for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by August 12.

Signed at Washington, DC this 17th day of July, 2014.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration.

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11777]

Notice of Proposed Exemption Involving Family Dynamics, Inc., Pension Plan (the Plan), Located in Leesburg, Florida

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

ACTION: Notice of proposed individual exemption.

SUMMARY: This document contains a notice of pendency (the Notice) before the Department of Labor (the Department) of a proposed individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended, (the Act) and the Internal Revenue Code of 1986, as amended, (the Code). The proposed exemption, if granted, will affect the participants and beneficiaries of Plan participating in the proposed transactions and the fiduciaries with respect to such Plan.

DATES: *Effective Date:* This proposed exemption, if granted, shall be effective with regard to the transactions described in Section I below for the period beginning on September 15, 2011, and ending on December 28, 2012. This proposed exemption, if granted, shall be effective with regard to transactions described in Section III below beginning on the date of the publication in the **Federal Register** of the grant of this proposed exemption and ending on the last day any of the Subsequent Notes is held in the Plan.

DATES: Written comments and requests for a public hearing on the proposed exemption should be submitted September 8, 2014.

ADDRESSES: All written comments and/or requests for a public hearing concerning the proposed exemption should be sent to the Office of Exemptions Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Application No. D–11777. Alternatively, interested persons are invited to submit comments and/or requests for a hearing to the Department by email to *e-oed@dol.gov* or by facsimile at (202) 219–0204.

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

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This document contains a notice of proposed individual exemption from certain prohibitions described in section 406 of the Act and section 4975 of the Code.[1] The proposed exemption has been requested in an application filed with the Department by Family Dynamics, Inc. (FDI), pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedure set forth in 29 CFR 2570, Subpart B (76 FR 66637, 66644, October 27, 2011). 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.

The application pertaining to the proposed exemption contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for a complete statement of the facts and representations. The application pertaining to the proposed 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–1513, 200 Constitution Avenue NW., Washington, DC 20210.

[1] All references to specific provisions of Title I of the Act herein shall refer also to the corresponding provisions of the Code.

Summary of Facts and Representations

The Parties

1. FDI, a Florida corporation (formerly known as Gregg Enterprises, Inc.), is a subchapter S corporation formed in 2000 to retain certain assets and liabilities that were excluded from the sale of Florida Crushed Stone Holdings, Inc. and its subsidiaries (FCSH). FCSH, founded and owned by Mr. F. Browne Gregg, Sr. (Mr. Gregg, Sr.), produced construction aggregates, cement, silica sand, lime rock based materials, and other construction materials.

2. In June 2000, FCSH had approximately 700 employees when FCSH was sold to Rinker Materials Corporation (Rinker), an unrelated third party. Prior to the sale of FCSH to Rinker, all of the stock of FCSH was distributed to certain shareholders.

In connection with the closing of the sale transaction with Rinker, certain of the assets of FCSH, certain liabilities of FCSH, including all of the obligations of FCSH with respect to the Plan, as well as fewer than twenty (20) employees, were transferred to FDI, which at that time was established as a newly-formed subsidiary of FCSH.

3. As an employer any of whose employees are covered by the Plan, FDI is a party in interest with respect to the Plan, pursuant to 3(14)(C) of the Act. FDI is also a party in interest with respect to the Plan, pursuant to 3(14)(A) of the Act, as the named fiduciary and Plan administrator. The stockholders of FDI are members of the Gregg family or are trusts for the benefit of certain members of the Gregg family. There are 828.70 shares outstanding of FDI. The largest individual shareholders of FDI are Mrs. Gail Gregg-Strimenos (Mrs. Strimenos) and Mrs. Jeannie Gregg-Emack (Mrs. Emack), each of whom owns a 26.96 percent (26.96%) interest in FDI. Mrs. Strimenos and her sister, Mrs. Emack are the daughters of Mr. Gregg, Sr. Mrs. Strimenos serves as the Chairman of FDI. The remaining eight (8) shareholders of FDI are Gregg family trusts which own, in the aggregate, 46.08 percent (46.08) of FDI.

4. Among the assets transferred to FDI, and therefore not sold to Rinker in 2000, is Family Dynamics Land Company, LLC (FDLC). FDLC currently owns property (the Property) located in the City of Mineola, Florida. The Property is FDLC's only asset. FDLC has no revenues, operations, or liabilities.

5. In 2007, FDI sold all of its equity interests in FDLC to Minneola AG, LLC (Minneola), a real estate holding company, in exchange for a single promissory note with a principal amount of $29,330,000. Minneola's only

significant asset is its 100 percent (100%) equity ownership in FDLC.

Mrs. Strimenos and Mrs. Emack through separate limited liability corporations own, respectively, 40.70 percent (40.70%) and 36.12 percent (36.12%) of the interests in Minneola. Five (5) other Gregg family trusts own 23.18 percent (23.18%) of Minneola.[2]

6. Other entities owned by members of the Gregg family include Yeehaw Ranch Land, LLC (Yeehaw); PMCC, LLC (PMCC); Bi-Coastal Holdings, LLC (Bi-Coastal); and Arcadia Holdings, LLC (Arcadia).

The Plan

7. The Plan is a defined benefit pension plan established in 1953 by FCSH to provide benefits to its employees. As a result of the sale of FCSH to Rinker in 2000, FDI became the sponsor of the Plan. The Plan covers approximately 740 former employees of FCSH and current employees of FDI and their beneficiaries, including beneficiaries of deceased participants (based on Form 5500 for plan year 2011). In 2003, the Plan was ''frozen'' by FDI with the result that there have been no additional accruals and no new participants to the Plan since that time. The trustee of the Plan is Mrs. Strimenos.

The assets of the Plan are currently held through annuity contracts issued by Massachusetts Mutual Life Insurance Company. It is represented that the Plan is currently underfunded. In this regard, the value of the Plan's assets, as of September 30, 2013, was approximately $28.92 million. This represents approximately 77 percent (77%) of the Plan's 2013 funding target.

It is represented that liquidity is not an issue for the Plan. According to the Plan's actuary, the projected benefit payments are approximately $2.3 million for the 2013 plan year, gradually increasing to approximately $2.7 million in plan year 2021. As of September 30, 2013, the Plan had liquid assets of approximately $28.92 million, while the present value of the Plan's projected benefit payments through 2021, (discounted at 6 percent (6%) the Plan's assumed rate of investment return) was approximately $17.56 million, as of December 31, 2012.

FDI estimates that its annual minimum funding obligation will be $2.1 million or more for a number of years.

The Notes

8. As discussed briefly in Representation 5, in 2007, Minneola issued to FDI a single promissory note (the Single Note) with a face amount of $29,330,000 in exchange for a 100 percent (100%) equity interest in FDLC. The Single Note carried interest at 4.53 percent (4.53%) per year, compounded semi-annually, with principal and interest payable at maturity on January 1, 2016. On September 12, 2011, the Single Note was re-issued as 29 separate promissory notes (collectively, the ''Notes'' and individually, ''Note #1 through Note #29''), 28 of which have a face amount of $1 million, and one (1) of which (Note #29) has a face amount of $1,330,000. It is represented that the Notes were issued with substantially the same terms as the Single Note. The Notes are closely-held and are not traded on a public market. The Notes are numbered consecutively with each successive higher numbered note being subordinate to any note with a lower number. Although the Notes initially had a maturity date of 2016, effective November 5, 2012, FDI and Minneola agreed to amend Note #3 through Note #29 to extend the maturity date to September 1, 2019, and to correct the amount of accrued interest stated in each such note, and to cap the default interest rate at 12 percent (12%) per annum.

