

The burden for provision of the NCRP data will remain at the 2021 level of 14 hours per respondent due to the fact that the survey is not changing for this approval, for a total of 700 hours annually for the 50 DOCs in 2022, 2023 and 2024.

**Burden hours for PCCS records (NCRP-1E, NCRP-1F):** There are currently 40 jurisdictions submitting PCCS data (35 DOCs and 5 parole supervising agencies), and BJS estimates that extraction and submission of both the PCCS entries and exits takes an average of 8 hours per jurisdiction. In 2022–2024, BJS hope to recruit an additional 5 jurisdictions to submit NCRP PCCS data. For those 40 supervising agencies currently responding, provision of the PCCS data in 2022–2024 will total 320 hours (8 hours \* 40 = 320 hours) annually. The total estimate for submission of PCCS for new jurisdictions in 2022–2024 is 120 hours (24 hours \* 5 = 120 hours). For new agencies, BJS assumes the initial submission will take about three times longer than established reporters to account for programming, questions, and submission. The total amount of time for all PCCS submissions annually is 440 hours.

**Burden hours for data review/follow-up consultations:** Follow-up consultations with respondents are usually necessary while processing the data to obtain further information regarding the definition, completeness and accuracy of their report. The duration of these follow-up consultations will vary based on the number of record types submitted, so BJS has estimated an average of 3 hours per jurisdiction to cover all of the records (prison and/or PCCS) submitted. In 2022, BJS anticipates that one of the two parole supervising agencies not currently submitting PCCS data will begin to submit, so the number of jurisdictions requiring follow-up consultations is 51 (50 DOCs submitting at least the prison data, and one parole supervising agency submitting only PCCS data). This yields a total of 153 hours of follow-up consultation after submission. This total estimate of 153 hours for data review/follow-up consultations remains the same for 2023 and 2024.

**Total burden hours for submitting NCRP data:** BJS anticipates that the total annual burden for provision of all NCRP data across the jurisdictions will participate in 2022–2024 is anticipated to be 1,293 hours (700 hours for prison records, 440 hours for PCCS records, and 153 hours for follow-up consultation), or 25 hours per respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,293 total burden hours associated with this collection in 2022, 2023, and 2024.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: September 15, 2021.

**Melody Braswell,**

Department Clearance Officer for PRA, U.S. Department of Justice.

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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). If granted, these proposed exemptions allow designated parties to engage in transactions that would otherwise be prohibited provided the conditions stated there in are met. This notice includes the following proposed exemptions: L–12008, Phillips 66 Company; L–12021, Comcast 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, by November 4, 2021.

**ADDRESSES:** All written comments and requests for a hearing should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D–12003 via email to [EOED@dol.gov](mailto:EOED@dol.gov) or online through the Federal eRulemaking Portal: <http://www.regulations.gov> 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–1515, 200 Constitution Avenue, NW, Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

#### SUPPLEMENTARY INFORMATION:

##### Comments

In light of the current circumstances surrounding the COVID–19 pandemic caused by the novel coronavirus which may result in disruption to the receipt of comments by U.S. Mail or hand delivery/courier, persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person’s interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. A request for a hearing can be requested by any interested person who may be adversely affected by an exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (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; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing where: (1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

**Warning:** All comments received will be included in the public record without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact

information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the <http://www.regulations.gov> website is an “anonymous access” system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

#### 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, unless otherwise stated in the Notice of Proposed Exemption, 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).<sup>1</sup> 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.

<sup>1</sup> 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).

#### Phillips 66 Company

Located in Houston, TX

[Application No. L-12008]

#### Proposed Exemption

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Security Act of 1974, as amended (ERISA or the Act) to the Phillips 66 Group Life Insurance Plan (the Plan). As described in more detail below, under the proposed exemption, the Plan would enter into an insurance contract with an unrelated A-rated insurance company (the Fronting Insurer) that would, in turn, enter into a reinsurance contract with Spirit Insurance Company (Spirit), an affiliate of Phillips 66 (the Reinsurance Arrangement). Under the Reinsurance Arrangement, Spirit would reinsure the Plan's risks. Importantly, the Fronting Insurer would remain fully responsible for the Plan's risks in the event that Spirit does not fulfill its contractual obligations to the Fronting Insurer.

Phillips 66, through its ownership of Spirit, is expected to receive a net income increase from the Reinsurance Arrangement.<sup>2</sup> To ensure that the majority of Spirit's additional net income is passed through to the Plan and its participants and beneficiaries, this proposed exemption requires Phillips 66 to fund certain new Plan benefit enhancements (the Benefit Enhancements). Specifically, for every dollar increase in net income that Spirit (and indirectly, Phillips 66) receives from the Reinsurance Arrangement, Phillips 66 must pay at least \$0.51 to fund Benefit Enhancements.

This proposed exemption also would require Phillips 66 to delegate fiduciary oversight of the Plan to a qualified fiduciary that is independent of Phillips 66 and its affiliates (the Independent Fiduciary). The exemption conditions require the Independent Fiduciary to approve the Reinsurance Arrangement in advance, ensure that the Reinsurance Arrangement is in the interest and protective of the Plan and its participants and beneficiaries, and

<sup>2</sup> This proposed exemption requires a qualified independent fiduciary to review the Reinsurance Arrangement to determine if Phillips 66 is deriving any benefits other than an increase in Spirit's net income, such as a benefit from a further diversification of Spirit's risks. Any such benefit(s) must be quantified to the extent possible, and the majority of all benefits to Phillips 66 from the Reinsurance Arrangement must ultimately be paid to fund Benefit Enhancements in the manner described below.

submit annual and five-year “look-back” reports to the Department.<sup>3</sup>

#### Summary of Facts and Representations<sup>4</sup>

##### The Parties

1. *Phillips 66*. Phillips 66 is a multinational energy company headquartered in Houston, Texas that processes, transports, stores and markets fuel products.

2. *The Plan*. The Plan is sponsored by Phillips 66 and provides life insurance, travel assistance, occupational accidental death, and accidental death and dismemberment benefits. As of December 31, 2019, the Plan covered more than 12,500 participants.

3. *Zurich Life Insurance Company*. The Plan's benefits are insured by Zurich American Life Insurance Company (hereinafter, either Zurich or the Fronting Insurer), which has received an “A” financial strength rating from A.M. Best Company (A.M. Best). Zurich is unrelated to Phillips 66 and, per the conditions of the exemption, must remain so throughout the duration of the Reinsurance Arrangement.

4. *Spirit Insurance Company*. Spirit is an insurance company that is 100 percent owned by Phillips 66. Spirit currently writes Property Damage, Business Interruption, Excess Casualty, and Terrorism insurance policies for Phillips 66 and several of Phillips 66's joint ventures. Spirit has received an “A” financial strength rating from A.M. Best since its formation in 2012.<sup>5</sup> For the fiscal year ending December 31,

<sup>3</sup> The Department notes that the Independent Fiduciary's annual written report is essential to the Department's tentative finding that this proposed exemption is, and will continue to be, in the interest and protective of the Plan and its participants and beneficiaries. The Independent Fiduciary must clearly, prudently and loyally determine whether Phillips 66 and its affiliates have complied with each term and condition of the exemption and include its finding in the report. The relief provided in this proposed exemption is conditioned upon the independent fiduciary's compliance with this requirement.

<sup>4</sup> The Department notes that availability of this exemption is subject to the express condition that the material facts and representations contained in application L-12008 are true and complete, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of such change.

<sup>5</sup> On March 7, 2012, Vermont issued Spirit a license to transact business as a single-parent captive insurance company. Vermont captive insurance law allows captive insurance companies to conduct reinsurance operations. In 2017, Spirit converted from a pure captive insurance company to a sponsored captive insurance company and formed 3P Capital Insurance Company IC, an incorporated protected cell of Spirit.

2018, Spirit reported earned premiums of \$33.0 million and total assets of \$285.2 million.

#### *The Prohibited Transaction Arrangement*

4. Phillips 66 intends to use Spirit to reinsure the Plan's benefit claims under the Reinsurance Arrangement. The Reinsurance Arrangement would be structured as follows: (a) The Plan would enter into an insurance arrangement with Zurich to insure the Plan's risks; and (b) Zurich would enter into a reinsurance agreement with Spirit, whereby Spirit would reinsure up to 100 percent of the Plan's risks.

In general terms, the Plan would make premium payments to Zurich, and Zurich would make corresponding payments to Spirit in an amount less than the premiums it is paid by the Plan. The difference between the premiums the Plan pays Zurich and the amounts Zurich pays Spirit comprises Zurich's fee to Spirit. In return, Spirit would be responsible for administering the Plan participants' benefit claims filed with Zurich. The Reinsurance Agreement between Zurich and Spirit would be "indemnity only," which means that Zurich, as the Fronting Insurer, would maintain the responsibility to pay benefit claims to participants and beneficiaries in the event Spirit does not satisfy any of its contractual obligations to Zurich for any reason.

#### *Benefit to Phillips 66*

5. As noted in the Independent Fiduciary discussion below, Spirit (and Phillips 66 indirectly) expects to receive a \$1,484,000 increase to its net income in the first year of the Reinsurance Arrangement.

