

internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,<sup>2</sup> solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.<sup>3</sup>

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 31, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Exemption Application No. L-11954]

#### Proposed Exemption for Certain Prohibited Transaction Restrictions: Fedeli Group, Inc. Employee Benefits Plan Located in Cleveland, OH

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of proposed exemption.

**SUMMARY:** This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act). This proposed exemption would permit the Fedeli Group, Inc. Employee Benefits Plan (the Benefit Plan) sponsored by Fedeli Group, Inc. (Fedeli Group or the Applicant) to enter into an insurance contract with THP Insurance Company, Inc. (THP), an unrelated insurance company, and THP will, in turn, enter a reinsurance arrangement with Risk Specialists LLC (Risk Specialists), a captive reinsurance company affiliated with Fedeli Group.

**DATES:**

*Comments due:* Written comments and requests for a public hearing on the proposed exemption should be

submitted to the Department by December 21, 2023.

*Exemption date:* If granted, this proposed exemption will be in effect on the date that the grant notice is published in the **Federal Register**.

**ADDRESSES:** All written comments and requests for a hearing should be submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. L-11954 via email to *e-OED@dol.gov* or online through *https://www.regulations.gov*. Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure 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.

**FOR FURTHER INFORMATION CONTACT:**

Blessed ChukSORJI-Keefe of the Department, telephone (202) 693-8567. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

*Comments:* 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 how the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the 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 if: (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 *https://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 a 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 *https://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 *https://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.

#### 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). If the exemption is granted, the Fedeli Group, Inc. Employee Benefits Plan (the Benefit Plan) sponsored by Fedeli Group, Inc. (Fedeli Group or the Applicant) will enter into an insurance contract with THP Insurance Company, Inc. (THP), an unrelated insurance company, and THP will, in turn, enter a reinsurance arrangement with Risk Specialists LLC (Risk Specialists), a captive reinsurance company affiliated with Fedeli Group. Under the reinsurance arrangement, Risk Specialists will reinsure the insurance risks associated with the Benefit Plan. The reinsurance arrangement would result in an indirect transfer of premium payments from the Benefit Plan to Risk Specialists, LLC. This exemption requires, among other things, annual reports to be prepared by a qualified, independent fiduciary and submitted to the Department of Labor confirming whether Fedeli and its

<sup>2</sup> All contract personnel will sign appropriate nondisclosure agreements.

<sup>3</sup> Electronic Document Information System (EDIS): *https://edis.usitc.gov*

affiliates have met the exemption's terms and conditions.<sup>1</sup>

### Summary of Facts and Representations<sup>2</sup>

1. *The Plan Sponsor.* Fedeli Group is an S corporation based in Cleveland, Ohio. Fedeli Group provides insurance products and risk management services. Fedeli Group is 51% owned by the Umberto P. Fedeli Amended and Restated Revocable Trust (dated July 16, 2016), 29% by the Umberto P. Fedeli 2012 Discretionary Trust (dated November 28, 2012) and 20% by the Umberto P. Fedeli 2009 Discretionary Trust (dated December 23, 2009).

2. *The Plan.* The Fedeli Group sponsors and administers the Benefit Plan, which is a self-funded employee welfare benefit plan covering medical and hospital expenses for eligible Fedeli Group employees. The Benefit Plan currently covers approximately 64 participants.

3. *The Captive Reinsurer.* Risk Specialists is a licensed property and casualty captive insurance company that operates under applicable Tennessee law. Risk Specialists is 100% owned by Risk Specialists Captive Holdings, LLC (Risk Specialists Captive Holdings LLC), a limited liability company formed in Ohio on the same date as Risk Specialists. Risk Specialists Captive Holdings is 51% owned by the Fedeli Revocable Trust, 29% owned by the Fedeli 2012 Trust, and 20% owned by the Fedeli 2009 Trust. Risk Specialists serves as the reinsurer with respect to 13 different lines of insurance coverages provided to Fedeli Group and unrelated third parties.

4. *The Third-Party Insurer.* THP Insurance Company, Inc. (THP) is a domestic stock insurance company domiciled in West Virginia and licensed in both Ohio and West Virginia. THP is unrelated to all Fedeli Group-related

entities and is currently rated "A+" by A.M. Best Company.

