

including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- 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.

Agency: DOL-BLS.

Title of Collection: Census of Fatal Occupational Injuries.

OMB Control Number: 1220-0133.

Affected Public: Individuals or Households; State Local, and Tribal Governments; Federal Government; and Private Sector—businesses or other for-profits, farms, and not-for-profit institutions.

Total Estimated Number of Respondents: 1,878.

Total Estimated Number of Responses: 18,748.

Total Estimated Annual Burden Hours: 3,469.

Total Estimated Annual Other Costs Burden: \$0.

Dated: October 31, 2013.

Michel Smyth,
Departmental Clearance Officer.

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security 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 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: D-11729, Bank of America Corporation; and L-11760, Intel Corporation.

DATES: All interested persons are invited to submit written comments or requests 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.

ADDRESSES: 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 include a general description of the evidence to be presented at the hearing. All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No., stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or FAX. Any such comments or requests should be sent either by email to: *moffitt.betty@dol.gov*, or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue NW., Washington, DC 20210.

Warning: All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

SUPPLEMENTARY INFORMATION:

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).

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 (76 FR 66637, 66644, October 27, 2011).¹ Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), 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.

Bank of America Corporation Located in Charlotte, NC

[Application No. D-11729]

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA section 408(a) and Code section 4975(c)(2) in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

Section I: Covered Transactions

If this proposed exemption is granted, the restrictions of ERISA sections 406(a)(1)(D) and 406(b) and the sanctions resulting from the application of Code section 4975 (including the loss of exemption² by reason of Code sections 4975(c)(1)(D), (E) and (F)) shall not apply to the receipt of Relationship Benefits by an individual for whose benefit a Covered Plan is established or maintained, or by his or her Family Members, from BAC pursuant to an arrangement in which the Account Value of, or the Fees incurred for services provided to, the Covered Plan is taken into account for purposes of determining eligibility to receive such Relationship Benefits, provided that each condition of Section II of this proposed exemption is satisfied.

¹ The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

² Pursuant to Code section 408(e)(2)(A) (for an individual retirement account or individual retirement annuity); Code section 530(e) (for a Coverdell education savings account); Code section 220(e)(2) (for an Archer medical savings account); or Code section 223(e)(2) (for a health savings account).

Section II: Conditions

(a) The Covered Plan whose Account Value, or whose Fees paid, are taken into account for purposes of determining eligibility to receive Relationship Benefits under the arrangement must be established and maintained for the exclusive benefit of the participant covered under the Covered Plan, his or her spouse, or their beneficiaries.

(b) The Relationship Benefits offered under the arrangement must be of a type that a Qualified Affiliate could offer consistent with all applicable federal and state banking laws and all applicable federal and state laws regulating Broker-Dealers.

(c) Where Account Values are taken into account for purposes of determining eligibility to receive benefits under the arrangement, the Account Values of Covered Plan accounts shall be treated as favorably, for purposes of satisfying such eligibility requirements, as the Account Values of other types of customer accounts.

(d) Where levels of Fees incurred are taken into account for purposes of determining eligibility to receive benefits under the arrangement, the levels of Fees incurred by Covered Plan accounts shall be treated as favorably, for purposes of satisfying such eligibility requirements, as the levels of Fees incurred by other types of customer accounts.

(e) The Relationship Benefits offered under the arrangement must be provided by a Qualified Affiliate in the ordinary course of its business as a Bank or Broker-Dealer to customers who qualify for such benefits, but who do not maintain Covered Plans with a Qualified Affiliate.

(f) The combined total of fees for the provision of services to a Covered Plan is not in excess of reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2).

(g) The investment performance of the investments made by the Covered Plan is no less favorable than the investment performance of identical investments that could have been made at the same time by a customer of BAC who is not eligible for (or who does not receive) Relationship Benefits.

(h) The Relationship Benefits offered under the arrangement to the Covered Plan customer must be the same as are offered to non-Covered Plan customers of Qualified Affiliates having the same aggregate Account Value or the same amount of Fees generated.

Section III: Definitions

The following definitions apply to this proposed exemption:

(a) The term "Account Value" means investments in cash or securities held in the account for which market quotations are readily available. For purposes of the exemption, the term "cash" includes savings accounts that are insured by a federal deposit insurance agency and constitute deposits as that term is defined in 29 CFR 2550.408b-4(c)(3). The term "Account Value" does not include investments that are offered by BAC (or a Qualified Affiliate) exclusively to Covered Plans.

(b) The term "affiliate" includes any person directly or indirectly controlling, controlled by, or under common control with Bank of America Corporation.

(c) The term "Bank" means a bank described in Code section 408(n).

(d) The term "BAC" means Bank of America Corporation and any of its affiliates.

(e) The term "Broker-Dealer" means a broker-dealer registered under the Securities Exchange Act of 1934, as amended.

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

(g) The term "Covered Plan" means an IRA or other savings account described in section III(j) of this proposed exemption or a Keogh Plan described in section III(k) of this proposed exemption that is established with BAC as trustee or custodian.

(h) The term "Family Members" means beneficiaries of the individual for whose benefit the Covered Plan is established or maintained, who would be members of the family as that term is defined in Code section 4975(e)(6), or a brother, a sister, or a spouse of a brother or sister.

(i) The term "Fees" means commissions and other fees received by a Broker-Dealer from the Covered Plan for the provision of services, including but not limited to: Brokerage commissions, investment management fees, investment advisory fees, custodial fees, and administrative fees.

(j) The term "IRA" means an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), a Coverdell education savings account described in Code section 530, an Archer MSA described in Code section 220(d), or a health savings account described in Code section 223(d). For purposes of this proposed exemption, the term "IRA"

does not include an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in Code section 408(k) and a Simple Retirement Account described in Code section 408(p) that provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.

(k) The term "Keogh Plan" means a pension, profit-sharing, or stock bonus plan qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in Code section 401(c). For purposes of this proposed exemption, the term "Keogh Plan" does not include an employee benefit plan covered by Title I of ERISA.

(l) The term "Qualified Affiliate" means any person directly or indirectly controlling, controlled by, or under common control with BAC that is a Bank or Broker-Dealer.