*Department's Note:* The Department developed this proposed exemption based on the Applicant's representation that Phillips 66 is not expected to receive any benefit from the Reinsurance Arrangement other than the net income increase described herein, which must be verified annually by the Independent Fiduciary. If Phillips 66 or a related party directly or indirectly receives any other benefit from the captive reinsurance arrangement, the benefit must be quantified by the Independent Fiduciary and included in the Primary Benefit Test described below.<sup>6</sup> Consistent with this condition, the proposed exemption expressly prohibits Phillips 66 (or a related entity)

<sup>6</sup> This includes any benefit to Phillips 66 or a related party arising from a further diversification of Spirit's risks in connection with the addition of the Plan's employee benefit insurable risks to One Belmont's other insurable risks.

from, among other things: (1) Using any participant-related data or information that is generated by (or derived from) the Reinsurance Arrangement in any manner that benefits Phillips 66 or a related entity; or (2) transferring any portion of Spirit's reserves that are attributable to Plan participants' contributions to Phillips 66 or a related entity.

#### *Benefit to the Plan*

6. As discussed in further detail below, Phillips 66 must pay all costs associated with providing the Benefit Enhancements in an amount that exceeds one-half of the sum of all direct or indirect benefits that Phillips 66 and any related party derives from the Reinsurance Arrangement. In other words, for every dollar that Phillips 66 or a related party directly or indirectly benefits from the Reinsurance Arrangement, Phillips 66 must pay at least \$0.51 toward Benefit Enhancements (the Primary Benefit Test).

*Department's Note:* Both the benefit to Phillips 66 and the cost to Phillips 66 from the Reinsurance Arrangement are based on projections. Therefore, this proposed exemption requires an Independent Fiduciary to look back over successive five-year periods to determine whether the Primary Benefit Test has been met based on actual results. If the Independent Fiduciary finds that the Primary Benefit Test has not been met during a prior five-year period, Phillips 66 must immediately implement a prospective reduction to the participants' portion of the Plan premiums in an amount that is sufficient to make up for the shortfall. The amount of the prospective reduction must include an additional payment of interest on the shortfall, at the Code's federal underpayment rate set forth in Code section 6621(b). Further, Phillips 66 may not offset or reduce any benefits provided to Plan participants and beneficiaries in connection with its implementation of the captive reinsurance arrangement.

#### **Exemptive Relief and Analysis**

7. *ERISA Analysis.* Phillips 66 is a party in interest with respect to the Plan pursuant to ERISA section 3(14)(C), because it is an employer whose employees are covered by the Plan. In addition, the captive reinsurer, Spirit, is a party in interest with respect to the Plan pursuant to ERISA section 3(14)(G) because it is wholly owned by Phillips 66.

8. ERISA section 406(a) prohibits a wide variety of transactions between plans and parties in interest. For

example, ERISA section 406(a)(1)(D) prohibits a plan fiduciary from causing a plan to engage in a transaction that results in the transfer of plan assets to a party in interest. The Reinsurance Arrangement would violate ERISA section 406(a)(1)(D), because it would result in Plan premium payments (which are plan assets) being indirectly transferred to Spirit who is a party in interest with respect to the Plan.

9. ERISA section 406(b)(1) prohibits a fiduciary from dealing with plan assets for its own interest or own account, and ERISA section 406(b)(3) prohibits a fiduciary from receiving any consideration for the fiduciary's personal account from any party dealing with the plan in connection with a transaction involving the plan's assets. The Reinsurance Arrangement would violate ERISA sections 406(b)(1) and 406(b)(3), because the plan fiduciary would cause Plan premiums to be paid to Zurich with knowledge that the premiums ultimately would be paid to Spirit.

#### *Description of Plan Benefit Enhancements*

10. In order to satisfy the Primary Benefit Test, Phillips 66 must fund the following Plan Benefit Enhancements:

a. *The New Care Advocacy Service Benefit.* Participants and beneficiaries of the Plan must receive a New Care Advocacy Service Benefit at no additional cost. The Applicant represents that under the New Care Advocacy Service, master's degree-level licensed social workers would seek out participants and beneficiaries in need of medical assistance, including those who have been diagnosed with a terminal or chronic illness and those managing a chronic condition that has confined them to their home or a rehabilitation center. Care Advocacy support services include providing participants with education and assistance regarding available community resources, scheduling and navigating doctor's appointments, completing forms, and coordinating care between doctors and specialists.

b. *The Enhanced Funeral Concierge Service Benefit.* The Plan currently provides a Funeral Concierge Service Benefit to participants. Under the conditions of the exemption, Phillips 66 would extend the Funeral Concierge Service Benefit to cover participants' and beneficiaries' family members at no additional cost. The Applicant represents that participants and beneficiaries could use the Funeral Concierge Service Benefit to compare prices among funeral homes through the use of a nationwide database of funeral

home prices. Additionally, participants or their family members can receive assistance from licensed funeral home directors when negotiating funeral service pricing.

c. *The Enhanced Accelerated Death Benefit.* The Plan currently provides an Accelerated Death Benefit that allows a terminally-ill participant with a life expectancy of 24 months or less to receive an accelerated life insurance benefit payment before death in an amount up to 50 percent of his or her total life insurance benefit amount. If this exemption is granted, the amount of the Plan's Accelerated Death Benefit would increase from 50 percent to 80 percent of a participant's life insurance benefit amount.

d. *The Enhanced Accidental Death & Dismemberment Benefit.* Under the Plan currently, if a participant suffers an injury resulting in Hemiplegia, the Plan will pay a benefit equal to 66 percent of the participant's incurred losses from such injury. If the exemption is granted, the Plan would increase this payment from 66 percent to 75 percent of the participant's incurred losses from such injury.

e. *The New Accidental Death & Dismemberment Benefit.* Currently, the Plan does not provide an additional benefit to a participant's beneficiary if the participant dies in an automobile accident while seated in an air bag-protected position after the air bag system deploys during an accident. If the exemption is granted, the Plan would pay an additional ten percent of the death benefit upon the occurrence of this event up to a maximum amount of \$25,000.

Further, the Plan currently does not cover costs associated with transporting a participant's body from his or her place of death to a mortuary near the participant's primary residence if the participant dies 100 miles or more from such residence. If this exemption is granted, the Plan would pay five percent of the AD&D policy coverage amount to cover the costs associated with transporting a deceased participant's body to a mortuary near his or her primary residence up to a maximum benefit amount of \$5,000.

Finally, the Plan currently does not cover medical costs incurred by a participant who suffers third degree burns. If this exemption is granted, the Plan would pay a percentage of the principal sum based on the body area(s) and the percentage of the body surface affected.

#### *The Independent Fiduciary*

11. Kathleen Ely, FSA, MAAA, a Consulting Actuary with Milliman of

Windsor, Connecticut will serve as the Plan's Independent Fiduciary with respect to the Reinsurance Arrangement. Ms. Ely represents that she and Milliman are independent of all parties associated with the Reinsurance Arrangement, including Phillips 66, Spirit, and the Plan. In this regard, Ms. Ely represents that she and Milliman do not have: (a) An interest in any party involved in the Reinsurance Arrangement; (b) an ownership interest in Phillips 66, Spirit, or the Plan, nor are they directly or indirectly, controlled by, or under common control with them; and (c) any economic stake or financial interest that is contingent upon the implementation of the Reinsurance Arrangement. This exemption requires that no party related to this exemption request has, or will, indemnify Ms. Ely or Milliman, in whole or in part, for negligence and/or for any violation of state or federal law that may be attributable to the Independent Fiduciary in performing its duties under the captive reinsurance arrangement. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violation.

Ms. Ely represents that Milliman's gross income received from Phillips 66, Spirit, and the Plan is less than 0.1 percent of Milliman's gross annual income from all sources. Further, as a condition of the exemption, neither Ms. Ely nor Milliman would enter into any agreement or instrument that violates ERISA section 410 or section 2509.75-4 of the Department's regulations.<sup>7</sup>

12. *Independent Fiduciary Analysis.* In the course of conducting a preliminary assessment of the merits of the Reinsurance Arrangement, Ms. Ely reviewed the following documents: (a) A draft application to the Department requesting exemptive relief;<sup>8</sup> (b) a

<sup>7</sup> ERISA section 410 provides, in part, that "except as provided in ERISA sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning Part 4 of Title I of ERISA] shall be void as against public policy."