5. *Transitioning the Benefit Plan to the Third-Party Insurer Using the Captive Reinsurer.* Fedeli Group seeks to use its captive insurance company, Risk Specialists, to reinsure the Benefit Plan's claims. If this proposed exemption is granted, the Plan will enter into a Master Group Policy with THP, pursuant to which THP will provide group health insurance coverage to eligible participants under the Benefit Plan. THP will enter into a reinsurance agreement (the Reinsurance Agreement) with Risk Specialists. Under this arrangement, Risk Specialists will be responsible for the Benefit Plan's insurance claims under the Master Group Policy with THP, and Risk Specialists will indirectly receive the Benefit Plan's premium payments to THP. The Reinsurance Agreement between THP and Risk Specialists will be "indemnity only," which means that THP will be responsible for Benefit Plan claims under the Master Group Policy to the extent Risk Specialists does not satisfy those claims under the Reinsurance Agreement.

6. *Exemptive Relief Requested.* The proposed reinsurance arrangement would violate certain prohibited transaction provisions of ERISA for the following reasons:

- Fedeli Group is a party in interest with respect to the Benefit Plan pursuant to ERISA section 3(14)(C), because it is an employer whose employees are covered by the Benefit Plan;
- The Trusts are parties in interest with respect to the Benefit Plan under ERISA section 3(14)(E) because they collectively own 100% of Fedeli Group, the Benefit Plan sponsor.
- Risk Specialists, the captive reinsurer, is a party in interest with respect to the Benefit Plan under ERISA section 3(14)(G) because it is 100% owned by the Trusts.

7. ERISA section 406(a) prohibits a wide range of transactions between plans and parties in interest with respect to those plans. As relevant here, ERISA section 406(a)(1)(D) prohibits a plan fiduciary from engaging in a transaction if the fiduciary knows or should know the transaction constitutes a direct or indirect transfer any plan assets for the use or benefit of a party in interest. The reinsurance arrangement would result in an indirect transfer of Benefit Plan premium payments to Risk Specialists, which is a party in interest with respect to the Benefit Plan.

8. ERISA section 406(b)(1) of ERISA prohibits a fiduciary from dealing with plan assets for the fiduciary's own

interest or own account. The fiduciaries of the Benefit Plan would violate ERISA section 406(b)(1) by causing the Benefit Plan to pay premiums to THP, with the knowledge that the premiums will ultimately be directed to Risk Specialists, the captive reinsurer.

9. *Benefits to the ERISA-Covered Plan.* The Department has the authority under ERISA section 408(a) to exempt transactions from the prohibitions of ERISA section 406. 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 the plan's participants and beneficiaries, and protective of the rights of the plan's participants and beneficiaries.

10. The Department has tentatively determined that the proposed reinsurance arrangement would be in the interest of the Benefit Plan and its participants and beneficiaries. As described in further detail below, a qualified, independent fiduciary has concluded that the reinsurance arrangement will reduce each Benefit Plan participant's share of the Benefit Plan premium paid to THP by at least \$2,023.20<sup>3</sup> per participant per year for the duration of the exemption relative to the contribution the participant would otherwise have made under a non-captive arrangement with a competitive third party insurer receiving no more than reasonable compensation within the meaning of ERISA section 408(b)(2). Historically, Benefit Plan participants contributed approximately 25% towards the cost of the Benefit Plan. Under the proposal, all the savings from the Captive Approach will be used to reduce Benefit Plan participants' share of the Benefit Plan's premiums, and Benefit Plan participants will contribute no more than 17.38% of the Benefit Plan's costs throughout the duration of the exemption.

11. The Department requested that the Applicant provide a complete and accurate accounting of all benefits the Fedeli Group expects to derive from the captive reinsurance arrangement, including tax and non-tax benefits. In addition, the Department requested that the Applicant provide a full explanation of the "economic substance of the proposed transaction," that is, the economic impact or outcome that the exemption would have on the Fedeli Group, Fedeli-related parties and the Benefit Plan's participants and beneficiaries. Both the accounting of

<sup>1</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 demonstrate that the independent fiduciary has clearly, prudently, and loyally determined whether Fedeli 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>2</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-11954 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.

