such Affiliates for the provision of services to Employers and their Plans and in

connection with the purchase of insurance contracts has not exceeded "reasonable compensation" within the meaning of section 408(b)(2) and 408(c)(2). Third, EBPLife, its agents or Affiliates, or the predecessors of such Affiliates, have not been trustees, plan administrators, fiduciaries with discretionary authority over the assets of the Plan, or Employers of the Plans. Neither EBPLife nor its Affiliates, nor the predecessors of such Affiliates have acted as fiduciaries in connection with the decision by the Employer to purchase Stop-Loss Policies reinsured by EBPLife where Affiliates of EBPLife or predecessors of such Affiliates also provided services. Fourth, the Plans have paid no commissions with respect to the reinsurance of the Stop-Loss Policies, nor have the Plan Fiduciaries received, directly or indirectly (i.e. through any Affiliates), any compensation or other consideration for their own personal account from EBPLife, any of its Affiliates, any predecessor of such Affiliates, or other party dealing with any of the Plans in connection with a transaction described herein. Finally, EBPLife is currently licensed and regulated by the State of Oklahoma and forty (40) other states in which it does business. It is represented that EBPLife has complied with all applicable state insurance laws and regulations, regarding its operations and reserves in the State of Oklahoma where it is domiciled and licensed to do business and has been subject to financial audit by the State of Oklahoma Department of Insurance no less frequently than once every three years.

13. It is represented that the reinsurance arrangement as described herein provides additional protection to the Plans. In this regard, the issuing Carriers of the Stop-Loss Policies are primarily liable for all claims covered by such Stop-Loss Policies in excess of the applicable stop-loss limits under such Stop-Loss Policies. However, EBPLife is also liable for the payment of claims covered by the Stop-Loss Policies where such policies have been and are reinsured by EBPLife. In this way, it is represented that the Plans have been and will be protected by the financial strength of two insurance companies rather than one. Further, because in the event of EBPLife's insolvency, the Carriers remain fully liable for any unpaid claims against the Stop-Loss Policies, it is represented that these Carriers have every incentive to ensure that EBPLife has not engaged in and does not engage in questionable practices which might affect the reinsurance of the risk associated with

the Stop-Loss Policies. For this reason, EBPLife has been and will be subject to the continuous oversight of the Carriers that issue the Stop-Loss Policies reinsured by EBPLife.

With respect to practices regarding claims submitted under reinsured Stop-Loss Policies, it is represented that EBPLife and its Affiliates, and any predecessors of such Affiliates have followed standard claims processing procedures. In this regard, it is represented that the Employer has had the final authority regarding the payment or nonpayment of each claim. Further, it is represented that EBPHealth did not exercise fiduciary authority with respect to the authorization or disallowance of any benefit claims.

In order to assist the Employer: (1) To monitor the performance of EBPHealth in the processing of claims, prior to the conversion, and to monitor the subsequent performance of FIRST HEALTH in the processing of claims; (2) to prevent possible abuse involving claims avoidance; and (3) to provide additional safeguards against possible conflicts of interest, it is represented that EBPLife and its Affiliates have made and will make available, or the predecessors of such Affiliates have made available upon request by the Employers of each of the Plans at no additional charge full and detailed written reports. Such reports have provided and will provide certain information which permits Employers to verify that EBPLife has not and does not delay its processing or payment of claims in order to avoid coverage under the Stop-Loss Policies that it reinsures.

Further, First Health maintains that the larger Employers with which it does business can be assumed to be more sophisticated and therefore more likely to monitor the provision of claims administration services provided by First Health and to understand the issues involved in this exemption. In addition, First Health represents that the conversion of EBPHealth, as described above, eliminated the possibility that First Health could exercise discretion in a manner intended to reduce the potential liability of EBPLife under the Stop-Loss Policies. In this regard, it is represented that the claims processing program currently adopted by First Health and the implementation of its automated claims processing system ensures that claims administration cannot in any way be affected by the identity of the insurer or reinsurer of the Stop-Loss Policies.

14. In summary, the applicant represents that the proposed transactions meet the statutory criteria of section 408(a) of the Act because:



(a) Each transaction was effected by EBPLife in the ordinary course of its business as an insurance company;

(b) The terms of each transaction were at least as favorable to the Plans as those negotiated at arm's-length with unrelated third parties under similar circumstances;

(c) The combined total of all fees and other consideration received by EBPLife, its Affiliates, and by the predecessors of such Affiliates for the provision of services to the Employers and their Plans and in connection with the purchase of insurance contracts was not in excess of "reasonable compensation" within the meaning of sections 408(b)(2) and 408(c)(2) of the Act;

(d) Neither EBPLife, its agents, its Affiliates, nor the predecessors of such Affiliates have served as trustees (other than as non-discretionary trustees who do not render investment advice with respect to any of the assets of such Plans), plan administrators, fiduciaries with discretionary authority over the assets of any of the Plans, or Employers any of whose employees are covered by any of the Plans;