<sup>8</sup> Given that, among other things, some of the documents reviewed by the Independent Fiduciary were draft documents and/or documents that are no longer current, this proposed exemption requires the Independent Fiduciary to: Review the terms of the exemption; obtain and review all current objective, reliable, third-party documentation necessary to make the determinations required of the Independent Fiduciary under the exemption; and confirm in writing that all of the exemption terms and conditions have been met (or, due to timing requirements, can reasonably be expected to be met consistent with the terms of this proposed exemption). The Independent Fiduciary must send this written confirmation to the Department's Office of Exemption Determinations at least 30 days before

memo dated July 11, 2019, from the Applicant's representative, Spring Consulting Group, LLC (Spring Consulting), describing the Benefit Enhancements, including the funding of the Benefit Enhancements and the expected costs Phillips 66 would incur to provide the Benefit Enhancements; (c) a draft Employee Benefits Study prepared by Spring Consulting that details projected 2020 financial statement results for Spirit; (d) a Certificate of Authority from the Vermont Department of Banking, Insurance, Securities and Health Care Administration authorizing Spirit to transact business as a captive insurance company in Vermont; (e) a copy of Phillips 66's Life and AD&D insurance certificates; (f) a draft of the Reinsurance Arrangement contract between Spirit and Zurich; (g) documentation of the pricing of the subject coverages, expense charges, and related underwriting information; (h) 2018 audited financial statements for Spirit; (i) a 2018 Actuarial Opinion for Spirit; and (j) a declaration by Phillips 66 that the Plan would pay no commissions with respect to the Reinsurance Arrangement.

Based on the foregoing, Ms. Ely completed two Independent Fiduciary Reports, dated November 15, 2019 and October 22, 2020. In the first report, Ms. Ely provided a preliminary assessment that, among other things, the Plan Benefit Enhancements would represent an immediate and objectively determined benefit to the Plan's participants and beneficiaries. In the second Independent Fiduciary Report, Ms. Ely provided preliminary estimates with regard to the costs that Phillips 66 would incur to fund the Benefit Enhancements, which are discussed below.

(a) *Care Advocacy Service.* Ms. Ely estimated high-end and low-end potential ranges of costs for Phillips 66 to provide the Care Advocacy Service. Ms. Ely relied upon information obtained from Zurich's total book of business and experience for the high-end estimate. Based upon its book of business, Zurich estimated that the cost to provide the Care Advocacy Service ranged from \$200-\$500 per hour and that, on average, a care advocate would spend 25 hours on a case. Zurich further estimated that two percent of Plan participants would use the service.<sup>9</sup>

Phillips 66 engages in the Reinsurance Arrangement. The confirmation must include: Copies of each document relied on by the Independent Fiduciary; and the steps the Independent Fiduciary took to make its confirmation.

<sup>9</sup> Zurich's book of business indicates the take up is assessed through a pro-active review of claims

Based on the foregoing, Ms. Ely estimates that, assuming a cost of \$200 per hour for 25 hours, the annual estimated cost for Phillips 66 to provide the Care Advocacy Service would be \$1.3 million ( $\$200 * 25 * 2\% * 13,000$  employees).

Ms. Ely also researched non-Zurich data.<sup>10</sup> Based on this data, Ms. Ely concluded that it would be reasonable to reduce the average number of hours spent on a case to 10 hours at a cost of \$200 per hour. Under this formula, Ms. Ely estimates that the annual cost incurred by Phillips 66 to provide the Care Advocacy Service would be \$520,000 ( $\$2,000 * 2\% * 13,000$ ). Based on the foregoing, Ms. Ely concluded that \$520,000 represents a reasonable low-end estimate for the cost to provide the Care Advocacy Service.

(b) *Funeral Concierge Services.* Ms. Ely relied on information from Zurich's book of business to estimate the cost for Phillips 66 to fund the additional Funeral Concierge Services to the Plan. Ms. Ely notes that Zurich estimated the cost to provide the Funeral Concierge Services would be \$995 per use and that two percent of employees would use the service. Ms. Ely notes that, while Phillips 66 already provides the Funeral Concierge Benefit to Plan participants, it does not provide the benefit to participants' family members. Therefore, Ms. Ely's estimate only includes the additional costs that Phillips 66 would incur based on participants' family members' use of the benefit. Ms. Ely represents that a reasonable additional utilization estimate for participants' family members would be two percent, which is in line with Zurich's estimate. Assuming this two percent utilization rate, Ms. Ely estimated that the annual cost for Phillips 66 to provide the Funeral Concierge Benefit would be \$258,700 ( $\$995 * 2\% * 13,000$ ).

(c) *AD&D.* Ms. Ely relied on data provided by Zurich to estimate the annual cost for Phillips 66 to provide the increased accelerated AD&D benefits and the new AD&D benefit. Ms. Ely notes that Zurich estimated that the aggregate cost of the increased accelerated death benefits would be

\$4.50 per employee per year, and the cost of the new AD&D benefit enhancement would be \$6.11 per employee per year. Ms. Ely states that, assuming 13,000 eligible employees, the total estimated cost for Phillips 66 to fund these benefit enhancements would be \$137,930 per year ( $\$4.5 + \$6.11 * 13,000$ ).

13. *The Primary Benefit Test:* Ms. Ely states that a reasonable low-end estimate of the expected annual costs for Phillips 66 to fund the Benefit Enhancements would be \$916,630. This includes \$137,930 for accidental death benefit enhancements, \$520,000 for Care Advocacy Service, and \$258,700 for additional Funeral Concierge Services. Given that Spirit expects to realize a net income increase of \$1,484,000 from the Reinsurance Arrangement, the estimated cost to fund the Benefit Enhancements represents 62 percent of the projected benefit that would inure to Phillips 66 (\$916,630/\$1,484,000). Thus, Ms. Ely preliminarily estimated that the Primary Benefit Test would be met in the initial year of the Reinsurance Arrangement.

*Department's Note.* Even though Ms. Ely's prior findings suggest the conditions of this exemption will be met, those findings would not be current as of the effective date of this proposed exemption. Therefore, Ms. Ely must again engage in a prudent/loyal analysis in accordance with ERISA Section 404(a)(1)(A) and (B), to verify that she has reviewed the terms of the exemption and all of the necessary documents and evidence, and has concluded that: The majority of the net benefits from the proposed captive reinsurance arrangement can reasonably be expected to inure to the Plan; and all of the exemption's other terms and conditions have been met (or, due to timing requirements, can reasonably be expected to be met consistent with the terms and conditions of the proposed exemption). This confirmation must be submitted to the Department's Office of Exemption Determinations at least 30 days before the Plan engages in the captive reinsurance arrangement. The confirmation must include copies of each document relied on by Milliman and the steps it took to make its confirmation.

Further, the exemption requires the Independent Fiduciary to "look back" over successive five-year periods to determine whether the Primary Benefit Test has been met based on actual financial results and actual cost incurred by Phillips 66 to provide the Plan Benefit Enhancements rather than projections. The Independent Fiduciary must provide the Department with a written report of the actual costs and

benefits, along with the underlying sources for such data. The Department notes that this information would be included in the public record. The Department is proposing this exemption based on its understanding that the Independent Fiduciary would be able to quantify the necessary information based on reliable and verifiable information, including audited financials and information obtained from the unrelated Fronting Insurer. The Department retains the right to propose a revocation or amendment to this exemption if it is unable to confirm the reliability of the underlying financial data supporting the Independent Fiduciary's "look-back" findings. Any failure by the Department to propose a revocation or amendment to the exemption is not an endorsement or conclusion by the Department that the conditions of the exemption were, in fact, met.

14. *Benefit Enhancements Adjustment.* Before the end of a five-year period, Phillips 66 may change Benefit Enhancements at its own expense to ensure that the Primary Benefit Test would be satisfied. The exemption requires any new Benefit Enhancement to be: (a) Widely available to Plan participants on an equal basis; and (b) approved, in advance, by the Independent Fiduciary, after the Independent Fiduciary has determined that each Benefit Enhancement is in the interest of the Plan's participants and beneficiaries and widely available to them on an equal basis.<sup>11</sup> A complete description of any new Benefit Enhancement and the Independent Fiduciary's prior determination regarding why the new enhancement is in the interest of the Plan's participants and beneficiaries must be included in the next annual Independent Fiduciary report submitted to the Department.

*Department's Note.* Notwithstanding a determination by the Independent Fiduciary that a Benefit Enhancement meets the terms of this exemption, the Department may propose to revoke or amend the exemption to the extent that, among other things, the Department determines that a Benefit Enhancement is not sufficiently protective or in the

reports to identify those individuals who may require assistance. Zurich then connects with those individuals to assess what types of service may be required. In addition, the employer's HR department may bring employees in need of such assistance to Zurich's attention. The service also is advertised at Phillips 66 benefits fairs and employee meetings whenever possible.

<sup>10</sup> This research included data taken from: <https://www.hopkinsmedicine.org/health/wellness-and-prevention/the-power-of-a-health-care-advocate>; and <https://www.verywellhealth.com/how-much-does-a-private-patient-advocate-cost-2614909>.

<sup>11</sup> If the Primary Benefit Test has not been met and Phillips 66 seeks to terminate the captive reinsurance arrangement, the relief in the exemption will terminate at the end of the year in which the Primary Benefit Test was not met, as long as Plan participants receive a reduction in their portion of the Plan premium. The premium reduction amount must be at least equal to the amount by which the prior five-year Primary Benefit Test was not met, as verified by the Independent Fiduciary and reported to the Department as part of the Independent Fiduciary's annual report.

interest of the Plan and its participants and beneficiaries. Any failure by the Department to propose to modify or revoke the exemption is not an endorsement or conclusion by the Department that the conditions of the exemption were, in fact, met.