<sup>3</sup> The independent fiduciary's determination of the \$2,023.20 amount is described below in more detail.

expected benefits and the explanation of the expected economic substance of the proposed transaction were reviewed and confirmed by the independent fiduciary.

*Applicant's Response:* The Applicant represents that the only benefits Fedeli Group expects to receive from the proposed Captive Approach relative to the Plan's current self-funding arrangement are the incidental benefits that would result from more predictability and better control over its benefit funding obligations. Under Fedeli Group's current self-funded arrangement, Fedeli's benefit funding obligations are dependent on the timing and amount of participant claims. In contrast, under the Captive Approach, the Fedeli Group will only make one annual premium payment. According to the Applicant, this initial funding obligation will represent an estimate of the anticipated claims Benefit Plan participants and beneficiaries will incur during the year. The ability to budget for one up-front annual premium payment instead of multiple weekly or monthly claims payments would provide Fedeli Group with predictability for Fedeli Group's benefit obligations.<sup>4</sup>

In addition, the Applicant represents that the Captive Approach grants financial control to the Fedeli Group over insurance spending by managing risks and underwriting "Fedeli specific" risks rather than paying risk premiums to third-party insurers or self-insuring. By underwriting its own risks, the Fedeli Group gains greater transparency and improved data on its actual benefit claims cost and utilization. Fedeli also benefits from flexibility in underwriting and funding depending on the Fedeli Group's specific employee demographics and plan design that it could not receive by purchasing commercial insurance.

Furthermore, the Captive Approach will result in reduced overall plan costs because benefit expenses are paid based on actual experience, as opposed to a third-party insurance carrier (the Third-Party Approach) requiring a fixed payment at a premium charged by an insurance carrier where the premium amount does not change regardless of the amount of claims that are incurred. Moreover, the Fedeli Group will not bear the sole payment obligation that it does under its current self-insurance arrangement. These reduced costs will redound to the Benefit Plan in the form of lower cost of health care coverage.

*The Department's Note:* This exemption is being proposed based on

the Applicant's representations and the exemption's requirement, that no Fedeli Group-related entity will receive a direct or indirect profit, tax benefit, investment gain or other remunerative benefit through the Captive Approach. The Department notes that if a Fedeli Group-related entity ultimately receives such a profit, benefit or gain, the Fedeli Group must further enhance the Benefit Plan in an amount greater than the \$2,023.20 per participant per year contribution reduction in a manner consistent with the terms and conditions of this proposed exemption. Additionally, the Department notes that this proposed exemption prohibits Fedeli Group or a related entity from using any participant-related data or information generated by, or derived from, the Captive Approach in a manner that benefits the Fedeli Group or related entity.

As described below, this exemption, if granted, requires a qualified, independent fiduciary to review all relevant financial information of Risk Specialists and any other Fedeli-related entity as is necessary to ensure that this and the other terms and conditions described in this proposal are met and to annually certify in a written report submitted to the Department that all requirements of the proposed exemption have been met.

#### *Applicant's Analyses*

12. The Applicant represents to the Department that it evaluated two different insurance-based approaches to provide the benefits payable under the Benefit Plan and the effects on the costs from each, based on the 2023 plan year information for the Benefit Plan. The Applicant's first insurance-based approach contemplates a Third-Party Approach, while the second insurance-based approach takes into account Risk Specialists as the captive reinsurer (the Captive Approach).

13. The Applicant states that, based on actual values from the Benefit Plan's 2023 financial statement, the annual premium under the Third-Party Approach would have been \$2,254,314, compared to the \$2,124,829 annual premium under the Captive Approach. Therefore, the Applicant calculated the total annual cost savings under the Captive Approach would be \$129,485 for the 2023 Plan Year.

14. The cost savings under the Captive Approach will be passed on to Benefit Plan participants on a pro-rata basis, by reducing employees' Benefit Plan contribution obligations. As of September 19, 2023, the Benefit Plan covered 64 participants, the \$129,485 in total annual cost savings under the

Captive Approach will be directly applied to Benefit Plan participants as a reduction in their contribution obligations.