All of the Notes are subject to: (a) The partial guarantees of certain Gregg family trusts, based on the respective ownership of such trusts of interests in Minneola; and (b) the unconditional guarantees of Mrs. Emack and Mrs. Strimenos, who have jointly and severally guaranteed payment of the aggregate amount of such Notes in full. It is represented that Mrs. Emack and Ms. Strimenos had a combined net worth in excess of $112 million, as of December 31, 2012.

The Property

9. As discussed briefly above, FDLC is the present owner of the Property, which is located in the City of Minneola, Florida. The Property, which is irregular in shape, currently consists of approximately 1,770 acres of real estate, nine (9) parcels of which are contiguous mostly wooded lots or cleared pasture land.[3] The Property is fully entitled by the City of Minneola for a Planned Unit Development-Residential development and is subject to a Development of Regional Impact order for the Hills of Minneola development that has been approved by the City of Minneola and the Florida Department of Community Affairs.

FDI's Financial Situation

10. It is represented that FDI's cash flow is quite limited. FDI's ability to liquidate assets to satisfy the minimum funding requirement for the Plan has also been impacted by the implosion in 2008 of the Florida real estate market. For example, FDI's assets consist primarily of illiquid investment in entities controlled by the Gregg family. Such investments held by FDI include notes receivable from entities controlled by members of the Gregg family, in the aggregate amount of $9.172 million, future royalties from an unrelated phosphate mining company, in the amount of $5.216 million, a non-recourse loan in the amount of $5.661 million to a Gregg family member, the Notes, and miscellaneous assets worth $0.403 million dollars. It is represented that none of these investments pays current income to FDI, and none of these investments is liquid.

FDI's Efforts To Fund the Plan

11. When FDI realized it would be unable to make the required contribution in cash to the Plan in 2011 for the plan year ended December 31, 2010, FDI sought legal advice from the firm of Constangy Brooks & Smith, LLC which advised FDI to seek a funding waiver for plan year 2010. Accordingly, FDI applied for a funding waiver from the IRS on March 15, 2011, with respect to the 2010 plan year. However, FDI was not advised that the funding waiver would not be issued in time to prevent a funding deficiency for plan year 2010 and that funding waivers are generally not issued in successive years.

12. On or about May 24, 2011, FDI engaged another law firm, Alston & Bird LLP (A&B), an Atlanta law firm. FDI believes it was prudent in reaching out to A&B for assistance regarding the matters described above, and it was reasonable for FDI to believe that A&B would provide it with the guidance that it needed in connection with the in-kind contribution to the Plan and for FDI to rely on that belief.

[2] While there is overlapping ownership of FDI and Minneola, it is represented that the ownership of the shareholders of FDI and the members of Minneola is sufficiently diverse such that the two companies, FDI and Minneola, are not members of a ''control group,'' as defined in section 407(d)(7) of the Act. Minneola is a party in interest with respect to the Plan, pursuant to 3(14)(G) of the Act, as 50 percent (50%) or more of the interests in Minneola are owned in the aggregate, directly or indirectly, by Mrs. Strimenos and Mrs. Emack who are each 10 percent (10%) or more shareholders of FDI, the employer.

[3] For the purpose of constructing an interchange (the Interchange), FDLC, as owner of the Property, is working on donating a portion of the Property, consisting of approximately 50 acres, free and clear to the City of Minneola, which acreage will be subtracted from the acreage of the Property.

Although A&B continued to pursue the funding waiver, there was uncertainty on whether the waiver request would be granted. Therefore, A&B advised FDI to seek a prospective prohibited transaction exemption from the Department, which, if granted, would enable FDI to contribute any of the Notes in-kind to the Plan, as needed. In this connection, it is represented that A&B prepared a draft exemption application, drafted the trust agreement that was required in order to make the contribution in-kind to the Plan, advised FDI to obtain an independent appraisal of the fair market value of the Notes, while continuing discussions with the Internal Revenue Service (IRS) and the Pension Benefit Guaranty Corporation (PBGC) regarding the funding waiver.

13. FDI did not make quarterly contributions to the Plan for the 2010 plan year. The failure to make quarterly contributions to the Plan is a reportable event which was reported to the PBGC, as required. FDI states that, on September 10, 2011, A&B apprised FDI of the following three ''paths,'' summarized as: (a) FDI could assume that it would obtain a funding waiver, refrain from making contributions to the Plan, file for a prohibited transaction exemption, and make the in-kind contribution after the prohibited transaction exemption is granted. If the funding waiver were not forthcoming, FDI would be subject to tax on the unpaid contribution and to excise tax; (b) FDI could make the in-kind contribution on September 15, 2011, and file for a prohibited transaction exemption asking for retroactive relief. If the requested exemption were not granted, FDI would be subject to excise tax; or (c) FDI could start the process for a distress termination of the Plan in which the PBGC would have the right to attach assets of FDI in order to satisfy the unfunded liabilities. FDI states that it had to choose one of these options by September 15, 2011. On September 14, 2011, the PBGC filed a lien on the assets of FDI in the amount of $2.7 million. On or about September 15, 2011, FDI determined to go ahead with option (b) described above: The in-kind contribution to the Plan of two (2) of the Notes (Note #1 and Note #2), followed by the filing of an application for retroactive exemption with the Department. FDI states that, because discussions with the IRS and the PBGC were unsuccessful and the funding waiver was not forthcoming, FDI withdrew the waiver request on September 15, 2011. FDI states that, on October 14, 2011, A&B alerted FDI that hiring an independent fiduciary may be a component of obtaining the exemptive relief described above.

Appraisal of All the Notes

14. On September 12, 2011, Robert H. Buchannan, J.D., ASA and Victor E. Jarosiewicz, ASA, CFA (collectively, the PCE Appraisers) of PCE Valuations, LLC (PCE), in Winter Park and Tampa, Florida, together determined that the aggregate fair market value of all 29 of the Notes was $35,405,600 (rounded), as of September 8, 2011 (the PCE Appraisal).

The PCE Appraisers are qualified as Accredited Senior Appraisers of the American Society of Appraisers. Both of the PCE Appraisers are independent in that they have no personal interest or bias with respect to the parties involved, and their compensation was not contingent on the conclusions reached in their report.

Based on the PCE Appraisal and a discount rate of 4.09% and 4.10%, respectively for Note #1 and Note #2, the PCE Appraisers determined that the present value of the aggregate face amount on Note #1 and Note #2, plus accrued interest was $2,511,500, as of September 15, 2011. It is represented that FDI allocated $2,315,017 of the aggregate value of Note #1 and Note #2 to satisfy the minimum funding contribution to the Plan for plan year 2010. The remainder of $196,483 FDI applied to satisfy a portion of its minimum funding obligation to the Plan for plan year 2011.

Legal Analysis

15. Retroactive and prospective relief is proposed, herein, from sections 406(a)(1)(A), 406(a)(1)(D), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2) and 407(a) of the Act, and the corresponding provisions of the Code for the in-kind contribution, holding, and redemption of Note #1 and Note #2 in the past, and for the prospective in-kind contribution, holding, and redemption of certain of the Notes (the Subsequent Notes) in the future. Retroactive and prospective relief is also proposed, herein, from section 406(a)(1)(B) for the extensions of credit by the Plan to Minneola and to FDI in connection with the Plan's past acquisition and holding of Note #1 and Note #2 and the Plan's acquisition and holding in the future of any Subsequent Notes.

Section 406(a)(1)(A) of the Act prohibits a sale or exchange between a party in interest and a plan. As the past in-kind contribution of Note #1 and Note #2 was made by FDI to the Plan, and as future in-kind contributions of the Subsequent Notes will be made by FDI to the Plan for the purpose of satisfying FDI's minimum funding obligations to the Plan, retroactive and prospective relief from section 406(a)(1)(A) of the Act is needed, because the Plan will receive the contribution in-kind of the Subsequent Notes in exchange for receiving a cash contribution.[4]

Section 406(a)(1)(B) of the Act prohibits a loan or an extension of credit between a plan and a party in interest. As Minneola, the issuer of the Notes, is a party in interest with respect to the Plan, the acquisition and holding of any of the Notes would constitute a prohibited loan or extension of credit by the Plan to Minneola for which relief from 406(a)(1)(B) is needed.