(e) Neither EBPLife, its Affiliates, nor the predecessors of such Affiliates have acted in connection with the decision by the Employer to purchase Stop-Loss Policies reinsured by EBPLife;

(f) Plan Fiduciaries who are independent of EBPLife and its Affiliates, and independent of the predecessors of such Affiliates; who are sufficiently knowledgeable with respect to administration, benefits, funding, and any matters related, thereto concerning such Plans; and who are capable of making an informed and independent decision, have been responsible for deciding to purchase or renew the Stop-Loss Policies reinsured by EBPLife and for executing the Administration Agreement with Affiliates of EBPLife or have been responsible for executing Administration Agreements with predecessors of such Affiliates to provide services to such Plans;

(g) Plan Fiduciaries have received full and detailed written disclosures, including but not limited to a copy of the Administration Agreement which among other things disclosed whether EBPLife reinsured risk under a Stop-Loss Policy issued to the Employer or a Plan and described all of the services provided by Affiliates of EBPLife, or by the predecessors of such Affiliates to such Plan or such Employer, prior to the decision which caused Affiliates of EBPLife or the predecessors of such Affiliates to provide services to the Plan or the Employer where the Employer

also purchased or renewed a Stop-Loss Policy reinsured by EBPLife;

(h) Plan Fiduciaries acknowledged in writing receipt of disclosures with respect to the transactions described herein, and acknowledged that the decision to engage in such transaction was a decision made in a fiduciary capacity, and, as of the effective date of this exemption, approved the subject transaction;

(i) The Plans paid no commissions with respect to the reinsurance by EBPLife of the Stop-Loss Policies.

(j) The Plan Fiduciaries did not receive, directly or indirectly (i.e. through any Affiliates), any compensation or other consideration for his or her own personal account from EBPLife, any of its Affiliates, any predecessor of such Affiliates, or other party dealing with any of the Plans in connection with a transaction described in this exemption.

(k) EBPLife and its Affiliates, and any predecessors of such Affiliates followed standard claims processing practices regarding any claims submitted with respect to benefits under any of the Plans covered by any of the Stop-Loss Policies reinsured by EBPLife;

(l) The Employer had final authority regarding the payment or nonpayment of any and all claims submitted with respect to benefits under any of the Plans covered by the Stop-Loss Policies reinsured by EBPLife;

(m) EBPLife and its Affiliates have made and will make available, or the predecessors of such Affiliates have made available upon request by the Employers of each of the Plans at no additional charge certain information to Employers;

(n) Regarding its operations and reserves, EBPLife has complied with all applicable requirements of law and insurance regulations of the State of Oklahoma, where it is domiciled and licensed to do business;

(o) EBPLife has been subject to a financial audit by the Department of Insurance of the State of Oklahoma, where it is domiciled and licensed to do business no less frequently than once every three years;

(p) The issuing Carriers of the Stop-Loss Policies are fully liable for all claims covered by the Stop-Loss Policies in excess of the applicable stop-loss limits under such Stop-Loss Policies;

(q) Where the Stop-Loss Policies are reinsured by EBPLife, EBPLife, as reinsurer, is fully liable for the payments of claims under such Stop-Loss Policies; and

(r) Consultants who were unrelated to EBPLife, its Affiliates, or to the

predecessors of such Affiliate, solicited bids for administrative services and/or Stop-Loss Policies on behalf of Employers and served as brokers or agents to Employers with respect to the purchase by Employers of Stop-Loss Policies reinsured by EBPLife;

(s) As of December 12, 1996, EBPLife, its Affiliates, and the predecessors and successors of such Affiliates have not and will not offer Stop-Loss Policies reinsured by EBPLife in any instance where EBPLife or its Affiliates deal directly with Employers, rather than with Consultants representing such Employers, in providing services to such Employers or their Plans;

(t) EBPLife, its Affiliates have retained or shall retain, or cause to be retained, or the predecessors of such Affiliates have retained or caused to be retained for a period of six (6) years from the date of any transaction the records necessary to enable certain parties to determine whether the conditions of this exemption have been met.

#### Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include the Employers who sponsor the Plans and the Plan fiduciaries of such Plans for which First Health and/or EBPHHealth provided non-discretionary administrative services. It is possible that any or all such Employers also choose to purchase Stop-Loss Policies reinsured by EBPLife. For this reason, the Department has determined that the only practical form of providing notice to interested persons is the distribution by the applicant by first class mail of a copy of the notice of pendency of this proposed exemption (the notice) within fifteen (15) days of the date of the publication of such Notice in the **Federal Register** to the Employers who sponsor of any of the Plans for which First Health and/or EBPHHealth have provided services as of the effective date of this proposed exemption. Such distribution to interested persons shall include a copy of the Notice, as published in the **Federal Register**, plus a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2), which shall inform such interested persons of their right to comment.

