



1120 Connecticut Avenue, NW  
Washington, DC 20036

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**Lisa J. Bleier**  
Senior Trust Counsel  
Center for Securities, Trust  
and Investments  
Phone: 202-663-5479  
Fax: 202-828-4548  
[lbleier@aba.com](mailto:lbleier@aba.com)

May 5, 2005

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5669  
U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, DC 20210

RECEIVED  
OFFICE OF REGULATIONS  
AND INTERPRETATIONS  
2005 MAY 10 AM 9:29

Re: Abandoned Plan Regulation

To Whom It May Concern:

We appreciate this opportunity to provide our comments about the proposed regulation under ERISA which would facilitate the termination of, and distribution of benefits from, individual account pension plans that have been abandoned by their sponsoring employers.

The American Bankers Association, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks--makes ABA the largest banking trade association in the country. In 2004, nearly 1800 trust institutions held almost \$6 trillion in 21.5 million employee benefit accounts.<sup>1</sup>

We would like to express our support for the pragmatic and workable guidance provided here by the Department of Labor. We believe this is very important guidance for helping participants who are in the difficult position of being unable to access their accounts, and trustees who are in the difficult position of being unable to provide that access. This guidance is a welcome answer to the problem. We do have some suggestions we would like to offer that are more technical in nature, and we urge that this guidance be made consistent with other DOL guidance.

<sup>1</sup> According to 2004 FDIC call report data and ABA analysis

### Expansion of Definition of QTA

The proposal calls for the naming of a Qualified Termination Administrator (QTA) who would be responsible for designating a plan as abandoned and complete the necessary actions for terminating the plan.

While we certainly appreciate that a QTA can be a person eligible to serve as trustee and must hold the assets of the plan, we would like to see an expansion of the definition. There are situations where the bank is the trustee, but is not the recordkeeper. In those situations, the recordkeeper is in the best position to step in as QTA, since the recordkeeper should have all the addresses, beneficiaries and most recent contact information with respect to the plan participants.

Further, if the DOL does take this suggestion, and chooses to expand the definition of QTA, as we urge, then we would also like to see some additional language that would allow the trustee to accept directions from the QTA and protect the trustee in doing so. This would allow for the more seamless distribution of assets when the bank is trustee only, but not the recordkeeper.

### What is an Abandoned Plan?

After a QTA has been established, the QTA has the responsibility to determine that a plan is considered abandoned. The proposal allows a QTA to consider a plan abandoned if no contributions to, or distributions from, the plan have been made for the preceding 12 month period or where facts and circumstances would suggest that the plan is abandoned.

We would like to see additional clarifying language in section (b)(i)(B) (“Other facts and circumstances”) that states that the examples are not limiting. In particular we would like situations where there has been a dissolution of a plan sponsor that is a legal entity without a successor being designated to be specifically mentioned. We believe this merits particular attention because it is an action taken by the state. We would suggest language at the end of the parenthetical stating, “including but not limited to situations where there has been a dissolution of a plan sponsor.” While we realize the definition is intended to be expansive, we believe this particular situation would merit a specific mention.

### Final Termination Issues

To the extent the trustee is the QTA and there is a pre-existing service provider, we do not believe the trustee should have to perform additional due diligence on alternative service providers. A previously-engaged record keeper, for example, will be in the best position to expeditiously update the participants and beneficiaries records. To the contrary, engaging a new record keeper to update the participants and beneficiaries records may engender significant delay in the termination process while the new recordkeeper becomes familiar with the terms of the plan. To require the trustee to perform such additional due diligence would subject the plan to unnecessary expense in cases where the existing service provider is properly carrying out its duties.

### Distribution of Benefits

We appreciate the Department's recognition of accounts that may need to be rolled over where the participant fails to elect a form of benefit distribution. We would like to see the regulation include a specific reference to the rollover safe harbor issued September 28, 2004 regarding automatic rollover accounts. This will make clear the appropriate standards for handling a rollover account when the participant is non-responsive regarding the action to be taken with their benefits. In addition, we would like the Department to specifically refer to the guidance in Field Assistance Bulletin 2004-02 relating to missing participants in terminating defined contribution plans. That guidance applies the rollover safe harbor to account balances over \$5,000 and permits escheatment in limited circumstances, both of which should also be available in the case of abandoned plans.

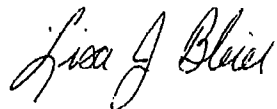
We would also like to see additional clarification from the Department of Labor about handling illiquid assets. This concern relates to assets that are assets of the plan as a whole (as opposed to assets held within individual participant accounts that could be distributed in-kind), but for a variety of reasons cannot be sold. Examples include limited partnerships, closely-held businesses, defaulted mortgages, and defaulted bonds, among other things. In particular, we would like to see the Department allow escheatment to the state for illiquid assets.

### Effective Date

In terms of the effective date, we see no reason as to why the three regulations should not become effective immediately on publication. As mentioned earlier, some plans have been awaiting this guidance for some time, and those participants have already been denied their benefits for many months, and, in some cases, years.

If you have any follow-up questions for us, please give me a call.

Sincerely,



Lisa J. Bleier