

MEMO# 15361

November 18, 2002

DOL RELEASES FIELD ASSISTANCE BULLETIN 2002-3 ON FLOAT ISSUES

[15361] November 18, 2002 TO: PENSION COMMITTEE No. 46-02 PENSION OPERATIONS ADVISORY COMMITTEE No. 75-02 RE: DOL RELEASES FIELD ASSISTANCE BULLETIN 2002-3 ON FLOAT ISSUES The Department of Labor ("DOL") has released Field Assistance Bulletin 2002-3 (attached), which provides guidance to plan fiduciaries regarding their duty to prudently select and monitor service providers' earnings on short-term investment of plan assets, commonly called "float." The Bulletin also describes the obligations of service providers to disclose sufficient amounts of information to their employee benefit plan customers to enable plan fiduciaries to make an informed decision about compensation agreements. The Bulletin notes that DOL field offices have found little or no disclosure of specific information regarding compensation earned in the form of float. Duties of Plan Fiduciaries The Bulletin states that a plan fiduciary must engage in an objective process designed to elicit information necessary to assess the qualifications of the provider, the quality of services offered, and the reasonableness of the fees charged in light of the services provided. A responsible fiduciary should do the following: review comparable providers and service arrangements (e.g., quality and costs) in order to determine whether such providers may credit float to the provider's own account, rather than the plan; review the circumstances under which the service provider may earn float; ensure that their service agreements include time limits within which the provider will implement investment instructions following receipt of cash from the plan; ensure that their service agreements specify the time at which assets are transferred from the plan to the general account (e.g., the date the check is requested, the date the check is written, or the date the check is mailed); 2 obtain from the service provider, if relevant, an indication as to when checks are mailed following a direction to distribute funds;1 review periodic statements or reports of distribution checks to determine the extent to which checks tend to remain outstanding for unusually long periods of time (e.g., 90 or more days); review sufficient information to enable the plan fiduciary to evaluate the float as part of the total compensation to be paid for the services to be rendered under the agreement, including the rates the provider generally expects to earn, e.g., money market rates2; and periodically monitor compliance by the service provider with the terms of the agreement and the reasonableness of compensation under the agreement to ensure that it continues to comply with ERISA's fiduciary requirements. Duties of Service Providers The Bulletin states that a service provider must disclose to its employee benefit plan customers sufficient information concerning the administration of its accounts holding float so that the customer can reasonably approve the arrangement based on an understanding of the service provider's compensation. It is not sufficient, according to the Bulletin, for the service provider to merely disclose in its service agreement that additional compensation may be paid to the service provider as a result of float. Instead, the service provider should: disclose the

specific circumstances under which float will be earned and retained by the service provider; establish, disclose and adhere to specific time frames within which cash pending investment direction will be invested following direction from the plan fiduciary, as well as any exceptions that might apply; disclose when the float period commences on distributions (e.g., the date check is requested, the date the check is written, the date the check is mailed) and ends (the date on which the check is presented for payment); disclose, and adhere to, time frames for mailing and any other administrative practices that might affect the duration of the float period; and 1 The DOL Bulletin acknowledges that float will be earned on disbursements until checks are presented for payment by the payee, the timing of which is beyond the control of the plan and service provider. 2 The DOL Bulletin acknowledges that any projections by the fiduciary will result in only a rough approximation of the potential float because of uncertainties with respect to both actual interest rates and the length of the periods during which any given funds may be pending investment or pending disbursement. 3 disclose the rate of the float or the specific manner in which such rate will be determined, e.g., a statement that earnings on cash pending investment and earnings on uncashed checks are generally at a money market interest rate. Lisa Robinson Assistant Counsel Attachment (in .pdf format)