

duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th day of March, 2007.

**Ivan Strasfeld,**

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

[FR Doc. E7-5209 Filed 3-21-07; 8:45 am]

BILLING CODE 4510-29-P

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Application No. D-11345]

#### Notice of Proposed Individual Exemption To Amend and Replace Prohibited Transaction Exemption (PTE) 2000-34, Involving the Fidelity Mutual Life Insurance Company (FML), Located in Pittsburgh, PA

**AGENCY:** Employee Benefits Security Administration, U.S. Department of Labor.

**ACTION:** Notice of proposed individual exemption to amend and replace PTE 2000-34.

This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption which, if granted, would amend and replace PTE 2000-34 (65 FR 41732, July 6, 2000), an exemption granted to FML. PTE 2000-34, relates to (1) the receipt of certain stock (Plan Stock) issued by Fidelity Insurance Group, Inc. (Group), a wholly owned subsidiary of FML, or (2) the receipt of plan credits (Plan Credits), by or on behalf of a FML mutual member (the Mutual Member), which is an employee benefit plan (the Plan), other than the Employee Pension Plan of Fidelity Mutual Life Insurance Company, in exchange for such Mutual Member's membership interest (the Membership Interest) in FML, in accordance with the terms of a plan of rehabilitation (the Third Amended Plan), approved by the Pennsylvania Commonwealth Court (the Court) and supervised by both the Court and a rehabilitator (the Rehabilitator) appointed by the Pennsylvania Insurance Commissioner (the Commissioner). These transactions are described in a notice of proposed exemption (65 FR 18359, April 7, 2000), which underlies PTE 2000-34.

If granted, this proposed exemption would incorporate by reference many of the conditions contained in PTE 2000-34. The proposed exemption would also revise and update certain facts and representations set forth in PTE 2000-34 to include the terms of the Fourth Amended Plan of Rehabilitation (the Fourth Amended Plan) which supersedes the Third Amended Plan upon which PTE 2000-34 is based.

**DATES:** *Effective Date:* If granted, this proposed exemption would be effective as of the date the grant notice is published in the **Federal Register**.

**DATES:** Written comments should be received by the Department by April 24, 2007.

**ADDRESSES:** All written comments should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D-11345. Interested persons are also invited to submit comments to the Department by e-mail to [uzlyan.katie@dol.gov](mailto:uzlyan.katie@dol.gov) or by facsimile at (202) 219-0204.

The application pertaining to the proposed exemption and the comments will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of

Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

#### FOR FURTHER INFORMATION CONTACT:

Ekaterina A. Uzlyan, Office of Exemptions Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693-8552. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of a proposed exemption that would amend and replace PTE 2000-34. PTE 2000-34 provides an exemption from the prohibited transaction restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1)(A) through (D) of the Code.

The proposed exemption has been requested in an application filed on behalf of FML pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is being issued solely by the Department.

#### I. FML and Its Affiliates

As noted in the proposed exemption underlying PTE 2000-34, FML is a mutual life insurance company maintaining its principal place of business at 250 King of Prussia Road, Radnor, Pennsylvania. Prior to certain rehabilitation proceedings, FML was licensed to issue life insurance policies in 47 states and the District of Columbia. Because FML has been organized as a mutual form of life insurance company, it has no stockholders. Instead, the owners of its contracts (i.e., the Mutual Members) are vested with the right to vote and to receive an allocable portion of the divisible surplus. In addition, the Mutual Members have contractual rights under their contracts with FML.

FML owns all of the stock of Group, a Pennsylvania-domiciled stock corporation. Group, in turn, owns all of the stock of Fidelity Life Insurance Company (FLIC), a Pennsylvania stock life insurance company.

## II. Description of FML and the Earlier Plans of Rehabilitation

During late 1990, the Pennsylvania Insurance Department began monitoring FML's operations because of concern over FML's real estate holdings, its decline in surplus and unrealized capital losses. In response to an increase in surrenders of FML insurance contracts (the Contracts), and loan requests for the period October 26 to November 5, 1992, the Pennsylvania Insurance Department and FML's Board of Directors petitioned the Court for an Order of Rehabilitation. As a result, FML was placed in rehabilitation on November 6, 1992. Under the Order of Rehabilitation, a moratorium was imposed on cash distributions, Contract surrenders, withdrawals and policy loans, except in certain hardship situations. The moratorium was intended to stop the outflow of cash and to afford the Rehabilitator time to stabilize FML's assets.

FML filed the Original Plan of Rehabilitation (the Original Plan), with the Court on June 30, 1994. The Original Plan and the successor amended plans of rehabilitation (i.e., the First Amended Plan of Rehabilitation (the First Amended Plan) and the Second Amended Plan of Rehabilitation (the Second Amended Plan)) are described in detail in PTE 2000-34 at 18361-18362.

## III. The Third Amended Plan

Because the First Amended Plan and the Second Amended Plan were never implemented due to objections raised by a number of parties, FML filed the Third Amended Plan with the Court on June 30, 1998. According to PTE 2000-34, the Third Amended Plan provided that on the reorganization closing date (the Closing Date), FML would transfer its insurance operations (including assets and insurance-contract obligations) to FLIC pursuant to assumption reinsurance and transfer agreements. FLIC would then continue as a wholly owned subsidiary of Group and a successor to FML. Prior to the transfer to and assumption by FLIC, FML would modify the terms of its insurance contracts by endorsement. These contractual obligations (as modified by such endorsements) would remain in force after such transfer, with FLIC being the obligated insurer.