In addition, the partial guarantees of the Notes by certain Gregg family trusts that would be considered parties in interest with respect to the Plan under section 3(14)(E) of the Act as owners of the capital or profits interest of Minneola. Similarly, the unconditional guarantees of the Notes by Mrs. Emack and Mrs. Strimenos would violate section 406(a)(1)(B) of the Act because these individuals would each be considered a party in interest with respect to the Plan under section 3(14)(H) of the Act as an officer and/or a 10 percent (10%) or more shareholder of FDI, an employer any of whose employees are covered by the Plan.

Section 406(a)(1)(E) of the Act prohibits a fiduciary from causing a plan to engage in a transaction, if he knows or should know that such transaction constitutes the direct or indirect acquisition, on behalf of a plan, of any employer security in violation of section 407(a) of the Act. Section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of a plan to permit a plan to hold any ''employer security'' in violation of section 407(a) of the Act. Section 407(a)(1) of the Act states that a plan may not acquire or hold any ''employer security'' that is not a ''qualifying employer security.''

The Notes may be considered ''employer securities,'' as defined in section 407(d)(1) of the Act, because Mrs. Strimenos and Mrs. Emack own, in the aggregate, directly or indirectly, more than 50 percent (50%) of both FDI

[4] In *Commissioner* v. *Keystone Consolidated Industries,* 508 US 152 (1993), the Supreme Court held that an employer's contribution of property in satisfaction of the plan's funding obligation was a ''sale or exchange'' for purposes of section 4975 of the Code. Moreover, the Department has held that an in-kind contribution to a plan constitutes a prohibited transaction, if the contribution reduces an obligation of a plan sponsor or employer to make a cash contribution to the plan. *See* Interpretive Bulletin 94–3.

and Minneola. Section 407(d)(5) of the Act defines a ''qualifying employer security'' as an employer security that is either stock, a marketable obligation (as defined by section 407(e) of the Act), or an interest in certain publicly traded partnerships. The Notes are not stock or interests in a publicly traded partnership. Neither are the Notes marketable obligations. A ''marketable obligation'' is defined, in part, under section 407(e) of the Act as a ''bond, debenture, note, or certificate, or other evidence of indebtedness'' if such obligation is acquired on the market, from an underwriter, or directly from the issuer, and immediate following the acquisition of such obligation, not more than 25% of the aggregate amount of obligations issued in such issue and outstanding at the time of acquisition is held by the plan; at least 50% of the aggregate amount of the obligations in such issue is held by persons independent of the issuer; and immediately following such acquisition not more than 25 percent (25%) of the assets of the plan is invested in obligations of the employer or an affiliate. As the Notes are closely-held and not traded on the market, were not acquired by the Plan from the issuer, and at least 50% of the aggregate amount of such Notes are held by FDI, who is not independent of Minneola, the issuer, the Notes do not satisfy the definition of a ''marketable obligation,'' as defined under section 407(e) of the Act. Accordingly, relief from section 407(a)(1)(E) and 406(a)(2) is needed for the acquisition and holding of the Notes by the Plan.

Furthermore, relief from section 406(a)(1)(A) and 406(a)(1)(D) of the Act is needed in the past, because Note #1 and Note #2 held in the Plan were transferred to and redeemed by Minneola, a party in interest with respect to the Plan, and relief from the same sections of the Act will be needed in the future in the event that the Subsequent Notes are transferred to and redeemed by FDI, FDLC, Minneola, or any other a party in interest with respect to the Plan.

In addition, both retroactive and prospective relief is needed from the provisions of section 406(b)(1) of the Act in connection with the past decision by FDI, a fiduciary with respect to the Plan, to contribute Note #1 and Note #2 in-kind to the Plan and with respect to any future decisions by FDI to contribute in-kind any of the Subsequent Notes to the Plan. Both retroactive and prospective relief is needed from the prohibitions of section 406(b)(2) of the Act due to FDI's presence on both sides of the transactions, as the sponsor and fiduciary of the Plan.

Property Appraisal

16. Subsequent to the in-kind contribution of Note #1 and Note #2, on January 1, 2012, FDI engaged Independent Fiduciary Services, Inc. (IFS), a Division of GBS Investment Consulting, LLC, and a predecessor of Gallagher Fiduciary Advisers, LLC (GFA), to serve as the independent, qualified, fiduciary (the I/F) and the investment manager on behalf of the Plan. GFA, the successor to IFS, hired Integra Realty Resources (Integra) of Orlando, Florida, to determine the ''as is'' fair market value of the fee simple interest in the Property (the Integra Appraisal). The Integra Appraisal was prepared by Stephen J. Matonis, MAI, MRICS, Director/Partner of Integra, and Marti M. Hornell, Senior Analyst of Integra (together, the Integra Appraisers). The Integra Appraisers conducted an on-site inspection of the Property, respectively, on April 22, 2012, and April 25, 2012.

The Integra Appraisers are qualified as State-Certified General Real Estate Appraisers. The Integra Appraisers are independent in that they have no bias with respect to the Property or the parties involved and their engagement and compensation was not contingent upon developing or reporting a predetermined value. It is represented that the percentage of revenue derived from this appraisal engagement was a *de minimis* percentage of Integra's 2011 revenues.

According to the Integra Appraisers, the holding of the Property by FDLC for future development is the only use that meets the four tests of highest and best use. Therefore, the Integra Appraisers concluded that the highest and best use of the Property is as vacant. In this regard, the Integra Appraisers represented that the most probable buyer of the Property would be an investor/developer that would continue the existing agricultural uses of the Property until such time that demand for the Property warrants moving forward with the development of the Property. In the opinion of the Integra Appraisers, a reasonable marketing period for the Property is estimated at 18 to 24 months.

Accordingly, based solely on the Sales Comparison Approach to valuation, the Integra Appraisers, in a report dated May 3, 2012, determined that the ''as is'' fair market value of the fee simple interest in the Property, as of April 22, 2012, was $48,000,000 ($27,405 per usable acre), including approximately fifty (50) acres of land that would be transferred to the City of Minneola for construction of the Interchange.

Re-Appraisal of Note #1 and Note #2

17. On July 21, 2012, GFA also hired Kevin P. Steeley (Mr. Steeley) and Hugh H. Woodside (Mr. Woodside), ASA, CFA, Managing Director, of Empire Valuation Consultants, LLC (Empire), in Rochester, NY, (collectively, the Empire Appraisers) as a second IQA to establish the value of Note #1 and Note #2, exclusively. Both the Empire Appraisers are qualified, in that Mr. Steeley has been associated with Empire since 2006, and Mr. Woodside is an Accredited Senior Appraiser affiliated with the American Society of Appraisers and is a Chartered Financial Analyst. Both the Empire Appraisers are independent in that neither Mr. Steeley nor Mr. Woodside has an interest in Note #1 and Note #2. Further, it is represented that the Empire Appraiser's fees were not contingent upon the determination of value of Note #1 and Note #2.

Discounting the payments for Note #1 and Note #2 using the discount rates, respectively, of 5.9 percent (5.9%) and 6.2 percent (6.2%), the Empire Appraisers determined that looking back to September 15, 2011, the aggregate fair market value of for Note #1 and Note #2 was $2,316,047 (the First Empire Appraisal).

It is represented that the First Empire Appraisal valuation though somewhat lower than the $2,511,500 aggregate value for Note #1 and Note #2, as set forth in the PCE Appraisal, was still in excess of FDI's funding obligation for the plan year 2010. Accordingly, once the First Empire Appraisal was obtained, the I/F determined to use the lower valuation for the purpose of satisfying FDI's funding obligation to the Plan.