#### *The Department's Findings*

15. The Department has the authority under ERISA section 408(a) ERISA to grant exemptions from the prohibition transaction provisions of ERISA section 406 if the Department finds that the transaction is in the interest and protective of the rights of the affected plan and its participants and beneficiaries, and is administratively feasible.<sup>12</sup> The Department's findings required under ERISA section 408(a) are discussed below.

16. *The Proposed Exemption is "Protective of the Plan."* The Department has tentatively determined that the proposed exemption is protective of the rights of Plan participants and beneficiaries. In addition to the requirements described above, no commissions would be paid by the Plan with respect to the sale of any third party insurance contract and/or any reinsurance contract, and Phillips 66 would only contract with insurers with a financial strength rating of "A" or better from A.M. Best Company or an equivalent rating from another rating company, in the year the contract is entered into. Further, for each taxable year, the gross premiums received by Spirit for benefit insurance provided to Phillips 66 and its employees with respect to which Spirit is a party in interest by reason of the relationship to Phillips 66 described in ERISA sections 3(14)(G), would not exceed 50 percent of the gross premiums received for all lines of its insurance business (*i.e.*, benefit insurance and non-benefit insurance) in that taxable year.

Ms. Ely, the Independent Fiduciary must review the Reinsurance Arrangement and confirm and determine: (a) The total economic benefit derived by Phillips 66 and its related parties from the Reinsurance Arrangement; (b) that the majority of the economic benefits derived by Phillips 66 and related parties from the Reinsurance Arrangement were transferred to the Plan in the form of Benefit Enhancements and/or reduced

premiums; (c) the Reinsurance Arrangement created real and substantial additional benefits for the Plan and its participants; (d) the Reinsurance Arrangement did not result in an offset or reduction in participants' other benefits and was otherwise consistent with ERISA. Ms. Ely has confirmed that: (i) She has the requisite knowledge regarding the Reinsurance Arrangement to fulfill her duties under ERISA section 404 as a prudent and independent plan fiduciary; (ii) she will monitor the Reinsurance Arrangement throughout the duration of the exemption; and (iii) the Reinsurance Arrangement is consistent with ERISA, including the prudence and loyalty provisions of ERISA section 404.

The exemption would require Ms. Ely to file annual certified reports to the Department, under penalty of perjury, confirming whether all terms and conditions of the exemption have been met. She must complete each report within six months from the end of the 12-month period to which it relates (the first 12-month period begins on the effective date of the exemption).

20. *The Proposed Exemption is "In the Interest of the Plan."* The Department has tentatively determined that the proposed exemption would be in the Plan's interest. Among other things, the Plan must receive the majority of the total benefit generated from the Reinsurance Arrangement, as verified by the Independent Fiduciary and reported to the Department.

21. *The Proposed Exemption is "Administratively Feasible."* The Department has tentatively determined that the proposed exemption would be administratively feasible, because the proposed reinsurance arrangement is subject to robust annual reviews by Ms. Ely that must be filed with the Department's Office of Exemption Determinations.

22. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an individual exemption under ERISA section 408(a).

### **Proposed Exemption**

#### *Section I. Definitions*

(a) An "affiliate" of Phillips 66 or Spirit includes: (1) Any person or entity who controls Phillips 66 or Spirit or is controlled by or under common control with Phillips 66 or Spirit; (2) Any officer, director, employee, relative, or partner with respect to Phillips 66 or Spirit; and (3) Any corporation or partnership of which the person in (2)

of this paragraph is an officer, director, partner, or employee;

(b) The term Benefit Enhancements means the following benefits, unless adjusted consistent with the terms of this proposed exemption:

(i) *The New Care Advocacy Service Benefit.* Under this new benefit, master's degree-level licensed social workers would proactively find participants needing specialized assistance, including those diagnosed with a terminal or chronic illness or who are managing a chronic condition that has confined them to their home or a rehabilitation center. Care Advocacy support service includes participant education and assistance with respect to available community resources, and assistance with scheduling and navigating doctor's appointments, completing forms, and coordinating care with doctors and specialists.

(ii) *The Enhanced Funeral Concierge Service Benefit.* Under this enhancement, the Plan would extend its existing Funeral Concierge Service Benefit to provide coverage for Plan participants' family members.

(iii) *The Enhanced Accelerated Death Benefit.* The Plan currently provides an Accelerated Death Benefit for a terminally-ill participants with life expectancy of 24 months or less to receive an accelerated life insurance benefit payment in advance of her death of up to 50 percent of the participant's total life insurance benefit amount. Under this enhancement, the amount of the Accelerated Death Benefit would increase to 80 percent of a participant's life insurance benefit.

(iv) *The Enhanced Accidental Death & Dismemberment Benefit.* The Plan currently provides that if a participant suffers an injury resulting in Hemiplegia, the Plan would pay such participant a benefit equal to 66 percent of the participant's incurred losses from such injury. Under this enhancement, the payment would increase to 75 percent of the participant's incurred losses from such injury.

(v) *The New Accidental Death & Dismemberment Benefit.* Under the current terms of the Plan, if a participant dies in an automobile accident while seated in an air bag-protected position and such air bag system deployed during the accident, the Plan would not pay any additional benefit to the participant. Under this enhancement, the Plan would provide a new benefit that pays ten percent of the principal sum, up to \$25,000, upon the occurrence of this event.

Further, under the current terms of the Plan, if a participant dies 100 miles away from his or her primary place of

<sup>12</sup> Specifically, ERISA section 408(a) provides that the Department may not grant an exemption unless it finds that the exemption is administratively feasible, in the interests of the plan and its participants and beneficiaries, and protective of the rights of the plan participants and beneficiaries.

residence, the Plan would not cover costs incurred to transport the participant's body from the place of death to a mortuary near the participant's primary residence. Under this enhancement, the Plan would provide a new benefit to participants covering up to five percent of the AD&D policy amount, up to a maximum of \$5,000, of the cost associated with transporting the deceased participant's body to a mortuary near her primary residence. Finally, the Plan currently does not cover medical costs incurred by a participant who suffers third degree burns. If this exemption is granted, the Plan would enhance the AD&D benefit by paying a percentage of the principal sum based on the body area(s) and the percentage of the body surface affected.

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

(d) The term "Independent Fiduciary" means a person who:

(1) Is not Phillips 66 or an affiliate of Phillips 66 or Spirit and does not hold an ownership interest in Phillips 66, Spirit or their affiliates;

(2) Was not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that:

(i) It is a fiduciary 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

(ii) Has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) For purposes of this definition, no organization or individual may serve as Independent Fiduciary for any fiscal year if the gross income received by such organization or individual from Phillips 66, Spirit, or their affiliates for that fiscal year exceeds two percent of such organization's or individual's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department;

(5) No organization or individual that is an Independent Fiduciary and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder may acquire any property from, sell any property to, or

borrow any funds from Phillips 66, Spirit, or their affiliates while the individual serves as an Independent Fiduciary. This prohibition would continue for a period of six months after either (1) the party ceases to be an Independent Fiduciary or (2) the Independent Fiduciary negotiates on behalf of the Plan during the period that such organization or the individual serves as an Independent Fiduciary; and

(6) In the event a successor Independent Fiduciary is appointed to represent the interests of the Plan with respect to the subject transaction, no time should elapse between the resignation or termination of the former Independent Fiduciary and the appointment of the successor Independent Fiduciary.

#### *Section II. Proposed Transactions*

The exemption would provide relief from the prohibited transactions provisions of ERISA sections 406(a)(1)(A), (D), and 406(b)(1) and (b)(3), and the excise tax imposed by Code section 4975(a) and (b) (due to the operation of parallel prohibited transaction provisions contained in Code section 4975(c)(1)(A), (D), (E), and (F)) with respect to: (1) The reinsurance of risks; and (2) the receipt of premiums by Spirit in connection with insurance contracts sold by Zurich (or any successor Fronting Insurer) to provide Group Term Life and Accidental Death and Dismemberment benefits to Plan participants. In order to receive such relief, the conditions in Section III must be met in conformance with the definitions set forth in Section I.

#### *Section III. Conditions*

(a) Phillips 66 must improve the Plan with Benefit Enhancements that are funded solely by Phillips 66 in compliance with (b) through (e) below;

(b) For every dollar that Phillips 66 and its related parties directly and indirectly benefit from the Captive Reinsurance arrangement, Phillips 66 must pay at least \$0.51 towards the Benefit Enhancements, as may be adjusted under condition (e) below (the Primary Benefit Test);

(c) The Independent Fiduciary must determine whether the Primary Benefit Test has been met with respect to each successive five-year period covered by the exemption. The Independent Fiduciary must report its determinations as part of the Independent Fiduciary's next annual report. For purposes of the initial five-year period, the Independent Fiduciary may test only the costs and benefits that inure to Phillips 66 during years two through five of the initial five-year period.

