

MEMO# 27050

February 26, 2013

ICI Comment Letter on Department of Labor Proposed Amendments to Abandoned Plan Regulations and Class Exemption; DOL extends Comment Period for Class Exemption Amendment through March 18, 2013

[27050]

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TO: PENSION MEMBERS No. 12-13
OPERATIONS COMMITTEE No. 11-13
BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 6-13
TRANSFER AGENT ADVISORY COMMITTEE No. 21-13 RE: ICI COMMENT LETTER ON
DEPARTMENT OF LABOR PROPOSED AMENDMENTS TO ABANDONED PLAN REGULATIONS
AND CLASS EXEMPTION; DOL EXTENDS COMMENT PERIOD FOR CLASS EXEMPTION
AMENDMENT THROUGH MARCH 18, 2013

The Institute filed the attached comment letter regarding the Department of Labor's (Department) proposed amendments to the abandoned plan program and the related prohibited transaction exemption (PTE 2006-06). [\[1\]](#) Separately, the Department extended the comment period on the proposed amendment to PTE 2006-06 through March 18, 2013, due to an administrative error. Although the notice of the right to comment was provided in the Federal Register on December 12, 2012, it was not posted to the regulations website until January 22, 2013. [\[2\]](#)

As you may recall, the proposed amendments primarily focus on the ability of a chapter 7 bankruptcy trustee to act as a Qualified Termination Administrator (QTA) and utilize the existing abandoned plan program to terminate, wind up and distribute benefits from such plans. The amendments also include technical changes to the current abandoned plan regulations not related to chapter 7 plans, but, rather to (1) the required notification by QTAs regarding whether they or an affiliate are the subject of an investigation, examination or enforcement action by the Department, IRS or SEC concerning their conduct as a fiduciary or party in interest to an ERISA covered plan; and (2) the distribution of account

balances of deceased participants.

The letter summarizes and attaches the Institute's June 14, 2007 letter, which was sent to the Department as a follow up to an October 2006 telephone conference with the Department. During that call, Institute members raised various concerns that had presented obstacles to their participation in the program. The letter also includes additional comments on decedent transfers and the appointment by a chapter 7 bankruptcy trustee of an eligible designee to act as the QTA.

The comment letter addresses the following issues:

Acting as a QTA

The letter recommends changes or clarifications to the definition of a QTA so that more financial institutions are eligible to serve as QTAs, particularly with respect to self-trusteed plans. Further, the letter states that it would be helpful for the Department to clarify that holding legal title is not required to act as a QTA, and suggests that the Department could expand the definition of a QTA to include parties (such as third-party administrators) that hold participant-level records for the plan.

Fiduciary Liability

The letter states that many Institute members continue to be concerned about potential ongoing financial liability after the abandoned plan is terminated and assets are distributed, particularly with respect to missing participants, and recommends that the general liability relief under section 404(a) be available where a QTA undertakes reasonable and diligent efforts to comply with the requirements for winding up the affairs of the plan. The letter also recommends that the Department clarify that a QTA, which has substantially complied with the conditions set forth in the regulation, has no continuing liability subsequent to the winding up of the plan for subsequent actions taken by the transferee of the assets.

Missing Participants

The letter includes several recommendations with regard to missing participants. The letter recommends that the regulations include a de minimis exception for very small accounts where the cost of locating a participant would use up the account balance. For accounts of missing participants that are too large to fall under a de minimis rule, the letter recommends that the PBGC implement a program to allow for the transfer of missing participant accounts to the PBGC. The letter also recommends that the Department clarify that the use of the QTA's own IRA is not required when the account balance is greater than \$1,000 or meets the minimum balance requirement for an IRA of the QTA and recommends that the Department consider expanding the options for small accounts with assets of \$1,000 or less. Finally, the letter recommends that the Department clarify that an IRA provider accepting a transfer of assets from a QTA is not subject to the same limitation on fees that appears in PTE 2006-06, (i.e., fees may be charged against earnings only).

Decedent Transfers

In the preamble to proposed amendments, the Department solicited comments on whether the proposed conditions allowing for the transfer of decedent balances to an appropriate bank account or state's unclaimed property fund, regardless of the size of the account balance, sufficiently safeguard the rights of participants and beneficiaries. In response, the letter recommends that the proposed amendments clarify that the proposed decedent transfer provisions do not apply if the QTA has received a claim with respect to the account from any person or if the participant's beneficiary is his estate. Further, the letter

recommends that the proposed amendments clarify that a QTA may follow the decedent provisions contained in the regulation if it has determined that a participant is deceased and the QTA has no record of a beneficiary designation

Annuities

The letter discusses obstacles to the use of the abandoned plan program associated with plans funded with annuity contracts, including (1) the inability of QTAs to obtain payment for services in circumstances where the annuity contract does not permit the deduction of service fees from the annuity, and (2) small account balances in plans subject to the qualified joint and survivor annuity (QJSA) requirements of the Internal Revenue Code.

Appointment of an Eligible Designee

As you may recall, the proposed amendments provide that that a bankruptcy trustee may designate an eligible designee to serve as the QTA. However, there are no provisions in the proposed amendments providing for acceptance of such an appointment by the eligible designee. The letter recommends that the amendments clarify that an eligible designee must accept such designation before it becomes effective.

Howard Bard
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[Attachment](#)

endnotes

[1] A copy of the proposed regulatory amendments is available here: <http://www.gpo.gov/fdsys/pkg/FR-2012-12-12/pdf/2012-29500.pdf>. A copy of the proposed amendments to PTE 2006-06 is available here: <http://www.gpo.gov/fdsys/pkg/FR-2012-12-12/pdf/2012-29556.pdf>. For a description of the proposed amendments see Memorandum to Pension Members No. 38-12, Bank, Trust and Retirement Advisory Committee No. 61-12, Transfer Agent Advisory Committee No. 61-12 [26799], dated December 20, 2012. Comments received by the Department are available here: <http://www.dol.gov/ebsa/regs/cmt-1210-AB47.html>.

[2] A copy of the Federal Register notice extending the comment period on PTE 2006-06 is available here: <http://www.gpo.gov/fdsys/pkg/FR-2013-02-14/pdf/2013-03463.pdf>.