of the comments requested that the underlying data be made available. One comment noted that the capacity requirements must be consistent with historical information provided to law enforcement. Two comments requested that law enforcement compare law enforcement data to carrier data and that the two data sources be reconciled. One of the comments urged that the capacity requirements be established for actual numbers of simultaneous interceptions for the central office and that those numbers be based on data and information supplied by the carriers. Another comment stated that the capacity requirements should be based on historical activity.

As stated in the methodology section of this notice, law enforcement has based the capacity requirements on the historical baseline of interception activity for specific geographic areas, and included reasonable growth factors to establish capacity levels for the future. Historical baselines are provided in the appendices of the Second Notice.

14. Methodology

Eight comments were received questioning the methodology used for determining capacity requirements. Specifically, the comments asked law enforcement to explain its methodology and justify how actual and maximum capacity requirements were determined.

In response to these comments, a methodology section included as part of the Second Notice describes that means by which capacity requirements were determined.

15. Funding and Cost Impact

Fifteen comments were received on the issues of funding and cost impact. Three of the comments requested clarification on the cost impact of complying with CALEA if Congress did not appropriate funding. Two comments requested that law enforcement provide an equitable distribution plan for fund disbursement, while another suggested that law enforcement provide a reasonable assessment of the level of funding that was available for upgrades. Ten of the comments addressed the costs associated with compliance.

Issues pertaining to cost recovery and funding are not the subject or intent of this Notice. Detailed information on funding and cost recovery issues is provided in the proposed cost recovery rules that were published in the Federal Register, 61 FR 21396, on May 10, 1996. A summary of these rules is included in section IV.B of the Second Notice.

16. Impact on Small Carriers

Three comments were received on the effect that CALEA may have on small telephone companies. In particular, the comments indicated that high implementation costs might make compliance difficult to achieve. In addition, the comments stated that unnecessarily high capacity requirements might stifle the advancement of new and emerging telecommunications technologies in rural markets.

Law enforcement recognizes that many small carriers provide service to geographic areas that historically have had minimal or no electronic surveillance activity. The capacity requirements stated in this notice are based on the historical interception activity for a given area. In order for law enforcement to effectively respond to future incidents of unusual and unexpected criminality, minimum capacity requirements have been established for areas with no history of interceptions.

In response to the comment regarding the effect of capacity requirements on new and emerging technologies, law enforcement also recognizes that CALEA prohibits law enforcement from specifying the design of equipment, facilities, features, or systems, or adoption of any equipment, facility, service or feature by a telecommunications carrier.

17. Manufacturers' Concern

Three comments were received expressing manufacturers' concerns with the capacity requirements. One of the comments noted that the Initial Notice might require capacity expansion beyond current manufacturers' capabilities. One comment stated that SMR manufacturers might not have the products required for SMR carriers to comply with the capacity requirements. One comment stated that equipment should be designed only from the perspective of the worst case scenario.

Law enforcement has provided capacity estimates in this Second Notice that can be used by manufacturers in designing and developing CALEA-compliant solutions for wireline and wireless (cellular and PCS) technologies. Other technologies, such as SMR, will be addressed in subsequent Notices of Capacity.

18. Definitions of Installed or Deployed and Significant Upgrade

One comment requested clarification on the terms ''installed'' or ''deployed'', inquiring as to whether equipment ordered before January 1, 1995, but not delivered until after January 1, 1995, would be considered installed or deployed. Another comment stated the term significant upgrade must be clearly defined.

The terms installed or deployed and significant upgrade pertain to the assistance capability requirements and, therefore, are not within the purview of the Notices on Capacity. (It should be noted that the definition of installed or deployed was included in the proposed cost recovery rules published in the Federal Register, 61 FR 21396, on May 10, 1996.)

Louis J. Freeh,

Director, FBI.

[FR Doc. 97–318 Filed 1–13–97; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

[Unemployment Insurance Program Letter (UIPL) No. 9–97]

Unemployment Compensation for Federal Employees (UCFE)—Coverage Ruling for Human Subjects for Research Studies Conducted by U.S. Department of Agriculture, Agricultural Research Service

Pursuant to Employment and Training Order No. 2–92, the Director, Unemployment Insurance Service, has determined that human subjects who participate in nutritional research studies conducted by the U.S. Department of Agriculture, Agricultural Research Service, do not perform ''Federal Service'' within the meaning of 5 U.S.C. 8501(1) for UCFE program purposes. The UCFE Coverage Ruling No. 97–1 is published below.

Dated: January 6, 1997.

Timothy M. Barnicle,

Assistant Secretary of Labor.

Directive: Unemployment Insurance Program Letter No. 09–97.

To: All State Employment Security Agencies.

From: Mary Ann Wyrsch, Director, Unemployment Insurance Service.

Subject: Unemployment Compensation for Federal Employees (UCFE) Program Coverage Ruling No. 97–1, Human Subjects for Research Studies Conducted by the U.S. Department of Agriculture, Agricultural Research Service (ARS).

1. *Purpose.* To provide State Employment Security Agencies (SESAs) with a copy of the above UCFE program coverage ruling.