(d)(1) If the Primary Benefit Test has not been met with respect to a five-year period, Phillips 66 must reduce the participants' portion of the Plan's premium in the next consecutive year by an amount that is at least equal to the amount by which the prior five-year Primary Benefit Test was not met, plus an additional payment of interest on the shortfall, at the Code's federal underpayment rate set forth in Code section 6621(b). The premium reduction must benefit all plan participants equally, be fully implemented during the course of the year following the last year of the five-year period to which it relates, and be verified by the Independent Fiduciary; (2) If the captive reinsurance arrangement is terminated before the end of a five-year period (a Shorter Term), and if the Primary Benefit Test has not been met during the Shorter Term, Phillips 66 must reduce the participants' portion of the Plan's premium in the following year by an amount at least equal to the amount by which the Shorter Term Primary Benefit Test was not met. The premium reduction must benefit all plan participants equally, be fully implemented during the course of the year following the last year of the Shorter Term, and be verified by the Independent Fiduciary. Relief in this proposed exemption does not extend to prohibited transactions described in this proposed exemption that occur during the Shorter Term unless the requirements in this subsection (d)(2) have been met. The Independent Fiduciary must ensure the premium reduction was properly implemented, notwithstanding that the captive reinsurance arrangement has already been terminated;

(e) Phillips 66 may adjust the Benefit Enhancements to the Plan at any time, if such adjustment is approved in advance by the Independent Fiduciary after the Independent Fiduciary first determines that each adjusted Benefit Enhancement is in the interest of the Plan's participants and beneficiaries and available to them on an equal basis. The cost incurred by Phillips 66 to fund the Benefit Enhancement may be used to determine whether the Primary Benefit Test has been met. A complete description of any new Benefit Enhancements and the Independent Fiduciary's rationale and determinations regarding such enhancements must be included in the next Independent Fiduciary report submitted to the Department.

(f) Spirit must:

(1) Be a party in interest with respect to the Plan based on its affiliation with

Phillips 66 that is described in ERISA Section 3(14)(G);<sup>13</sup>

(2) Be licensed to sell insurance or conduct reinsurance operations in the Vermont;

(3) Have obtained a Certificate of Authority from the insurance commissioner of Vermont to transact business as a captive insurance company. Such certificate must not have been revoked or suspended;

(4) Have undergone a financial examination (within the meaning of the law of its domiciliary State, Vermont) by the Insurance Commissioner of Vermont within five years before the end of the year preceding the year in which the reinsurance transaction occurred;

(4) Have undergone, and continue to undergo, an examination by an independent certified public accountant for its last completed taxable year immediately before the taxable year of the Reinsurance Arrangement covered by this exemption; and

(5) Be licensed to conduct reinsurance transactions by a state 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;

(g) In each year of coverage provided by a Fronting Insurer, the formulae used by the Fronting Insurer to calculate premiums will be similar to formulae used by other insurers providing comparable life insurance coverage under similar programs. Furthermore, the premium charges calculated in accordance with the formulae will be reasonable and comparable to the premiums charged by the Fronting Insurer and its competitors with the same or a better financial strength rating providing the same coverage under comparable programs;

(h) The Plan must pay no commissions with respect to the sale of such contracts or the Reinsurance Arrangement;

(i) The Fronting Insurer must have a financial strength rating of "A" or better from A.M. Best Company (A.M. Best) or an equivalent rating from another rating agency;

(j) The Reinsurance Arrangement between Spirit and Zurich or any successor Fronting Insurer must be indemnity insurance only. The arrangement must not relieve a Fronting

Insurer from any responsibility or liability to the Plan, including liability that would result if Spirit fails to meet any of its contractual obligations to Zurich or any successor Fronting Insurer under the Reinsurance Arrangement;

(k) Phillips 66 will not offset or reduce any benefits provided to Plan participants and beneficiaries in relation to its implementation of the Proposed Benefit Enhancements;

(l) The Independent Fiduciary must:

(1) In compliance with the fiduciary obligations of prudence and loyalty under ERISA Sections 404(a)(1)(A) and (B) (i) review the Reinsurance Arrangement and the terms of the exemption; (ii) obtain and review all current objective, reliable, third-party documentation necessary to make the determinations required of the Independent Fiduciary by the exemption; and (iii) confirm in writing that all of the exemption's terms and conditions have been met (or, due to timing requirements, can reasonably be expected to be met consistent with the terms of this proposed exemption) and send this confirmation to the Department's Office of Exemption Determinations at least 30 days before Phillips 66 engages in the Reinsurance Arrangement. The confirmation must include: Copies of each document relied on by the Independent Fiduciary and the steps the Independent Fiduciary took to make its confirmation;

(2) Monitor, enforce and ensure compliance with all conditions of this exemption, in accordance with its obligations of prudence and loyalty under ERISA Sections 404(a)(1)(A) and (B), including all conditions and obligations imposed on any party dealing with the Plan, throughout the period during which Spirit's assets are directly or indirectly used in connection with a transaction covered by this exemption.

(3) Report any instance of non-compliance immediately to the Department's Office of Exemption Determinations;

(4) Take all appropriate actions to safeguard the interests of the Plan;

(5) Review all contracts pertaining to the Reinsurance Arrangement, and any renewals of such contracts, to determine whether the requirements of this proposed exemption and the terms of Benefit Enhancements continue to be satisfied;

(6) Submit an annual Independent Fiduciary Report to the Department certifying under penalty of perjury whether each term and condition of the proposed exemption is met over the applicable period. Each report must be:

(i) Completed within six months after the end of the twelve-month period to which it relates (the first twelve-month period would begin on the effective date of the exemption grant); and (ii) submitted to the Department within 60 days thereafter. The relevant report must include all of the objective data necessary to demonstrate that the Primary Benefit Test has been met;

(o) Neither Phillips 66 nor any related entity may use participant-related data or information generated by or derived from the Reinsurance Arrangement in a manner that benefits Phillips 66 or a related entity;

(p) No amount of Spirit's reserves that are attributable to the Plan participants' contributions may be transferred to Phillips 66 or a related party;

(q) All the facts and representations set forth in the Summary of Facts and Representation must be true and accurate; and

(r) No party related to this exemption request has or will, indemnify the Independent Fiduciary, in whole or in part, for negligence and/or for any violation of state or federal law that may be attributable to the Independent Fiduciary in performing its duties under the captive reinsurance arrangement. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violations.

*Effective Date:* This proposed exemption would become effective on the date the Department publishes a grant notice in the **Federal Register**.

#### Notice to Interested Persons

Persons who may be interested in the publication of this notice in the **Federal Register** include Plan participants and beneficiaries. The Applicant will provide notification to such interested persons by electronic and first-class mail within fifteen (15) calendar days after the publication date of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice as it appears in the **Federal Register** on the date of publication and a copy of the Supplemental Statement required, by 29 CFR 2570.43(b)(2), which will advise interested persons of their right to comment on the proposed exemption and request a hearing.

The Department must receive all written comments and requests for a hearing no later than forty-five (45) days after the date the Notice is published in the **Federal Register**.

All comments will be made available to the public.

*Warning:* Please do not include any personally identifiable information (such as your name, address, or other

<sup>13</sup> Under ERISA section 3(14)(G), a corporation is a "party in interest" with respect to an employee benefit plan if 50 percent or more of the combined voting power of all classes of the corporation's stock entitled to vote, or the total value of shares of all classes of stock of the corporation, is owned by an employer any of whose employees are covered by the employee benefit plan.

contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and are retrievable by most internet search engines.

*Further Information Contact:* Mr. Joseph Brennan of the Department, telephone (202) 693-8456. (This is not a toll-free number.)

### **Comcast Corporation (Comcast)**

**Located in Philadelphia, PA**

**[Application No. L-12021]**

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). As more fully explained below, this proposed exemption would allow an affiliate of Comcast, One Belmont Insurance Company, to reinsure the life insurance risks of the Comcast Corporation Comprehensive Health and Welfare Benefit Plan. Comcast expects to benefit by approximately \$375,000 per year from the proposed arrangement, and participants in the Plan's Dental Component will receive at least a \$375,000 yearly reduction in their portion of the premium payments. If Comcast benefits by more than \$375,000 in a particular year (e.g., \$500,000), participants in the Plan's Dental Component will receive that same reduction (\$500,000) in their premium payments in the subsequent plan year. This exemption requires, among other things, annual reports by a qualified, independent fiduciary, submitted to the Department of Labor confirming whether the requirements of the exemption have been met.<sup>14</sup>

### **Summary of Facts and Representations**<sup>15</sup>

#### *The Applicants*

1. Comcast is an American telecommunications conglomerate

<sup>14</sup> The Department notes that the independent fiduciary's annual written report is essential to the Department's tentative finding that this proposed exemption is, and will continue to be, in the interest and protective of the Plan and its participants and beneficiaries. Each report must clearly, prudently, and loyally determine whether Comcast and its affiliates have complied with each term and condition of the exemption. The exemption's relief is conditioned on the independent fiduciary's compliance with this requirement.

<sup>15</sup> The Department notes that availability of this exemption, is subject to the express condition that the material facts and representations contained in

headquartered in Philadelphia, Pennsylvania. Comcast wholly owns One Belmont Insurance Company (One Belmont), a captive insurance and reinsurance corporation regulated by the State of Vermont. One Belmont currently provides the following insurance coverage to Comcast and its subsidiaries: Workers compensation, general liability, automobile liability deductible reimbursement, production insurance, and international employee health & welfare benefits. As of December 31, 2019, One Belmont had total assets of \$271,114,394 and gross written premiums of \$50.0 million.