15. The Applicant calculated the monthly \$161.60 contribution reduction per Benefit Plan participant (\$129,485.00/12 months = \$10,790.42/64 participants = \$168.60). The Applicant states that this monthly reduction in contribution obligations will result in annual savings per participant of \$2,023.20 ( $\$168.60 \times 12$  months) with no reduction in medical, health, or other plan benefits. Further, the Applicant states that these cost savings for Benefit Plan participants will be implemented simultaneously with the establishment of the Captive Approach.

16. The Applicant represents that, historically, contributions to the Benefit Plan by Benefit Plan participants have been targeted at 25% of Benefit Plan costs. By implementing the proposed Captive Approach and lowering annual Benefit Plan costs by \$129,485, there will be a cost savings to the Benefit Plan of 7.62% per year. Based on the Applicant's assertions that the Captive Approach will result in participants' savings of 7.62% per year, the Department is including an exemption condition that requires participant contributions to comprise no more than 17.38% (i.e., 25% - 7.62%) of the Benefit Plan's premiums on a going-forward annual basis.

#### *The Independent Fiduciary*

17. George J. Stadlander, President and majority owner of Consoliplex L.L.C. (Consoliplex), a health plan service organization located in Cleveland, Ohio, will serve as the Benefit Plan's qualified independent fiduciary (the Independent Fiduciary) with respect to the proposed transactions. Mr. Stadlander states that he is qualified to serve as the Independent Fiduciary for the Benefit Plan because he: (a) is not employed by Fedeli Group or its affiliates; (b) has more than thirty years of experience in the field of health benefits, including serving as an officer and executive vice president for Medical Mutual, a local health insurance company with over \$2 billion in annual premiums; (c) currently owns an organization that serves as a plan manager for five multiple employer welfare arrangements; and (d) has managed the actuarial department, the underwriting department, network contracting, utilization management and sales departments, in his capacity with the local health local health insurance company, which has provided him with

<sup>4</sup> Under the current arrangement, the funding obligation is less predictable because benefits are paid out as claims are incurred.

the experience and background for forming the opinions expressed in his Independent Fiduciary report. Mr. Stadtländer was chosen to act as Independent Fiduciary by David M. Deroma, the plan fiduciary responsible for selecting the independent fiduciary. Mr. Deroma represents that Mr. Stadtländer's selection was based solely on his qualifications to serve as an independent fiduciary after a prudent process without regard to whether Mr. Stadtländer's views were likely to favor the interests of the Fedeli Group or related parties.

18. Mr. Stadtländer represents that he understands his duties, responsibilities, and liabilities under ERISA as the Independent Fiduciary on behalf of the Benefit Plan participants and their beneficiaries, and that, as Independent Fiduciary of the Benefit Plan, he does not act on behalf of the Benefit Plan sponsor or take its interests into account. Mr. Stadtländer also represents that neither he nor Consoliplex have received, nor will they receive, more than 1% of their annual income from Fedeli Group and its related parties. In addition, Mr. Stadtländer represents that neither he nor any related parties, including Consoliplex: have performed any work in connection with the Captive Approach on behalf of the Fedeli Group or its related parties; have any financial interest with respect to his work as an independent fiduciary or the Captive Approach apart from his express fees for his work as an independent fiduciary for the Benefit Plan; or have received any other compensation or entered into any financial or compensation arrangements with the Fedeli Group and related parties. Fedeli Group and its related parties have not, and will not, indemnify the Independent Fiduciary, in whole or in part, 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 purports to waive any liability under state or federal law for any such violations.

19. As the Independent Fiduciary, Mr. Stadtländer prepared an initial report dated February 26, 2018 (the February 2018 Independent Fiduciary Report), which he has updated with supplemental reports on July 30, 2019 (the July 2019 Independent Fiduciary Report), and December 5, 2019 (the December 2019 Independent Fiduciary Report), at the Department's request.

