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DOL Releases Interim Final Amendments to Abandoned Plan Program and Related Class Exemption

[35722]

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TO: ICI Members
Pension Committee
Pension Operations Advisory Committee SUBJECTS: Pension RE: DOL Releases Interim Final Amendments to Abandoned Plan Program and Related Class Exemption

On May 17, 2024, the Department of Labor (DOL) published interim final rules and a related amendment to Prohibited Transaction Exemption (PTE) 2006-06, amending DOL's Abandoned Plan Program.[1] The amendments finalize proposed amendments issued in 2012 (the "proposal").[2]

The amendments primarily focus on the ability of a chapter 7 bankruptcy trustee to act as a Qualified Termination Administrator (QTA) and use DOL's existing Abandoned Plan Program to terminate, wind up and distribute benefits from a plan sponsored by an employer in liquidation under chapter 7 of the US Bankruptcy Code (a "chapter 7 plan").[3] The amendments also include technical changes to the current abandoned plan regulations not related to chapter 7 plans, some of which address issues previously raised by ICI regarding the Abandoned Plan Program.

Acknowledging the delay in finalizing the rules (i.e., it has been over ten years since the comment period closed on the 2012 proposal), DOL explains that another round of public comments would help it make further improvements.[4] Therefore, DOL is adopting the changes as an interim final rule and including a request for comments.

The interim final rules and amended PTE are effective on July 16, 2024.

Background

DOL created the Abandoned Plan Program in 2006 to facilitate the termination of individual account plans that have been abandoned by the plan sponsor, including the distribution of benefits from those plans. In general, the regulations provide a mechanism for service providers to voluntarily take over and terminate plans believed to have been abandoned by the plan sponsor. The Abandoned Plan Program contains three parts: (1) a procedure for

financial institutions holding the assets of an abandoned plan to act as a QTA and terminate the plan and distribute benefits to the plan's participants and beneficiaries, with limited liability; (2) a fiduciary safe harbor for making distributions from the terminated plan with respect to participants and beneficiaries who fail to make an election regarding a form of benefit distribution; and (3) a method for filing a terminal report for abandoned individual account plans. PTE 2006-06 provides prohibited transaction relief for a financial institution acting as a QTA to select and pay itself (or an affiliate) for rendering termination services to the plan.

The program as adopted in 2006 did not cover plans whose sponsors are in liquidation under chapter 7 of the US Bankruptcy Code. This is because bankruptcy trustees generally do not meet the regulation's requirements for who is qualified to act as a QTA. In December 2012, DOL issued proposed amendments which would expand the qualification requirements to better allow a chapter 7 bankruptcy trustee to act as a QTA. The proposal also included technical changes to the current abandoned plan regulations not related to chapter 7 plans, some of which addressed issues previously raised by ICI regarding the Abandoned Plan Program.

Technical Changes Unrelated to the Expansion to Chapter 7 Plans

The final amendments include the following technical changes unrelated to the expansion to chapter 7 plans:

Removal of disclosure of government examinations from the notice of plan abandonment

Like the proposal, the final amendments eliminate the requirement contained in the current abandoned plan regulations requiring QTAs to state whether they (or any affiliates) are, or in the past 24 months were, the subject of an investigation, examination or enforcement action by DOL, the IRS, or the SEC, concerning their conduct as a fiduciary or party in interest with respect to any ERISA-covered plan. In the preamble, DOL explains that it is eliminating this requirement for the following reasons: (a) DOL generally can determine from its own records whether a person is, or over the past 24 months was, the subject of an investigation concerning their conduct as a fiduciary or party in interest to an ERISA-covered plan; and (b) DOL believes the requirement deters some qualified persons from serving as QTAs.[5] ICI's comment letter voiced support for this change, noting that it may not be possible to provide such information with absolute certainty, particularly with respect to large financial institutions.

Distribution of account balances greater than $1,000 in the case of deceased plan participants

The current regulation permits a QTA to transfer an account balance of $1,000 or less to an interest-bearing, federally insured bank or savings association account or to a state unclaimed property fund (for amounts greater than $1,000, the account must be transferred to an IRA). The proposed amendments proposed to permit a QTA to make a transfer to an interest-bearing, federally insured bank or savings association account or to a state unclaimed property fund for an account of any size in the case of deceased participant. The proposed amendments would have allowed for such a transfer only if the QTA reasonably and in good faith finds that the participant, and, if applicable, the beneficiary, are deceased.

The interim final amendments adopt this provision with several modifications, some of which ICI suggested.

