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Office of Regulations and Interpretations
Employee Benefits Security Administration
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U.S. Department of Labor
200 Constitution Avenue N.W.
Washington D.C. 20210

Attn: Abandoned Plan Regulation

On behalf of Wells Fargo & Co. and its affiliates, I appreciate the opportunity to comment on the proposed regulations regarding the termination of abandoned individual account plans. As the Department noted, abandoned plans pose difficult issue for all service providers, and we applaud the Department's efforts to provide a means by which such plans can be terminated. After reviewing the proposed regulation and related class exemption, some minor changes could greatly simplify the process for retirement plan service providers and make it more likely for them to serve as a qualified termination administrator (QTA).

Many features of the proposed regulations are similar to the recent regulations on automatic rollovers for cash-out distributions (29 CFR §2550.404a-2). Many retirement plan service providers spent considerable time and effort designing systems so that automatic rollovers of cash-out distributions are done in an economic and efficient manner. To do so, many providers streamlined the process as much as possible to avoid complicating variations, at least to the extent the provider (or an affiliate) was selected as the IRA provider. For example, many providers set a \$1,000 minimum threshold for accepting automatic rollovers, even though the safe harbor guidance for automatic rollovers was extended to amounts below \$1,000.

Under the proposed regulations for abandoned plans, accounts for nonresponsive participants and spousal beneficiaries must be transferred to IRAs in a similar manner. Again, so that the process can be done in an orderly and efficient manner, using the same criteria for automatic rollovers of distributions from abandoned plans that is currently used for automatic rollovers of cash-out distributions would greatly simplify the process for QTAs. Otherwise, separate system programming would have to be constructed by IRA providers in order to accommodate two different sets of rules governing IRAs for nonresponsive participants and beneficiaries. Such programming can be extremely time consuming and costly, especially for a relatively small group of individuals when compared to the overall number of IRA owners maintained on the operating system. If the guidance on rollovers from abandoned plans is not coordinated with the guidance on rollovers of cash-out distributions, service providers will be discouraged from serving as QTAs, and may simply refuse to do so. For that reason, please consider the following changes to the proposed regulations to coordinate the two regulatory schemes utilizing automatic rollovers:

1. Establishing non-IRA accounts for nonspousal beneficiaries should not be required. First, experience has shown that such accounts are very rare in retirement plans, as most nonspousal beneficiaries receive a distribution soon after they are entitled to one. Second, unlike IRA rollovers, the tax deferred status of the account is not maintained for distributions for a nonspousal beneficiary. The distribution would be taxable in the year made, and income earned on the account would be taxable to the nonspousal beneficiary each year. If the nonspousal beneficiary could not be located, the beneficiary may unknowingly underreport taxable income not only for the year of distribution, but for numerous subsequent years, compounding the individual's tax problems. Third, most states' unclaimed property laws would require the account to be transferred to the state within a short period of time, often three years. While the Department may have no control over such laws, it should consider them when determining if it is worthwhile to transfer these accounts or utilize another method. Fourth, the IRA product developed by many service providers for cash-out distributions for their retirement plan clients would not accommodate these accounts given their different tax treatment, and new costly system programming would have to be developed. Given all these considerations, the regulation should be revised to allow distribution of such accounts directly to the nonspousal beneficiary, or sent to the applicable state under unclaimed property laws if the beneficiary cannot be located, under both the fiduciary safe harbor and the abandoned plan regulation.
2. The requirement that all accounts other than those for nonspousal beneficiaries be rolled over into IRAs if the participant or spousal beneficiary does not respond should be limited to only those accounts greater than \$1,000, similar to the regulations on automatic rollovers. First, many providers have established their automatic rollover product to only accept amounts of greater than \$1,000, and requiring a lower limit for these similar accounts would require additional time, effort, and expense to properly establish. Second, many providers of automatic rollovers use a money market mutual fund that has a minimum investment threshold, often \$1,000. Obviously, accounts for individuals under that minimum threshold could not be invested in that money market fund and an alternative investment would have to be used, again adding complications. Third, some accounts in terminating plans are so small it makes no economic sense to set up an account that could easily be consumed by an establishment fee. For example, one terminating plan which we were recently involved with had over 100 participants with under \$10 in their account and almost 600 with under \$200. Requiring IRAs for such small accounts simply does not make economic sense. Therefore, the regulations (both the fiduciary safe harbor and the abandoned plan regulation) should permit distribution of accounts that do not exceed \$1,000 directly to the participants or beneficiaries, or if they cannot be found, sent to the applicable state pursuant to unclaimed property laws.
3. The related class exemption will also present problems with respect to establishing IRAs for unresponsive individuals. Under the proposed exemption, a QTA that selects itself or an affiliate as the IRA provider or uses a related investment product would have to limit fees charged to the IRA to only the income earned by the IRA, excluding establishment charges. While this mirrors the exemption for automatic rollovers from an IRA provider's own plan, many providers avoided this complication by amending the limit for cash-out distributions from their plans down to \$1,000. As such, many providers did not take on the complex programming task of including a bifurcated fee structure in their IRA product. Most