(m) The term "Relationship Benefits" means reduced or no cost financial products and services, including premium rates of account or investment interest, discounted rates of interest on loans, reductions or waivers of otherwise applicable fees and charges, and/or differentiated servicing.

Summary of Facts and Representations

1. Bank of America Corporation (the Applicant) is a bank holding company and a financial holding company under the Gramm-Leach-Bliley Act of 1999 (GLBA). As of December 31, 2011, Bank of America Corporation and its subsidiaries had total consolidated assets of approximately \$2.1 trillion. The consumer and corporate banking business of Bank of America Corporation and its affiliates (together, BAC) is conducted primarily through Bank of America, National Association (BANA). BANA is a national franchise that includes branch and electronic banking, consumer lending services, and credit and debit card services. BAC's brokerage business, conducted primarily through Merrill Lynch, Pierce, Fenner & Smith Incorporated (Merrill Lynch), provides investment services, securities trading, research, and brokerage services to consumer and corporate customers. Merrill Lynch is a retail brokerage firm with approximately 17,000 financial advisors and offices located in all 50 states and the District of Columbia. Together, BANA and Merrill Lynch serve approximately 57 million consumer and small business relationships and client accounts with more than \$2.2 trillion in net assets. In

the ordinary course of its business, BAC (including BANA and Merrill Lynch) provide a range of financial products and services to individuals including individual retirement accounts (IRAs) described in Code section 408(a), individual retirement annuities described in Code section 408(b), Coverdell education savings accounts described in Code section 530, Archer MSAs described in Code section 220(d), health savings accounts described in Code section 223(d) and Keogh plans (i.e., pension, profit-sharing, or stock bonus plans qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in Code section 401(c)) not covered by Title I of ERISA (each, a “Covered Plan” as defined in the proposed exemption and collectively, the “Covered Plans”). For purposes of this proposed exemption, the term “Covered Plan” includes Simplified Employee Pensions (SEP) described in Code section 408(k) and Simple Retirement Accounts described in Code section 408(p) that provide participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.

Reduced or No Cost Services in Prohibited Transaction Exemptions 93–33 and 97–11

2. The Applicant wishes to offer relationship banking and brokerage benefits that are similar to the reduced or no cost services contemplated by Prohibited Transaction Exemptions (PTEs) 93–33 and 97–11. PTE 93–33³ permits an individual for whose benefit an IRA or Keogh Plan is established or maintained, or his or her family members, to receive services at reduced or no cost from a bank under an arrangement in which the account balance of the IRA or Keogh Plan is considered when determining eligibility to receive such services. PTE 93–33 permits banks to offer their customers only those services allowed under applicable federal and state banking laws.⁴ When an affiliate of the bank

offers the service, it must be a type of service that the bank can offer its own customers.

3. PTE 97–11⁵ permits an individual for whose benefit an IRA or Keogh Plan is established or maintained, or his or her family members, to receive services at reduced or no cost from a broker-dealer registered under the Securities Exchange Act of 1934 under an arrangement in which the account value or the fees incurred for services provided to the IRA or Keogh Plan is considered when determining eligibility to receive such services. PTE 97–11 limits the services that broker-dealers may offer under a relationship brokerage program to services that are permitted under federal and state laws regulating broker-dealers.⁶ Furthermore, when an affiliate of the broker-dealer offers the services, the services must be a type that the broker-dealer can offer its own customers.

4. PTEs 93–33 and 97–11 provide relief from the restrictions of ERISA sections 406(a)(1)(D) and 406(b) and the sanctions resulting from the application of Code section 4975, including the loss of exemption of an individual retirement account under Code section 408(e)(2) by reason of Code section 4975(c)(1)(D), (E) and (F), for individuals for whose benefit an IRA or Keogh Plan is established or maintained.

5. The Applicant states that BAC’s decision to offer relationship banking and brokerage benefits reflects the important changes that have occurred in the financial industry since PTEs 93–33 and 97–11 were issued. In this regard, the Applicant notes that PTEs 93–33 and 97–11 were granted by the Department prior to the enactment of the GLBA. The Applicant represents that the GLBA altered the U.S. legal and regulatory framework governing the operations of U.S. bank holding

customers a higher interest rate on their investments, provided the conditions of the exemption are met.

³ 58 FR 31053 (May 28, 1993), as amended at 59 FR 22686 (May 2, 1994), and as amended at 64 FR 11044 (March 8, 1999).

⁴ In the notice of proposed exemption for PTE 93–2 (PTE 93–33 subsequently amended PTE 93–2), the following examples of relationship banking services were listed: free checking services, discounted safe deposit box rents, or free loan closing costs. 56 FR 8365, 8366 (February 28, 1991). In addition, the Department notes that a bank may offer other services or benefits to customers as part of its relationship banking program. For example, under PTE 93–33 a bank may offer its relationship banking

companies such as Bank of America Corporation. The GLBA permits bank holding companies that qualify as “financial holding companies”—including the Applicant—to affiliate broadly with various types of financial services firms, including full service broker-dealers. Furthermore, the enactment of the GLBA greatly facilitated financial services integration in the United States and growth of bank-affiliated securities operations.

6. According to the Applicant, another significant U.S. regulatory development occurred in 1995 when the U.S. Federal Reserve Board (FRB) adopted a rule regarding inter-affiliate “combined-balance discount service programs” offered to individual customers of banks and bank affiliates. In particular, the rule established a safe harbor from the statutory restrictions on bank tying arrangements so that banks have greater flexibility to package products with their affiliates. The Applicant represents that the rule validated the ability of banks and their broker-dealer affiliates to offer combined-balance discount programs (that meet the safe harbor requirements) to their customers. Furthermore, the Applicant represents that in 1997, the FRB reaffirmed the safe harbor when it re-wrote its Regulation Y, which includes a section dealing with anti-tying restrictions. The Applicant represents that the relationship banking and brokerage benefits described in this proposed exemption meet the safe harbor.