Redemption of Note #1 and Note #2

18. FDI had Minneola redeem Note #1 and Note #2 from the Plan. Such redemptions required Minneola to pay an amount in cash to the Plan equal to the $1 million principal amount of each note, plus all accrued interest due through the date of such redemptions.

It is also represented that because Note #1 and Note #2 had been contributed at a discounted value (*i.e.,* the First Empire Appraisal established the fair market value of such notes in the aggregate at $2,316,047, looking back to September 15, 2011) (*See,* Representation 17), as compared to the outstanding balance of such notes, which was approximately $2,468,930, as of September 15, 2011, the pre-mature redemption of Note #1 and Note #2 for $2,616,702.01, well in advance of the

January 1, 2016 maturity date of such notes, resulted in the Plan achieving a very favorable return of approximately 10.39 percent (10.39%) per annum over the relatively short period of time (from September 15, 2011, to December 28, 2012) that the Plan held such notes.

Current Exemption Request

19. FDI filed the subject application (D–11777) for an individual exemption (the Current Application) on May 6, 2013, seeking both retroactive and prospective relief. Specifically, in the Current Application, FDI is relying on the Department's retroactive policy, as set forth at 29 CFR section 2570.35(a)(8), and has requested retroactive relief for the in-kind contribution of Note #1 and Note #2 to the Plan, for the holding of such notes by the Plan, and for the redemption of such notes from the Plan by Minneola. In this regard, FDI explains that it followed and relied on the written guidance provided by A&B, to file an exemption application with the Department, as discussed more fully in Representations 12 and 13, above, prior to the contribution in-kind of Note #1 and Note #2 to the Plan.

Further, FDI is seeking prospective relief for the in-kind contribution, the holding, and the redemption of the Subsequent Notes. Both prospective and retroactive relief is also needed for the guarantees and extensions of credit between the Plan and certain parties in interest.

With regard to the prospective relief, FDI estimates that its mandatory minimum funding contribution for each of the next several plan years will be approximately $2.1 million or more per year. In this regard, the proposed prospective relief, if granted prior to September 15, 2014, would enable FDI, subject to obtaining the approval of the I/F, to contribute in-kind of certain Subsequent Notes to the Plan on September 15, 2014, depending on the final valuations of such notes, in order to satisfy FDI's minimum funding obligation for the 2013 plan year, and further to contribute certain Subsequent Notes to satisfy its minimum funding obligations for future plan years.

This proposed exemption, if granted, shall be effective with regard to transactions, involving Note #1 and Note #2 for the period beginning on September 15, 2011, and ending on December 28, 2012. This proposed exemption, if granted, shall be effective with regard to transactions, involving the Subsequent Notes, beginning on the date of the publication in the **Federal Register** of the grant of this proposed exemption and ending on the last day any of the Subsequent Notes is held in the Plan.

Appointment of GFA

20. FDI, acting in its corporate capacity and as named fiduciary for the Plan, engaged GFA pursuant to an agreement, dated March 21, 2013, (the Agreement) to serve as the I/F on behalf of the Plan. Under the terms of the Agreement, GFA will be retained for as long as the Plan holds any of the Subsequent Notes. GFA will be authorized to make all decisions on whether the Plan should accept the in-kind contribution of the Subsequent Notes in satisfaction of FDI's minimum funding obligations and otherwise to manage such notes on behalf of the Plan. It is represented that GFA's fees and expenses will be paid by the Plan.

GFA, a Delaware limited liability company, is a registered investment adviser. On June 1, 2011, GFA acquired substantially all of the assets of IFS. GFA represents that it is qualified to serve as the I/F through its experience and through the experience of its predecessor, IFS, in acting as the I/F for plans in connection with contributions of non-cash assets to satisfy funding obligations, and the management of such assets, including both private securities and real estate. GFA represents that it has acted as independent fiduciary in connection with numerous transactions that have been the subject of individual prohibited transaction exemptions. In addition, GFA serves as an on-going investment consultant to plans with assets totaling approximately $37.1 billion. GFA is independent in that neither it nor any of its affiliates has any relationship with FDI, Minneola, FDLC, and the guarantors of the Notes, except that: (a) FDI has undertaken to provide a limited indemnification to GFA as set forth in the Agreement; and (b) FDI is secondarily liable (after the Plan) for GFA's fees and expenses, as set forth in the Agreement. It is represented that GFA's projected fee revenues during its 2013 Federal income tax year that may be derived from FDI will be less than two percent (2%) of GFA's total revenues for the 2013 income tax year.

To supplement in-house legal resources and advice from local counsel in Florida, GFA retained the law firm of Steptoe & Johnson LLP to provide legal advice on the fiduciary and related business issues raised by the proposed transactions, including the fiduciary responsibilities under the Act. In this regard, GFA has acknowledged that is understands the duties and responsibilities under the Act of serving as a fiduciary on behalf of the Plan.

GFA requested, received, and reviewed a number of documents concerning the Plan, FDI, Minneola, FDLC, the guarantors, the Notes, and the Property. Further, GFA met in-person and by telephone with FDI executives, their legal and financial advisors, and several of the guarantors to learn about the history, ownership, business model, and financial performance of FDI, Minneola, and FDLC. GFA's professional team also toured the Property.

GFA has evaluated for methodological soundness, and mathematical and textual accuracy both the Integra Appraisal of the Property and a preliminary, unsigned, updated appraisal of Note#3, Note#4, and Note#5, dated September 7, 2012, prepared in draft by the Empire Appraisers (the Second Empire Appraisal). It is represented that the fair market value appraisal of the Property will be updated by an independent, qualified, appraiser (IQA) engaged by GFA, prior to GFA's determination on whether to accept on behalf of the Plan any of the Subsequent Notes, and prior to the contribution in-kind of such notes to the Plan. Similarly, the fair market value of any of the Subsequent Notes that are contributed in-kind to the Plan will be determined by the IQA engaged by GFA, prior to such in-kind contribution. Each such appraisal of the Subsequent Notes will reflect the then-current terms of such notes, and will take into account all factors deemed relevant, including the then-current value of the Property and the additional pledges and covenants GFA has negotiated on behalf of the Plan (as discussed below in Representation 21). The same procedure will be followed by GFA for additional contributions in-kind of Subsequent Notes to the Plan.

Pledges and Covenants Negotiated by GFA

21. GFA has negotiated several additional protections for the Plan, as set forth in the term sheet that was attached to the Current Application. As a result of these negotiations, FDI has, among other things, agreed to the following:

(a) Upon the contribution in-kind of any of the Subsequent Notes to the Plan, the Plan will receive a security interest in the Property (or in a relevant portion of such Property) (the Security Interest) and will retain such Security Interest, until the Plan no longer holds any of the Subsequent Notes. The Property (or the relevant portion, thereof) in which the Plan holds a Security Interest will have at least an appraised value equal to a minimum of five (5) times the aggregate

outstanding balance, including all principal and accrued interest thereon, of all the Subsequent Notes held by the Plan, where such appraised value is determined by an IQA immediately after the most recent contribution in-kind of such Subsequent Notes and immediately after the sale or disposition of any portion of the Property;

(b) FDLC will covenant to refrain from mortgaging the Property and will covenant to distribute to Minneola the net proceeds (after the payment of expenses) from the sale of all or a portion of the Property by FDLC. If any mortgage is placed on the Property, such mortgage will create a default under the Subsequent Notes held in the Plan that will allow the Plan to enforce its rights under such a default;

(c) FDI will cause Minneola, at the option of FDI, either to pay the funds Minneola receives from FDLC to the Plan as payment on the Subsequent Notes held in the Plan or will loan such funds to FDI for the purpose of FDI making a contribution to the Plan within thirty (30) days of such loan (either as a current contribution or a pre-contribution of a future funding obligation);