2. *Background.* For a complete discussion of the background of the UCFE Program Coverage Ruling No. 97–1, please refer to the *Discussion/Analysis* section of the attachment to this directive.

On August 15, 1996, the Administrator of the ARS requested that the Secretary of Labor issue a UCFE program coverage ruling on whether human subjects participating in nutritional research studies conducted by the ARS perform ''Federal Service'' within the meaning of 5 U.S.C. 8501(1) for UCFE program coverage purposes. The attached Coverage Ruling held that these subjects did not perform Federal service.

3. *Action Required.* SESAs should:

a. Provide copies of this directive, plus attachment, to all appropriate staff, including the Unemployment Insurance Tax and Appeals Units.

b. Follow the guidance contained in the attachment when determining the UCFE program eligibility of individuals who participated as human subjects in ARS nutritional research studies.

4. *Inquiries.* Direct inquiries to the appropriate Regional Office.

5. *Attachment.* UCFE Program Coverage Ruling No. 97–1.

UCFE Program Coverage Ruling No. 97–1

Human Subjects for Research Studies Conducted by U.S. Department of Agriculture, Agricultural Research Service

Ruling: Human subjects who participate in nutritional research studies conducted by U.S. Department of Agriculture (USDA), Agricultural Research Service (ARS), do not perform ''Federal Service'' within the meaning of 5 U.S.C. 8501(1).

Statement of Facts: In holding that human subjects participating in ARS nutritional studies do not perform ''Federal service,'' I have considered the following factors:

1. Title XIV of the Food and Agriculture Act of 1977 (Public Law 95–113) provides that USDA is the lead Federal agency for agricultural research in the field of human nutrition and on the nutritive value of foods. Since 1953, the ARS is the USDA agency in charge of conducting nutritional studies.

2. Individuals who participate as ''human subjects'' in these nutritional studies are covered by the Common Rule for the Protection of Human Subjects (45 CFR Part 46, 7 CFR Part 1c, and ARS Directive 605.1).

3. Human subjects do not earn annual leave, sick leave, nor are they covered under any Federal employee retirement system.

4. On August 2, 1990, the Internal Revenue Service (IRS) ruled in a non-precedential decision that human test subjects in medical tests conducted by the Food and Drug Administration are not employees and do not receive ''wages'' for income tax withholding or Federal employment tax purposes. Priv. Ltr. Rul. 91–06–004 (Aug. 2, 1990).

5. On January 24, 1994, in a Federal Employment Tax Determination letter mailed to the Bionetics Corporation, the IRS ruled that an individual's participation as a human test subject in USDA-sponsored research was as an independent contractor and not an employee of the firm conducting the research. This letter was obtained from the ARS on August 16, 1996.

Discussion/Analysis: The purpose of the ARS nutritional research is to carry out the policy of the United States as stated in Section 1421(b) of the Food and Agricultural Act of 1977: ''It is hereby declared to be the policy of the United States that the Department of Agriculture conduct research in the fields of human nutrition and on nutritive value of foods and conduct human nutrition education activities. . . .''

The individuals who agree to be human subjects for this research are treated according to the principles contained in the Common Rule for the Protection of Human Subjects, and in accord with the Nuremburg Code, the Declaration of Helsinki, and the Public Health Service Guidelines. These guiding principles are designed to ensure that human subjects are fully informed of the purpose and planned procedures to be utilized in the research, and that the individual's decision to participate is voluntary without coercion or undue influence. The human subjects receive a $35 per day stipend for as long as they participate in the study. The ARS considers the $35 per day stipend to be too small to influence or coerce an individual's decision to volunteer to be a human subject in its nutritional research studies.

The human subjects participating in these ARS nutritional studies enter into a consent agreement with the ARS nutritional studies enter into a consent agreement with the ARS. The consent agreement stipulates that the human subjects participating in the study must observe the regimen prescribed by the ARS. The human subjects agree to provide blood and other bodily samples for analyses by the research study staff. The human subjects may elect to end their participation in the study at any time prior to its completion, and failure of the human subject to comply with the experimental protocol and/or established rules will result in the human subject being asked by the ARS to leave the study.

Prior to October 1995, the ARS utilized contractors (e.g., the Bionetics Corporation) for assistance in conducting the metabolic research studies including the payment of the human subjects' stipends. In 1995, the California Employment Development Department (CEDD) informed the contractor at the ARS' Western Human Nutrition Research Center (WHNRC) that human subjects participating in nutritional studies at the WHNRC were employees of the contractor. Under California State law, the contractor became liable for State unemployment taxes based on the payment of the $35 per day stipend. In October 1995, the WHNRC assumed the responsibility for the payment of the human subjects' stipends, and the issue arose whether these subjects perform ''Federal Service.'' All stipends provided to human subjects are now paid by the ARS.