7. In 2008, the Department granted an individual exemption, PTE 2008–02,⁷ to Citigroup Inc. (Citigroup) that provides relief similar to PTEs 93–33 and 97–11. Under the exemption, individuals for whose benefit an IRA or Keogh Plan is established or maintained, and their family members, can receive both banking and brokerage services at reduced or no cost under an arrangement in which the account value of, or the fees incurred for services provided to, the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services. As part of the arrangement, Citigroup contemplated providing services such as: Reductions or waivers of fees for services such as checking, ATM, investment advisory and account opening or maintenance fees; preferred lending rates; premium interest crediting rates; credit or debit cards providing services such as enhanced mileage accumulation and reward point features; and the provision of investment information and seminars

⁷ 73 FR 3280 (January 17, 2008).

that are available on an invitation-only basis.

Proposed Transactions

8. In 2009, the Applicant acquired Merrill Lynch, which operates a significant retail securities business. As a result, BAC developed programs that link retail banking services with retail brokerage services. Under these programs, the Applicant's affiliates are able to consider a customer's combined balance maintained with the Applicant's affiliates to determine the customer's eligibility to receive various benefits including bank and broker-dealer products and services at reduced or no cost. The Applicant does not believe these arrangements clearly fall within the relief provided by PTEs 93-33 and 97-11. Therefore, the Applicant requests an exemption to permit the receipt of certain benefits by an individual for whose benefit a Covered Plan is established or maintained, or his or her family members, from BAC, pursuant to an arrangement in which the account value of or the fees incurred for services provided to the Covered Plan, is taken into account for purposes of determining eligibility to receive such products and services. The Applicant represents that these products and services (Relationship Benefits) are defined as reduced or no cost financial products and services, including premium rates of account or investment interest, discounted rates of interest on loans, reductions or waivers of otherwise applicable fees and charges, and/or differentiated servicing. More specifically, the Relationship Benefits will include: (1) Higher interest rates on products such as checking accounts, savings accounts and certificates of deposit; (2) services with reduced cost or value added features such as reductions or waivers of fees on checking accounts and ATM access, reduced or waived investment advisory and account opening or maintenance fees, reduced or waived securities trading commissions, and preferred lending rates; (3) credit or debit cards that provide services such as enhanced mileage accumulation and reward points features; (4) access to enhanced customer support services; and/or (5) investment information and seminars that are available on an invitation-only basis. Differentiated servicing refers to the provision of an enhanced level of customer service relative to that which would otherwise be provided, such as reduced customer service wait times, access to specialized customer support representatives, specialized newsletters, and similar items.

9. The Applicant offers the following example of a Relationship Benefits program that could be offered under the proposed exemption, if granted:

An individual client of BAC is the beneficial owner of an IRA with assets of \$25,000 in a 12-month certificate of deposit, and BAC is the IRA custodian. The client also maintains a savings account at BANA with a balance of \$10,000; a BANA checking account with a balance of \$5,000; and a brokerage account at Merrill Lynch with a balance of \$20,000. BAC makes a Relationship Benefits program available to clients that maintain aggregate balances of \$50,000 or more in accounts eligible to participate in the program. Under the Relationship Benefits program, certain account fees that might otherwise apply are waived for the eligible accounts of qualifying clients, and higher interest rates are paid on certain deposit accounts. Without the exemption proposed herein, the client's IRA is not an eligible account, so the client fails to qualify for the program. Consequently, the client's checking account may be charged a \$10 fee for overdraft protection transfers, a \$30 fee for stop payment requests, and/or a \$3 fee for receiving images of paid checks. Additionally, the client's brokerage account will not be eligible for the 30 free trades per month that would otherwise be available through the program. Finally, if the client's IRA is not eligible to participate, the interest rate paid on the savings account will be 0.15% annual percentage yield (APY) rather than 0.20% APY, and the interest rate paid on the IRA's 12-month certificate of deposit will be 0.35% APY rather than 0.45% APY. If the proposed exemption is granted, the client will qualify for program participation due to the IRA's inclusion as an eligible account. Therefore, the client will receive more favorable interest rates and waived fees under the program.

Statutory Findings

10. The Applicant represents that the statutory criteria needed to grant an exemption under ERISA section 408(a) and Code section 4975(c)(2) will be satisfied. First, the proposed exemption is administratively feasible because: (1) The conditions and relief of the requested exemption are comparable to those described in PTEs 93-33, 97-11, and 2008-02; and (2) the requested exemption will not require continued monitoring or other involvement on behalf of the Department. Second, the Applicant claims that the proposed exemption is in the interest of the Covered Plans because the plans will benefit from access to better products and services available through the Relationship Benefits program. Finally, the Applicant claims that the proposed exemption is protective of the rights of the Covered Plan participants and beneficiaries because:

(a) The Covered Plan whose account value, or whose fees paid, are taken into

account for purposes of determining eligibility to receive Relationship Benefits under the arrangement will be established and maintained for the exclusive benefit of the participant covered under the Covered Plan, his or her spouse, or their beneficiaries.

(b) The Relationship Benefits offered under the arrangement will be of a type that a qualified affiliate could offer consistent with all applicable federal and state banking laws and all applicable federal and state laws regulating broker-dealers.

(c) Where account values are taken into account for purposes of determining eligibility to receive benefits under the arrangement, the account values of Covered Plan accounts will be treated as favorably, for purposes of satisfying such eligibility requirements, as the account values of other types of customer accounts.

(d) Where levels of fees incurred are taken into account for purposes of determining eligibility to receive benefits under the arrangement, the levels of fees incurred by Covered Plan accounts will be treated as favorably for purposes of satisfying such eligibility requirements, as the levels of fees incurred by other types of customer accounts.

(e) The Relationship Benefits offered under the arrangement will be provided by a BAC affiliate in the ordinary course of its business as a bank or broker-dealer to customers who qualify for such benefits, but who do not maintain Covered Plans with a BAC affiliate.

(f) The combined total of fees for the provision of services to a Covered Plan will not be in excess of reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2).

(g) The investment performance of the investments made by the Covered Plan will be no less favorable than the investment performance of identical investments that could have been made at the same time by a customer of BAC who is not eligible for (or who does not receive) Relationship Benefits.

(h) The Relationship Benefits offered under the arrangement to the Covered Plan customer will be the same as are offered to non-Covered Plan customers of BAC affiliates having the same aggregate account value or the same amount of fees generated.