(d) FDI will apply any funds it receives from Yeehaw, PMCC, Bi-Coastal, and Arcadia for the benefit of the Plan, pursuant to written covenants and agreements that such entities will use the available proceeds from the sale of any real property owned by such entities, and all net royalties received by Arcadia from third parties, to first pay off any debts owed to FDI by such entities. In this regard, at the option of FDI, such available proceeds and such royalties either will be contributed to the Plan (as a current contribution or a pre-contribution of a future funding obligation) or will be loaned to Minneola with a written direction that Minneola pay the proceeds of such loan to the Plan as payment on any of the Subsequent Notes held by the Plan;

(e) The covenants and agreements are entered into prior to any in-kind contribution of any Subsequent Notes to the Plan; and such notes will be amended to treat a breach of any such covenants and agreements as an event of default under such notes;

(f) The Subsequent Notes contributed in-kind to the Plan will be contributed in the next order of seniority of such notes. The aggregate fair market value of the Subsequent Notes that may be contributed in-kind to the Plan shall not exceed 20 percent (20%) of the fair market value of the total assets of the Plan, in each case determined by GFA immediately after the in-kind contribution of such notes;

(g) If, at any time, the fair market value of the Property, all or a portion of which serves as collateral for the Subsequent Notes contributed in-kind to the Plan is less than 150 percent (150%) of the aggregate outstanding principal and accrued interest balance of such notes held by the Plan, the Plan will have the right, exercisable on 120 days' prior written notice by GFA, to accelerate the payment of such notes to the extent necessary to cause the fair market value of the Property to be at least 150 percent (150%) of the outstanding principal and accrued interest amount of such notes; and

(h) If at any time, GFA determines that the Plan does not have sufficient liquidity to meet its projected 12-month forward expense obligations (including benefit payment obligations), the Plan will have a right, exercisable on ninety (90) days' prior written notice to FDI, to accelerate the repayment of any of the Subsequent Notes held in the Plan; provided that such acceleration right shall only be to the extent necessary to pay down the aggregate outstanding principal and accrued interest balance of such notes, in an amount as determined by GFA to be necessary to provide the Plan with sufficient liquid assets to meet its twelve (12) month forward expense obligation.

GFA represents that it will consider at the time of each proposed in-kind contribution of any of the Subsequent Notes whether FDI has sufficient cash or other assets to render such an in-kind contribution unnecessary to satisfy the Plan's minimum funding requirements, or whether such an in-kind contribution can be made in addition to rather than in lieu of a payment of a cash contribution then due.

22. GFA notes that its ability to extend the maturity date on the Subsequent Notes will give Minneola the necessary time it needs to market and sell the Property, which time may be more than the 18–24 months estimated by Integra Appraisal to sell the Property in order to generate sufficient cash to pay off the Subsequent Notes contributed in-kind to the Plan.

GFA represents that it will be responsible for monitoring and managing all of the Subsequent Notes contributed in-kind to the Plan and is authorized to enforce all of the Plan's rights under the instruments governing such notes, including the additional covenants, pledges, and agreements designed by GFA to serve as security for the Plan, which are outlined, above. In this regard, GFA is responsible for taking prudent action on behalf of the Plan in the event of default on any of the Subsequent Notes held in the Plan and in the event of default on any of the terms of the covenants, pledges, and agreements designed to provide security for the Plan.

GFA has made a preliminary determination in a report (the Report) attached to the Current Application, that the contribution of the Subsequent Notes in satisfaction of FDI's funding obligation will be in the interest of the Plan and its participants and protective of the rights and interests of such participants and beneficiaries. As described more fully in the Report, the Plan will receive in-kind contributions of fairly valued fixed income securities that will satisfy the minimum funding requirements of the Plan and improve the Plan's funding status, as compared to the Plan's funding status in the absence of such in-kind contributions.

Merits of the Proposed Exemption

23. The Applicant submits that proposed exemption will satisfy the requirement that an individual exemption must be administratively feasible. In this regard, GFA will determine, in each instance, whether the Plan should accept the Subsequent Notes as in-kind contributions to the Plan. Moreover, GFA will be authorized to manage and make all decisions with respect to any of the Subsequent Notes contributed in-kind to the Plan for as long as any such notes remain in the Plan. Hence, FDI maintains that the proposed exemption requires no on-going oversight by the Department and is administratively feasible.

24. FDI maintains that the in-kind contribution of Note #1 and Note #2 was, and the in-kind contribution of Subsequent Notes will be, in the interest of the Plan because such past and prospective in-kind contributions have substantially improved and will improve the security of benefits for the Plan participants without endangering the value of the Plan or creating any liquidity concerns. Further, FDI maintains that the redemptions of Note #1 and Note #2 were in the interest of the Plan in that the Plan achieved a favorable return of approximately 10.39 percent (10.39%) per annum over the relatively short period the Plan held such notes.

FDI represents that it is in the interest of the Plan to accept the in-kind contribution of the Subsequent Notes, as the Plan will receive fairly valued fixed income securities. In this regard, FDI submitted with the Current Application the Second Empire Appraisal, dated September 7, 2012, prepared in draft by the Empire Appraisers. Prior to the in-kind contribution of any of the Subsequent Notes to the Plan, the then-

current fair market value of such notes will be determined by an IQA, before GFA makes a determination on whether to accept such notes on behalf of the Plan.

It is represented that many factors were incorporated into the Empire Appraisers' analysis. Accordingly, in the Second Empire Appraisal, using a discount rate of 5.9 percent (5.9%) for Note #3, 6.1 percent (6.1%) for Note #4, and 6.3 percent (6.3%) for Note #5, the Empire Appraisers estimated that the aggregate present value of Note #3, Note #4, and Note #5 was $3,468,935, as of September 7, 2012.

It is represented that GFA will review and approve an updated appraisal prepared by an IQA engaged by GFA, of any Subsequent Notes to be contributed in-kind to the Plan prior to such contribution.

25. Additionally, FDI explains that any contribution in-kind of the Subsequent Notes to the Plan will be protective of the Plan and its participants and beneficiaries. In this regard, the Notes are ordered as to seniority such that each successive higher numbered note is subordinate to any note with a lower number. For example, no amount can be paid on Note #8 until all principal and interest has been paid on Note #3 through Note #7. Given the redemptions of Note #1 and Note #2, on December 28, 2012, Note #3 is now the most senior of the Notes. FDI states that the Subsequent Notes will be contributed to the Plan in the next order of their seniority, starting with Note #3, as necessary to satisfy FDI's future funding obligations to the Plan, subject to the conditions set forth in this proposed exemption.

Other than the Subsequent Notes that are the subject of this proposed exemption, FDI will not contribute any employer real property or employer securities to the Plan for so long as the Plan owns any such notes.

27. If the proposed exemption is granted, FDI represents that the Plan will continue to exist, will be adequately funded, and will eventually be terminated in a standard termination. However, FDI maintains that if the proposed exemption is not granted, it is not clear how the Plan will be funded over the next several years, nor is it clear whether FDI will continue in business due to its large minimum funding obligations to the Plan and its current lack of liquid assets.

Moreover, if the proposed exemption is denied, FDI states that there will be hardship and economic loss to the Plan. In particular, given FDI's current lack of liquid assets and its anticipated lack of liquidity over the next several years, FDI explains that it is highly unlikely that it can make the required contributions to the Plan in cash. Consequently, some or all of the required contributions might not be made, resulting in economic loss to the Plan and its participants and beneficiaries.