### A. Sale of Group Stock

The Third Amended Plan further provided for FML to sell approximately 51% of the outstanding common stock of Group (Group Common Stock) to an investor (i.e., the Investor) in a private

placement in exchange for cash. The Investor would be an independent foreign or domestic entity which satisfied certain securities law and certain minimum rating or capitalization criteria. The Investor would be selected according to bid procedures drawn up by the Commissioner and adopted by the Court, and would be subject to Court approval. Immediately after the Closing Date, the Investor would own slightly more than 50% of the Group Common Stock. Part of the cash received by FML from the sale of Group Common Stock to the Investor would be used by FML to pay the claims of its creditors. The remaining cash would be contributed by FML to the capital of FLIC in order to fund FLIC's future operations.

### B. Classes of Claims

The Third Amended Plan set up classes of claims against FML and specified the priorities of each class of claims, in conformity with the Pennsylvania laws applicable to insurance company rehabilitations. For example, Class 3 covered the claims which holders of Contracts had in their capacities as Contractholders (and not in their capacities as Mutual Members). These claims included claims for death or annuity proceeds or other payments for insured losses under FML insurance policies. Contractholders would be permitted to surrender their Contracts for the full cash surrender value. The Contracts of Contractholders not exercising this surrender option would continue in effect, as modified by endorsement by FML, and then assumed and reinsured by FLIC. Class 10, the last and residual category, covered claims of FML's Mutual Members with respect to their Membership Interests.

### C. Mutual Members

Under the Third Amended Plan, the claims of FML's Mutual Members would generally be satisfied on the Closing Date by distributing Group Common Stock and Group preferred stock (Group Preferred Stock)<sup>1</sup> to these Mutual Members in exchange for the relinquishment of their Membership Interests in FML. Group Common Stock would have voting rights of one vote per share. Group Preferred Stock would have a liquidation preference and redemption value of \$25 per share. The holders of Group Preferred Stock would be entitled to receive cumulative annual dividends, payable quarterly, at the rate of 7% per annum of the liquidation

preference (i.e., \$1.75 per share annually). Group Preferred Stock would generally be non-voting.

Upon the liquidation of Group, a share of Group Preferred Stock would be entitled to a distribution preference of \$25 per share, plus the amount of any accrued but unpaid dividends. Group could elect to redeem shares of Group Preferred Stock at any time after 20 years from the Closing Date (or the issue date, if later) at a redemption price of \$25 per share plus the amount of any accrued but unpaid dividends. Group Preferred Stock would be convertible into shares of Group Common Stock at any time at the option of the holder.

Of the Plan Stock that would be allocated to Mutual Members for Class 10 claims, 20% would be allocated based on voting rights, and 80% would be based on the Contract's contribution to FML's surplus. Each Mutual Member receiving Plan Stock would receive Group Common Stock and Group Preferred Stock in the ratio of 3 common shares to 2.8 preferred shares.

Under the Third Amended Plan, a special distribution rule would apply to Mutual Members who held insurance contracts in connection with (a) retirement plans or arrangements described in sections 403(a) or 408 of the Code or (b) non-trusted retirement plans described in Code section 401(a) (Non-Trusteed Tax-Qualified Retirement Funding Contracts). Mutual Members holding Non-Trusteed Tax-Qualified Retirement Funding Contracts would not receive Plan Stock in exchange for the relinquishment of their Membership Interests. These Mutual Members would instead be entitled to receive Plan Credits having a value equal in value to the Plan Stock they would otherwise have received. This special rule was adopted to take into account the legal impediments which frequently exist on the ability of holders of Non-Trusteed Tax-Qualified Retirement Funding Contracts to hold corporate stock.

The Investor would be required to purchase Plan Stock which would otherwise have been allocated to Non-Trusteed Tax-Qualified Retirement Funding Contracts. The proceeds of such sale would be contributed to the capital of FLIC. Mutual Members holding Non-Trusteed Tax-Qualified Retirement Funding Contracts would have the right to disclaim the Plan Credits which they would otherwise receive in exchange for their Membership Interests. Any Mutual Member which is a Plan or other member would have the right to disclaim its interest in the Plan Stock which it would otherwise receive in exchange for its Membership Interest.

<sup>1</sup> Group Common Stock and Group Preferred Stock are also collectively referred to as "Plan Stock."

#### *D. Liquidation of FML; Continuation of Group and FLIC*

Under the Third Amended Plan, FML would liquidate and dissolve shortly after the Closing Date. Any Group Common Stock and Group Preferred Stock which FML would continue to hold after the Closing Date would be returned to Group for cancellation. FLIC would then continue in existence as a wholly owned subsidiary of Group, and would continue FML's business in a substantially unchanged manner by receiving premiums, paying claims, and generally administering the FML contracts which FLIC had assumed.

#### *E. Sale of Plan Stock; Commission-Free Purchase and Sales Program*

Under the Third Amended Plan, Mutual Members would not be restricted from selling or transferring the Plan Stock received, including converting the Group Preferred Stock to Group Common Stock, although Group, its affiliates and the Investor would be subject to restrictions on purchasing or redeeming such Stock. Additionally, Group would not be precluded from establishing a commission-free purchase or sales program to allow Mutual Members who received a small number of shares of Plan Stock the opportunity to round-up those shares or sell such shares for a temporary period without the payment of sales commission. The Plan Stock would be publicly-traded and listed on the Nasdaq, or the New York or American Stock Exchange.

#### *F. Protections for Plan Mutual Members*

PTE 2000–34 provided certain protections for Mutual Members that are Plans. In this regard:

- The Third Amended Plan would be approved by the Court and implemented in accordance with procedural and substantive safeguards that are imposed under Pennsylvania law and would be subject to review and/or supervision by the Commissioner and the Rehabilitator.
- The Court would determine whether the Third Amended Plan properly conserved and equitably administered the assets of FML in the interests of investors, the public and others in accordance with the legislatively-stated purpose of protecting the interests of the insured, creditors and the public; and (2) equitably apportioned any unavoidable loss through improved methods for rehabilitating FML.
- Each Mutual Member would have an opportunity to comment on the Third Amended Plan at hearings held by the Court after full written disclosure of the terms of the Third Amended Plan is given to such Mutual Member by FML.