Notice to Interested Persons

The Applicant represents that since the number of interested persons is very large, it will post notice of this proposed exemption on its principal consumer banking and brokerage Web sites in addition to publication of this notice in

the **Federal Register**. The Department must receive written comments and/or requests for a public hearing no later than 45 days from the date this notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Erin Hesse, U.S. Department of Labor, telephone (202) 693-8546. (This is not a toll-free number.)

Intel Corporation (Intel or the Applicant) Located in Santa Clara, CA

[Application No. L-11760]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).

Section I. Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D) and 406(b) of the Act shall not apply to:

(a) The reinsurance of risks and the receipt of premiums therefrom by Technology Assurance Limited (TAL), an affiliate of Intel, as the term “affiliate” is defined in Section III(a) below, in connection with basic and supplemental group term life insurance sold by the Minnesota Life Insurance Company (MN Life), or any successor insurance company which is unrelated to Intel (the Fronting Insurer), to the Intel Group Life Insurance Plan (the Life Plan); and

(b) The reinsurance of risks and the receipt of premiums therefrom by TAL, in connection with basic and supplemental accidental death and dismemberment (AD&D) insurance sold by the Fronting Insurer to the Intel Group Accidental Death and Dismemberment Plan (the AD&D Plan);⁸ provided the conditions set forth in Section II, below, are satisfied.

Section II. Conditions

(a) **TAL**—

(1) Is a party in interest with respect to the Plans by reason of a stock or partnership affiliation with Intel that is described in section 3(14)(E) or 3(14)(G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one “State,” as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Hawaii Department of Insurance (HDOI), which has neither been revoked nor suspended;

⁸ The AD&D Plan and the Life Plan are together referred to herein as the “Plans.”

(4)(A) Will undergo an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction covered by this proposed exemption, if granted; or

(B) Has undergone a financial examination by the HDOI within five (5) years prior to the end of the year preceding the year in which such reinsurance transaction has occurred; and

(5) Is licensed to conduct reinsurance transactions by Hawaii, whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority.

(b) The Plans pay no more than adequate consideration for the insurance contracts.

(c) No commissions are paid by the Plans with respect to the direct sale of such contracts or the reinsurance thereof.

(d) In the initial year of every reinsurance contract involving TAL and a Fronting Insurer, there is an immediate and objectively determined benefit to participants and beneficiaries of the Plans in the form of increased benefits, and such benefits continue in all subsequent years of each such contract of reinsurance and in every renewal of each such contract, and will at least approximate the increase in benefits that will be effective as of the publication of the final exemption in the **Federal Register**, as described in this Notice of Proposed Exemption (the Notice).

(e) In the initial year and in subsequent years of coverage provided by a Fronting Insurer, the formula used by the Fronting Insurer to calculate premiums will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the Fronting Insurer and its competitors with the same or a better rating providing the same coverage under comparable programs.

(f) The Fronting Insurer has a financial strength rating of “A” or better from A. M. Best Company (A. M. Best). The reinsurance arrangement between the Fronting Insurer and TAL will be indemnity insurance only, (i.e., the Fronting Insurer will not be relieved of liability to the Plans should TAL be unable or unwilling to cover any liability arising from the reinsurance arrangement).

(g) The Plans retain an independent, qualified fiduciary (the I/F) or successor to such fiduciary, as defined in Section III(c), below, to analyze the transactions and to render an opinion that the requirements of Section II(a) through (f) and (h) of this proposed exemption have been satisfied.

(h) Participants and beneficiaries in the Plans will receive in subsequent years of every contract of reinsurance involving TAL and the Fronting Insurer no less than the immediate and objectively determined increased benefits such participants and beneficiaries received in the initial year of each such contract involving TAL and the Fronting Insurer.

(i) The I/F will: Monitor the transactions proposed herein on behalf of the Plans on a continuing basis to ensure such transactions remain in the interest of the Plans; take all appropriate actions to safeguard the interests of the Plans; and enforce compliance with all conditions and obligations imposed on any party dealing with the Plans.

(j) In connection with the provision to participants in the Plans of the insurance coverage provided by the Fronting Insurer which is reinsured by TAL, the I/F will review all contracts (and any renewal of such contracts) of the reinsurance of risks and the receipt of premiums therefrom by TAL and must determine that the requirements of this exemption, if granted, and the terms of the increased benefits continue to be satisfied.

Section III. Definitions

(a) The term “affiliate” of a person includes any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(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 “I/F” describes a person, or a successor to such person, who is not Intel or TAL or an affiliate of either entity; and:

(1) Does not have an ownership interest in Intel, in TAL, or in an affiliate of either;

(2) Is not a fiduciary with respect to the Plans prior to its appointment to serve as the I/F;

(3) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(4) Has appropriate training, experience, and facilities to act on behalf of the Plans regarding the subject transactions in accordance with the fiduciary duties and responsibilities prescribed by the Act.

For purposes of this definition of an "I/F," no organization or individual may serve as an I/F for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) for that fiscal year exceeds two percent (2%) of that organization's or individual's annual gross income from all sources for the prior fiscal year from Intel or from TAL, or from an affiliate of either (including amounts received for services as I/F under any prohibited transaction exemption granted by the Department).

In addition, no organization or individual who is an I/F, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from Intel or from TAL, or from any affiliate of either during the period that such organization or individual serves as an I/F, and continuing for a period of six (6) months after such organization or individual ceases to be the I/F, or negotiates any such transaction during the period that such organization or individual serves as the I/F.

In the event a successor I/F is appointed to represent the interests of the Plans with respect to the subject transactions, there may be no lapse in time between the resignation or termination of the former I/F and the appointment of the successor I/F.

Summary of Facts and Representations

1. Intel, which is headquartered in Santa Clara, California, develops advanced integrated digital technology products (primarily integrated circuits) for industries such as computing and communications. Intel also designs and manufactures computing and communications components, wireless and wired connectivity products, as well as platforms that incorporate these components.

For the fiscal year ending December 31, 2012, Intel earned revenue of \$53.3 billion and net income of \$11.0 billion. Intel reported a global employee workforce of 101,671 as of December 31, 2011 (with approximately 55,500 employees in the United States). Intel is a party in interest with respect to the Plans, pursuant to section 3(14)(C) of

the Act, as an employer whose employees are covered by the Plans.