ICI's comment letter pointed out that a QTA often will not have a record of a deceased participant's beneficiary designation, because that information may have been maintained by the plan sponsor or plan administrator. The interim final amendment clarifies that this special rule is still available even if the QTA is unable to locate plan records that identify a beneficiary, provided that the QTA first conducts a reasonable search for the participant's beneficiary designation form.

Second, ICI's letter explained that it was not clear whether this provision would override the designation of a decedent's estate as the beneficiary (either because the participant made the designation or because the plan's terms provided a default rule that the participant's estate is the beneficiary). Further, we explained that it is not clear whether the rule would apply in the event that a deceased participant's heirs claim a right to the decedent's plan account. DOL responded to our concerns by expanding the proposal's special rule for deceased participants (i.e., allowing an account of any size to be transferred to an interest-bearing, federally insured bank or savings association account or to a state unclaimed property fund) to cover situations when the beneficiary is the estate of the participant. However, the QTA must meet certain conditions: (i) the QTA first must make reasonable and good faith efforts to determine whether or not an estate exists before making a transfer under the special rule; (ii) the QTA must find that it is unable to establish an IRA for the benefit of the estate of the participant; and (iii) the special rule is not available if the QTA has actual knowledge of any claims of a person purporting to have a right to all or part of the deceased participant's account.

Third, the interim final rule expands the information that must be included the final report to DOL when using this special rule. The QTA must include in the final report a summary of the pertinent findings, including the basis for the findings (including the name and last known address of the beneficiary, if known) and an attestation that the QTA has the full name and last known address of the deceased participant (as opposed to simply the identity of the deceased participant and beneficiary and the basis behind the finding that the participant and named beneficiary are deceased).

Notices and special terminal report, new online filing system

Regarding the final terminal report that must be filed under the Abandoned Plan Program, the interim final rule makes certain changes, including changes to streamline and update the process for filing reports.

The final terminal report is now a single, standalone form, instead of a collection of data from various parts of the Form 5500. Because of this change, DOL can no longer rely on the penalties and perjury statement within the Form 5500. Therefore, DOL adds a penalties and perjury statement to the content requirements for the final terminal report.

DOL adds two new content requirements for the final terminal report: the total number of distributions and the number of distributions to missing participants included in that total. DOL eliminated the requirements to report plan administrator identification information, whether the plan is collectively bargained, and the effective date of the plan.

DOL also announces that it is considering adding a provision in the final rules that would either require QTAs to maintain records regarding the location of distributions of the accounts of missing participants, or require such information be provided in the final terminal report. DOL asks for comment on this potential requirement and asks about "the extent to which QTAs currently maintain records on the location of these accounts and the

length of time that the records are kept."[6]

DOL also is establishing a new optional online method—the Abandoned Plan Program Online Filing System—for filing the final terminal report and notices required under the program. DOL believes that this system will be more efficient and will streamline the filing process. The online filing system will be voluntary, however DOL is considering making it the exclusive method for filing notices and the final terminal report under the program. DOL requests comments on this point.

Finally, DOL makes minor changes and clarifying edits to the model forms that are included in the appendices to the regulations.

Other Comments Unrelated to the Expansion to Chapter 7 Plans

In the preamble to the interim final rule, DOL discusses several other comments it received that are unrelated the expansion of the program to cover chapter 7 plans. DOL declined to incorporate these suggestions.

Forfeitures of small accounts

ICI's comment letter suggested 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. The current rules currently permit a QTA to treat as forfeited an account balance that is less than the estimated share of plan expenses allocable to the account. However, it is not clear that the "estimated share of plan expenses allocable to the account" would include the estimated costs of locating the participant. DOL declined to make this change, noting that "it is not reasonable to assume that every participant with a small account balance will be missing" and that "allocating a predetermined search cost for participants whom the QTA has no reason to believe are missing would not ordinarily be considered reasonable."[7] However, DOL notes that if the QTA determines that it must search for a specific participant, the reasonable cost of the search would be a permissible plan expense and therefore could be allocated to the account of the missing participant. These forfeiture determinations should be made on a case-by-case determination, based on the relevant facts and circumstances.