- Participation by all Mutual Members in the Third Amended Plan, if approved by the Court, would be mandatory, although Mutual Members could disclaim Plan Stock.

- The decision by a Mutual Member, which was a Plan, to receive or disclaim Plan Stock or Plan Credits allocated to such Mutual Member would be made by one or more independent fiduciaries of such plan and not by FML, Group or FLIC. Consequently, neither FML nor any of its affiliates could exercise investment discretion nor render "investment advice" within the meaning of 29 CFR 2510.3–21(c) with respect to an independent plan fiduciary's decision to receive or disclaim Plan Stock or Plan Credits.

- Twenty percent (20%) of the Plan Stock would be allocated to a Mutual Member based upon voting rights and eighty percent (80%) would be allocated to a Mutual Member on the basis of the contribution of the Mutual Member's insurance or annuity Contract to the surplus of FML. The contribution to FML's surplus is the actuarial calculation of both the historical and expected future profit contribution of the Contracts that have contributed to the surplus (i.e., the net earnings) of FML. The actuarial formulas would be approved by the Court and the Commissioner.

- The value of Plan Stock or Plan Credits that would be received by a Mutual Member would reflect the aggregate price paid by the Investor Group for Group Common Stock and for Plan Credits.

- All Mutual Members that were Plans would participate in the transactions on the same basis as all other Mutual Members that are not Plans.

- No Mutual Member would pay any brokerage commissions or fees in connection with the receipt of Plan Stock or Plan Credits.

- The Third Amended Plan would not affect the rights of a Contractholder, which is a Mutual Member. In this regard, FML's obligations to a Contractholder would be discharged and terminated upon their endorsement and assumption by FLIC, thereby making FLIC liable for the obligations under such Contract.

#### **IV. The Fourth Amended Plan**

Subsequent to the granting of PTE 2000–34, FML informed the Department of certain modifications to the Summary of Facts and Representations set forth in PTE 2000–34. Specifically, on November 23, 2005, the Fourth Amended Plan was submitted to the Court. The Fourth Amended Plan

supersedes the Third Amended Plan. FML represents that it was not possible to implement the Third Amended Plan because a qualified bidder could not be obtained. Consequently, FML explains that in November 2005, the Fourth Amended Plan was introduced and submitted to the Court.

The Fourth Amended Plan calls for the Commissioner to adopt one of the following reorganization alternatives for FML: (a) Cause FML to sell its insurance operations, assets, and insurance-contract obligations to an Investor who is an asset purchaser (the Asset Purchaser) in exchange for cash (the Asset Acquisition Alternative); or (b) convert FML from a mutual company to a stock company, and cause FML to sell its stock to an Investor who is a stock purchaser (the Stock Purchaser) in exchange for Investor Stock and/or cash (the Stock Acquisition Alternative).<sup>2</sup>

The Rehabilitator will conduct a competitive bidding process in accordance with the bid procedures set forth in the Fourth Amended Plan. The Rehabilitator will have the right to reject any and all bids, and will have no authority to accept a bid without the prior approval of the proposed transaction by the Pennsylvania Insurance Department and by the Court after petition, notice, and hearing.

Bidders may bid for either the purchase of all of the stock of FML or the assumption of all of FML's insurance contracts. If an assuming insurer is the successful bidder, selected assets of FML will be transferred to the Asset Purchaser in exchange for its assumption and reinsurance of FML's obligations under all of FML's insurance Contracts. If a purchaser of FML's stock is the successful bidder, FML will be demutualized and converted into a stock corporation, and FML's stock will be sold to such Stock Purchaser.

As under the Third Amended Plan, cash obtained by FML will be used to pay the claims of FML's creditors. In addition, FML's Mutual Members will receive cash or a combination of cash and Investor Stock (or, in some cases, Plan Credits).

#### *A. The Asset Acquisition Alternative*

Under the Asset Acquisition Alternative, the Asset Purchaser will assume all of FML's insurance contracts on the Closing Date. These contractual obligations (as modified) will remain in force after such transfer, with the Asset Purchaser being the obligated insurer.

<sup>2</sup> For purposes of this proposed exemption, the Asset Acquisition Alternative and the Stock Acquisition Alternative are together referred to as "the Alternatives."

In addition, before the Closing Date, each FML Contract in force will be modified by endorsement to remove provisions for voting rights, participation in divisible surplus through dividends, and to provide for continued compliance with various tax provisions. Moreover, each Contract having a cash value will be modified to provide that the Contract will be eligible annually, in lieu of dividends, for certain contractual charges, payments and credits which are not guaranteed by the terms of the contract (the Non-Guaranteed Elements). The Contractholder may elect to apply these Non-Guaranteed Elements in accordance with the same options as were available for the application of dividends before the contract was modified. No Contract modifications will reduce any benefits and guarantees.

The cash value, the Non-Guaranteed Element accumulation account, and policy loan accounts of each Contract will be the same after the Closing Date as they were before the Closing Date. Additionally, the initial post-closing Non-Guaranteed Elements will be determined by the Rehabilitator and will be subject to notice, hearing, and Court approval.

Further, the Asset Purchaser will pay FML a ceding commission determined by competitive bidding in accordance with the bidding procedures. The bidding procedure will be subject to approval by the Court.