2. TAL is an insurance company that is wholly owned by Intel. TAL was originally incorporated in Hawaii on August 5, 2004, and subsequently licensed to commence business on September 1, 2004, for the purpose of reinsuring property and casualty risks of Intel. TAL is a party in interest with respect to the Plans pursuant to section 3(14)(G) of the Act because it is a corporation of which 50 percent (50%) or more of the combined voting power of all classes of stock entitled to vote is owned directly or indirectly held by Intel, an employer any of whose employees are covered by the Plans, as described in section 3(14)(C) of the Act.

3. TAL writes Intel's Terrorism Risk Insurance Act coverage to Intel and its subsidiaries. For the period and year-to-date ended December 31, 2012, TAL reported total assets of \$9,570,558, gross written premiums of \$3,300,636, and earned premiums of \$166,200. TAL is subject to regulation by HIDOI, which requires that at least 100% of TAL's reserves be in some combination of cash, letters of credit, investments in approved investment policy, premiums in the course of collection, or other forms approved by HIDOI.

4. The Plans are welfare benefit plans that provide basic and supplemental group term life insurance and basic and supplemental AD&D coverage to active full-time and part-time employees of Intel. The Plans are funded through insurance.

Intel's general full-time employees, part-time employees, and contract employees are automatically enrolled in the basic Life Plan and the basic AD&D Plan. These employees are eligible to participate in supplemental and dependent coverage, regardless of age, sex, salary or position. The Life Plan had approximately 48,717 participants, as of August 31, 2012. Basic group term life insurance is paid for by Intel through employer premium contributions.

5. Under the terms of the Life Plan, basic group term life insurance is available to active full-time and contract employees at two times eligible annual earnings, multiplied by 100% and then rounded to the next higher \$1,000 if not already a multiple thereof, subject to a maximum of \$1,000,000 of coverage. For example, according to the Summary Plan Description (SPD) for the Life Plan, an employee earning \$25,000 per year would have "basic life amount" coverage of \$50,000, an employee earning \$50,000 per year would have "basic life amount" coverage of

\$100,000, and so forth up to the maximum of \$1,000,000.

In addition, basic group term life insurance is available to active part-time employees at two times full-time equivalent eligible annual earnings, multiplied by 62.5% and then rounded to the next higher \$1,000 if not already a multiple thereof, subject to a maximum of \$1,000,000 of coverage. For example, an employee earning \$25,000 per year would have "basic life amount" coverage of \$32,000, an employee earning \$50,000 per year would have "basic life amount" coverage of \$63,000, and so forth up to the maximum of \$1,000,000.

6. The Life Plan also provides supplemental group term life coverage to full-time and part-time employees of Intel, but not to Intel contract employees. Under the current terms of the Life Plan, basic supplemental life insurance is available to active full-time employees at one to seven times annual earnings as elected by the employee, multiplied by 100% and then rounded to the next higher \$1,000 if not already a multiple thereof, subject to a maximum of \$2,000,000. Basic supplemental life insurance is available to active part-time employees at one to seven times annual earnings as elected by the employee, multiplied by 62.5% and then rounded to the next higher \$1,000, if not already a multiple thereof, subject to a maximum of \$2,000,000.

Supplemental insurance is paid for by Intel's employees through premium contributions. All insurance terminates at retirement, except as provided for under the portability provision found in the SPD of the Life Plan.

7. The Life Plan further provides supplemental dependent term life insurance to full-time and part-time employees of Intel. Contract employees are not eligible for this coverage. Dependent term life insurance for the spouses and domestic partners of Intel's employees is available to active full-time and part-time employees in the following amounts: \$20,000, \$50,000, \$100,000, \$150,000, \$200,000 or \$250,000, as elected by the employee. Dependent term life insurance for the children of Intel's employees is available to active full-time and part-time employees in the following amounts: \$5,000, \$10,000, \$15,000 or \$20,000, as elected by the employee.

Dependent term life insurance coverage is paid for by Intel's employees through premium contributions. All dependent insurance terminates upon the employee's retirement except as provided under the portability provision found in the Plans' SPD.

8. Under the terms of the AD&D Plan, basic AD&D insurance is available to active full-time and contract employees of Intel at two times the employee's eligible annual earnings, multiplied by 100%, and then rounded to the next higher \$1,000, if not already a multiple thereof. Such AD&D coverage is subject to a maximum of \$1,000,000 of coverage. In addition, basic AD&D insurance is available to active part-time employees of Intel at two times the employee's annual earnings, multiplied by 62.5% and then rounded to the next higher \$1,000, if not already a multiple thereof. Such AD&D coverage is also subject to a maximum of \$1,000,000. All basic AD&D insurance that is available to Intel employees is non-contributory insurance, which means that the employer is required to make premium contributions.

9. The AD&D Plan also provides supplemental AD&D insurance to full-time and part-time employees of Intel, but not to Intel's contract employees. AD&D supplemental coverage is available to an active full-time employee at one to seven times the annual earnings as elected by the employee, multiplied by 100% and then rounded to the next higher \$1,000 if not already a multiple thereof. The maximum amount of coverage for an active full-time Intel employee is \$1,000,000. AD&D coverage is also available to an active part-time employee of Intel at one to seven times the employee's full-time equivalent eligible annual earnings, multiplied by 62.5% and then rounded to the next higher \$1,000, if not already a multiple thereof. The maximum amount of coverage is capped at \$1,000,000.

Under the current terms of the AD&D Plan, all supplemental AD&D insurance is paid for by Intel's employees through premium contributions. Therefore, supplemental AD&D insurance is contributory insurance, which means that the employee is required to make premium contributions. All AD&D insurance terminates at retirement, except as provided for under the portability provision found in the SPD. There are 48,437 participants in the basic AD&D Plan, of which 21,202 participants have elected supplemental AD&D coverage.