DOL requests comment on this forfeiture provision, regarding the allocation of expenses in the absence of a governing plan document provision. The provision allows expenses to be allocated either on a pro rata basis or on a per capita basis. DOL asks whether this flexibility is appropriate or whether DOL should provide guidelines for the types of fees and circumstances that would be appropriate for per capita versus pro rata methods of allocation.[8]

Distribution alternatives and other issues regarding missing participants

The accounts of missing participants generally must be distributed to an IRA. However, for accounts with balances of $1,000 or less (and if that amount is less than the minimum amount required to be invested in an IRA product offered by the QTA), the QTA may distribute the account balance to an interest-bearing federally insured bank or savings association account, the unclaimed property fund of the state in which the participant's or beneficiary's last known address is located; or an IRA offered by a financial institution other than the QTA.

Some commenters suggested that DOL should raise the $1,000 threshold to $5,000 and eliminate the condition that the amount be less than the minimum amount required to be invested in an IRA product offered by the QTA to the public at the time of the distribution. This would allow QTAs to distribute more accounts of missing or nonresponsive participants to bank or savings accounts or State unclaimed property funds and commenters suggested that this change could increase the likelihood that more asset custodians would elect to serve as QTAs.

DOL declined to make this change but requests additional comments on the merits of various distribution options. DOL mentions the program for missing participants of terminated DC plans which is managed by the Pension Benefit Guaranty Corporation (PBGC), (the "PBGC Program").[9] In conjunction with guidance on missing participants, DOL issued a temporary enforcement policy, under which it will not pursue violations under section 404(a) of ERISA against either responsible plan fiduciaries of terminating DC plans or QTAs of abandoned plans when a missing or non-responsive participant's or beneficiary's account balances are transferred to the PBGC Program rather than to an IRA, certain bank accounts, or to a state unclaimed property fund.[10] DOL confirms that it is continuing the temporary enforcement policy, and requests comments on whether the PBGC Program will provide missing participants a better chance of being reunited with their savings, compared to the other available distribution options. DOL asks whether the PBGC Program should be used instead of the other distribution options currently permitted.

At the time of our comment letter in 2013, the PBGC had not yet established the PBGC Program, as directed by Congress in the Pension Protection Act of 2006. However, our letter did recommend that the PBGC implement a program to allow for the transfer of missing participant accounts to the PBGC, as this would be a useful alternative.

DOL also requests comments on the methods of providing participant notices, and whether certified mail is the common way of providing notice in the case of involuntary cash out distributions. DOL asks whether QTAs are able to use DOL's electronic disclosure safe harbors and whether it would be helpful to provide guidance on the use of electronic disclosure to provide notices under the Abandoned Plan Program.

Distribution to IRAs offered by institutions other than the QTA

Our comment letter recommended that DOL 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. DOL declines to make this clarification in the interim final rule. However, DOL explains that the current rules do allow the QTA to distribute account balances to an IRA offered by an institution other than the QTA, provided that the conditions of the regulation are met, and that the QTA would be responsible as a fiduciary for the selection of the provider.[11]

QTA's limited liability

ICI's comment letter explains that many ICI 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. We recommended 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 recommended that DOL 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.

DOL explains that the current rule provides that the QTA is not responsible for monitoring a service provider selected in accordance with the regulation. However, DOL declined to make the changes we suggested, noting that "[t]he extent of the QTA's liability would depend on the surrounding facts and circumstances."[12]

DOL addressed another commenter's question regarding areas not addressed in the regulations, such as responding to domestic relations orders relating to benefits under the plan. DOL responded that QTAs can look to DOL's more general guidance already available that addresses obligations beyond the specific winding up affairs performed by QTAs.

Expand definition of QTA to other service providers

DOL stated that several commenters suggested that DOL expand the definition of a QTA so that recordkeepers and third-party administrators could serve that role. ICI's comment letter made this request, noting in particular that this is needed in the case of self-trusteed plans. In a self-trusteed plan, the financial institution may merely act as a recordkeeper and therefore not "hold" assets of the plan in a legal sense, thereby not meeting the regulatory requirements to act as a QTA. We suggested that DOL clarify that holding legal title is not required to act as a QTA. We further suggested that DOL expand the definition of a QTA to include parties (such as third-party administrators) that hold participant-level records for the plan. We suggested that, if DOL is concerned about unregulated entities serving as QTAs, DOL could limit the expansion to parties regulated by the SEC. DOL declined to take any of these suggestions. However, DOL said that it welcomes additional comment in this area, and in particular, how the SEC's existing regulations applicable to recordkeepers and third-party administrators would protect the interests of the abandoned plans and their participants and beneficiaries.[13]

Special Rules for Chapter 7 Plans

Like the proposal, the interim final amendments expand the current Abandoned Plan Program to include plans of companies that are in liquidation under chapter 7 of the US Bankruptcy Code,[14] provide for the ability of a chapter 7 bankruptcy trustee to serve as a QTA and utilize the current Abandoned Plan Program framework.

