

Dated: November 18, 1997.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 97-30767 Filed 11-21-97; 8:45 am]

BILLING CODE 2210-01-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States, Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATE: January 8-9, 1998.

TIME: 8:30 a.m.-5:00 p.m.

ADDRESS: Fess Parker's Double Tree Hotel, 633 East Cabrillo Boulevard, Santa Barbara, California.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273-1820.

Dated: November 18, 1997.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 97-30768 Filed 11-21-97; 8:45 am]

BILLING CODE 2210-55-M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Office of Justice Programs; Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested

ACTION: Notice of information collection under review; a 1-minute survey on curfews.

The Department of Justice, Office of Juvenile Justice and Delinquency Prevention previously published this notice in the **Federal Register** on September 12, 1997 for 60 days. During this comment period no comments were received by the Department of Justice. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 24, 1997.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the

estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503.

Additionally, comments may be submitted to OMB via facsimile to 202-395-7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202-514-1534. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: A 1-Minute Survey on Curfews.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form, None; Sponsoring component, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary, State and local governments; Other, Not-for-profit institutions. The purpose of the data collection is to gather information from jurisdictions on the use of juvenile curfew and its effectiveness as a tool to reduce juvenile crime and victimization. The survey form will be sent to all those

who were mailed a copy of an OJJDP Bulletin on the topic of curfew.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 2,000 respondents at 1 minute per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 33.3 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: November 18, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97-30759 Filed 11-21-97; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 97-61; Exemption Application No. D-09685, et al.]

Grant of Individual Exemptions; EBPLife Insurance Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, 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 proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

EBPLife Insurance Company, Located in Minneapolis, Minnesota

[Prohibited Transaction Exemption 97-61, Application No. D-9685]

Exemption

Section I—Transaction

The restrictions of section 406(a) of the Act shall not apply, effective from April 15, 1994, to July 1, 1997, 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),¹ 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

¹ The Department, herein, is not providing 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 stop-loss or other insurance contracts in connection with welfare benefit plans that 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.

a fee, provided that the conditions set forth in section II below were satisfied.

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 dates of this exemption:

(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 dates 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 dates 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 during the effective period of this exemption 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, 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 subsection (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: The exemption is effective, from April 15, 1994, to July 1, 1997.

Written Comments

In the Notice, the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within 45 days

of the date of the publication of the Notice in the **Federal Register** on July 11, 1997. All comments and requests for hearing were due by August 25, 1997. Subsequently, on two occasions the applicant requested additional time within which to notify interested persons. Accordingly, the Department agreed to extend the comment period to October 29, 1997.

As of the close of the extended comment period, the Department had received no requests for hearing. However, the Department did receive a comment letter from the applicant, EBPLife, dated September 3, 1997, in which the applicant confirmed the July 1, 1997, sale by First Data Corporation of its administrative service affiliate, First Health, to an unrelated company. As a result of that sale, EBPLife no longer has current plan sponsor clients with respect to which it, or its Affiliates, provides both reinsurance and non-discretionary administrative services. Accordingly, the Department has determined to amend the effective date of the exemption to cover the period from April 15, 1994, the date the application was filed, to July 1, 1997, the date when the First Health was sold.

After full consideration and review of the entire record, including the written comment filed by the applicant, the Department has determined to grant the exemption, as modified and clarified above. The comment submitted by the applicant to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N-5638, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on July 11, 1997, 62 FR 37299.

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

Franklin & Davis, P.C. Profit Sharing Plan (the Plan), Located in Troy, Michigan

[Prohibited Transaction No. 97-62; Exemption Application No. D-10450]

Exemption

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 two loans (the Loans) totaling \$229,000 to Franklin & Davis, P.C. (F&D), the Plan's sponsor and a disqualified person with respect to the Plan, by the individual account (the Account) of Bruce W. Franklin (Mr. Franklin), provided the following conditions are satisfied: (a) The terms of the Loans are at least as favorable to the Plan as those obtainable in arm's-length transactions with an unrelated party; (b) the Loans do not exceed 25% of the assets of the Account; (c) the first Loan (Loan 1) is secured by a second mortgage on certain real property which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the amount of Loan 1 plus the balance of the first mortgage which it secures; (d) the second Loan (Loan 2) is secured by certain securities which have a fair market value not less than 200% of Loan 2; and (e) the fair market value of the collateral remains at least equal to the percentages described in conditions (c) and (d), above, throughout the duration of the Loans.²

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 2, 1997 at 62 FR 51692.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (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 or disqualified person from certain other provisions to which the exemptions 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;

²Since Mr. Franklin is the sole owner of F&D and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 19th day of November, 1997.

Ivan Strasfeld,

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

[FR Doc. 97-30827 Filed 11-21-97; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10328, et al.]

Proposed Exemptions; MS Commodity Investments Portfolio II, L.P. (the Partnership, et al.)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions 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 requests 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