Also under the Asset Acquisition Alternative, FML will transfer to the Asset Purchaser the assets of its insurance operations and other assets having a total value equal to the net FML liabilities assumed by the Asset Purchaser (i.e., statutory reserves), less the agreed-upon purchase price as determined through the bidding procedures (i.e., the ceding commission). The transferred assets will be free and clear of all liens and claims arising from pre-closing to claims against FML, but will be subject to the obligations imposed by the assumed Contracts and "the Assumption Reinsurance Agreement." Additionally, FML will transfer all of the outstanding common stock of FLIC to the Asset Purchaser in the event such assuming insurer submits a bid to purchase the stock of FLIC that is selected by the Rehabilitator and approved by the Court.

Further, holders of FML Contracts will have the right to reject the transfer of their Contracts to the Asset Purchaser. Each rejected contract will be cancelled by FML before the Closing Date, and the Contractholder will receive the cash surrender value of the

Contract (if any). The Asset Purchaser will have no liability with respect to any rejected contract. The rights of Contractholders in their capacities as Mutual Members of FML will not be affected by any such Contract rejection.

As noted below, as soon as practicable after the Closing Date, FML will transfer to Mutual Members (including Mutual Members that are Plans), consideration in the form of cash or Plan Credits, in exchange for such Mutual Member's Membership Interest in FML.

#### *B. The Stock Acquisition Alternative*

Under the Stock Acquisition Alternative, FML will demutualize and convert to a stock corporation effective as of the Closing Date. All of FML's assets will vest in the stock corporation, and the Stock Purchaser will assume all of FML's liabilities which are not released, discharged, or otherwise retained under the Fourth Amended Plan. Moreover, FML's Contracts will be endorsed as under the Asset Acquisition Alternative.

Also under the Stock Acquisition Alternative, all of FML's post-conversion (Post-Conversion) issued and outstanding common stock<sup>3</sup> will be transferred to the Stock Purchaser on the Closing Date, in exchange for the consideration determined by competitive bidding, in accordance with the bidding procedures, and subject to approval by the Court. Such consideration may consist of (a) cash or (b) a combination of cash and common stock issued by the Stock Purchaser or the parent of the Stock Purchaser (Investor Stock), or a combination of both. Alternatively, the Stock Purchaser may acquire all of FML's stock pursuant to a merger for (a) cash or (b) a combination of cash and Investor Stock.

Investor Stock forming part of the consideration for FML's stock will be listed on either the Nasdaq or the New York Stock Exchange. The Investor Stock will also be registered under the Securities Exchange Act of 1934, and it will not be subject to transfer restrictions (except as may otherwise be required under relevant securities laws). As another option, pursuant to a registration exemption under the Securities Exchange Act of 1933, the Stock Purchaser may use as consideration, its shares of unregistered common stock if such Stock Purchaser obtains an SEC "no action" letter or a legal opinion as to the applicability of such SEC exemption.

<sup>3</sup> The applicant represents that neither Group nor FLIC has any preferred stock outstanding. The Fourth Amended Plan also does not propose to use any preferred stock.

If Investor Stock forms part of the consideration for FML's shares, the Stock Purchaser will be required to establish a "round lot" program under which each FML Mutual Member who receives fewer than 100 shares of Investor Stock under the Fourth Amended Plan may either (a) purchase additional shares of Investor Stock to increase his holdings to a "round lot" consisting of 100 shares, or (b) sell all of his or her shares of Investor Stock, without paying brokerage commissions or administrative or similar expenses.

At or before Closing, the Rehabilitator and the Stock Purchaser will determine how many shares of Investor Stock are allocable to Mutual Members which are entitled to receive Plan Credits instead of Investor Stock. Instead of transferring these shares as part of the consideration, the Stock Purchaser will pay to FML the market value of such shares as of the Closing Date, and FML will apply this amount as Plan Credits.

#### *C. FML Creditors*

Part of the cash received by FML from either the Asset Purchaser or the Stock Purchaser will be used to pay the claims of FML's creditors in full, together with interest at the rate of 6%. In addition, the Fourth Amended Plan sets up ten classes of claims against FML and specifies the priorities of each class of claims, in conformity with the Pennsylvania laws applicable to insurance company rehabilitations. These classes, priorities, and payment provisions are substantially identical to those included in the Third Amended Plan. In this regard, Mutual Members' claims for their Mutual Membership Interests in FML comprise class 10 claims.

#### *D. Mutual Members*

The Fourth Amended Plan provides that in exchange for the mandatory relinquishment of their Mutual Membership Interests, Mutual Members of FML will be entitled to receive FML's net assets (including cash or a combination of cash and Investor Stock) remaining after the satisfaction of all claims in Classes 1 through 9. Of the FML net assets allocated to Mutual Members for Class 10 claims, 20% will be allocated based on voting rights, and 80% will be based on the Contract's contribution to FML's surplus.

As under the Third Amended Plan, the Fourth Amended Plan provides for a special distribution rule. This special distribution rule will apply to Mutual Members, under both Alternatives, who hold Contracts in connection with Non-Trusteed Tax-Qualified Retirement Funding Contracts. These Mutual

Members will not receive any cash or Investor Stock in exchange for the relinquishment of their Membership Interests with respect to such Contracts, but will instead receive Plan Credits having a value equal to the cash or combination of cash and Investor Stock they would otherwise have received. Under the Stock Acquisition Alternative, the Stock Purchaser will be required to pay cash to this group of Mutual Members in lieu of Investor Stock, which will be replaced by Plan Credits.

Each Mutual Member will have the right to disclaim its interest in the cash or combination of cash and Investor Stock which such Mutual Member would otherwise receive in exchange for its Membership Interest.

#### *E. Liquidation or Continuation of FML*

Effective as of the Closing Date, FML will generally be discharged from any liability with respect to any and all of its liabilities claims and, obligations. Under the Asset Acquisition Alternative, FML will be liquidated and dissolved after all endorsed insurance contracts are assumed by the Asset Purchaser. Under the Stock Purchase Alternative, FML will continue in existence as an operating stock insurance company owned by the Stock Purchaser.