A chapter 7 plan would be considered abandoned on the date the plan sponsor's bankruptcy proceeding commences (when a bankruptcy court enters an order for relief under the US Bankruptcy Code).

The amendments modify the notification and distribution requirements applicable to chapter 7 plans. The QTA must provide DOL a notice of its intent to serve as QTA which includes specified information (including certain chapter 7 information). Further, a bankruptcy trustee serving as a QTA (including an independent bankruptcy trustee serving as eligible designee) does not have the authority to designate itself as the transferee of distribution proceeds.

Bankruptcy trustee as QTA

Notwithstanding the general rule that a QTA is qualified only if it (1) is eligible to serve as a trustee or issuer of an IRA within the meaning of section 7701(a)(37) of the Internal Revenue Code (the "Code"), and (2) holds the assets of the plan that is abandoned, the interim final amendments provide that a chapter 7 bankruptcy trustee may serve as a QTA

without meeting these requirements.

Appointing an eligible designee as QTA

As under the proposal, a bankruptcy trustee serving as a QTA may terminate and wind up the plan itself or may appoint an eligible designee to assume these duties. DOL adopted several modifications to this provision in the interim final amendments.

Under the proposal, any eligible designee appointed by the bankruptcy trustee was required to meet the requirements for serving as a QTA for non-chapter 7 plans (i.e., be eligible to serve as a trustee or issuer of an individual retirement plan within the meaning of section 7701(a)(37) of the Code and hold the assets of the plan that is abandoned). The interim final rule retains this provision as one option for who may serve as an eligible designee and also specifies that this eligible designee must acknowledge and accept the designation in writing.[15]

Under the interim final rules, in addition to the option described above, the bankruptcy trustee may appoint an independent bankruptcy trustee practitioner that has served within the previous five years as bankruptcy trustee in a case under chapter 7 of the Bankruptcy Code. The independent trustee must accept the designation in writing and acknowledge in writing to the bankruptcy trustee that they are an ERISA fiduciary with respect to the plan.

Generally, the bankruptcy trustee's decision to appoint an eligible designee is voluntary; however, if the bankruptcy trustee determines that the chapter 7 plan is owed delinquent contributions (employer and employee) of more than a de minimis amount, then the interim final rules require the bankruptcy trustee to appoint an eligible designee.

DOL adds three new conditions for a QTA's appointment of an eligible designee. First, prior to designating an eligible designee, a bankruptcy trustee must make reasonable and diligent efforts to determine whether the plan is owed any contributions (employer and employee) and the amount thereof. Second, the bankruptcy trustee must notify the eligible designee of its findings on the amount of delinquent contributions (regardless of whether the eligible designee is a custodian or an independent bankruptcy trustee). Third, the bankruptcy trustee must provide the eligible designee with reasonable access to any records under the control of the bankruptcy trustee that may be needed to wind up the plan. Finally, as under the proposal, the bankruptcy trustee is responsible for the selection and monitoring of the eligible designee. DOL confirms in the preamble that the duty to monitor the eligible designee is ongoing throughout the termination and winding up process until all plan assets are distributed.

Winding up the affairs of the plan

Unlike a non-bankruptcy trustee QTA, a bankruptcy trustee acting as a QTA (or the eligible designee) has an affirmative duty to collect known delinquent contributions if it would be cost effective to do so. In a change from the proposal, this obligation will attach only if the plan is owed at least a de minimis amount of contributions (based on both employer and employee contributions, combined).[16]

Although a non-bankruptcy trustee QTA is not required to conduct an inquiry or review to determine whether or what fiduciary breaches may have occurred prior to its becoming a QTA, a bankruptcy trustee acting as a QTA (or an eligible designee) is required to report to DOL any activity that it believes may be evidence of fiduciary breaches involving plan

assets by a prior plan fiduciary, such as embezzlement. This requirement applies to the bankruptcy trustee even after the eligible designee has terminated the plan. If the bankruptcy trustee, in administering the debtor's estate, discovers additional information that it believes may be evidence of a fiduciary breach, the bankruptcy trustee must report this information to DOL.

The provisions governing payment of fees and expenses from plan assets also are essentially the same for chapter 7 plans and other (non-chapter 7 bankruptcy) abandoned plans. Plan assets may be used to pay reasonable expenses of plan termination.