20. *February 2018 Independent Fiduciary Report.* Mr. Stadtländer represents that he reviewed the

Applicant's rationale as to why the Captive Approach would directly Benefit Plan participants and beneficiaries. Mr. Stadtländer represents that the Applicant's factual assumptions and related analysis were accurate and reasonable, and that his access to the Fedeli Group's books and records will allow him to ensure that the use of the Benefit Plan's assets comply with the requirements of ERISA.

21. Mr. Stadtländer represents that he is authorized to take all appropriate actions to safeguard the interests of the Benefit Plan and its participants and beneficiaries, including but not limited to monitoring the proposed transactions to ensure the transactions remain in the interests of the Benefit Plan and its participants and beneficiaries, and that he can take appropriate actions available under the circumstances with respect to the proposed transactions, including but not limited to enforcing compliance with all contractual conditions and obligations imposed on any party dealing with the Benefit Plan.

22. *July 2019 Independent Fiduciary Report.* In the July 30, 2019 Independent Fiduciary Report, Mr. Stadtländer certified that the proposed captive reinsurance arrangement would: (a) primarily Benefit Plan participants and beneficiaries and only provide non-monetary benefits to the Fedeli Group; (b) create real and substantial additional benefits for the Plan and Plan participants; (c) not be offset by reduction in benefits/salaries elsewhere; and (d) otherwise be consistent with ERISA (including the prudence and loyalty provisions) and the law.

23. *December 2019 Independent Fiduciary Report.* At the Department's request, Mr. Stadtländer provided additional responses and clarifications related to the proposed transactions. Mr. Stadtländer: (a) reviewed the Applicant's representations that the Fedeli Group and/or its related parties would not receive a monetary benefit (tax or non-tax, including a profit) from the proposed captive reinsurance arrangement, and certified that the Applicant's representations were accurate;<sup>5</sup> (b) determined that the proposed captive reinsurance arrangement would: (i) primarily Benefit Plan participants inasmuch as the financial benefits to Benefit Plan

<sup>5</sup> In this regard, Mr. Stadtländer stated that he received full disclosure of all benefits the Applicant expected to derive from the proposed transactions. Among other things, Mr. Stadtländer reviewed internal analyses of the economic benefits to the Applicant prepared by consultants and the Applicant itself, and he received full access to all data necessary to evaluate the transactions, including submissions made by the Applicant to state insurance departments.

participants would exceed the amount of any non-monetary incidental benefit to the Fedeli Group and related parties;<sup>6</sup> (ii) create real and substantial additional benefits for the Benefit Plan and for Benefit Plan participants; (iii) not be offset by reduction in benefits/salaries elsewhere; and (iv) be otherwise consistent with ERISA (including prudence/loyalty provisions) and the law; (d) certified, within the context of the captive, that the savings from the Captive Approach would inure to the benefit of the participants through a combination of some or all improved benefits or reduced contributions; (e) confirmed that, as the Independent Fiduciary, he had the requisite knowledge regarding captive reinsurance arrangements to fulfill his duties under ERISA section 404 as a prudent plan fiduciary; (f) confirmed that he, as the Independent Fiduciary, would monitor the reinsurance arrangement throughout the duration of the exemption, if granted by the Department; (g) confirmed that the proposed captive reinsurance arrangement is consistent with the prudence and loyalty provisions of ERISA section 40 and other applicable laws; and (h) provided analyses to support all representations it made to the Department.

24. In addition, Mr. Stadtländer stated that he would annually determine whether the terms and conditions of the exemption, if granted, had been met in the prior year. Specifically, the terms of the proposed exemption, if granted, provide that Mr. Stadtländer must file annual certified reports with the Department that confirm whether all terms and conditions of the exemption have been met under penalty of perjury. Under the terms of the proposed exemption, each report must be completed within six months from the end of the 12-month period to which it relates (the first 12-month period beginning on the effective date of the exemption, if granted, and submitted to the Department within six months thereafter).

25. Finally, Mr. Stadtländer attached his supporting analysis to the Independent Fiduciary Report. Stadtländer's analysis confirmed the Fedeli Group's calculations of the final saving value and annual cost savings. As stated above, the Applicant calculated a savings of \$168.60 per Benefit Plan participant per month using the Captive Approach based on an

<sup>6</sup> As described above, Fedeli Group represents that it would benefit by an increased predictability and greater control over its benefit funding obligations.

overall annual cost savings to the Benefit Plan of \$129,485.00.