2. Comcast sponsors the Comcast Corporation Comprehensive Health and Welfare Benefit Plan (the Plan), which provides eligible employees with medical, life insurance, dental, disability, death benefits and other welfare benefits. As of December 31, 2020, the Plan provided benefits to approximately 110,657 active participants. Comcast provides life insurance and death benefits to eligible employees through the Life Insurance and Death Benefit Plan, which is a component of the Plan (the Life Insurance Component). Benefits of the Life Insurance Component include basic life insurance, for which Comcast pays one hundred percent (100%) of the premium cost, and optional (supplemental) group term life insurance benefits, for which employees pay one hundred percent (100%) of the premium cost. The Plan also has a dental component (the Dental Component), for which Comcast pays 60% of the premium cost.

3. The basic and optional (supplemental) life insurance benefits provided under the Life Insurance Component are insured by the Prudential Insurance Company (Prudential), which is unrelated to Comcast and its affiliates. Prudential recently received an "A+" financial strength rating from A.M. Best Company.

4. The Applicants are requesting an exemption that would permit One Belmont to reinsure the basic and optional (supplemental) life insurance provided under the Plan's Life Insurance Component. As described below, the proposed exemption is subject to a number of conditions, each of which must be verified by a qualified,

application L-12021 are true and complete, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply to the covered transactions as of the date of such change.

independent fiduciary (the Independent Fiduciary). Among other things, the Independent Fiduciary must submit an annual report in which, in accordance with ERISA Sections 404(a)(1)(A) and (B), it prudently and loyally determines that the Applicants have met the terms of the exemption, including the requirement that the Plan's Dental Component has received all the financial benefits and cost savings associated with the reinsurance arrangement that would otherwise have gone to the Applicants.

5. The arrangement is expected to generate an annual financial benefit to Comcast. In particular, Comcast currently anticipates that the arrangement will result in \$375,000 annual cost savings, as compared to the current benefit structure.<sup>16</sup> Therefore, the proposed exemption requires Comcast to provide participants in the Plan's Dental Component with at least an annual aggregate \$375,000 reduction in their portion of the premium for the Plan's Dental Component, without any offsetting change or reduction in employee benefits.<sup>17</sup>

6. Comcast states that reducing the premiums of the Plan's Dental Component would benefit a higher percentage of Plan participants than would benefit from reducing the premiums paid by Plan participants for supplemental life insurance. Comcast states that 85% of Plan participants participate in the Plan's Dental Component, while only 35% of Plan participants who contribute towards the supplemental life insurance offered by the Plan.

7. In no event may the reduction in the participants' portion of the Dental Component's premium be less than the amount that Comcast or any of its affiliates ultimately benefits from the captive reinsurance arrangement. Further, Comcast must continue to contribute no less than 60% of the Dental Component's premiums after the captive reinsurance arrangement takes effect.

8. If this proposed exemption is granted, Prudential will continue to be the "fronting" insurer for the basic and optional (supplemental) group term life insurance. Prudential will contract with One Belmont for One Belmont to

<sup>16</sup> According to the Applicants, Prudential has agreed to reduce the Plan's basic life insurance premiums by \$375,000 in return for transferring the Plan's basic life insurance risks to One Belmont. The result is a cost savings to Comcast, since Comcast pays 100% of these premiums.

<sup>17</sup> Based on the number of participants currently enrolled in the Plan's Dental Component, that amount currently translates to \$3.84 per participant per year in employee premium savings.

provide reinsurance coverage for 90% of the risks insured with Prudential (up to \$1,500,000 in coverage for each individual employee under the Plan). This captive reinsurance agreement between Prudential and One Belmont will be "indemnity only," which means that Prudential will not be relieved of any of its liabilities with respect to benefits provided under the Plan's Life Insurance Component, even if One Belmont is unable or unwilling in any way to satisfy its contractual obligations to Prudential.

9. Comcast and its affiliates, including One Belmont, may not retain any profit, tax or other benefit from the captive reinsurance arrangement. If Comcast or any of its affiliates ultimately receive a tax, profit or other benefit in connection with the captive reinsurance arrangement, including any benefit arising from a further diversification of One Belmont's risks in connection with adding the Insurance Component's risks to One Belmont's other risks Comcast must ensure, and the Independent Fiduciary must verify, that participants in the Plan's Dental Component receive a corresponding dollar-for-dollar additional reduction to their portion of the premiums. For example, if Comcast's savings from the captive reinsurance arrangement for a year is \$375,000, and One Belmont realizes a \$25,000 net income increase from the captive reinsurance arrangement in that same year, the Plan's participants must receive a \$400,000 reduction in their portion of the Plan's Dental Component premium in the following year. Comcast may not offset or reduce any employee benefits in connection with this premium reduction.

#### *ERISA Analysis*

11. Comcast is a party in interest with respect to the Plan pursuant to ERISA section 3(14)(C), because it is an employer whose employees are covered by the Plan. In addition, the captive reinsurer, One Belmont, is a party in interest with respect to the Plan pursuant to ERISA section 3(14)(G) because it is 100% owned by the Comcast.<sup>18</sup>

12. ERISA section 406(a) prohibits a wide variety of transactions between plans and parties in interest. For example, ERISA section 406(a)(1)(D) prohibits a plan fiduciary from causing

a plan to engage in a transaction that results in the transfer of plan assets to a party in interest. The proposed captive reinsurance arrangement would violate ERISA section 406(a)(1)(D), because it would result in the Plan's premium payments (which are plan assets) being indirectly transferred to One Belmont, which is a party in interest with respect to the Plan.

13. ERISA section 406(b)(1) prohibits a fiduciary from dealing with plan assets for its own interest or own account. The proposed captive reinsurance arrangement would violate ERISA section 406(b)(1), because the plan fiduciary would cause the Life Insurance Component's premiums to be paid to Prudential with knowledge that corresponding payments ultimately would be paid to One Belmont, and Comcast may benefit from a diversification of One Belmont's risks.

14. Comcast must fund the reserves that will be established by One Belmont for the reinsurance arrangement. This amount is estimated to be \$180,000 for the first year. Comcast will be fully and solely responsible for funding any future reserves required in connection with the captive reinsurance arrangement. In this respect, Comcast may not pass along the cost of funding the reserves to the Plan or its participants.

15. In connection with this exemption request, the Applicants engaged Milliman Actuarial Services (Milliman) to act as the independent fiduciary (the Independent Fiduciary) on behalf of the Plan to evaluate, and if appropriate, approve or reject the subject transactions. Milliman is responsible for the prudent and loyal review and analysis of the proposed transactions on the Plan's behalf and for providing a written opinion as to whether the arrangement complies with the Department's requirements for an administrative exemption. Milliman must have access to the captive insurance company's financial statements, which will show premiums, claims, reserves and other relevant financial items, and Milliman must use this information to determine ongoing savings and any other benefits to the Applicants that result from the reinsurance transaction. In addition, Milliman must: (1) Review all contracts (and any renewal of such contracts) of the reinsurance of risks and the receipt of premiums therefrom by One Belmont and determine that the requirements of the exemption continue to be satisfied; and (2) quantify (in dollars) all savings and other benefits that Comcast receives from the proposed captive reinsurance arrangement, and ensure that the Plan's

participants receive a corresponding benefit, at Comcast's expense, in the manner described above.

16. Milliman represents that it has extensive experience overseeing captive reinsurance arrangements. Milliman represents that it does not have, and has not previously had, any relationship with any party in interest (including any affiliates thereof) engaging in the proposed transactions. Milliman does not have any financial interest with respect to their work as an independent fiduciary regarding this proposed transaction, or the captive reinsurance arrangement, apart from the express fees paid for their work as an independent fiduciary for the Plan. Gross income received by Milliman from Comcast, One Belmont, or Prudential for this fiscal year is less than 0.1% of Milliman's gross annual income from all sources. Under this exemption, the gross income Milliman receives from Comcast, One Belmont and Prudential in a fiscal year must not exceed two percent of Milliman's gross annual income from all sources for that year. As a condition of the exemption, neither Milliman nor any of its representatives will enter into any agreement or instrument that violates the prohibitions on exculpatory provisions in ERISA section 410 or the Department's regulation relating to indemnification of fiduciaries at 29 CFR 2509.75-4.<sup>19</sup> Finally, Comcast and its related parties have not, and will not, indemnify Milliman, in whole or in part, for negligence and/or for any violations of state or federal law that may be attributable to Milliman performing its duties under the captive reinsurance arrangement. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violations.

17. In connection with the transactions that are the subject of this proposed exemption, Milliman represents that it has, among other things, in full accordance with its prudence and loyalty obligations under ERISA sections 404(a)(1)(A) and (B): (a) Reviewed a draft of Comcast's application for an administrative exemption that was submitted to the Department; (b) conferred with Comcast's representative to discuss the transactions involved in the reinsurance arrangement; (c) conducted such other

<sup>18</sup> Under ERISA section 3(14)(G), a corporation is a "party in interest" with respect to an employee benefit plan if 50% or more of the combined voting power of all classes of the corporation's stock entitled to vote, or the total value of shares of all classes of stock of the corporation, is owned by an employer any of whose employees are covered by the employee benefit plan.