As in the proposal, the amendments include different standards for fees that a bankruptcy trustee acting as a QTA may pay itself (or an eligible designee who is an independent bankruptcy trustee) versus the standards applicable when a bankruptcy trustee acting as a QTA appoints a custodian as an eligible designee. When the QTA is the bankruptcy trustee (or in the case of an independent bankruptcy trustee serving as the eligible designee), expenses must be consistent with industry rates for the same or similar services charged by QTAs who are not bankruptcy trustees. Custodians serving as eligible designees, on the other hand, must meet an additional standard contained in the current regulation: the fees may not be in excess of rates ordinarily charged by the QTA (or affiliate) for the same or similar services rendered to plans that are not terminated as abandoned plans, if the QTA (or its affiliate) provides such services to other customers.

In the interim final rule, DOL makes a change to include a limited exception to the general rule, which applies to services provided by the eligible designee in connection with the duty to collect delinquent contributions on behalf of the plan (but not in determining whether the plan is owed contributions). In that circumstance, expenses must be consistent with industry rates for such or similar services ordinarily approved by bankruptcy courts for persons representing or assisting a bankruptcy trustee in performing collection duties in chapter 7 matters.

Rule of accountability

As under the proposal, the interim final rule includes a "rule of accountability" applicable to a bankruptcy trustee acting as a QTA. Under this rule, a bankruptcy trustee, or an eligible designee, would not be able to seek a release from liability under ERISA or assert a defense of derived judicial immunity (or similar defense) in an action brought against the bankruptcy trustee or its designee arising out of its conduct under the regulation.

Internal Revenue Code Qualification Requirements

DOL notes that it conferred with the IRS, and the IRS confirmed that the changes made by the interim final rules do not impact the corrections principles currently memorialized in the IRS's Employee Plans Compliance Resolution System (EPCRS).[17]

EPCRS provides that, in the case of failure that results from the employer having ceased to exist or no longer maintaining the plan, the permitted correction method is to terminate the plan and distribute plan assets to participants and beneficiaries in accordance with procedures substantially similar to those described in the Abandoned Plan Program, provided that certain conditions are met.[18]

DOL also notes that it received several comments on QTAs' responsibilities regarding the survivor annuity requirements in the Code.[19] ICI's comment letter noted the following as obstacles, which are not easily resolved: (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 Code.

DOL responded that it needed additional information and additional consultation with the IRS and Treasury. Therefore, DOL requests comments on practical difficulties faced by QTAs complying with the survivor annuity requirements.[20]

PTE 2006-06 Amendment

Concurrent with the interim final regulation, DOL issued a final amendment to PTE 2006-06, the exemption allowing a QTA to select and pay itself or an affiliate to provide services in connection with the termination of the plan. The PTE amendment expands the definition of a QTA to include bankruptcy trustees and their eligible designees.

One condition in PTE 2006-06 requires that fees and expenses charged to the IRA or other account may only be taken from the income earned by the IRA or other account, with the exception of establishment charges. ICI's comment letter recommended that DOL 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). In declining to make this change, DOL explained its belief that the removal of this condition is not warranted because the regulations provide significant flexibility for small account balances to be distributed by methods other than through a rollover to an IRA.[21] DOL adds that this provision is necessary to preserve the principal balance of missing participants and that it provides a valuable safeguard against potential conflicts of interest associated with a QTA's selection of its own or its affiliate's IRA.

Additional Comments Received and DOL's Request for Comments

Acknowledging the delay in finalizing the 2012 proposal, DOL explains that another round of public comments would help it make further improvements. While DOL will accept comments on any aspect of the interim final rule, it requests comments in the following seven general areas:[22]

- Whether the tests for determining de minimis for purposes of delinquent contributions is sufficiently protective of plan participants and beneficiaries and whether DOL should add a provision for indexing that threshold for inflation.
- On the requirement for eligible designees to take reasonable steps to collect delinquent contributions on behalf of the plan and the expansion of the definition of eligible designee to include an independent bankruptcy trustee practitioner.
- Whether, and if so, how, to extend the framework of the Abandoned Plan Program to cover plans whose sponsors are in liquidation under chapter 11 of the Bankruptcy Code, state receivership, or receivership under the FDIC.[23]
- Whether DOL should incorporate the PBGC Program into the final rule (as discussed above, under Distribution Alternatives and Other Issues Regarding Missing Participants). DOL asks if, for example, it should consider expanding the definition of QTA to allow entities that do not currently satisfy the QTA requirements to act as a QTA solely for the purposes of winding up an abandoned plan by transferring all of the accounts of missing and nonresponsive participants to the PBGC.
- Whether the current Abandoned Plan Program options for distributions to State unclaimed property funds should be expanded.[24]
- Whether the regulation should be amended to permit the distribution of Code section 403(b) individual annuity contracts and Code section 403(b)(7) individual custodial

accounts.
- Whether provisions should be added to the Abandoned Plan Program specifically addressing participants in abandoned plans for whom benefits were previously forfeited pursuant to Treasury regulation §1.411(a)-4(b)(6), because the plan could not locate them.