26. In summary, FDI represents that the subject retroactive transactions satisfy the statutory criteria of section 408(a) of the Act because:

(a) Prior to the in-kind contribution of Note #1 and Note #2, the fair market value of such notes was determined to be at least $2,316,047, as determined by the IQA;

(b) Prior to the in-kind contribution of Note #1 and Note #2, FDI engaged the law firm of A&B, and FDI thereafter contributed Note #1 and Note #2 in a manner consistent with written guidance provided by A&B on September 10, 2011;

(c) The Notes were redeemed for $2,616,702.01, providing the Plan with a 10.39% annual rate of return in connection with its holding of Note #1 and Note #2;

(d) The terms and conditions of the transactions were no less favorable to the Plan than the terms and conditions negotiated at arm's length under similar circumstances between unrelated parties; and

(e) The Plan did not incur any commissions, fees, costs, other charges, or expenses in connection with the acquisition, the in-kind contribution, the holding, and/or the redemption of Note #1 and Note #2, except for the fees of the I/F, or persons engaged by the I/F to act on behalf of the Plan.

27. In summary, FDI represents that the subject prospective transactions satisfy the statutory criteria of section 408(a) of the Act because, among other things:

(a) The terms and conditions of the transactions will be no less favorable to the Plan than the terms and conditions negotiated at arm's length under similar circumstances between unrelated parties;

(b) The terms of the transactions will be determined in advance by the I/F, acting on behalf of the Plan, to be administratively feasible, in the interest of, and protective of the Plan and its participants and beneficiaries;

(c) The I/F is engaged with full discretionary authority to act on behalf of the Plan with respect to each of the Subsequent Notes contributed in-kind of the Plan, including the exercise of any of the rights of the Plan under such notes, and the responsibility to monitor such notes, and to ensure compliance by FDI, Minneola, FDLC, and any affiliates thereof, with the terms and conditions of such notes, and with the terms and conditions of this proposed exemption;

(d) The Subsequent Notes will be contributed in-kind to the Plan in the next order of seniority of such notes (*i.e.,* Note #3, Note #4, Note #5, etc.);

(e) Prior to the in-kind contribution of any of the Subsequent Notes, the fair market value of such notes will be determined by an IQA, engaged by the I/F;

(f) Upon the contribution in-kind of any Subsequent Notes to the Plan,

(1) The Plan will receive a recorded, perfected Security Interest in the Property (or in a relevant portion of such Property) and will retain such Security Interest until the Plan no longer holds any Subsequent Notes; and

(2) The Property in which the Plan holds the Security Interest will have, at all times throughout the duration of the contributed Subsequent Notes, an appraised value equal to a minimum of five (5) times the aggregate outstanding balance, including all principal and accrued interest thereon, of all of the Subsequent Notes held by the Plan;

(g) The aggregate fair market value of the Subsequent Notes proposed to be contributed in-kind to the Plan shall not exceed 20% of the fair market value of the total assets of such Plan, in each case determined by the I/F immediately after the in-kind contribution of such notes;

(h) The Plan will not incur any commissions, fees, costs, other charges, or expenses in connection with the acquisition, the in-kind contribution, the holding, and/or the redemption of any of the Subsequent Notes, including the fees and expenses of the I/F, and the fees and expenses of an IQA, counsel, or other persons engaged by the I/F;

(i) If, at any time, the fair market value of the Property, all or a portion of which serves as collateral for the Subsequent Notes contributed in-kind to the Plan, is less than 150 percent (150%) of the aggregate outstanding principal balance and accrued interest of such notes held by the Plan, the Plan has the right, exercisable on 120 days' prior written notice by the I/F to FDI, to accelerate the payment of such notes in order to cause the fair market value of the Property to be at least 150 percent (150%) of the aggregate outstanding principal and accrued interest amount of such Subsequent Notes;

(j) If, at any time, the I/F determines that the Plan does not have sufficient liquidity to meet its projected 12-month forward expense obligations (including benefit payment obligations), the Plan will have a right, exercisable, by the I/F, on ninety (90) days' prior written notice to FDI, to accelerate the

repayment of the Subsequent Notes held by the Plan;

(k) Any extension of the maturity date of the Subsequent Notes is subject to the approval of the I/F; and

(l) The Notes will be partially guaranteed by certain family trusts, based on the respective ownership of such trusts of interests in Minneola; and unconditionally guaranteed by Mrs. Emack and Mrs. Strimenos, who jointly and severally will guarantee payment of the aggregate amount of such notes in full.

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 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

Section I: Retroactive Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), 4975(c)(1)(B), and 4975(c)(1)(E) of the Code,[5] shall not apply, effective September 15, 2011, through December 28, 2012, to the following transactions, provided that the conditions, as set forth in Section II and Section V of this proposed exemption, are satisfied;

(a) The contribution in-kind to the Plan of two (2) promissory notes (Note #1 and Note #2), of a series of twenty-nine (29) numbered promissory notes (collectively, the ''Notes'' and individually, ''Note #1 through Note #29''), as defined below in Section VI(d), by Family Dynamics, Inc. (FDI), the sponsor of the Plan, for the purpose of satisfying the minimum funding obligation of FDI to the Plan for the plan year ending December 31, 2010;

(b) The holding by the Plan of Note #1 and Note #2 until December 28, 2012;

(c) The extension of credit by the Plan to Minneola AG, LLC (Minneola), the issuer of the Notes and a party in interest with respect to the Plan, resulting from the holding of Note #1 and Note #2 by the Plan;

(d) The extension of credit to the Plan: (1) by certain stockholders of FDI; and (2) by the members of Minneola, by reason of each such stockholder's and/or each such member's personal guaranty of all or a portion of the face amounts, plus accrued interest thereon, of Note #1 and Note #2; and

(e) The redemption of Note #1 and Note #2 on December 28, 2012, by Minneola for a cash payment that equaled the fair market value of such notes, including principal and all accrued interest thereon through the date of redemption.

Section II: Conditions for Retroactive Transactions

(a) Prior to the in-kind contribution of Note #1 and Note #2, the fair market value of such notes was determined to be at least $2,316,047, as determined by an independent, qualified appraiser (the IQA);

(b) Prior to the in-kind contribution of Note #1 and Note #2, FDI engaged the law firm of Alston and Bird, LLP (A&B), and FDI thereafter contributed Note #1 and Note #2 in a manner consistent with written guidance provided by A&B on September 10, 2011;

(c) The Notes were redeemed for $2,616,702.01, providing the Plan with a 10.39 percent (10.39%) annual rate of return in connection with its holding of Note #1 and Note #2;

(d) The terms and conditions of the transactions, as described in Section I, were no less favorable to the Plan than the terms and conditions negotiated at arm's length under similar circumstances between unrelated parties;

(e) The Plan did not incur any commissions, fees, costs, other charges, or expenses in connection with the acquisition, the in-kind contribution, the holding, and/or the redemption of Note #1 and Note #2, except for the fees of a qualified, independent fiduciary acting on behalf of the Plan (the I/F), as defined below in Section VI(c), or persons engaged by the I/F on behalf of the Plan.

Section III: Prospective Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), 4975(c)(1)(B), and 4975(c)(1)(E) of the Code, shall not apply as of the date the final exemption is published in the **Federal Register** and ending on the last day certain of the Notes (the Subsequent Notes), as defined below in Section VI(m), are held by the Plan, to the following transactions, provided that the conditions as set forth in Section IV and Section V of this proposed exemption are satisfied:

(a) The contribution in-kind to the Plan of the Subsequent Notes for the purpose of satisfying FDI's minimum funding obligations to the Plan;

(b) The holding of the Subsequent Notes until the maturity date of such notes;

(c) The extension of credit by the Plan to Minneola resulting from the holding of the Subsequent Notes by the Plan;

(d) The extension of credit to the Plan by: (1) Certain major stockholders of FDI; and (2) the members of Minneola that are family trusts, by reason of each such stockholder's and/or each such member's personal guaranty of all or a portion of the face amount, plus accrued interest thereon, of any of the Subsequent Notes; and

(e) The redemption by FDI, Family Dynamics Land Company, LLC (FDLC), Minneola, or any affiliate thereof, as affiliate is defined below in Section VI(a), of any of the Subsequent Notes on or before the maturity date of such notes for the *greater* of: (1) The aggregate principal plus accrued interest thereon of such notes, as of the date of redemption; or (2) the fair market value of such notes, as determined by an IQA, as of the date of redemption.