computer systems designed for servicing IRAs do not separate principal from income. Therefore, additional complex programming would be required to put in this type of restriction. Furthermore, related to the point discussed above, if IRAs have to be established for all participants and spousal beneficiaries, this would mean that IRAs for very small balances would be free from fees since little income would be generated from a money market fund type of investment on, for example, a \$20 IRA. An additional concern is whether these IRAs would be "comparable" IRAs for purposes of the automatic rollover regulation, which limits fees charged to those types of IRAs to comparable fees charged to other types of IRAs. If so, then essentially no fees could be charged to any IRAs under either the automatic rollover regulation or the abandoned plan regulation. Such a restriction makes it unlikely that service providers would be willing to act as a QTA. Instead, the fee restriction should be limited to the same fees charged for comparable IRAs, as noted in Section III (i)(1) of the exemption.

Additionally, the exemption should clarify whether a closing fee can be treated the same as an establishment fee, since both are a one-time charge for having an IRA account with a provider. Also, if the above suggestion on fee limitations is not accepted, the Department should clarify whether the IRA owner's ability to transfer his or her account to a different institution must be made without penalty to principal. While the proposed exemption clearly states that the IRA owner must be allowed to transfer to a different investment vehicle with the same IRA provider without penalty to principal, it is not as clear with regard to the transfer of the account to a different institution.

While the above suggestions would help coordinate both types of automatic rollovers, other items in the regulations also merit consideration. The limitations on fees that a QTA can charge will also present difficulties for service providers who desire to act as a QTA. Currently, both the regulations and the class exemption prohibit a QTA from charging fees that exceed the rates charged for plan termination services provided to plans other than abandoned plans. Many providers do not have a set fee schedule for all services they provide to terminating plans, given that fees can vary significantly from plan to plan depending upon the investments used in the plan, the size of the plan, and other factors unique to each individual plan. Occasionally, services provided to terminating plans may be discounted due to a long standing relationship or to preserve goodwill with the client. If there is no set fee schedule, or a provider occasionally gives discounted fees to other terminating plans for business reasons, would that mean that a provider could not charge its "regular" termination fees to an abandoned plan? And if the provider does not have a set fee schedule for such services for the reasons described above, how would such fees be determined? Unless the Department wishes to establish its own fee schedule for these plan terminations, these requirements should be removed, or plan providers will be discouraged from serving as QTAs. The Department will know what fees are expected since fees will be reported to it in the estimation of charges that will be made to a terminating plan. It has 90 days to object. That should be a sufficient safeguard against the possibility of unreasonable fees.