**FOR FURTHER INFORMATION CONTACT:**  
Angelena C. Le Blanc of the Department, telephone (202) 219-8883 (This is not a toll-free number.)



**Smart Chevrolet Co. Employees' Profit Sharing Retirement Plan (the Plan) Located in Pine Bluff, Arkansas**

[Application No. D-10445]

*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), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The proposed secured loans (the Loans) by the Plan to Motors Finance Company (Motors), a party in interest with respect to the Plan, and (2) the guaranty of such Loans (the Guaranty) by the individual partners of Motors; provided that the following conditions are met: (a) The terms and conditions of the Loans are at least as favorable as those which the Plan could have received in similar transactions with an unrelated third party; (b) an independent fiduciary negotiates, reviews, approves, and monitors the Loans and the Guaranty under the terms and conditions, as set forth in paragraph #6 below; and (c) the balance of all Loans will at no time exceed 15% of the assets of the Plan.<sup>9</sup>

**Temporary Nature of Exemption**

The proposed exemption is temporary and, if granted, will expire five (5) years after the date of the grant. However, the exemption will extend until the maturity of any of the 90 day Loans made within the 5 year period.

**Summary of Facts and Representations**

1. The Plan is a defined contribution profit sharing plan which, as of December 31, 1995, had assets totaling \$3,385,217. As of the same date, the Plan had forty-five (45) participants. Richard L. Smart (Mr. Smart), S. Ray West, Jr. (Mr. West), Lee Smart (Lee) and Roger Smart (Roger) are participants in and are the Advisory Committee of the Plan. Smart Chevrolet Company (the Employer) is the sponsor of the Plan. The Employer sells new and used automobiles in the Pine Bluff, Arkansas area. As of December 31, 1995, the Employer had a net worth of \$2,883,009.

Mr. Smart is the president of and a shareholder in the Employer.

2. Motors is engaged in financing the purchase of new and used automobiles sold by the Employer to its customers. The net worth of Motors, as of December 31, 1995, was \$300,000. Certain of the principal owners of the Employer are also partners in Motors. Mr. Smart is a five percent (5%) managing partner in Motors. Meredith S. Maxwell, Felix Smart, Lee, Roger and Mr. West each own a fifteen percent (15%) partnership interest in Motors. The collective net worth of the partners of Motors, as of December 31, 1995, was \$8,500,000. The net worth of the partners of Motors includes their respective interests in Motors, in the Employer, and in certain notes payable to its partners by Motors.

3. The current trustee of the Plan is Boatmen's Trust Company of Arkansas (Boatmen's Trust), the successor in interest to Worthen Trust Co., Inc., the trustee at the time PTE 92-43 (see rep. 4, below) was granted. Boatmen's National Bank of Pine Bluff (BNBPB), a sister corporation to Boatmen's Trust, participates in a line of credit to supply the Employer and Motors with operating funds of from \$100,000 to \$200,000 daily. Mr. Smart is on the Advisory Board of BNBPB and is a shareholder in Boatmen's Bancshares, Inc., the parent of Boatmen's Trust and of BNBPB.

4. On July 8, 1985, (50 FR 27863), the Department granted an exemption (PTE 85-121) which permitted for a period of seven (7) years beginning July 8, 1985, certain Loans to Motors by two employee benefit plans (the Plans) then sponsored by the Employer, and to the guaranty of such Loans by the Employer and the individual partners of Motors. Subsequent to the grant of PTE 85-121, the Smart Chevrolet Employees Retirement Plan, one of the Plans which participated in the exemption for PTE 85-121, was merged into the Plan.<sup>10</sup> On June 17, 1992, (57 FR 27073), the Department granted an exemption (PTE 92-43) which permitted, for a period of five (5) years, certain Loans by the Plan to Motors.

It is represented that under the two prior exemptions Motors has made all payments on the Loans in a timely manner and has never defaulted on any of the Loans made by the Plans. As a result of such Loans made pursuant to PTE 92-43, the Plan received an interest rate of between 5.50% to 7.25%, depending on the federal discount rate in effect at the time such Loans were

executed. Further, though the principal balance of these Loans has varied from time to time, the terms and conditions of each of the Loans complied with the requirements set forth in the exemptions. The aggregate fair market value of these Loans by the Plan to Motors, as of the most recent annual report, was \$818,449 which represented 24.18% of the fair market value of the total assets of the Plan. The applicant, herein, is requesting another exemption which will permit the continuation of such Loans for a period of five (5) years beginning on the date of the grant of this proposed exemption. However, PTE 85-121 and PTE 92-43 permitted the Plan to invest up to 25% of its assets in these Loans. The applicant has represented that with respect to Loans made pursuant to the exemption proposed herein, the Loans will not exceed 15% of aggregate Plan assets.