Section IV: Conditions for Prospective Transactions

(a) The terms and conditions of the transactions will be no less favorable to the Plan than the terms and conditions negotiated at arm's length under similar circumstances between unrelated parties;

(b) The terms of the transactions, as described in Section III, are determined in advance by the I/F, acting on behalf of the Plan, to be administratively feasible, in the interest of, and protective of the Plan and its participants and beneficiaries;

(c) The I/F is engaged with full discretionary authority to act on behalf of the Plan with respect to each of the Subsequent Notes contributed in-kind of the Plan, including the exercise of any of the rights of the Plan under such notes, and the responsibility to monitor such notes, and to ensure compliance by FDI, Minneola, FDLC, and any affiliates thereof, with the terms and conditions of such notes, and with the terms and conditions of this proposed exemption;

(d) The Subsequent Notes will be contributed in-kind to the Plan in the next order of seniority of such notes (*i.e.,* Note #3, Note #4, Note #5, etc.);

(e) Prior to the in-kind contribution of any of the Subsequent Notes, the fair market value of such notes will be

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

determined by an IQA, engaged by the I/F. The fair market value must reflect the then-current terms of such Subsequent Notes, and take into account all factors deemed relevant, including the then-current value of a certain parcel of real property (the Property), as defined below in Section VI(f), all or a portion of which secures such notes, as well as the additional pledges and covenants the I/F has negotiated on behalf of the Plan;

(f) Upon the contribution in-kind of any Subsequent Notes to the Plan,

(1) The Plan receives a recorded, perfected security interest in the Property (or in a relevant portion of such Property) (the Security Interest) and retains such Security Interest until the Plan no longer holds any Subsequent Notes; and

(2) The Property in which the Plan holds the Security Interest has, at all times throughout the duration of the contributed Subsequent Notes, an appraised value equal to a minimum of five (5) times the aggregate outstanding balance, including all principal and accrued interest thereon, of all of the Subsequent Notes held by the Plan, where such appraised value is determined by an IQA,

(A) Immediately after the most recent contribution in-kind of such Subsequent Notes; and

(B) Immediately after the sale or disposition of any portion of the Property;

(g) The aggregate fair market value, as determined pursuant to Section IV(e) above, of the Subsequent Notes proposed to be contributed in-kind to the Plan shall not exceed 20% of the fair market value of the total assets of such Plan, in each case determined by the I/F immediately after the in-kind contribution of such notes;

(h) The Plan will not incur any commissions, fees, costs, other charges, or expenses in connection with the acquisition, the in-kind contribution, the holding, and/or the redemption of any of the Subsequent Notes, including the fees and expenses of the I/F, and the fees and expenses of an IQA, counsel, or other persons engaged by the I/F;

(i) If, at any time, the fair market value of the Property, all or a portion of which serves as collateral for the Subsequent Notes contributed in-kind to the Plan, is less than 150 percent (150%) of the aggregate outstanding principal balance and accrued interest of such notes held by the Plan, the Plan has the right, exercisable on 120 days' prior written notice by the I/F to FDI, to accelerate the payment of such notes in order to cause the fair market value of the Property to be at least 150 percent (150%) of the aggregate outstanding principal and accrued interest amount of such Subsequent Notes;

(j) If, at any time, the I/F determines that the Plan does not have sufficient liquidity to meet its projected 12-month forward expense obligations (including benefit payment obligations), the Plan has a right, exercisable, by the I/F, on ninety (90) days' prior written notice to FDI, to accelerate the repayment of the Subsequent Notes held by the Plan;

(k)(1) FDI provides to the I/F a report from the custodian of the Plan no later than ten (10) days after the end of each calendar quarter detailing the assets of the Plan (excluding the Subsequent Notes held by the Plan) as of the last day of the calendar quarter just ended so long as the Plan owns any Subsequent Notes; and

(2) FDI provides to the I/F, not later than thirty (30) days after the written request of the I/F, a report from the actuary of the Plan projecting the Plan's forward expense obligations for the following twelve (12) months;

(l) The following FDI-related entities: Yeehaw Ranch Land, LLC (Yeehaw), PMCC, LLC (PMCC), Bi-Coastal Holdings, LLC (Bi-Coastal), and Arcadia Holdings, LLC (Arcadia): Will covenant with FDI to use the ''available proceeds,'' as defined in Section VI(1), from the sale of any real property owned by such entities, and all net royalties received by Arcadia from third parties, to pay off any debts owned by such entities to FDI. At the option of FDI, such available proceeds and such royalties either will be contributed to the Plan (as a current contribution or a pre-contribution of a future funding obligation) or will be loaned to Minneola with a written direction that Minneola pay the proceeds of such loan to the Plan as payment on any of the Subsequent Notes held by the Plan;

(m) The covenants and agreements described in Section IV(m) above of this proposed exemption are entered into prior to any in-kind contribution of any Subsequent Notes to the Plan; and such notes will be amended to treat a breach of any such covenants and agreements as an event of default under such notes;

(n) FDLC enters into a covenant agreement with the Plan, pursuant to which FDLC covenants to: (1) Refrain from mortgaging the Property; and (2) distribute to Minneola the net proceeds (after the payment of expenses) from the sale of all or a portion of the Property by FDLC. If any mortgage is placed on the Property, such mortgage will create a default under the Subsequent Notes held in the Plan that will allow the Plan to enforce its rights under such a default;

(o) FDI enters into an agreement with the Plan, whereby FDI shall apply all the funds that FDI receives during the Prospective Exemption Period, as defined below in Section VI(e), with respect to certain of FDI's illiquid assets, as defined below in Section VI(k), either to the repayment of the principal and accrued interest on the Subsequent Notes then held in the Plan, or to the use of such funds to satisfy FDI's current and future funding obligations to the Plan;

(p) FDI will cause Minneola, at the option of FDI, either to pay to the Plan any funds Minneola receives from FDLC to the Plan, as payment on the Subsequent Notes held in the Plan, or to loan such funds to FDI for the purpose of FDI making a contribution to the Plan within thirty (30) days of such loan (either as a current contribution or a pre-contribution of a future funding obligation);

(q) Any extension of the maturity date of the Subsequent Notes is subject to the approval of the I/F; and

(r) The Notes are partially guaranteed by certain family trusts, based on the respective ownership of such trusts of interests in Minneola; and unconditionally guaranteed by Mrs. Gail Gregg-Strimenos and Mrs. Jeannie Gregg-Emack, who jointly and severally guarantee payment of the aggregate amount of such notes in full.

Section V: General Conditions

(a) FDI, Minneola, FDLC, and any affiliates thereof, as applicable, maintain or causes to be maintained within the United States, starting on September 15, 2011, and ending on the date which is six (6) years after the last day any of the Subsequent Notes is held by the Plan, the records necessary to enable the persons, described below in Section V(b)(1)(A)–(C), to determine whether the conditions of this proposed exemption have been met, except that:

(1) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of FDI, Minneola, FDLC, or their affiliates, as applicable, such records are lost or destroyed prior to the end of the six (6) year period, described in Section V(a) above, and

(2) No party in interest with respect to the Plan, other than FDI, Minneola, FDLC, and their affiliates, as applicable, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination, as required, below, by Section V(b)(1).