10. The AD&D Plan further provides insurance coverage to dependents of full-time and part-time employees of Intel, but not to dependents of Intel's contract employees. Dependent AD&D insurance for the spouses, domestic partners and children of Intel's employees is available to active full-time and part-time employees in the following amounts: (a) Option 1:

spouse/same sex domestic partner \$50,000; child(ren) \$10,000; (b) Option 2: spouse/same sex domestic partner \$100,000; child(ren) \$20,000; (c) Option 3: Spouse/same sex domestic partner \$150,000; child(ren) \$30,000; (d) Option 4: Spouse/same sex domestic partner \$200,000; child(ren) \$40,000; and (e) Option 5: spouse/same sex domestic partner \$250,000; child(ren) \$50,000. Dependent AD&D insurance coverage is paid for by Intel's employees through premium contributions. Benefits will terminate at the end of the calendar month in which the dependent is no longer eligible.

11. From January 1, 2007, until December 31, 2012, the Plans' benefits were insured by the Metropolitan Life Insurance Company (MetLife). Since January 1, 2013, MN Life has been providing direct insurance for the basic and supplemental group term life insurance and the basic and supplemental AD&D coverage offered under the Plans in accordance with an agreement MN Life entered into with Intel. As of September 30, 2012, MN Life had total assets of approximately \$28.4 billion. MN Life has agreed to a rate guarantee for a 7 year period beginning January 1, 2013, through December 31, 2019. It is represented that Intel selected MN Life based upon consideration of relevant factors to the arrangement, including the reasonableness of the fees and the quality and quantity of the benefits offered. Both MN Life and MetLife are rated "A+" by A. M. Best.

The Applicant states that the change in insurance carriers from MetLife to MN Life has not reduced Intel's or the employees' overall costs for insurance benefits. The costs remain the same for both Intel and the employees. However, the Applicant represents that the change in carriers has resulted in several increased benefits for Intel employees, as described below.

12. Also, on January 1, 2013, MN Life entered into a reinsurance agreement with TAL to reinsure up to 100% of the Plans' risks with TAL. However, TAL will not receive any premiums from MN Life until this proposed exemption is granted. MN Life's reinsurance agreement with TAL (the Reinsurance Agreement) is "indemnity only"—that is, MN Life will not be relieved of its liability for benefits under the Plans if TAL is unable or unwilling to satisfy the liabilities arising from the reinsurance arrangement.

13. As TAL is a party in interest with respect to the Plans, the reinsurance of the risks associated with the basic and supplemental group term life insurance and basic and supplemental AD&D

coverage offered to the Plans by MN Life results in the indirect transfer to TAL of the Plans' premium payments, which are plan assets. Section 406(a)(1)(D) of the Act prohibits the transfer to, or use by or for the benefit of, a party in interest, of any assets of a plan. Accordingly, this proposed exemption, if granted, would provide relief from the prohibitions set forth in section 406(a)(1)(D) of the Act for the reinsurance of risks and the receipt of premiums therefrom by TAL, in connection with basic and supplemental group term life insurance and basic and supplemental AD&D coverage.

In addition, because the reinsurance by TAL of such insurance coverage was contemplated by Intel at the time that the Plans obtained insurance coverage from MN Life, such transactions could constitute violations by Intel of section 406(b) of the Act. In this regard, section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. Section 406(b)(2) of the Act prohibits a fiduciary from acting in a transaction involving plan assets on behalf of a party whose interests are adverse to those of the plan. Section 406(b)(3) of the Act prohibits a fiduciary from receiving any consideration for his own personal account from any party dealing with a plan in connection with a transaction involving plan assets.

14. With respect to the Reinsurance Agreement between MN Life and TAL, the Applicant represents that all eligible active full-time and part-time employee participants in the Plans have been receiving certain increases to their basic and supplemental group term life insurance since January 1, 2013. In this regard, the supplemental group term life and supplemental AD&D benefit coverage under the Plans has been increased. According to the Applicant, as noted above, Intel employees are currently eligible to elect up to seven times their annual salary for supplemental group term life insurance and up to six times or seven times their annual salaries for supplemental AD&D benefits. Formerly, employees who elected supplemental group term life insurance and supplemental AD&D coverage were eligible to elect up to five times and six times their annual earnings, respectively. The maximum amount of coverage for these benefits will remain the same (capped at \$2,000,000 for the supplemental group term life insurance, and \$1,000,000 for the supplemental AD&D insurance).

The Applicant represents that the insurance premiums employees pay for these increases will not be raised unless the employees elect to increase their

supplemental life and/or supplemental AD&D coverage. The Applicant also explains that if Intel employees seek supplemental group term life insurance or AD&D insurance outside of their respective Plans, they would be doing so in the individual insurance market of the state in which they live. In most states, the employee would be subjected to individual underwriting, and would on average, pay higher premiums than on a group basis.

15. Intel is providing all of its employees who are participants in the Plans with access to Ceridian's Will Preparation and Legal Services program. This benefit enhancement includes the following services: (a) A free 30-minute initial consultation per legal issue with an attorney in the Plan participant's state of residence; (b) the creation of various legal documents, such as a will or a financial power of attorney; (c) a referral to a local attorney, access to a variety of legal forms, and access to an online legal library; and (d) a 25% discount off an attorney's normal hourly rate should an employee retain an attorney after an initial consultation. Intel is bearing the cost of this benefit enhancement.

According to the Applicant, previously, only Intel employees who were enrolled in the supplemental group term life insurance program had access to the free will preparation service offered by Hyatt Legal Plans.

16. Further, Intel is providing legacy planning services to employees to assist them in their time of need. These services relate to: (a) Asset distributions; (b) last wishes; (c) estate planning; (d) last will and testament; (e) power of attorney; (f) healthcare directives; (g) beneficiary designations; and (h) document locator. Legacy planning services are provided to all active Intel employees through secure Web site access. Intel is bearing the full cost of this enhancement to the Plan.

17. Finally, Intel is providing new beneficiary financial counseling services to beneficiaries of all active employees as part of the Plan. In effect, eligible individuals are able to receive financial services through PriceWatterhouseCoopers LLP. The beneficiary financial counseling services (BFC Services) are available to all beneficiaries receiving life benefits at no additional cost. The BFC Services provide the following benefits to beneficiaries of Intel employees: (a) A beneficiary guide giving information on estate issues, survivor benefits, financial planning and non-financial issues; (b) eAdvisor, an integrated planning tool giving beneficiaries access to online financial calculators, life event guides

and related services; (c) access to the bi-monthly electronic financial planning newsletter, "Your Money, Your Future;" (d) a computer-generated personalized financial analysis; (e) ConseLine, an unlimited toll-free telephone access for one year on financial planning issues; and (f) six-months of personal financial counseling.