5. Jess P. Walt (Mr. Walt) has agreed to serve as the independent fiduciary. Mr. Walt, who is a banker, represents that he is independent in that none of the partners of Motors, or the stockholders, officers, or directors of the Employer are officers or directors of the bank where Mr. Walt is employed. In addition, Mr. Walt represents that none of these persons are stockholders of the bank that employs Mr. Walt, except Felix Smart, who owns 35 of the 7,500 outstanding shares, which represent a .47% ownership percentage of the bank. It is represented that the partners of Motors, the Employer and its officers, directors, and shareholders do not have any loans or accounts outstanding at the bank which employs Mr. Walt. Further, the bank which employs Mr. Walt represents that it does not participate in the line of credit extended to Motors by BNBPB.

Mr. Walt represents that he is qualified to act on behalf of the Plan in that he, as a bank officer, has been involved for many years in making automobile installment loans and evaluating credit and collateral considerations related to such loans. Mr. Walt also represents that he is knowledgeable in selecting appropriate rates of return on short term investments and will be continuously aware of the fluctuations in short term interest rates and the alternative low risk short term investments that would be available to the Plan.

6. Mr. Walt will accept fiduciary responsibility with respect to the proposed transactions. In this regard, Mr. Walt will be responsible for determining whether it is advisable for the Plan to enter into the Loans and the Guaranty which are the subject of this proposed exemption and to continue to

<sup>9</sup> For purposes of this proposed exemption references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

<sup>10</sup> All references in this Summary of Fact and Representations to the Plan will, if applicable, include both Plans prior to the merger unless the context clearly dictates otherwise.

participate in such transactions, taking into account the rate of return of such investment and the liquidity and diversification of the Plan.

It is represented that Mr. Walt will approve Loans in an amount not to exceed fifteen percent (15%) of the assets of the Plan, provided that all of the terms and conditions described herein are met.<sup>11</sup> All Loans will have a maturity of ninety (90) days and will bear interest at a rate which is two percentage points above the federal discount rate. Mr. Walt represents that such interest rate reflects the prevailing fair market interest rate on comparable investments. Mr. Walt represents that he will receive copies of all the promissory notes evidencing the Loans in order to insure that the interest rate is two percent (2%) above the federal discount rate. If at any time a rate of two percentage points above the federal discount rate is not reflective of the prevailing fair market rate of return on a comparable ninety (90) day investments, Mr. Walt indicates that the Loans should be liquidated at the next maturity date, or the yield on such Loans be increased to the then prevailing fair market rate.

The Loans will be secured by all of the installment sale contracts (the Contracts) of Motors. As of December 31, 1995, Motors had 833 outstanding Contracts totaling \$5,597,582, with an average balance of \$6,720 per Contract. Mr. Walt has represented that he will examine the security agreement and financing statements with regard to the Contracts and will ascertain that the Plan's security interest in all of the Contracts is properly executed, and that such security interest is perfected by properly filed financing statements in conformity with the Uniform Commercial Code, as adopted in Arkansas. It is represented that Mr. Walt, through a combination of monthly reports from Boatmen's and monthly Certification of Compliance Statements signed by Mr. Smart, will insure that at all times the aggregate face value of the Contracts equals at least 200% of the total outstanding balance of the Loans. It is further represented that if at the end of any month the report from Boatmen's indicates that the aggregate face value of the Contracts does not equal at least 200% of the total outstanding balance of the Loans, Mr. Walt will direct Motors to pay the Plan an amount sufficient to

bring the Loans into compliance with the 200% collateral requirement.

Mr. Walt, on behalf of the Plan, has accepted the commitment of the Employer and Motors that the Contracts will conform to the following loan policy guidelines: (a) A complete credit history will be performed for each customer; (b) a customer's credit history will be analyzed together with the customer's equity and the terms of the Loan; (c) depending on the use of the vehicle, a customer equity of from 10% to 30% will be required; (d) with an extension of six months available in circumstances of minimal vehicle use, the maximum term of any of the Contracts will be 60 months on new and current year used vehicles, 54 months, 42 months, 36 months, and 24 months, respectively, on one, two, three, four, and five year old vehicles; (e) prior to closing on any Contracts, a written certificate of insurance from an insurance agent will be required showing that the automobile is covered for physical damage with no more than a \$250 deductible; (f) such insurance coverage includes fire, theft, and other perils and shows Motors as loss payee; and (g) Motors will employ a full time collector and strict management supervision will be maintained daily over collections.

Motors has represented that, if at any time, it changes the above-described loan policy guidelines it will notify Mr. Walt. Therefore, it is the responsibility of Mr. Walt to determine whether such changes materially affect the value of the Contracts. Mr. Walt represents that if the value of the Contracts is materially affected, such Contracts will be excluded from the collateral which secures the Loans by the Plan to Motors.