<sup>19</sup> ERISA section 410 provides, in relevant part, that "except as provided in [ERISA] sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning Part 4 of Title I of ERISA] shall be void as against public policy."

due diligence reviews as were prudent to determine that the conditions of the proposed exemption would be met, including the premiums to be paid by the Life Insurance Component for the proposed coverage.

*Department's Note.* If the Department grants an exemption, Milliman's findings would not be current as of the exemption's effective date. Therefore, as a condition of the exemption, Milliman must engage in another analysis of the proposed transactions in full accordance with ERISA Section 404(a)(1)(A) and (B). As part of this analysis, Milliman must review the terms of the exemption and verify that it has concluded based on its review of all of the relevant documents and evidence that all of the exemption's terms and conditions have been met (or, due to timing requirements, can reasonably be expected to be met consistent with the time requirements set forth in this proposed exemption)). Milliman must document the basis for its conclusions in a written report submitted to the Department's Office of Exemption Determinations at least 30 days before the Plan engages in the reinsurance arrangement. The report must include copies of all documents and evidence Milliman relied on when conducting its review.

18. For the duration of the captive reinsurance arrangement, Milliman must: (a) Monitor, enforce and ensure compliance with all conditions of the exemption, including all conditions and obligations imposed on any party dealing with the Plan, throughout the period during which One Belmont's assets are directly or indirectly used in connection with a transaction covered by this exemption; (b) report any instance of non-compliance immediately to the Department's Office of Exemption Determinations; (c) monitor the transactions covered by the exemption on a continuing basis, to ensure the transactions remain in the interest of the Plan; and (d) take all appropriate actions to safeguard the interests of the Plan and its participants and beneficiaries. Milliman must also review all contracts and agreements (and any renewal of such contracts) relevant to the captive reinsurance arrangement and exemption.

19. Additionally, Milliman must file annual certified reports to the Department, under penalty of perjury, confirming that all of the terms and conditions of the exemption have been met and explaining the bases for that conclusion.

20. In the initial year of this proposed transaction, there will be an immediate and objectively determined benefit in the form of reduced employee

contributions for the Dental Component of the Plan in the amount of \$375,000. Milliman must ensure that all participants in the Plan's Dental Component will receive: The premium savings they are entitled to under the exemption; and the full amount of any other benefit Comcast receives from the proposed arrangement. The Department retains the right to propose a revocation or amendment to this exemption if it is unable to confirm the reliability of the underlying financial data supporting the Independent Fiduciary's "look-back" findings. The Department notes that its failure to revoke an exemption is not an endorsement or conclusion that the conditions of the exemption are, in fact, met.

21. In addition to the protections and conditions discussed above, this proposed exemption requires, and Milliman must verify that: (a) Neither the Plan nor any plan participant pays any commissions with respect to the direct insurance agreement between Comcast and Prudential and the reinsurance agreement between Prudential and One Belmont; (b) the formula used by Prudential, or any successor insurer, to calculate premiums will be similar to the formula used by other insurers providing comparable coverage under similar programs that are not captive reinsured; (c) the premium charged to the Life Insurance Component will be reasonable and comparable to the premiums charged by the insurer and its competitors with the same or a better financial strength rating providing the same coverage under comparable insurance programs that are not captive reinsured; (d) the Life Insurance Component will only contract with insurers with a financial strength rating of "A" or better from A. M. Best; (e) the Plan pays no more than adequate consideration with respect to insurance that is part of the captive reinsurance arrangement covered by the proposed exemption and (f) the captive reinsurance arrangement between the insurer and One Belmont will be indemnity reinsurance only (*i.e.*, the Fronting Insurer will not be relieved of any liability to the Plan should the reinsurer be unable or unwilling for any reason to cover any liability arising from the reinsurance arrangement).

22. This proposed exemption expressly prohibits Comcast (or a related entity) from using any participant-related data or information that is generated by (or derived from) the proposed captive reinsurance arrangement in any manner that benefits Comcast or a related entity. Comcast may not reduce or offset any benefits

provided to Plan participants and beneficiaries in connection with its implementation of the proposed captive reinsurance arrangement. Further, all expenses associated with the exemption and the exemption application, including any payment to the Independent Fiduciary, must be paid by Comcast and not the Plan.

#### *The Department's Findings*

23. The Department has the authority under ERISA section 408(a) to grant an exemption from the prohibition transaction provisions of ERISA section 406 if the Department finds that the transaction is in the interest and protective of the rights of the affected plan and its participants and beneficiaries, and is administratively feasible.<sup>20</sup> The Department's findings required under ERISA section 408(a) with respect to the proposed captive reinsurance arrangement are discussed below.

24. *The Proposed Exemption is "Administratively Feasible."* The Department has tentatively determined that the proposed exemption would be administratively feasible, because the proposed captive reinsurance arrangement is subject to robust annual reviews by Milliman that must be filed with the Department's Office of Exemption Determinations.

25. *The Proposed Exemption is "In the Interests of the Plan."* The Department has tentatively determined that the proposed exemption would be in the interest of the Plan because, among other things, 100% of the benefit to Comcast from the proposed captive reinsurance arrangement must be transferred to participants in the Plan's Dental Component by reducing their premiums in an amount equal to any and all cost savings and benefits Comcast derives from the proposed captive reinsurance arrangement. At no point during the proposed captive reinsurance arrangement will the aggregate benefit to the Plan's participants in the Dental Component be less than \$375,000 per year, and Comcast may not contribute less than 60% towards the premium for the Plan's Dental Component after entering into the proposed reinsurance arrangement.

26. *The Proposed Exemption is "Protective of the Plan."* The Department has tentatively determined that the proposed exemption is

<sup>20</sup> Specifically, ERISA section 408(a) provides that the Secretary of Labor may not grant an exemption unless the Secretary finds that the exemption is administratively feasible, in the interests of the plan and its participants and beneficiaries, and protective of the rights of the plan participants and beneficiaries of such plan.

protective of the rights of the Plan participants and beneficiaries because, among other things: (a) The premium charged to the Life Insurance Component will be reasonable and comparable to the premiums charged by the insurer and its competitors with the same or a better financial strength rating providing the same coverage under comparable insurance programs that are not captive reinsured; (b) the Life Insurance Component will only contract with insurers with a financial strength rating of "A" or better from A. M. Best; (c) the Plan pays no more than adequate consideration with respect to insurance that is part of the captive reinsurance arrangement covered by the proposed exemption; and (d) the reinsurance arrangement between the insurer and One Belmont will be indemnity reinsurance only (*i.e.*, the Fronting Insurer will not be relieved of any liability to the Plan should the reinsurer become unable or unwilling for any reason to cover any liability arising from the reinsurance arrangement).

#### Summary

27. Based on Comcast satisfying the conditions described above, the Department has tentatively determined that the relief sought by Comcast satisfies the statutory requirements for an exemption under ERISA section 408(a).

#### Proposed Exemption

The relief described in Section II of this proposed exemption is conditioned upon adherence to the material facts and representations described herein and as presented to the Department by Comcast, as well as satisfaction of the Definitions in Section I and the Conditions in Section III.

#### Section I. Definitions

(a) An "affiliate" of Comcast or One Belmont includes: (1) Any person who controls the person or is controlled by or under common control with Comcast or One Belmont; (2) Any officer, director, employee, relative, or partner in Comcast or One Belmont; and (3) Any corporation or partnership of which the person in (2) of this paragraph is an officer, director, partner, or employee;

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

(c) The term "Independent Fiduciary" means a person who:

(1) Is not an affiliate of Comcast or One Belmont and does not hold an ownership interest in Comcast or One Belmont or their affiliates;

(2) Is not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that it:

(i) Is a fiduciary with respect to the plan and has agreed not to participate in any decision regarding any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) Has not entered into any agreement or instrument that violates the prohibitions on exculpatory provisions in ERISA section 410 or the Department's regulation relating to indemnification of fiduciaries at 29 CFR 2509.75-4.

(5) For purposes of this definition, no organization or individual may serve as Independent Fiduciary for any fiscal year if the gross income received by such organization or individual from Comcast, One Belmont or their affiliates for that fiscal year exceeds two percent (2%) of such organization's or individual's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which such organization or individual is an officer, director, or 10 percent (10%) or more partner or shareholder, and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department; and

(6) No organization or individual that is an Independent Fiduciary and no partnership or corporation of which such organization or individual is an officer, director or ten percent (10%) or more partner or shareholder may acquire any property from, sell any property to, or borrow any funds from Comcast or One Belmont or their affiliates while serving as an Independent Fiduciary. This prohibition will continue for a period of six months after: The party ceases to be an Independent Fiduciary; and/or the Independent Fiduciary negotiates any transaction on behalf of the Plan during the period that the organization or individual serves as an Independent Fiduciary.

#### Section II: Covered Transactions

If this proposed exemption is granted, the restrictions of ERISA sections 406(a)(1)(D) and 406(b)(1) will not apply to the reinsurance of risks and the receipt of premiums therefrom by One Belmont Insurance Company, an affiliate of Comcast Corporation

(Comcast), in connection with insurance contracts sold by Prudential Insurance Company (Prudential), or any successor fronting insurer meeting the requirements of this proposed exemption (a Fronting Insurer), to provide group term life insurance benefits to participants in the life insurance component (the Life Insurance Component) of the Comcast Corporation Comprehensive Health and Welfare Benefit Plan (the Plan).