(b)(1) Except as provided in Section V(b)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in Section V(a) are unconditionally available for examination at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department, or the Internal Revenue Service; and

(B) Any fiduciary of the Plan, and any duly authorized representative of such fiduciary; and

(C) Any participant or beneficiary of the Plan, and any duly authorized representative of such participant or beneficiary;

(2) None of the persons, described above in Section V(b)(1)(B) through (C), shall be authorized to examine trade secrets of FDI, Minneola, FDLC, or their affiliates or commercial or financial information which is privileged or confidential.

Section VI: Definitions

(a) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

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

(c) The term ''I/F'' means Gallagher Fiduciary Advisers, LLC or any successor that has satisfied all of the criteria for a ''qualified independent fiduciary'' within the meaning of 29 CFR 2570.31(j).

(d) The term ''Notes'' means a series of twenty-nine (29) promissory notes (declining in seniority from Note#1 to Note#29), issued by Minneola and acquired by FDI from Minneola as a result of the sale of FDLC which owns the Property by FDI to Minneola. Each of the Notes has a face value of $1,000,000, except for Note#29, which has a face value of $1,330,000. Each of the Notes has an interest rate of 4.53 percent (4.53%) per annum compounded semi-annually.

(e) The term ''Prospective Exemption Period'' means the period beginning on the date of publication in the **Federal Register** of the grant of this proposed exemption and ending on the last day any of the Subsequent Notes is held by the Plan.

(f) The term ''Property'' means a certain tract of approximately 1,770 acres of real estate which is located in the City of Minneola, Florida.

(g) The term ''Minneola'' means Minneola AG, LLC, a Florida limited liability company.

(h) The term ''FDI'' means Family Dynamics, Inc., a Florida corporation.

(i) The term ''FDLC'' means Family Dynamics Land Company, LLC, a Florida limited liability company.

(j) The term ''Plan'' means the Family Dynamics, Inc. Pension Plan.

(k) The phrase ''FDI's illiquid assets'' means the following assets:

(1) A $6.730 million dollar note from Yeehaw;

(2) A $2.872 million dollar note from PMCC;

(3) A $5.463 million dollar note from Bi-Coastal the sole owner of Arcadia;

(4) A non-recourse loan to a Gregg family member in the amount of $5.661 million dollars;

(5) The Notes with an aggregate value of $35.757 million dollars issued by Minneola and held by FDI which are the subject of this proposed exemption; and

(6) Miscellaneous assets worth $0.403 million dollars.

(l) The term ''available proceeds'' means the proceeds from the sale of property less: (1) All reasonable expenses, including any brokerage commissions, payable to parties unrelated to FDI or its principals/beneficial owners; and (2) all debt required to be paid as a condition to closing on such sale to obtain a release of any mortgage on such property.

(m) The term ''Subsequent Notes'' means Note#3 through Note#29.

Notice To Interested Persons

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption include all the participants and the beneficiaries of deceased participants in the Plan at the time the proposed exemption is issued.

It is represented that all such interested persons will be notified of the publication of the Notice by first class mail, to each such interested person's last known address within fifteen (15) days of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(a)(2), which will advise all interested persons of their right to comment and to request a hearing. All written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

All comments will be made available to the public.

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 proposed 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 a plan solely in the interest of the participants and beneficiaries of a 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 404(a) of the Code that a plan operate for the exclusive benefit of the employees of the employer maintaining a plan and their beneficiaries;

(2) Before a proposed 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 a plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of a plan;

(3) 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

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

Written Comments and Hearing Requests

All interested person are invited to submit written comments and/or requests for a public hearing on the proposed exemption to the address, as set forth above, within the time frame, as set forth above. All comments and

requests for a public hearing will be made a part of the record. Comments and hearing requests should state the reasons for the writer's interest in the proposed exemption. A request for a public hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. Comments and hearing requests received will also be available for public inspection with the referenced application at the address, as set forth above.

Signed at Washington, DC, this 11th day of July, 2014.

Lyssa E. Hall,

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

[FR Doc. 2014–17425 Filed 7–23–14; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85,104]

Fisher and Ludlow, a Nucor Company, Saegertown, Pennsylvania; Notice of Revised Determination on Reconsideration

On May 28, 2014, the Department issued an Affirmative Determination Regarding Application for Reconsideration of the negative determination regarding workers' eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of Fisher and Ludlow, a Nucor Company, Saegertown, Pennsylvania (subject firm). The Department's Notice was published in the **Federal Register** on June 13, 2014 (79 FR 33955).

The group eligibility requirements for workers of a firm under Section 246(a)(3)(A)(ii) of the Trade Act are satisfied if the following criteria are met:

(I) Whether a significant number of workers in the workers' firm are 50 years of age or older;

(II) Whether the workers in the workers' firm possess skills that are not easily transferable; and

(III) The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

The negative determination for ATAA was based on the findings that Section 246(a)(3)(A)(ii)(II) was not met because the workers in the workers' firm possess skills that are easily transferrable and Section 246(a)(3)(A)(ii)(III) was not met because conditions within the workers' industry were not found to be adverse.

During the reconsideration investigation, the Department collected information from the subject firm which revealed that the group eligibility requirements under Section 246(a)(3)(A)(ii) of the Trade Act was satisfied.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of the subject firm meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. § 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. § 2273, I make the following certification:

All workers of Fisher and Ludlow, a Nucor Company, Saegertown, Pennsylvania, who became totally or partially separated from employment on or after February 27, 2013, through April 8, 2016, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 7th day of July, 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–17435 Filed 7–23–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,838]

Apria Healthcare, LLC, Billing Department, Overland Park, Kansas; Notice of Revised Determination on Remand

On February 28, 2014, the U.S. Court of International Trade (USCIT) granted the U.S. Department of Labor's (Department's) motion for voluntary remand for further investigation in *Former Employees of Apria Healthcare, LLC, Billing Department, Overland Park, Kansas* v. *U.S. Secretary of Labor,* Case No. 13–00409.

On June 24, 2013, the state workforce office filed a petition for Trade Adjustment Assistance (TAA) on behalf of workers of Apria Healthcare, LLC (hereafter referred to as ''the subject firm''), Billing Department, Overland Park Kansas (TA–W–82,838; hereafter referred to as ''the Billing Department''), and Apria Healthcare, LLC, Document Imaging Department, Overland Park, Kansas (TA–W–82,838A; hereafter referred to as ''the Document Imaging Department'').

The initial investigation revealed that workers within the Billing Department were engaged in employment related to the supply of medical billing services; workers within the Document Imaging Department were engaged in employment related to the supply of patient record management services; workers within the two different departments were separately identifiable by services performed and, therefore, were treated as separate subject worker groups; and a significant number or proportion of workers within each subject worker group were totally or partially separated from employment.

Although certification was granted for the Document Imaging Department under TA–W–82,838A, a negative determination was initially made regarding the Billing Department under TA–W–82,838. The Department determined that the subject firm acquired from a foreign country the supply of services like or directly competitive with those services provided by the workers within the Document Imaging Department. Consequently, workers within the Document Imaging Department were determined to be a group eligible to apply for TAA. The workers in the billing number, however, were not determined to be an eligible worker group. The negative determination issued under TA–W–82,838 was based on the Department's findings that the subject firm did not shift to, or acquire from, a foreign country the supply of services like or directly competitive with those supplied by the workers within the Billing Department and that the subject firm did not import services like or directly competitive services with those supplied by the workers within the Billing Department.

The negative determination regarding workers' eligibility to apply for TAA under TA–W–82,838 was issued on September 5, 2013. The Department's Notice of determinations was published in the **Federal Register** on October 3, 2013 (78 FR 61392).

By application dated September 19, 2013, a worker in the Billing Department requested administrative reconsideration of the Department's negative determination regarding TA–W–82,838. The request for reconsideration alleged that the separated worker ''did the N and K report which was electronic rejections from India and my job was to tell them how to get the claim to go through. Lots of times the claims had to be dropped onshore (meaning United States) . . . I do have documentation and emails . . . to support my facts.'' Following the receipt of the request for