MEMO# 30136

August 16, 2016

Pennsylvania Has Eliminated RMD Age as a Trigger for Escheating Retirement Accounts Effective Sept. 10; Action Necessary

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TO: COMPLIANCE MEMBERS No. 24-16
OPERATIONS MEMBERS No. 22-16
PENSION COMMITTEE No. 3-16
SMALL FUNDS MEMBERS No. 35-16
TRANSFER AGENT ADVISORY COMMITTEE No. 35-16 RE: PENNSYLVANIA HAS ELIMINATED RMD AGE AS A TRIGGER FOR ESCHEATING RETIREMENT ACCOUNTS EFFECTIVE SEPT. 10; ACTION NECESSARY

As you likely know, every state has an unclaimed property law that requires abandoned property to be turned over to the state. With respect to retirement accounts, generally speaking, these accounts are presumed abandoned based on two triggers: (1) the owner of the account reaching the age of required minimum distributions (RMDs) (i.e., age 70.5); and (2) depending on the state, either mail sent to the owner is returned to the sender as undeliverable or the owner has failed to indicate an interest in the account within a specified period of time. In Pennsylvania, this specified period of time is three years. As a result of recent changes to Pennsylvania's unclaimed property law that were included in amendments to Pennsylvania's Fiscal Code as part of the State's 2016-17 budget, Pennsylvania has eliminated the age trigger for retirement accounts. [1]

Accordingly, as of September 10, 2016, property held in a fiduciary capacity and property held in "an individual retirement account, a retirement plan for self-employed individuals, or similar account or a retirement plan created pursuant to Federal law or the laws of Pennsylvania" shall be presumed abandoned and unclaimed "three (3) years after the holder has lost contact with the owner, unless the owner has, within that three (3) year period: (1) commenced receiving distributions of principal or income; (2) increased or decreased the principal; (3) received payment of principal or income; or (4) otherwise indicated an interest in the account or plan or in other property of the owner in possession, custody, or control of the holder." [2]

For purposes of this provision, the date on which the holder has lost contact with the owner shall be: (1) the date a second consecutive communication sent by the holder by first class U.S. mail to the owner is returned to the holder undelivered by the U.S. Postal Service; or (2) if the second communication is made later than thirty days after the first communication is returned, the date the first communication is returned undelivered to the holder by the U.S. Postal Service. For those owners who do not receive communications from the holder via U.S. mail,

> . . . the holder shall attempt to confirm the owner's interest in the property by sending the owner an electronic mail communication not later than two (2) years after the owner's last indication of interest in the property. If the holder received notification that the electronic mail communication was not received, or if the owner does not respond to the electronic mail communication within thirty (30) days after the communication was sent, the holder shall promptly attempt to contact the owner by first class U.S. mail. If the mail is returned to the holder as undelivered by the U.S. Postal Service, the holder shall be deemed to have lost contact with the owner on the date of the owner's last indication of interest in the property. [3]

While we understand that there may be efforts during Pennsylvania's 2017 legislative session to restore the RMD trigger for retirement accounts, in the meantime, members should revise their compliance policies and procedures relating to deeming retirement accounts abandoned to eliminate any age-based triggers.

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endnotes

[1] See Pennsylvania House Bill 1605, Printers No. 3730, which was signed into law on July 13, 2016 as Act 85 of 2016. The bill can be accessed through the website for the Pennsylvania General Assembly at: http://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2015&sInd=0&body=H&type=B&bn=1605. Section 3 of the bill, on pages 24-34, contains the amendments to Pennsylvania's unclaimed property law.

[2] See revisions to Section 1301.8(A)(2) on pp. 25-26 of HB 1605. It should be noted that, while this provision extends to retirement plants created pursuant to Federal Law, the Department of Labor has long held the view that Section 514(a) of ERISA preempts state law providing for the escheatment of ERISA accounts. See Advisory Opinion No. 94-41A, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration Department of Labor, (December 7, 1994), which is available at: https://www.dol.gov/ebsa/programs/ori/advisory94/94-41a.htm.

[3] See HB 1605 at p. 26 line 30 through page 27 lines 1-13. The structure of this new provision tracks Section 202 of the Uniform Unclaimed Property Act (RUUPA) adopted by the Uniform Law Commission in July 2016. The RUUPA, however, includes the 70.5 age trigger.