#### *The Department's Findings*

26. 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>7</sup> The Department's findings required under ERISA section 408(a) with respect to the proposed captive reinsurance arrangement are discussed below.

27. *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 Mr. Stadlander and included in a report he must file with the Department's Office of Exemption Determinations.

28. *The Proposed Exemption is "Protective of the Plan."* The Department has tentatively determined that the proposed exemption is protective of the rights of the Benefit Plan's participants and beneficiaries because, among other things, a the exemption contains a number of additional conditions in addition to the requirement discussed above, including the following: (a) no commissions will be paid by the Benefit Plan with respect to the direct sale of any third party insurance contract and/or any reinsurance contract; and (b) the Fedeli Group will only contract on behalf of the Benefit Plan with insurers having a financial strength rating of "A" or better from A.M. Best Company or the equivalent rating from another rating company. In addition, for each taxable year of Risk Specialists, the gross premiums received in that taxable year by Risk Specialists for benefit insurance provided to Fedeli Group and its employees with respect to which Risk Specialists is a party in interest by reason of the relationship to Fedeli Group as described in ERISA section 3(14)(E) or (G), will not exceed 50% of the gross premiums received for all lines of insurance (*i.e.*, benefit insurance and non-benefit insurance) in that taxable year by Risk Specialists.

29. Further, the interests of the Benefit Plan and its participants and beneficiaries are represented in the covered transactions by an Independent

Fiduciary that is obligated, among other things, to: (a) monitor the transactions described in the exemption on behalf of the Benefit Plan, on a continuing basis, to ensure the transactions remain in the interest of the Benefit Plan; (b) take all appropriate actions to safeguard the interests of the Benefit Plan; and (c) enforce compliance with all conditions of the exemption and all conditions and obligations imposed on any party dealing with the Benefit Plan. In connection with the provision to participants in the Benefit Plan of the insurance coverage provided by THP or its successor, which is reinsured by the Risk Specialists, the Independent Fiduciary will review all contracts (and any renewal of such contracts) of the reinsurance of risks and the receipt of premiums therefrom and ensure that the requirements of this exemption, and the terms of the increased benefits continue to be satisfied.

30. *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 Benefit Plan because, among other things, all of the cost savings from the Captive Approach (relative to the reasonable cost the Benefit Plan would otherwise have paid for comparable benefits pursuant to a non-captive arrangement with an unrelated, third-party insurer) will be used to reduce the amount that each Benefit Plan participant is required to contribute toward the premium the Benefit Plan pays to THP or another fronting insurer. Specifically, based on calculations confirmed by the Independent Fiduciary, the captive reinsurance arrangement will reduce the monthly contribution of each Benefit Plan participant by approximately \$168.60. This monthly reduction in contribution obligations will result in annual savings per participant of \$2,023.20 (\$168.60 × 12 months). Significantly, Benefit Plan participants will contribute no more than 17.38% of the premium paid by the Benefit Plan to THP or another fronting insurer in any Benefit Plan year, which is less than the 25% the participants previously contributed to Benefit Plan premiums.

In addition, the proposed exemption conditions require contributions of Benefit Plan participants to be further reduced by any net benefit received by any Fedeli Group entity, including Risk Specialists, that is generated by the Captive Approach over each five-year period, the first year of which would begin on the date this exemption is granted. Net benefits may include, but are not limited to, increased earned income, increased savings, a tax

reduction or a profit or any benefit arising from a further diversification of Risk Specialist's risks in connection with adding Plan-related insurance risks to Risk Specialist's other risks. Participants' contributions will be reduced by the amount of the net benefit (plus interest) on a pro rata basis in the year following the five-year period to which the net benefit relates.

#### Summary

31. Based on Fedeli Group, Inc. satisfying the conditions described above and the representations made in its exemption allocation and communications with the Department, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements for an exemption under ERISA section 408(a).