#### Section III. Conditions

(a) In the initial year and each subsequent year of the captive reinsurance arrangement, the participants' portion of the premium for the dental component of the Plan (the Dental Component) must be reduced by at least \$375,000. If Comcast's savings from the captive reinsurance arrangement are greater than \$375,000 in any year, Comcast must reduce the participants' portion of the Dental Component's premium by that greater amount in the next subsequent year. If Comcast or any of its affiliates ultimately receive some other benefit in connection with the captive insurance arrangement, such as a tax reduction or a profit or any benefit arising from a further diversification of One Belmont's risks in connection with adding the Insurance Component's risks to One Belmont's other risks, participants in the Dental Component must receive an additional corresponding dollar-for-dollar reduction to their portion of the Dental Component's premiums in the subsequent year.

(b) No commissions are paid by the Plan with respect to the direct sale of such contracts or the reinsurance thereof;

(c) In the initial year and in subsequent years of coverage provided by a Fronting Insurer, the formulae used by the Fronting Insurer to calculate premiums will be similar to formulae used by other insurers providing comparable life insurance coverage under similar programs that are not captive reinsured. Furthermore, the premium charges calculated in accordance with the formulae will be reasonable and will be comparable to the premiums charged by the Fronting Insurer and its competitors with the same or a better financial strength rating providing the same coverage under comparable programs that are not captive reinsured;

(d) Comcast is solely and fully responsible for funding One Belmont's reserves with respect to the reinsurance arrangement covered by this proposed exemption;

(e) One Belmont:

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

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as such term is defined in ERISA section 3(10);

(3) Has obtained a Certificate of Authority from the state of Vermont, its domiciliary state, that has neither been revoked nor suspended;

(4) (A) Has undergone and shall continue to undergo an examination by an independent certified public accountant for its last completed taxable year immediately before the taxable year of the reinsurance transaction covered by this exemption; or

(B) Has undergone a financial examination (within the meaning of the law of Vermont) by the Commissioner of Banking, Insurance, Securities and Health Care Administration of the State of Vermont within five (5) years before the end of the year preceding the year in which the reinsurance transaction occurred; and

(5) Is licensed to conduct reinsurance transactions under Vermont law, which requires an actuarial review of reserves to be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(f) The Plan retained and will continue to retain an independent, qualified fiduciary or successor to such fiduciary, as defined in Section I(c), (the Independent Fiduciary) to analyze the transactions covered by this proposed exemption, and render an opinion that the requirements of this exemption have been satisfied;

(g) The Independent Fiduciary must, in full accordance with its obligations of prudence and loyalty under ERISA sections 404(a)(1)(A) and (B), review the terms of the exemption, engage in a prudent and loyal analysis of the covered transactions, and verify that based on its review of all relevant documents and evidence, it has concluded that all of the exemption's terms and conditions have been met (or can be reasonably be expected to be met consistent with the time requirements set forth in this proposed exemption). This conclusion must be documented in a written report submitted to the Department's Office of Exemption Determinations at least 30 days before the Plan engages in a transaction covered by the exemption. The report must include copies of each document relied on by the Independent Fiduciary and discuss the bases for its conclusion;

(3) Monitor, enforce and ensure compliance with all conditions of this exemption, including all conditions and obligations imposed on any party dealing with the Plan, throughout the period during which One Belmont's assets are directly or indirectly used in connection with a transaction covered by this exemption;

(4) Report any instance of non-compliance immediately to the Department's Office of Exemption Determinations;

(5) Monitor the transactions described in the exemption on a continuing basis, to ensure the transactions remain in the interest of the Plan;

(6) Take all appropriate actions to safeguard the interests of the Plan;

(7) Review all contracts pertaining to the Reinsurance Arrangement, and any renewals of such contracts, to determine whether the requirements of this proposed exemption continue to be satisfied;

(8) Determine that the Reinsurance Arrangement is in no way detrimental to the Plan and its participants and beneficiaries;

(9) Confirm that the Plan's Dental Component has received all the financial benefits and cost savings associated with the proposed captive reinsurance arrangement that otherwise would have been retained by Comcast or a party related to Comcast;

(10) Provide an annual report to the Department, under penalty of perjury, certifying that each term and condition of this exemption is satisfied and setting forth the bases for the certification. Each report must be: (i) Completed within six months after the end of the twelve month period to which it relates (the first twelve month period begins on the first day of the implementation of the captive reinsurance arrangement covered by this proposed exemption); and (ii) submitted to the Department within six months thereafter;

(h) Comcast and its related parties have not, and will not, indemnify the Independent Fiduciary, in whole or in part, for negligence and/or for any violations of state or federal law that may be attributable to the Independent Fiduciary in performing its duties under the captive reinsurance arrangement. In addition, no contract or instrument will purport to waive any liability under state or federal law for any such violations.

(i) Neither Comcast nor a related entity may use participant-related data or information generated by, or derived from, the Reinsurance Arrangement, in a manner that benefits Comcast or a related entity;

(j) All the facts and representations set forth in the Summary of Facts and Representation are true and accurate;

(k) Comcast will not offset or reduce any benefits provided to Plan participants and beneficiaries in connection with its implementation of the captive reinsurance arrangement;

(l) The Plan will only contract with a Fronting Insurer with a financial strength rating of "A" or better from A.M. Best;

(m) The Plan pays no more than adequate consideration with respect to insurance that is part of the captive reinsurance arrangement covered by the proposed exemption;

(n) In the event a successor Independent Fiduciary is appointed to represent the interests of the Plan with respect to the subject transaction, no time shall elapse between the resignation or termination of the former Independent Fiduciary and the appointment of the successor Independent Fiduciary; and

(o) All expenses associated with the exemption and the exemption application, including any payment to the Independent Fiduciary, must be paid by Comcast and not the Plan.

*Effective Date:* The proposed exemption is effective as of the date a final exemption is published in the **Federal Register**.

#### Notice to Interested Persons

Persons who may be interested in the publication of this notice in the **Federal Register** include Plan participants and beneficiaries. The Applicants will provide notification to such interested persons by electronic and first-class mail within fifteen (15) calendar days after the date the Notice is published in the **Federal Register**. Such mailing will contain a copy of the Notice as it appears in the **Federal Register** on the publication date and a copy of the Supplemental Statement required by 29 CFR 2570.43(b)(2) that advises interested persons of their right to comment on the proposed exemption and request a hearing.

The Department must receive all written comments and requests for a hearing no later than forty-five (45) days after publication date of the date of the Notice in the **Federal Register**.

All comments will be made available to the public.

*Warning:* Please do not include any personally identifiable information (such as your 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 are

retrievable by most internet search engines.

*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.

**G. Christopher Cosby,**

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

[FR Doc. 2021-20237 Filed 9-17-21; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Notice of a Change in Status of the Extended Benefit (EB) Program for New Mexico

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

This notice announces a change in benefit period eligibility under the EB program that has occurred since the publication of the last notice regarding the States' EB status:

- The beginning date for New Mexico's High Unemployment Period (HUP) was July 4, 2021, and statutorily once a state begins a HUP it must remain "on" for 13-weeks. During the mandatory 13-week "on" period, the Bureau of Labor Statistics released data which showed the seasonally-adjusted total unemployment rate for New Mexico falling below the 8.0 percent threshold necessary to remain "on" a HUP in EB. As such, the HUP for New Mexico will end on October 2, 2021 and beginning October 3, 2021, the maximum potential entitlement for claimants in EB in New Mexico will decrease from 20 weeks to 13 weeks.

The trigger notice covering state eligibility for the EB program can be found at: [http://ows.doleta.gov/unemploy/claims\\_arch.as](http://ows.doleta.gov/unemploy/claims_arch.as).

#### Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13 (c) (1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S-4524, Attn: Thomas Stengle, 200 Constitution Avenue NW, Washington, DC 20210, telephone number (202) 693-2991 (this is not a toll-free number) or by email: [Stengle.Thomas@dol.gov](mailto:Stengle.Thomas@dol.gov).

Signed in Washington, DC.

**Lenita Jacobs-Simmons,**

*Acting Assistant Secretary, Labor.*

[FR Doc. 2021-20238 Filed 9-17-21; 8:45 am]

**BILLING CODE 4510-FW-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Notice of a Change in Status of the Extended Benefit (EB) Program for the District of Columbia

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

This notice announces a change in benefit period eligibility under the EB program that has occurred since the publication of the last notice regarding the District of Columbia's EB status:

- Based in the language in the District's law which conditioned the applicability of the Total Unemployment Rate (TUR) trigger on full Federal funding resulted in an "off" indicator for the District of Columbia for the week ending August 21, 2021. This will end any payable period associated with the TUR trigger for the District of Columbia on September 11, 2021.

The trigger notice covering state eligibility for the EB program can be found at: [http://ows.doleta.gov/unemploy/claims\\_arch.as](http://ows.doleta.gov/unemploy/claims_arch.as).

#### Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program,