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**Re: DOL Announces Final Rules to Address Abandoned 401(k) Plans**

Dear Clients and Other Friends:

Today the Department of Labor ("DOL") issued final rules to help financial institutions and 401(k) recordkeepers address the problem of abandoned 401(k) plans and other individual account plans (e.g., profit sharing and money purchase pension plans). This problem has been a thorny one for 401(k) trustees/recordkeepers and these new rules provide welcomed guidance.

**The Problem of Abandoned 401(k) Plans**

A 401(k) plan may become "abandoned" when a small company dissolves into bankruptcy or is merged without addressing the company's 401(k) plan. These plans are often not identified as abandoned until the plan sponsor contacts are no longer available to assist with winding up the plan.

The DOL's ERISA Advisory Council, a group of benefit plan industry representatives, suggested that the DOL address this problematic area and provided valuable input to the DOL. As a result, the DOL finalized these rules to assist financial institutions and recordkeepers with the process of terminating and liquidating abandoned 401(k) plans. These new rules will greatly benefit participants in these abandoned plans. Currently the DOL deals with abandoned plans on a case-by-case basis. The DOL feels that these final rules should eliminate the need for court approvals and allow participants to gain access to their benefits sooner.

**DOL Final Rules Addressing Abandoned 401(k) Plans**

Included below is a general discussion of the final rules. The rules are detailed and must be carefully applied to the abandoned plan situations to assure compliance.

1. New DOL regulations (29 CFR Parts 2520.103-13, 2550.404a-3 and 2578.1) – *effective May 22, 2006* – establish when a plan is abandoned, give simplified procedures for winding up the plan and distributing benefits to participants and beneficiaries, and provide guidance on who may initiate and carry out the wrapping up process. An overview of the new rules provided by the regulation is included below.
  - a. Abandonment generally means that no contributions to or distributions from the plan have been made for a period of at least 12 consecutive months and, following reasonable efforts to locate the plan sponsor, it is determined that the sponsor no longer exists, cannot be located or is unable to maintain the plan.

- b. Only a “qualified termination administrator” or “QTA” may determine whether a plan is abandoned. A QTA must hold the plan’s assets and be eligible to serve as a trustee or issuer of an individual retirement account (generally, a bank, trust company, mutual fund family or insurance company).
  - c. QTAs are provided these guidelines in the regulations:
    - i. Notify the DOL’s Employee Benefits Security Administration (“EBSA”) prior to, and after, terminating and wrapping up a plan.
    - ii. Locate and update plan records.
    - iii. Calculate benefits payable to participants and beneficiaries.
    - iv. Notify participants and beneficiaries of the termination, their rights and options.
    - v. Distribute benefits to participants and beneficiaries.
    - vi. File a summary “terminal” report.
    - vii. A QTA is not required to amend a plan or accommodate the termination.
    - viii. The regulations include model notices that the QTA may use.
    - ix. In most cases, the account of a missing participant will be transferred to an IRA. In some cases, accounts of \$1,000 or less may be distributed to a bank account or state unclaimed property fund on behalf of the missing participant. A fiduciary safe harbor applies for these situations.
    - x. QTAs that follow these guidelines will be generally considered to have satisfied the prudence requirements of ERISA with respect to wrapping up the abandoned plan.
    - xi. QTAs are not responsible for filing a Form 5500 Annual Report on behalf of an abandoned plan, either in the terminating year or any previous plan years; but the QTA must complete and file a summary terminal report at the end of the wrapping up process.
2. As part of the new rules to address abandoned 401(k) plans, the DOL issued a prohibited transaction class exemption – PTCE 2006-06 – *effective May 22, 2006*. The exemption provides conditional relief from prohibited transaction restrictions involving transactions where a QTA selects and pays itself: (a) for services rendered prior to becoming a QTA; (b) to provide services in connection with terminating and wrapping up an abandoned plan; and (c) for distributions from abandoned plans to IRAs or other accounts maintained by the QTA resulting from a participant’s failure to provide direction.

The Abandoned Plan Program will be administered by the EBSA national and regional offices. Additional information about this important new program is available at the EBSA’s Web site: <http://www.dol.gov/ebsa/>. We welcome your inquiries.

Sincerely,

Theodore K. Rice