#### Notice to Interested Persons

Notice of the proposed exemption will be provided by the Applicant to all Interested Persons within 15 days of the publication of the notice of proposed exemption in the **Federal Register**, by first class U.S. mail to the last known address of all such individuals. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. Written comments are due within 45 days of the publication of the notice of proposed exemption in the **Federal Register**. All comments will be made available to the public.

*Warning:* 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. All comments may be posted on the internet and can be retrieved by most internet search engines.

#### 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 ERISA section 408(a) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction

<sup>7</sup> ERISA section 408(a).

provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA section 404(a)(1)(B); nor does it affect the requirement of Code Section 401(a) 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 ERISA section 408(a), 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 exemption would be supplemental to, and not in derogation of, any other provisions of ERISA 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 exemption would be subject to the express condition that the material facts and representations contained in the application are true and complete at all times and that the application accurately describes all material terms of the transactions which are the subject of the exemption.

### Proposed Exemption

#### *Section I. Proposed Transactions*

If the proposed exemption is granted, the restrictions of ERISA sections 406(a)(1)(D) and 406(b)(1) shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Risk Specialists Insurance Company, Inc. (Risk Specialists), in connection with insurance contracts sold by THP Insurance Company, Inc. (THP) or any successor insurance company to THP, which is unrelated to the Fedeli Group, Inc., including any entity related to Fedeli Group Inc. (collectively, Fedeli Group), to provide medical and hospital coverage to participants in the Fedeli Group Inc. Employee Benefit Plan (the Benefit Plan) provided that the conditions set forth in Section II are met.

#### *Section II. Conditions*

(a) All of the savings from the captive reinsurance arrangement will be used to

reduce the amount that each Benefit Plan participant is required to contribute toward the premium the Benefit Plan pays to THP or another fronting insurer. The cost savings must be determined relative to the reasonable cost the Benefit Plan would otherwise have paid for comparable benefits pursuant to a non-captive arrangement with an unrelated, third-party insurer. In no year will the reduction in Benefit Plan participant contributions be less than \$2,023.20 per participant per year. The premium reduction must benefit all Plan participants equally and must be verified by the Independent Fiduciary as described below.

(b) Benefit Plan participant contributions will be further reduced by an amount equal to any net benefit (the Extra Benefit) any Fedeli Group entity received that is directly or indirectly generated by the Captive Approach over each five-year period, the first of which begins on the grant date this exemption is granted. Extra Benefits include, but are not limited to, increased earned income, increased savings, a tax reduction or a profit or any benefit arising from a further diversification of Risk Specialist's risks in connection with adding Plan-related insurance risks to Risk Specialist's other risks. The reduction must be received by Benefit Plan participants on a pro rata basis in the year following the five-year period to which the Extra Benefit relates; plus, an additional interest payment on the amount of the Extra Benefit at the Internal Revenue Code's federal underpayment rate established in Code section 6621(b). The interest on the Extra Benefit must be calculated for the period from the end of the Benefit Plan year the Extra Benefit was earned through the start of the Benefit Plan year in which the Extra Benefit is applied to reduce Benefit Plan participants' contributions.

(c) Benefit Plan participants contribute no more than 17.38% of the premium paid by the Benefit Plan to THP or another fronting insurer;

(d) Risk Specialists:

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

(2) Is licensed to sell insurance or conduct reinsurance operations in the state of Tennessee;

(3) Has obtained a Certificate of Authority from the insurance commissioner of the State of Tennessee to transact the business of a captive insurance company, which has neither been revoked nor suspended, and has undergone a financial examination

(within the meaning of the law of its domiciliary State, Tennessee) by the Insurance Commissioner of the State of Tennessee within five years before the end of the year preceding the year in which the reinsurance transaction occurred;

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

(5) Is 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;

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

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

(g) In the initial year of any contract involving Risk Specialists and THP or any successor insurer, the Benefit Plan's participants and beneficiaries receive an immediate and objectively determined benefit in the form of decreased participant contributions, and such benefits will continue in all subsequent years of each contract and in every renewal of each contract;

(h) In the initial year and in subsequent years of coverage provided by THP or another fronting insurer (either, a Fronting Insurer), the formulae used by the Fronting Insurer to calculate premiums must 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 must be reasonable and must 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;