Intel states that the benefit enhancements described above will impose a financial burden on the sponsor of the Plans because, with the exception of employees electing increased supplemental group term life and AD&D coverage, Intel will be bearing the \$94,000 annual costs.

18. In connection with this exemption request, Milliman, Incorporated (Milliman) has been engaged to act as the I/F on behalf of the Plans for the purpose of evaluating, and if appropriate, approving the subject transactions. Specifically, William J. Thomson, FSA, MAAA, Principal and Consulting Actuary with Milliman has been appointed to undertake the duties of the independent fiduciary. In this regard, Milliman is responsible for conducting a due diligence review and analysis of the proposed transactions and for providing a written opinion as to whether the arrangement complies with the Department's requirements for an administrative exemption. Milliman certifies that it is qualified to serve as the I/F and the personnel who comprise Milliman are experienced in prohibited transaction exemptions issued by the Department. Milliman represents that it is independent in that it does not have and has not previously had, any relationship with any party in interest (including any affiliates thereof) engaging in the transactions described above. Further, Milliman represents that the gross income it received from Intel, TAL or MN Life for its fiscal year does not exceed two percent of its gross annual income from all sources.

19. In connection with the transactions that are the subject of this proposed exemption, Milliman, among other things: (a) Reviewed a draft of Intel's request for an administrative exemption from the Department; (b) conferred with Intel's representative to discuss the transactions and the Plans; and (c) conducted such other due diligence reviews as were deemed necessary. Milliman also considered the premiums to be paid by the Plans for the proposed coverage, and determined that the premiums were comparable to the premiums that would have been charged by a competitor insurer. Milliman notes that the premium rate agreed to with MN Life includes a percentage allocation for non-claims

expenses, which expenses here include fronting fees, expenses and taxes.

20. Milliman has determined that the reinsurance arrangement will result in an immediate and objectively determined benefit in the form of increased supplemental life insurance and AD&D benefits, enhanced will preparation and legal services, and new legacy planning and beneficiary financial counseling services to all participants and beneficiaries of the Plans. Milliman states that the benefit enhancements provide a means of reducing personal financial risks that may be unavailable to many of the Plans' participants as individuals, which provides a value to these persons even if they never file a claim.

21. The Applicant represents that the proposed exemption is administratively feasible because the reinsurance of the Plans' risks under the terms of the group term life insurance and AD&D coverage is, among other things, subject to review by an I/F, which can be audited. In addition, the Applicant notes that Intel has and will bear the cost of the exemption application and of notifying the interested persons. Further, the Applicant explains that the proposed exemption does not require continued monitoring or other involvement by the Department.

The Applicant also represents that the proposed exemption is in the interest of the Plans because the Plans will pay no more than adequate consideration for the insurance contracts with MN Life. The Applicant further represents that the proposed exemption is protective of the rights of the participants and beneficiaries of the Plans because the exemption requires the review and approval of an I/F, at Intel's expense. Specifically, the proposed exemption, if granted, requires that the I/F analyze the subject transactions and render an opinion regarding whether certain of the conditions of the exemption were satisfied, including that: (a) The Plans pay no more than adequate consideration for the insurance contracts; (b) the Plans pay no commissions with respect to the direct sale of such contracts or the reinsurance thereof; (c) in the initial year of every contract involving TAL and a Fronting Insurer, there is an immediate and objectively determined benefit to participants and beneficiaries of the Plans in the form of increased benefits approximating the increase in benefits that is effective January 1, 2013, as described herein, and such benefits continue in all subsequent years of each contract and in every renewal of each contract; and (d) in the initial year and in subsequent years of coverage

provided by a Fronting Insurer, the formula used by the Fronting Insurer to calculate premiums is similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and comparable to the premium charged by the Fronting Insurer and its competitors with the same or a better rating providing the same coverage under comparable programs.

The Applicant states that if exemptive relief is granted, any Fronting Insurer will have a financial strength rating of "A" or better from A. M. Best, and the reinsurance arrangement between the Fronting Insurer and TAL will be indemnity insurance only.

Finally, the Applicant notes that participants and beneficiaries in the Plans will receive in subsequent years of every contract of reinsurance involving TAL and the Fronting Insurer no less than the immediate and objectively determined increased benefits such participant and beneficiary received in the initial year of each such contract involving TAL and the Fronting Insurer.

22. In summary, the Applicant represents that the reinsurance transactions will meet the criteria of section 408(a) of the Act since, among other things:

(a) The Plans will pay no more than adequate consideration for the insurance contracts;

(b) No commissions will be paid by the Plans with respect to the direct sales of such contracts or the reinsurance thereof;

(c) In the initial year of every contract involving TAL and a Fronting Insurer, there will be an immediate and objectively determined benefit to participants and beneficiaries of the Plans in the form of increased benefits, and such benefits will continue in all subsequent years of each contract and in every renewal of each contract, and will approximate the increase in benefits that are effective January 1, 2013, as described in the Notice;

(d) In the initial year and in subsequent years of coverage provided by a Fronting Insurer, the formula used by the Fronting Insurer to calculate premiums will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the Fronting Insurer and its competitors with the same or a better

rating providing the same coverage under comparable programs;

(e) The Fronting Insurer will have a financial strength rating of "A" or better from A. M. Best. The reinsurance arrangement between the Fronting Insurer and TAL will be indemnity insurance only;

(f) The Plans will retain an I/F or successor to such fiduciary to analyze the transactions and to render an opinion that certain relevant requirements of the proposed exemption, if granted, have been satisfied;

(g) Participants and beneficiaries in the Plans will receive in subsequent years of every contract of reinsurance involving TAL and the Fronting Insurer no less than the immediate and objectively determined increased benefits such participant and beneficiary received in the initial year of each such contract involving TAL and the Fronting Insurer;

(h) The I/F will: Monitor the transactions proposed herein on behalf of the Plans on a continuing basis to ensure such transactions remain in the interest of the Plans; take all appropriate actions to safeguard the interests of the Plans; and enforce compliance with all conditions and obligations imposed on any party dealing with the Plans; and

(i) In connection with the provision to participants in the Plans of the insurance coverage provided by the Fronting Insurer which is reinsured by TAL, the I/F will review all contracts (and any renewal of such contracts) of the reinsurance of risks and the receipt of premiums therefrom by TAL and will determine that the requirements of this exemption, if granted, and the terms of the benefit enhancements continue to be satisfied.