The Loans will also be secured by the Guaranty of the partners of Motors. In this regard, the partners of Motors have executed a blanket Guaranty in order to satisfy the requirements of PTE 92-43. Mr. Walt is responsible for ascertaining that any Loans entered by the Plan pursuant to this proposed exemption are also covered by this blanket Guaranty or, if necessary, a new Guaranty will be executed. In addition, it is represented that all of the partners in Motors are jointly and severally liable for the debts of the partnership, specifically including the Loans.

It is represented that from time to time in order to secure its line of credit to Motors, Boatmen's may take a security interest in the Contracts. However, it is represented that such security interest will at all times be subordinated to 200% of the indebtedness of Motors to the Plan. Further, it is represented that other

notes payable from Motors to its partners will be subordinated to the Loans. As of December 31, 1995, a total amount of \$3,536,123 was due to the partners of Motors under the terms of the notes, but such amount was subordinated, to the indebtedness of Motors to the Plans incurred under PTE 92-43.

In addition, it is represented that all of the Contracts provide Motors with recourse against the Employer for the amount of any defaulted Contracts. In this regard, should there be defaults on any of the Contracts, it is represented that the Employer will repurchase such Contracts from Motors after giving legal notice to the customer under Arkansas law. Once the Employer repurchases any defaulted Contracts, the Employer, not Motors, will repossess the vehicles. The Employer has informed the Department that for 1995 and 1996, the average number of Contracts equaled 818. Of these Contracts forty (40) vehicles were repossessed in 1995 and twenty (20) vehicles were repossessed in 1996. The Employer maintains that defaults and repossessions constitute a very small percentage of the total number of Contracts outstanding at any time.

In addition to the responsibilities outlined above, Mr. Walt is responsible for monitoring Motors' compliance with the terms of the Loans and the Guaranty. In this regard, Mr. Walt has reviewed certain monthly reports (the Monthly Reports) which have been furnished to Joe D. Ratliff, second successor independent fiduciary; Pine Bluff National Bank, first successor independent fiduciary; and the First National Bank of Altheimer, the independent fiduciary under PTE 85-121. Mr. Walt represents that such Monthly Reports are appropriate for the purposes of monitoring the proposed transactions. If this proposed exemption is granted, it is represented that similar Monthly Reports will be provided to Mr. Walt and will be reviewed monthly by Mr. Walt, or more frequently, as Mr. Walt determines is necessary.

In addition, Mr. Walt is responsible for receiving and reviewing the monthly financial statements for Motors and for the Employer and annual financial statements of the partners of Motors. Mr. Walt represents that this information will assist him in monitoring the credit worthiness of the Employer and Motors. If there are any material decreases in the net worth of any of the parties involved, it is represented that Mr. Walt will liquidate the Loans at the next maturity date. In this regard, Mr. Walt represents that he places the most significance on the ability of the Employer to

<sup>11</sup> As noted above in rep. 4, PTE's 85-121 and 92-43 permitted the Plan to invest up to 25% of its assets in these Loans. The applicant has represented that no more than 15% of the Plan's assets will be invested in the Loans under the exemption proposed herein.

repurchase any of the Contracts that are in default and considers the net worth of the partners of Motors to be a secondary source of protection for the Plan. Mr. Walt further represents that if, in reviewing the monthly financial statements of the Employer, he determines that a decrease in the net worth of the Employer has impaired the Employer's ability to repurchase any of the Contracts, he will carefully review the aggregate net worth of the partners of Motors. After such review, if he determines, based on his banking experience, judgment, and other factors, that the Plan is not properly protected, Mr. Walt will instruct Boatmen's to liquidate the Loans at the next maturity date. In the event of a default by Motors on the Loans, Mr. Walt will be responsible for taking all necessary steps to protect the Plan and for enforcing all of the rights of the Plan, including pursuing the partners of Motors under the terms of the Guaranty.

In the opinion of Mr. Walt, the terms and conditions of the Loans and Guaranty are based on arm's length considerations. After reviewing the proposed transactions, Mr. Walt represents that he would make the Loans under the same terms to Motors. In conclusion, Mr. Walt has determined that the proposed transactions are in the best interest of the Plan and its participants and beneficiaries for the following reasons: (a) The Loans by the Plan to Motors are well collateralized; (b) the risk of loss to the Plan is almost non-existent; (c) the ninety (90) day maturity of the Loans will enable the Plan to shift its investments from the Loans in a short period of time, if necessary to provide liquidity to the Plan; (d) the yield to the Plan is approximately 227 basis points greater than that of a ninety (90) day bank certificate of deposit; (e) the rate of return, which will at all times be two percentage points above the federal discount rate, prevents the Plan from becoming locked into a below market interest rate and insures a favorable rate on a continuing basis; and (f) administration of the proposed transactions should generate less expense than that of other investments.