#### *F. Protections for Plan Mutual Members*

Under the Fourth Amended Plan, all Mutual Members that are Plans will be subject to the similar protections as those provided under the Third Amended Plan. In this regard:

- The Fourth Amended Plan will be approved by the Court, implemented in accordance with procedural and substantive safeguards that are imposed under Pennsylvania law and be subject to review and/or supervision by the Commissioner (both in her own capacity and in her capacity as Rehabilitator of FML). The Court will determine whether the Fourth Amended Plan (1) properly conserves and equitably administers the assets of FML, in the interests of investors, the public, and others in accordance with the legislatively-stated purpose of protecting the interests of the insured, creditors, and the public; and (2) equitably apportions any unavoidable loss through imposed methods for rehabilitating FML. The Court will also retain exclusive jurisdiction over the implementation, interpretation, and enforcement of the Fourth Amended Plan.

- The Fourth Amended Plan will provide for either: (1) the transfer of FML's assets to an independent Asset

Purchaser in exchange for cash; or (2) the conversion of FML from a mutual life insurance company into a stock life insurance company and either (A) the transfer of the stock of Post-Conversion FML to the independent Stock Purchaser or (B) the merger of Post-Conversion FML into the Stock Purchaser or an affiliate of the Stock Purchaser.

- Each Mutual Member will have an opportunity to comment on the Fourth Amended Plan at hearings held by the Court after full written disclosure of the terms of the Plan will be given to such Mutual Member by FML.

- Participation by all Mutual Members in the Fourth Amended Plan, if approved by the Court, will be mandatory, although Mutual Members may disclaim the Investor Stock, cash, and/or Plan Credits which they would otherwise receive.

- The decision by a Mutual Member which is a Plan to receive or disclaim Investor Stock, cash, and/or Plan Credits allocated to such Mutual Member will be made by one or more independent fiduciaries of such Plan, and not by FML or any affiliate of FML. Consequently, neither FML nor any of its affiliates will exercise discretion nor render "investment advice" within the meaning of 29 CFR 2510.3-21(c) with respect to an independent Plan fiduciary's decision to receive or disclaim Investor Stock, cash, and/or Plan Credits.

- Twenty percent (20%) of the net assets which will be available for distribution to the Mutual Members would be allocated among the Mutual Members based upon voting rights, and eighty percent (80%) of such net assets will be allocated among the Mutual Members on the basis of the contribution of the Mutual Members' respective insurance or annuity contracts to the surplus of FML. The contribution to FML's surplus will be based on the actuarial calculation of both the historical and expected future profit contribution of the Contracts that have contributed to the surplus (i.e., the net earnings) of FML. The actuarial formulas will be approved by the Court and the Commissioner.

- The amount and value of the Investor Stock, cash, and/or Plan Credits received by a Mutual Member will reflect the aggregate consideration paid by the Investor.

- All Mutual Members that are Plans will participate in the transactions on the same basis as all other Mutual Members that are not Plans, except that Mutual Members which hold Non-Trusteed Tax-Qualified Retirement Funding Contracts will receive Plan

Credits in exchange for their membership interests, rather than cash or cash and Investor Stock.

- No Mutual Member will pay any brokerage commissions or fees in connection with the receipt of Investor Stock, cash, and/or Plan Credits.

- Mutual Members will not be restricted from selling or otherwise transferring any Investor Stock which they receive. If Investor Stock comprises part of the consideration paid by the Investor, the Investor will be required to establish a commission-free purchase or sales program which would allow Mutual Members who receive a small number of shares of Investor Stock to "round up" such shares or sell such shares free of sales commissions.

- The Fourth Amended Plan will not adversely affect the rights of a Contractholder of the company which is a Mutual Member. In this regard, (1) if Post-Conversion FML is acquired by the Stock Purchaser, the obligations of FML to a Contractholder are retained by Post-Conversion FML, and (2) if FML's assets are purchased by the Asset Purchaser, FML's obligations to a Contractholder will be discharged and terminated upon their endorsement, and assumed by the Asset Purchaser, thereby making the Asset Purchaser liable for the obligations under the Contract.

#### *G. Status of the Fourth Amended Plan*

FML represents that the Fourth Amended Plan has been submitted to the Court. Written objections to the Fourth Amended Plan were due in April 2006 and no objections were received. By order dated August 29, 2006, the Court gave its preliminary approval to the Fourth Amended Plan which would allow the Rehabilitator to sell FML through a competitive bid process, with final approval to follow the selection of the winning bidder.

The competitive bid process has been initiated and the bidding was closed in February 2007. FML states that it is now very likely that its proposed acquisition under the Fourth Amended Plan will take the form of the Asset Acquisition Alternative. In addition, FML anticipates the successful bidder will be selected before the end of March 2007.

#### **V. Request for Individual Exemptive Relief**

FML requests an individual exemption from the Department that would apply to both Alternatives under the Fourth Amended Plan. Because FML is a service provider to Mutual Members that are Plans, FML is also a party in interest with respect to such plans under section 3(14)(B) of the Act. In addition, the successful bidder under

the Stock Acquisition Alternative would become a party in interest with respect to Mutual Members that are Plans under section 3(14)(H) of the Act. This is because the Stock Purchaser would own directly 100% of the common stock of FML.<sup>4</sup> Thus, in tendering cash, or a combination of cash and Investor Stock, or Plan Credits to Mutual Members that are Plans in exchange for their Mutual Membership Interests, FML and/or the Stock Purchaser would be engaging in a prohibited transaction in violation of section 406(a) of the Act. In this respect, the proposed transactions under the Fourth Amended Plan constitute material changes from the Third Amended Plan and necessitate an amendment to PTE 2000–34.