Also regarding fees, it would helpful if the regulation would clarify whether certain charges which could be considered "overhead" could be charged by the QTA for its work in terminating an abandoned plan. For example, could the QTA charge an hourly rate for its employees' work on the abandoned plan issues such as finding lost participants, correcting data, etc., since presumably such employees would otherwise be doing something else for the service provider?

The proposed regulation requires an election with regard to the benefits being made by participants within 30 days. Generally, other notices have a 30 to 90 day window, such as tax notices required under Internal Revenue Code Section 402(f). Allowing a 30 to 90 day window for these regulations would be helpful so that providers can follow their typical practice in making such distributions.

The requirement that a QTA report to the Department whether it or its affiliates are or have been subject to an investigation, examination, or enforcement action by the DOL, IRS, or SEC concerning the entity's conduct as a fiduciary or party in interest with respect to any plan governed by ERISA could be difficult for many providers. Many providers of services to retirement plans are among the largest corporations in the United States. Such entities frequently have dozens of affiliates that provide financial services, many of which will occasionally be provided for a plan governed by ERISA. However, only a small division of one member of the controlled group of corporations may provide services as QTA. It would likely be difficult for that division to determine whether *any* affiliate has ever met the investigation requirements noted in the proposed regulations. Given that this statement has to be made under penalty of perjury, it would take a large amount of effort to determine whether it applies. Removing this requirement, or at least eliminating the requirement to report on affiliates, would encourage more providers to serve as QTAs.

The requirement to notify the agent for services for legal process for corporations should be eliminated. In general, service providers to retirement plans have close contacts with their clients, and it is unlikely that the agent for service of legal process will be able to find a plan sponsor if a service provider with frequent contact cannot.

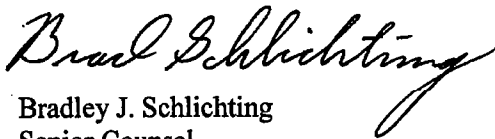
With regard to request for comments on the effective date of the regulations, a retroactive effective date for the safe harbor for terminating plans in general would be appropriate so that service providers can rely on the regulation when currently working with normal terminating plans.

Finally, it would be helpful if the Department would clarify certain items that affect the process by which QTAs and other service providers wind up plans. First, as noted above, many terminating plans have some participant balances that are extremely small. Occasionally, such balances do not even exceed a dollar and are usually due to trailing earnings or dividends that have been credited to the account, but contributed subsequent to a distribution. Other participants may have small balances for similar reasons, such as an allocation of a small amount of forfeitures prior to the termination. The regulation would require a search for such participants if the notice sent to them is returned. Many cannot be found. As noted in the preamble, the Department recently issued a FAB 2004-02 with guidance on locating missing participants. In that bulletin, the Department noted that certain steps must be taken regardless of account balance. However, it is our experience that for account balances that are so small, even these seemingly inexpensive methods (such as certified mail) could completely consume the account balance. If a QTA were to charge for its time and effort in going through these steps, even more account balances would be completely consumed by these steps. Therefore, it would be very helpful to service providers acting as a QTA, or indeed, all service providers in general, if the Department can clarify this requirement or provide a minimum account balance under which such locating steps are inappropriate.

On a similar note, many service providers charge a fee for making distributions, such as \$10 per distribution, to offset the costs of check cutting, tax reporting, and similar items. The Department has opined that it is generally acceptable to charge such fees to the account of the individual taking the distribution and many plan administrators have decided to charge participants distribution fees accordingly. For those participants with account balances equal to or less than the distribution fee, the Department should clarify whether a service provider may charge the distribution fee (to the extent of the account balance) to an account where the distribution fee is greater than or equal to the account balance, and thus not issue the distribution.

Thank you for the opportunity to comment on the proposed regulations and class exemption. We believe that the QTA program could be a great step forward in dealing with difficult issues involved with abandoned plans if certain simplifying steps are taken as discussed herein.

Sincerely,



Bradley J. Schlichting
Senior Counsel