7. The applicant maintains that the wide diversity of customers executing the Contracts significantly spreads the risk to the Plan. Further, the Employer will bear all costs of filing the application for exemption, providing notice to interested persons, and paying for the services rendered by Mr. Walt, as independent fiduciary, to the Plan. In addition, it is represented that throughout the five (5) year duration of this proposed exemption, the Plan will

not pay any fees, expenses, or commissions in connection with the proposed transactions.

8. In summary, the applicant represents that the Loans will satisfy the criteria of section 408(a) of the Act as follows: (a) Mr. Walt, the independent fiduciary of the Plan, has agreed to review, approve, and monitor the terms of the Loans and the Guaranty; (b) Mr. Walt has represented that the Loans will be in the best interest of the participants and beneficiaries of the Plan; (c) the Loans will be short term loans limited to no more than 15% of the assets of the Plan; (d) the Loans will be collateralized by a perfected security interest in the Contracts; (e) the face amount of the Contracts will at all times exceed 200% of the total amount of the Loans; (g) the Loans are guaranteed by the partners of Motors; (h) the terms of the Contracts provide Motors with recourse to the Employer in the event of a default on any of the Contracts; and (i) the Plan will receive a return on the Loans of at least two percentage points above the federal discount rate which is represented to be the prevailing fair market rate of return on comparable investments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll free number.)

**Ronald L. Chez (Mr. Chez) IRA and Lawrence G. Kuntz (Mr. Kuntz) IRA (Collectively; the IRAs) Located in Chicago, Illinois and Wilmington, Delaware, Respectively**

[Application Nos. D-10359 and D-10360]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, 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: (a) the proposed sale by the IRAs of certain closely held stock (the Stock) to Happy Valley Corporation (the Corporation), the issuer of the Stock and an unrelated third party with respect to the IRAs; and (b) the subsequent repurchase of the Stock from the Corporation by

Mr. Chez and Mr. Kuntz, fiduciaries and disqualified persons with respect to the IRAs; provided that the following conditions are met:

1. The sale and the repurchase of the Stock will be one-time transactions for cash;

2. The transactions described in (1) above will take place on the same business day;

3. Mr. Chez and Mr. Kuntz, in their individual capacity, will purchase the same shares of the Stock, as those that were sold to the Corporation by the IRAs. The stock transfer records of the Corporation will evidence that this is the case; and

4. The amount paid to the IRAs for the Stock will be the fair market value of the Stock determined at the time of the sale by a qualified independent appraiser. Mr. Chez and Mr. Kuntz will purchase the Stock from the Corporation for the same consideration as was received by the IRAs for the sale of the Stock.

*Summary of Facts and Representations*

1. The IRAs are self-directed individual retirement accounts. The Trustee for the IRAs is Delaware Charter Guarantee & Trust Company. In December 1995, Mr. Kuntz invested \$12,500 of his IRA assets in 1250 shares of the Stock, and Mr. Chez invested \$50,000 of his IRA assets in 5000 shares of the Stock. The investment in the Stock represents approximately 90% of Mr. Kuntz's IRA, and virtually 100% of Mr. Chez's IRA is invested in the Stock.<sup>12</sup> The IRAs hold a minority interest in the Corporation, whereby Mr. Kuntz's IRA holds 2.25% of the outstanding shares of the Stock, and Mr. Chez's IRA holds 9% of the outstanding shares. The Stock is closely held.

The applicant represents that Mr. Chez and Mr. Kuntz are related to the Corporation only as investors through their IRAs and do not have any other business or personal relationship with each other. Mr. Kuntz and Mr. Chez learned about the investment opportunity through business contacts and made the decision to invest in the Stock because they anticipated capital gain appreciation.

2. The issuer of the Stock is the Corporation, an Illinois corporation in the restaurant business. The Corporation was incorporated in April 1995, and on May 19, 1995 it elected "S" Corporation status for the tax year ending December 31, 1995.

Subsequently, the Corporation determined to raise additional capital and on May 20, 1995 prepared an offering memorandum for the Stock (the Memorandum). The Memorandum disclosed that the Corporation elected

<sup>12</sup>It is represented that Mr. Chez has numerous IRAs, and the investment in the Stock represents less than 1% of the aggregate assets of these IRAs.

subchapter "S" status and intended to operate as such. As such, the Corporation had only one class of stock and the offering was limited to no more than 35 potential shareholders. Under Internal Revenue Service (IRS) rules, only qualified shareholders may hold shares of a subchapter "S" corporation.

3. On July 27, 1995, the Corporation accepted a subscription agreement from Mr. Chez. The subscription agreement stated that Mr. Chez was purchasing the Stock as investment for his IRA. On December 4, 1995, the Corporation issued the Stock in Mr. Chez's name. However, on December 20, 1995, at the request of Mr. Chez, the Corporation issued a replacement stock certificate to Mr. Chez's IRA.