(i) Fedeli Group only contracts with insurers with a financial strength rating of "A" or better from A.M. Best Company. The reinsurance arrangement between any fronting insurer and Risk Specialists will be indemnity insurance only, such that the fronting insurer will not be relieved of any liability to the Benefit Plan should Risk Specialists be unable or unwilling to cover any

liability arising from the reinsurance arrangement;

(j) Participants and beneficiaries in the Benefit Plan must receive no less than the immediate and objectively determined increased benefits the participant and beneficiary received in the initial year of each such contract involving Risk Specialists and THP in subsequent years of every contract of reinsurance involving Risk Specialists and THP;

(k) For each taxable year of Risk Specialists, the gross premiums received in that taxable year by Risk Specialists for benefit insurance provided to Fedeli Group and its employees with respect to which Risk Specialists is a party in interest by reason of the relationship to Fedeli Group as described in ERISA section 3(14)(E) or (G), will not exceed 50% of the gross premiums received for all lines of insurance (*i.e.*, benefit insurance and non-benefit insurance) in that taxable year by Risk Specialists;

(l) The Benefit Plan retains a qualified independent fiduciary (the Independent Fiduciary) to analyze the transactions covered by the exemption and render an opinion that the terms and conditions of this exemption have been satisfied;

(m) The Independent Fiduciary will:

(1) Monitor the transactions described here on behalf of the Benefit Plan on a continuing basis to ensure such transactions remain in the interest of the Benefit Plan;

(2) Take all appropriate actions to safeguard the interests of the Benefit Plan; and

(3) Enforce compliance with all conditions of this exemption and all conditions and obligations imposed on any party dealing with the Benefit Plan;

(4) Review all contracts, and any renewals of such contracts, pertaining to the captive reinsurance arrangement, to determine whether the requirements of this exemption, and the terms of the increased benefits continue to be satisfied; and

(5) Provide an annual, certified report to the Department, under penalty of perjury, indicating whether the terms and conditions of the exemption continue to be satisfied. Each report must be 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 exemption), and be submitted to the Department within 60 days thereafter. The relevant report must include all the objective data necessary to demonstrate that the Primary Benefit Test has been met; and

(n) The Benefit Plan, Fedeli Group 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. 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.

(o) No Fedeli Group entity or related entity may use participant-related data or information generated by or derived from the proposed arrangement in a manner that benefits the Fedeli Group or related entity;

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

(q) Fedeli Group will not evade the conditions in this exemption by offsetting or reducing any benefits provided to Fedeli Group employees to defray the costs, expenses, or obligations of complying with this exemption;

(r) All expenses associated with the exemption and the exemption application, including any payment to the Independent Fiduciary, must be paid by Fedeli Group and not the Plan; and

(s) All the material facts and representations set forth in the Summary of Facts and Representation are true and accurate at all times.

**Effective Date:** The proposed exemption will be in effect as of the date the grant notice is published in the **Federal Register**.

Signed at Washington, DC.

**George Christopher Cosby,**

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

[FR Doc. 2023-24401 Filed 11-3-23; 8:45 am]

**BILLING CODE 4510-29-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 23-111]

### Name of Information Collection: NASA Complaint of Discrimination Form 1355

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

**DATES:** Comments are due by December 6, 2023.

**ADDRESSES:** Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain).

Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757-864-7998, or [b.edwards-bodmer@nasa.gov](mailto:b.edwards-bodmer@nasa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

Federal agencies are required by statute not to engage in discrimination on the bases of race, color, religion, sex, national origin, age, disability, genetic information, or retaliation. A Federal employee, former employee, or job applicant who believes s/he was discriminated against has a right to file a complaint with the agency's office responsible for its Equal Employment Opportunity (EEO) programs. Federal agencies must offer pre-complaint counseling or EEO alternative dispute resolution (EEO ADR) to individuals who allege that they were discriminated against by the agency. If pre-complaint counseling or EEO ADR does not resolve the dispute(s), the individual can file a formal discrimination complaint with the agency's EEO office.

##### II. Methods of Collection

Title 29 of the Code of Federal Regulations (CFR) part 1614 section 104 requires agencies to establish