The Unemployment Compensation for Federal Employees (UCFE) program provides unemployment compensation coverage for Federal civilian employees. In order to be eligible to receive unemployment compensation under the UCFE program, an individual must perform ''Federal Service'' as defined at 5 U.S.C. 8501(1). The term ''Federal Service,'' in part, is defined to be ''service performed after 1952 in the *employ* of the United States or an instrumentality of the United States which is wholly or partially owned by the United States. * * *'' (Emphasis added.) Therefore, for UCFE program coverage purposes, an individual must be a civilian employee of the United States Federal Government and not an independent contractor.

In reviewing this matter I have examined the relevant statutes, regulations, and consent agreements in addition to the decisions and determinations of the CEED and the IRS in determining whether human subjects participating in nutritional research with the ARS perform service as employees or are independent contractors.

The question of whether an individual is an independent contractor or an employee is one of fact to be determined upon consideration of the facts and the application of the law and regulations in a particular case. Individuals are employees for Federal employment tax purposes if they have the status of employees under the usual common law rules applicable in determining the relationship. Guidance for making the determination is found in three substantially similar sections of the IRS Employment Tax Regulations: 26 CFR 31.3121(d)–1; 31.3306(i)–1; and 31.3401(c)–1, which relate to the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and Federal Income Tax withholding respectively, as well as IRS Revenue Ruling 87–41, 1987–1 C.B. 296. Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services not only as to the result to be accomplished but also as to the details and means by which that result is obtained. In this connection, it is not necessary that the firm actually direct or control the manner in which the services are performed; it is sufficient that the right to do so be present.

Other factors characteristic of employment are the right of the employer to discharge and the furnishing of tools or a work place. An individual who is not by statute an employee and is not an employee under the common law rules is an independent contractor. Independent contractors are subject to another's control and direction only with respect to the result to be accomplished and not the means and methods to be used.

Consideration must also be given to such factors as the continuity of the relationship and whether the individual's services are an integral part of the business of the employer as distinguished from an independent trade or business of individual in which the individual assumes the risk of realizing a profit or suffering a loss.

The pertinent facts submitted for any consideration indicate:

1. The ARS nutritional research studies are conducted in accord with the Common Rule for the Protection of Human Subjects (45 CFR Part 46, 7 CFR Part 1c, and ARS Directive 605.1), and in accord with the Nuremburg Code and the Declaration of Helsinki. These require that human subjects' participation in research must be voluntary and uncoerced. Since ARS nutritional research studies follow the above regulations and international agreements, it suggests that the human subjects are volunteers, not employees, who are subject to control and direction. Further,

I agree with the ARS that the stipend paid to the human subjects for each day they participate in the research ($35 per day) is an amount so small that it does not have an undue influence on the decision of the individual to participate in the research.

2. Human subjects who voluntarily participate in the ARS nutritional research studies enter into a consent agreement under which they agree to follow research protocols established by the ARS during the duration of the research study. A continuing relationship between the ARS and the human subjects is not established.

3. The human subjects do not produce a product or provide a service to the ARS during these research studies. Providing samples of blood and normal bodily functions is not an activity pursued as a livelihood by the human subjects.

4. The human subjects control the means and methods used to accomplish the task, i.e., the provision of samples of bodily functions. While the ARS controls the research protocols to be followed, including the schedule of sample collection, the human subjects control their own bodily functions.

5. The ARS provides no tools, supplies, or equipment to the human subjects. The ARS does use instruments during the nutritional research to collect and analyze bodily samples provided by the human subjects, however these instruments are not used by the human subjects.

6. Human subjects are not entitled to sick leave or annual leave and are not covered under any Federal Employee Retirement System.

The reasons stated above indicate that an employment relationship does not exist and support the conclusion stated in the first paragraph of this ruling that, for UCFE program purposes, human subjects who participate in nutritional research studies conducted by the USDA, ARS, do not perform ''Federal Service'' within the meaning of 5 U.S.C. 8501(1).

This coverage ruling is issued pursuant to redelegation of authority from the Assistant Secretary, in Employment and Training Order No. 2–92, dated April 10, 1992, (published at 57 *Fed. Reg.* 13760), which is authorized by Section 6 of Secretary's Order No. 4–75 (40 *Fed. Reg.* 18515) (as amended by Secretary's Order No. 14–75).

Dated: November 26, 1996.

Mary Ann Wyrsch,

Director, Unemployment Insurance Service.

[FR Doc. 97–839 Filed 1–13–97; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Application No. D–10172, et al.]

Proposed Exemptions; The Chicago Corporation

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 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). 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.

The Chicago Corporation (TCC) Located in Chicago, IL

[Application No. D–10172]

Proposed Exemption

Based on the facts and representations set forth in the application, 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.)[1]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the proposed sale, for cash or other consideration, by the Midwest Banc Fund IV Group Trust (the BF IV Group Trust) in which employee benefit plans (the Plans) invest, of certain securities (the Securities) that are held in the BF IV Group Trust Portfolio, to a party in interest with respect to a participating Plan, where the party in interest proposes to acquire or merge with a bank company (the Bank Company) or a financial services company (the Financial Services Company) that issued such securities.

In addition, the restrictions of section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of a performance fee (the Performance Fee) by Plans investing in the BF IV Group Trust to TCC.

[1] For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.