On August 1, 1995, Mr. Kuntz subscribed for Stock shares in his own name. On December 20, 1995, at the request of Mr. Kuntz, the Corporation issued a replacement stock certificate to Mr. Kuntz's IRA.

4. However, during the preparation of the Corporation's income tax return for the year 1995, the Corporation's accountants discovered that pursuant to IRS Revenue Ruling 92-73, the IRAs are not permissible shareholders of a subchapter "S" corporation under section 1361 of the Internal Revenue Code (the Code).<sup>13</sup> Therefore, the issuance of the Stock to the IRAs terminated the Corporation's subchapter "S" status for the year. The applicant represents that the Corporation has received relief from the IRS under section 1362(f) of the Code. However, as a condition of the IRS relief, the IRAs will be required to terminate their ownership of the Stock.

5. Therefore, the applicant requests exemptive relief for the sale of the Stock by the IRAs back to the Corporation, the issuer of the stock, and the subsequent repurchase of the Stock by Mr. Chez and Mr. Kuntz, in their individual capacity. By letter dated May 22, 1997, the attorneys for the Corporation (the Attorneys) represent that the transaction must be structured through the Corporation. The Attorneys believe that the redemption and resale of the Stock

is consistent with section 1362(f)(3) of the Code which requires that steps be taken so that the Corporation is once more a small business corporation. Because section 1361(b)(1) of the Code which defines "small business corporation" does not permit an IRA to be a shareholder in such a corporation, the Attorneys believe that removing non-permitted shareholders is most effective where the transaction is completely reversed. Because the Stock was originally issued to the IRAs by the Corporation, the Attorneys propose to reverse the transaction through the redemption and the resale. The Attorneys also represent that this factual situation was examined by the IRS when it issued a ruling dated April 11, 1997, granting the Corporation relief under section 1362(f) of the Code.

6. The applicant submitted an appraisal dated May 7, 1997, regarding shares of the Stock (the Appraisal). The Appraisal was prepared by Blackman Kallick Bartelstein, LLP (BKB), certified public accountants, who are independent of the parties involved in the subject transactions. In the Appraisal, Michael Dorman of BKB relied primarily on the net book value and capitalized earnings approaches, and determined that the fair market value of the Stock was \$7.20 per share as of April 27, 1995, and \$10.10 per share as of March 23, 1997. As a result, both IRAs will realize a gain for the time period that the IRAs held the Stock.

Pursuant to the terms of the exemption, BKB will update the Appraisal at the time the transactions take place and the Stock will be sold at its fair market value as of the date of sale. Mr. Chez and Mr. Kuntz will purchase the Stock from the Corporation for the same consideration as was received by the IRAs for the sale of the Stock.

7. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because:

1. The sale and the repurchase of the Stock will be one-time transactions for cash;

2. The transactions described in (1) above will take place on the same business day;

3. Mr. Chez and Mr. Kuntz, in their individual capacity, will purchase the same shares of the Stock, as those that were sold to the Corporation by the IRAs. The stock transfer records of the Corporation will evidence that this is the case; and

4. The amount paid to the IRAs for the Stock will be the fair market value of the Stock determined at the time of the sale by a qualified independent appraiser.

Mr. Chez and Mr. Kuntz will purchase the Stock from the Corporation for the same consideration as was received by the IRAs for the sale of the Stock.

#### *Notice to Interested Persons*

Because Mr. Kuntz and Mr. Chez are the sole participants of their respective IRAs, 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 30 days from the date of publication of this notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ekaterina A. Uzlyan of the Department at (202) 219-8883. (This is not a toll-free number.)

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

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. 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) The proposed exemptions, if granted, will be subject to the express condition that the material facts and

<sup>13</sup> In this regard, Revenue Ruling 92-73 also provides that if a shareholder inadvertently causes a termination of an "S" corporation by transferring stock to a trust that qualifies as an individual retirement account under section 408(a) of the Code, relief may be requested under section 1362(f) of the Code and the regulations thereunder. Section 1362(f) of the Code provides that notwithstanding an event terminating subchapter "S" status of a corporation, if the IRS determines that the termination was inadvertent the IRS can waive the effect of the terminating event for any period, if the corporation timely corrects the event, and if the corporation and the shareholders agree to be treated as if the election has been in effect for such a period.

representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of July 1996.