Accordingly, the Department is amending and replacing PTE 2000–34 to reflect the implementation of the Alternatives under the Fourth Amended Plan. All references to the Third Amended Plan in the operative language of PTE 2000–34 have been replaced with references to the Fourth Amended Plan.

If granted, the amendment would be effective on the date the final amendment is published in the **Federal Register**. The revised operative language and definitions, with emphasis added to show the modifications, appear as follows:

#### SECTION I. COVERED TRANSACTIONS

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the receipt of certain stock (the *Investor Stock*) issued by the corporation (the *Stock Purchaser*) which acquires Post-Conversion Fidelity Mutual Life Insurance Company (*Post-Conversion FML*) by stock purchase or by merger, (2) the receipt of plan credits (the *Plan Credits*), or (3) the receipt of cash, by or on behalf of a mutual member (the *Mutual Member*) of FML which is an employee benefit plan (a *Plan*), other than an in house Plan sponsored by FML and/or its affiliates, in exchange for such Mutual Member's membership interest (the *Membership Interest*) in FML, in accordance with the terms of a plan of rehabilitation of FML (the *Fourth Amended Plan*) approved by the Pennsylvania Commonwealth Court (the *Court*) and supervised by both the Court and the Pennsylvania Insurance Commissioner (the *Commissioner*), who is acting as the rehabilitator of FML (the *Rehabilitator*).

This proposed exemption is subject to the following conditions set forth below in Section II.

#### SECTION II. GENERAL CONDITIONS

(a) The *Fourth Amended Plan* is approved by the Court, implemented in accordance with procedural and substantive safeguards that are imposed under Pennsylvania law and is subject to review and/or supervision by the Commissioner (both in her own capacity and in her capacity as Rehabilitator of FML). The Court determines whether the *Fourth Amended Plan*—

(1) Properly conserves and equitably administers the assets of FML, in the interests of investors, the public, and others in accordance with the legislatively-stated purpose of protecting the interests of the insured, creditors, and the public; and

(2) Equitably apportions any unavoidable loss through imposed methods for rehabilitating FML. The Court retains exclusive jurisdiction over the implementation, interpretation, and enforcement of the *Fourth Amended Plan*.

(b) The *Fourth Amended Plan* provides for either:

(1) The transfer of FML's assets to an independent purchaser (the *Asset Purchaser*) in exchange for cash; or

(2) The conversion of FML from a mutual life insurance company into a stock life insurance company and either (A) the transfer of the stock of Post-Conversion FML to the independent Stock Purchaser or (B) the merger of Post-Conversion FML into the independent Stock Purchaser or an affiliate of the Stock Purchaser.

(c) Each Mutual Member has an opportunity to comment on the *Fourth Amended Plan* hearings held by the Court after full written disclosure of the terms of the Plan is given to such Mutual Member by FML.

(d) Participation by all Mutual Members in the *Fourth Amended Plan*, if approved by the Court, is mandatory, although Mutual Members may disclaim the *Investor Stock*, cash, and/or Plan Credits which they would otherwise receive.

(e) The decision by a Mutual Member which is a Plan to receive or disclaim *Investor Stock*, cash, and/or Plan Credits allocated to such Mutual Member is made by one or more independent fiduciaries of such Plan, and not by FML or any affiliate of FML. Consequently, neither FML nor any of its affiliates will exercise discretion nor render "investment advice" within the meaning of 29 CFR 2510.3–21(c) with respect to an independent Plan fiduciary's decision to receive or disclaim *Investor Stock*, cash, and/or Plan Credits.

(f) Twenty percent (20%) of the net assets which are available for distribution to the Mutual Members is allocated among the Mutual Members based upon voting rights, and eighty percent (80%) of such net assets is allocated among the Mutual Members on the basis of the contribution of the Mutual Members' respective insurance or annuity contracts (the *Contracts*) to the surplus of FML. The contribution to FML's surplus is the actuarial calculation of both the historical and expected future profit contribution of the Contracts that have contributed to the surplus (i.e., the net earnings) of FML. The actuarial formulas are approved by the Court and the Commissioner.

(g) The amount and value of the *Investor Stock*, cash, and/or Plan Credits received by a Mutual Member reflect the aggregate consideration paid by the Stock Purchaser or Asset Purchaser, which is independent of FML.

(h) All Mutual Members that are Plans participate in the transactions on the same basis as all other Mutual Members that are not Plans, except that Mutual Members which hold Non-Trusteed Tax-Qualified Retirement Funding Contracts receive Plan Credits in exchange for their membership interests, rather than cash and/or Investor Stock.

(i) No Mutual Member pays any brokerage commissions or fees in connection with the receipt of *Investor Stock*, cash, and/or Plan Credits.

(j) Mutual Members are not restricted from selling or otherwise transferring any *Investor Stock* which they receive. If *Investor Stock* comprises part of the consideration paid by the Stock Purchaser, the Stock Purchaser is required to establish a commission-free purchase or sales program which will allow Mutual Members who receive a small number of shares of *Investor Stock* to "round up" such shares or sell such shares free of sales commissions.

(k) The *Fourth Amended Plan* does not adversely affect the rights of a contractholder of the company (the *Contractholder*) which is a Mutual Member. In this regard,

(1) If Post-Conversion FML is acquired by the Stock Purchaser, the obligations of FML to a Contractholder are retained by Post-Conversion FML; and

(2) If FML's assets are purchased by the Asset Purchaser, FML's obligations to a Contractholder are discharged and terminated upon their endorsement and assumption by the Asset Purchaser, thereby making the Asset Purchaser liable for the obligations under the Contract.

#### SECTION III. DEFINITIONS

For purposes of this proposed exemption:

(a) An "affiliate" of FML, *Post-Conversion FML*, the *Stock Purchaser*, or the *Asset Purchaser* includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such entity. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.) or

(2) Any officer, director or partner in such person.