Comments on these interim final rules are due on July 16, 2024.

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Notes

[1] The interim final rule was published at 89 Fed. Reg. 43636 (May 17, 2024), available at https://www.govinfo.gov/content/pkg/FR-2024-05-17/pdf/2024-09029.pdf. The amendment to PTE 2006-06 was published at 89 Fed. Reg. 43675 (May 17, 2024), available at https://www.govinfo.gov/content/pkg/FR-2024-05-17/pdf/2024-09030.pdf.

[2] For a description of the proposed amendments, see ICI Memorandum No. 26799 dated December 20, 2012, available at https://www.ici.org/memo26799. ICI submitted a comment letter in response to the proposed amendments. See ICI Memorandum No. 27050, dated February 26, 2013, available at https://www.ici.org/memo27050. In addition to commenting on the proposal, ICI's letter reiterated concerns ICI raised in a letter dated June 14, 2007 (and attaches the letter). The 2007 letter was sent to DOL as a follow up to an October 2006 telephone conference with DOL staff. During that call, ICI members raised various concerns that had presented obstacles to their participation in the program.

[3] DOL refers to this type of plan as a "Chapter 7 ERISA Plan."

[4] 89 Fed. Reg. at 43637.

[5] 89 Fed. Reg. at 43642. In the preamble to the proposal, DOL also mentioned as a reason the fact that, by definition, QTAs tend to be large financial institutions with many affiliations and, therefore, it may be costly for them to prepare an accurate statement. 77 Fed. Reg. at 74068 (December 12, 2012).

[6] 89 Fed. Reg. at 43645.

[7] 89 Fed. Reg. at 43642.

[8] 89 Fed. Reg. at 43642.

[9] In December 2017, the PBGC issued final regulations to expand its existing program for missing participants, making it available to most terminated DC plans. For an overview of the PBGC Program, see ICI Memorandum No. 31026, dated January 16, 2018, available at https://www.ici.org/memo31026. ICI has supported this program and urged PBGC to broaden the availability of the program and extend its application to missing participants in active plans.

[10] See Field Assistance Bulletin (FAB) 2021-01, available at

https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-01. For an overview of FAB 2021-01, see ICI Memorandum No. 33043, dated January 14, 2021, available at https://www.ici.org/memo33043.

[11] 89 Fed. Reg. at 43643.

[12] 89 Fed. Reg. at 43645.

[13] 89 Fed. Reg. at 43647.

[14] Under amendments to the federal bankruptcy law enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, if a company in liquidation sponsored an individual account plan, the company's chapter 7 bankruptcy trustee must perform the functions that would otherwise be required of the bankrupt entity with respect to the plan.

[15] Our comment letter observed that there were no provisions in the proposed amendments providing for acceptance of such an appointment by the eligible designee. Our letter recommended that the amendments clarify that an eligible designee must accept such designation before it becomes effective. DOL requests comment on

whether a model acceptance would be useful. 89 Fed. Reg. at 43639.

[16] DOL requests comment on the definition "de minimis" for this purpose.

[17] 89 Fed. Reg. at 43645.

[18] See Section 6.02(2)(e)(i) of IRS Revenue Procedure 2021-30.

[19] One commenter explained that QTAs may experience practical difficulties complying with the requirements due to lack of recordkeeping. 89 Fed. Reg. 43646.

[20] In the preamble, DOL explains that although it is sympathetic to this problem, it declines to make changes in response to the concerns. DOL also said that it welcomes additional comments on this area. 89 Fed. Reg. at 43647.

[21] 89 Fed. Reg. at 43680.

[22] 89 Fed. Reg. at 43647 to 43649.

[23] Also see discussion at 89 Fed. Reg. at 43646.

[24] DOL cites to the GAO Report entitled "Federal Action Needed to Clarify Tax Treatment of Unclaimed 401(k) Plan Savings Transferred to States" (January 2019); and the Report of the ERISA Advisory Council, "Voluntary Transfers of Uncashed Checks from ERISA Plans to State Unclaimed Property Programs" (November 2019).