**Ivan Strasfeld,**

*Director of Exemption Determinations  
Pension and Welfare Benefits Administration,  
Department of Labor.*

[FR Doc. 97-18128 Filed 7-10-97; 8:45 am]

BILLING CODE 4510-29-P

## NATIONAL INSTITUTION FOR LITERACY

[CFDA. No. 84.257B]

### Learning Disabilities Training and Dissemination Grants; Notice Inviting Applications for New Awards for Fiscal Year 1997

**AGENCY:** National Institute for Literacy (NIFL).

**ACTION:** Notice.

**PURPOSE:** The purpose of the Learning Disabilities Training and Dissemination (LDTD) grant program is to build the capacity of adult education and literacy service delivery systems and other human resource development systems to meet the educational and training needs of adults with learning disabilities.

In order to achieve this purpose, LDTD grantees will collaborate with the National Institute for Literacy's National Adult Literacy and Learning Disabilities (ALLD) Center (the Center), and with each other, to help selected systems (1) adapt existing policies and programs for training and service delivery to better meet the needs of adults with learning disabilities, and (2) use the Center's Tool Kit for Literacy Providers Serving Adults with Learning Disabilities (the Tool Kit) as a primary mechanism for adapting policies and programs for training and service delivery.

The NIFL's overarching goal for LDTD grants is to develop and implement, in cooperation with the Center, mechanisms for supporting systemic change in the provision of services to adults with learning disabilities. In the case of these grants, systemic change will involve (1) improving teaching and learning processes for adults with learning disabilities, (2) supporting training and technical assistance in the use of instructional methods and materials that have shown success with adults, and (3) working with administrators for state, regional, and

national systems to achieve the adoption of effective policies and programs that support the provision of quality educational opportunities for adults with learning disabilities.

LDTD grantees will work collaboratively with the Center and each other as part of a national strategy that leads to widespread awareness and use of the Center's resources, and that offers an in-depth, long term approach to improving education and training service delivery for adults with learning disabilities.

**Deadline for Transmittal of Applications:** Applications must be mailed on or before August 29, 1997. If hand-delivered, the application must be received at the address specified in this notice by 5:00 p.m. on the deadline date.

**Eligible Applicants:** Public and private non-profit agencies, institutions, and organizations that administer or support state, regional, or national adult education and literacy service delivery systems or related human resource service delivery systems, and consortia of such agencies, institutions, and organizations.

**Available Funds:** Approximately \$250,000 for the first year.

**Estimated Average Size of Awards:** Approximately \$75,000 per grant for the first year. Funding for subsequent years is likely to increase, with annual grants unlikely to exceed \$150,000, subject to availability of funds and the approval of continuation.

**Estimated Number of Awards:** 2-4 awards in the form of cooperative agreements. At least one award will be made to one of each of the following: (1) A public, state-based agency that administers programs for literacy or other human services, or a consortium headed by such an agency; and (2) a national private non-profit volunteer organization that administers or supports literacy or other human services, or a consortium headed by such an organization.

**Project Period:** Three years, contingent on satisfactory performance during each year, with the possibility of renewal for subsequent years.

**Note:** The National Institute for Literacy is not bound by any estimates in this notice.

**Applicable Regulations:** For purposes of administering these grants, the National Institute for Literacy has adopted the following regulations included in the Education Department General Administrative Regulations (EDGAR): 34 CFR part 74; 34 CFR 75.50; 75.51; 75.102; 75.104; 75.112-192; 75.200 (b)(2), (b)(4); 75.201; 75.215-222;

75.234-236; 75.251-253; 75.500; 75.620-621; 34 CFR Parts 77, 80, 82, 85.

The selection criteria used for this competition are set out in this Notice. While the criteria are based, in part, on those used generally by the U.S. Department of Education, they have been adapted by the NIFL to meet the needs of this program. While the NIFL is associated with the Departments of Education, Labor, and Health and Human Services, the policies and procedures regarding rulemaking and administration of grants are not adopted by the NIFL except as expressly stated in this Notice.

**FOR FURTHER INFORMATION CONTACT:** Susan Green, National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006-2712. Telephone: 202-632-1509. FAX: 202-632-1512. E-mail: sgreen@nifl.gov. For a complete application package, contact Darlene McDonald at 202-632-1525. E-mail: dmcdonald@nifl.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

For information about the National Adult Literacy and Learning Disabilities Center, applicants must contact the National Institute for Literacy. The Center has been advised to refer all such requests to the NIFL.

Information about the Center, all NIFL funding opportunities (including the application notices), and other information about the NIFL and related literacy matters can be viewed on the NIFL's LINC home page on the World Wide Web at: <http://novel.nifl.gov>. However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

#### SUPPLEMENTARY INFORMATION:

**Definitions:** For purposes of this notice, the following definitions apply:

**Literacy** is an individual's ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function on the job and in society, to achieve one's goals and develop one's knowledge and potential.

**Human Resource Development Systems** are systems of public and private programs that focus on building the skills and knowledge of youth and adults, including: adult and family literacy programs, welfare-to-work programs, vocational education and training programs, school-to-work programs, industry-based skill standards programs, K-12 education programs,