(b) The term "*Asset Purchaser*" means the person (e.g., individual, corporation, partnership, joint venture, etc.) selected by the Rehabilitator and approved by the Court to purchase FML's assets under an assumption reinsurance agreement.

(c) The term "FML" means the Fidelity Mutual Life Insurance Company (In Rehabilitation) and any affiliate of FML, as defined in paragraph (a) of this Section III, as they exist before FML is converted from a mutual life insurance company into a stock life insurance company.

(d) The term "*Investor Stock*" means the common stock of the Stock Purchaser that will be allocated to Mutual Members if Post-

<sup>4</sup> Although the Asset Purchaser will have an opportunity to purchase the common stock of FLIC, the Asset Purchaser will not become a direct or indirect owner of FML or a party in interest with respect to Mutual Members of FML that are Plans.

*Conversion FML is acquired by the Stock Purchaser in exchange for consideration that includes common stock of the Stock Purchaser.*

(e) The term "Mutual Member" means a Contractholder whose name appears on FML's records as an owner of an FML Contract on the Record Date of the *Fourth Amended Plan*.

(f) The term "Non-Trusteed Tax-Qualified Retirement Funding Contracts" means FML insurance contracts which are held in connection with retirement plans or arrangements described in section 403(a) or 408 of the Code or non-trusteed retirement plans described in section 401(a) of the Code.

(g) The term "Plan Credit" means either—

(1) Additional paid up insurance for a traditional life policy; or

(2) Credits to the account values for Contracts that are not traditional (such as a flexible premium policy).

*Under FML's Fourth Amended Plan, Plan Credits are to be allocated to Mutual Members who hold Non-Trusteed Tax-Qualified Retirement Funding Contracts, in lieu of Investor Stock and/or cash.*

(h) The term "Post-Conversion FML" means the Fidelity Mutual Life Insurance Company (In Rehabilitation) and any affiliate of FML, as defined in paragraph (a) of this Section III, as they exist after FML is converted from a mutual life insurance company into a stock life insurance company.

(i) The term "Stock Purchaser" means the person (e.g., individual, corporation, partnership, joint venture, etc.) selected by the Rehabilitator and approved by the Court to purchase the Post-Conversion FML, or to acquire Post-Conversion FML by merger, under a stock purchase agreement or merger agreement.

#### Notice to Interested Persons

Notice of the proposed exemption will be provided by FML to Mutual Members which are Plans within 3 days of the publication of the notice of the proposed exemption in the **Federal Register**. Such notice will be provided to interested persons by first class mail and will include a copy of the notice of proposed exemption, as published in the **Federal Register**, as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on the proposed exemption. Comments with respect to the notice of proposed exemption are due within 33 days after the date of publication of this pendency notice in the **Federal Register**.

#### 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 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 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 require, among other things, a fiduciary to discharge his or her 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 requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E)–(F) of the Code;

(3) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. 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

(5) This proposed exemption, if granted, is subject to the express condition that the facts and representations set forth in the notice of proposed exemption relating to PTE 2000–34 and this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

#### Written Comments

All interested persons are invited to submit written comments on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Based on the facts and representations set forth in the application, the Department is considering granting the

requested exemption under the authority of section 408(a) of the Act and section 4975(c) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), the Department proposes to amend and replace PTE 2000–34 as follows:

#### SECTION I. COVERED TRANSACTIONS

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the receipt of certain stock (the Investor Stock) issued by the corporation (the Stock Purchaser) which acquires Post-Conversion Fidelity Mutual Life Insurance Company (Post-Conversion FML) by stock purchase or by merger, (2) the receipt of plan credits (the Plan Credits), or (3) the receipt of cash, by or on behalf of a mutual member (the Mutual Member) of FML which is an employee benefit plan (a Plan), in exchange for such Mutual Member's membership interest (the Membership Interest) in FML, in accordance with the terms of a plan of rehabilitation of FML (the Fourth Amended Plan) approved by the Pennsylvania Commonwealth Court (the Court) and supervised by both the Court and the Pennsylvania Insurance Commissioner (the Commissioner), who is acting as the rehabilitator of FML (the Rehabilitator). This proposed exemption is subject to the following conditions set forth below in Section II.

#### SECTION II. GENERAL CONDITIONS

(a) The Fourth Amended Plan is approved by the Court, implemented in accordance with procedural and substantive safeguards that are imposed under Pennsylvania law and is subject to review and/or supervision by the Commissioner (both in her own capacity and in her capacity as Rehabilitator of FML). The Court determines whether the Fourth Plan—

(1) Properly conserves and equitably administers the assets of FML, in the interests of investors, the public, and others in accordance with the legislatively-stated purpose of protecting the interests of the insured, creditors, and the public; and

(2) Equitably apportions any unavoidable loss through imposed methods for rehabilitating FML.

(The Court will retain exclusive jurisdiction over the implementation, interpretation, and enforcement of the Fourth Amended Plan of Reorganization.)

(b) The Fourth Amended Plan provides for either:

(1) The transfer of FML's assets to an independent purchaser (the Asset Purchaser) in exchange for cash; or

(2) The conversion of FML from a mutual life insurance company into a stock life insurance company and either (A) the transfer of the stock of Post-Conversion FML to the independent Stock Purchaser or (B) the merger of Post-Conversion FML into the independent Stock Purchaser or an affiliate of the Stock Purchaser.

(c) Each Mutual Member has an opportunity to comment on the Fourth



Amended Plan at hearings held by the Court after full written disclosure of the terms of the Plan is given to such Mutual Member by FML.

(d) Participation by all Mutual Members in the Fourth Amended Plan, if approved by the Court, is mandatory, although Mutual Members may disclaim the Investor Stock, cash, and/or Plan Credits which they would otherwise receive.