Notice to Interested Persons

It is represented that Intel will notify interested persons of the publication of the Notice in the **Federal Register** by email and then first class mail to each such interested person's most recent address maintained in the records of the administrator of the Plans, if the email is undeliverable. The Notice will also be posted on Intel's internal Web site. Such notification will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required pursuant to 29 CFR 2570.43(a)(2) which will advise all interested persons of their right to comment and to request a hearing. Intel will provide such notification to all such interested persons within 10 days of the date of publication of the Notice in the **Federal Register**. Intel will mail

the letters within 10 days of the undeliverable response being received. All written comments and/or requests for a hearing must be received by the Department from interested persons no later than 50 days after publication of the Notice in the **Federal Register**.

All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT:

Blessed Chuksorji-Keefe of the Department, telephone (202) 693-8567. (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 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 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 31st day of October 2013.

Lyssa E. Hall,

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

[FR Doc. 2013-26506 Filed 11-5-13; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D-11672]

Withdrawal of Notice of Proposed Exemption Involving the Studley, Inc. Section 401(k) Profit Sharing Plan (the Plan) Located in New York, NY

In the **Federal Register** dated November 16, 2012 (77 FR 68842), the Department of Labor (the Department) published a notice of proposed exemption (the Notice) from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended, and from certain taxes imposed by the Internal Revenue Code of 1986, as amended. The Notice concerned the proposed cash sale by the Plan of an 8.828121% partnership interest (the Interest) in the Julien J. Studley N Street Partnership, a general partnership (the JJS Partnership) to Studley, Inc. (the Employer), a party in interest with respect to the Plan.

Subsequent to the publication of the Notice in the **Federal Register**, the Department was informed that Melvin Lenkin, Edward J. Lenkin and the EJL Trust, who are unrelated parties with respect to the Plan, purchased the Interest from the Plan. Accordingly, the Department hereby withdraws the Notice from the **Federal Register**.

Signed at Washington, DC, this 31st day of October 2013.

Lyssa E. Hall,

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

[FR Doc. 2013-26505 Filed 11-5-13; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-81,387]

Eastman Kodak Company, IPS—Dayton Location, Including On-Site Leased Workers From Adecco, Dayton, Ohio; Notice of Negative Determination on Reconsideration

On March 2, 2012, the Department of Labor (Department) initiated an investigation in response to a Trade Adjustment Assistance (TAA) petition filed on behalf of workers and former workers of Eastman Kodak Company, IPS-Dayton Location, including on-site leased workers from Adecco, Dayton, Ohio (hereafter referred to as "Eastman Kodak-IPS-Dayton"). On May 18, 2012, the Department denied the petition for group eligibility to apply for TAA. The Department's Notice of negative determination was published in the **Federal Register** on June 6, 2012 (77 FR 33494).

On August 1, 2012, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration, applicable to Eastman Kodak-IPS-Dayton. The Department's Notice of affirmative determination was published in the **Federal Register** on August 14, 2012 (77 FR 48549).

On March 19, 2013, the Department issued a Notice of Termination of Reconsideration Investigation to workers and former workers of Eastman Kodak-IPS-Dayton (TA-W-81,387) which stated that the worker group on whose behalf the request for reconsideration was filed is eligible to apply for TAA under the amended certification for TA-W-74,813A. The Department's Notice of termination of reconsideration investigation was published in the **Federal Register** on April 9, 2013 (78 FR 21155).

On June 21, 2013, the Department issued a Notice of Termination of Certification applicable to workers and former workers eligible to apply for TAA under TA-W-74,813A. The Department's Notice of Termination of Certification was published in the **Federal Register** on July 5, 2013 (78 FR 40507). In the Notice of Termination of Certification, the Department stated that the reconsideration investigation of TA-W-81,387 would be re-opened and a determination on reconsideration would be issued accordingly.

During the re-opened reconsideration investigation, the Department contacted the workers who filed the initial petition for information and received

additional information from one of the petitioners.

The petition alleges that production of printers shifted from the Dayton, Ohio facility to a foreign country. In an attachment to the petition, the petitioners state that "a few years back our facility . . . shipped the manufacture of . . . fluid systems and controllers to . . . China"; that "in 2010 a large portion of the print head refurbishment for the 4" (four inch) product line was shipped to . . . China"; that "all of the printed circuit board production and testing was moved to China"; that a "portion of the new product under development (Stream) was moved to Mexico for manufacture" in 2011; that people from Malaysia spent months in the fall of 2011 "to learn the processes of manufacture so equipment can be sent to their facility in Malaysia"; and that "production of the new Stream product is to be done in Malaysia."

During the re-opened reconsideration investigation, a former worker stated that separations at the Dayton, Ohio facility were due to the shift in production to China and/or Mexico; that production of "legacy" products were shifted to a facility in China that builds cameras and desktop printers; that the shift of production to China also resulted in reduced need for "testing and repair of new build circuit boards and electronic assembly"; that production of ink jet print systems and the "Four Inch" product line were shifted to China; and that, in April 2012, three of the remaining workers were separated "because the remaining repair work was shifted to a third party company in the Dayton area."

During the re-opened reconsideration investigation, the Department obtained updated information from Eastman Kodak Company regarding operations at the Dayton, Ohio facility and responses to the afore-mentioned allegations.

Based on information obtained during the re-opened reconsideration investigation, the Department determines that while there was some production shift abroad in 2006 to 2008, no such shift occurred in 2012 and 2013, and that the shift which occurred during 2006 to 2008 did not contribute to worker separations at the Dayton, Ohio facility in 2012 and 2013.

Rather, information obtained during the reconsideration investigation confirmed that worker separations at the Dayton, Ohio facility in 2012 and 2013 have been part of bankruptcy-related activities, including restructuring and domestic outsourcing of some services, and have not resulted in a shift of production abroad.