(e) The decision by a Mutual Member which is a Plan to receive or disclaim Investor Stock, cash, and/or Plan Credits allocated to such Mutual Member is made by one or more independent fiduciaries of such Plan, and not by FML or any affiliate of FML. Consequently, neither FML nor any of its affiliates will exercise discretion nor render "investment advice" within the meaning of 29 CFR 2510.3-21(c) with respect to an independent Plan fiduciary's decision to receive or disclaim Investor Stock, cash, and/or Plan Credits.

(f) Twenty percent (20%) of the net assets which are available for distribution to the Mutual Members is allocated among the Mutual Members based upon voting rights, and eighty percent (80%) of such net assets is allocated among the Mutual Members on the basis of the contribution of the Mutual Members' respective insurance or annuity contracts (the Contracts) to the surplus of FML. The contribution to FML's surplus is the actuarial calculation of both the historical and expected future profit contribution of the Contracts that have contributed to the surplus (i.e., the net earnings) of FML. The actuarial formulas are approved by the Court and the Commissioner.

(g) The amount and value of the Investor Stock, cash, and/or Plan Credits received by a Mutual Member reflect the aggregate consideration paid by the Stock Purchaser or Asset Purchaser, which is independent of FML.

(h) All Mutual Members that are Plans participate in the transactions on the same basis as all other Mutual Members that are not Plans, except that Mutual Members which hold Non-Trusteed Tax-Qualified Retirement Funding Contracts receive Plan Credits in exchange for their membership interests, rather than cash and/or Investor Stock.

(i) No Mutual Member pays any brokerage commissions or fees in connection with the receipt of Investor Stock, cash, and/or Plan Credits.

(j) Mutual Members are not restricted from selling or otherwise transferring any Investor Stock which they receive. If Investor Stock comprises part of the consideration paid by the Stock Purchaser, the Stock Purchaser is required to establish a commission-free purchase or sales program which will allow Mutual Members who receive a small number of shares of Investor Stock to "round up" such shares or sell such shares free of sales commissions.

(k) The Fourth Amended Plan does not adversely affect the rights of a contractholder of the company (the Contractholder) which is a Mutual Member. In this regard,

(1) If Post-Conversion FML is acquired by the Stock Purchaser, the obligations of FML to a Contractholder are retained by Post-Conversion FML; and

(2) If FML's assets are purchased by the Asset Purchaser, FML's obligations to a Contractholder are discharged and terminated upon their endorsement and assumption by the Asset Purchaser, thereby making the Asset Purchaser liable for the obligations under the Contract.

### SECTION III. DEFINITIONS

For purposes of this proposed exemption:

(a) An "affiliate" of FML, Post-Conversion FML, the Stock Purchaser, or the Asset Purchaser includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such entity. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.); or

(2) Any officer, director or partner in such person.

(b) The term "Asset Purchaser" means the person (e.g., individual, corporation, partnership, joint venture, etc.) selected by the Rehabilitator and approved by the Court to purchase FML's assets under an assumption reinsurance agreement.

(c) The term "FML" means the Fidelity Mutual Life Insurance Company (In Rehabilitation) and any affiliate of FML, as defined in paragraph (a) of this Section III, as they exist before FML is converted from a mutual life insurance company into a stock life insurance company.

(d) The term "Investor Stock" means the common stock of the Stock Purchaser that will be allocated to Mutual Members if Post-Conversion FML is acquired by the Stock Purchaser in exchange for consideration that includes common stock of the Stock Purchaser.

(e) The term "Mutual Member" means a Contractholder whose name appears on FML's records as an owner of an FML Contract on the Record Date of the Fourth Amended Plan.

(f) The term "Non-Trusteed Tax-Qualified Retirement Funding Contracts" means FML insurance contracts which are held in connection with retirement plans or arrangements described in section 403(a) or 408 of the Internal Revenue Code or non-trusteed retirement plans described in Section 401(a) of the Internal Revenue Code.

(g) The term "Plan" means an employee benefit plan.

(h) The term "Plan Credit" means either (1) additional paid up insurance for a traditional life policy or (2) credits to the account values for Contracts that are not traditional (such as a flexible premium policy). Under FML's Fourth Amended Plan, Plan Credits are to be allocated to Mutual Members who hold Non-Trusteed Tax-Qualified Retirement Funding Contracts, in lieu of Investor Stock and/or cash.

(i) The term "Post-Conversion FML" means the Fidelity Mutual Life Insurance Company (In Rehabilitation) and any affiliate of FML, as defined in paragraph (a) of this Section III, as they exist after FML is converted from a mutual life insurance company into a stock life insurance company.

(j) The term "Stock Purchaser" means the person (e.g., individual, corporation,

partnership, joint venture, etc.) selected by the Rehabilitator and approved by the Court to purchase the stock of Post-Conversion FML, or to acquire Post-Conversion FML by merger, under a stock purchase agreement or merger agreement.

This exemption is available to a Mutual Member of FML that is a Plan if the terms and conditions of the exemption are satisfied with respect to such Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 2000-34, refer to the proposed exemption and the grant notice which are cited above.

Signed at Washington, DC, this 16th day of March, 2007.

**Ivan L. Strasfeld,**

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

[FR Doc. E7-5208 Filed 3-21-07; 8:45 am]

BILLING CODE 4510-29-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-60,753]

#### **Cerf Brothers Bag Co., Inc., Earth City, MO; Notice of Affirmative Determination Regarding Application for Reconsideration**

By application dated January 13, 2007, a state representative requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The determination was issued on February 16, 2007 and published in the **Federal Register** on February 27, 2007 (72 FR 8795).

The negative determination was based on the Department's findings that that the petitioning workers of this firm or subdivision do not produce an article within the meaning of Section 222 of the Act.

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

### Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify