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May 9, 2005

Dear Sir or Madam;

This letter is in response to the Termination of Abandoned Individual Account Plans and the proposed regulations.

I have been an independent ERISA Fiduciary for eleven years doing settlement work on behalf of the Department of Labor since that time. I have acted as trustee on fourteen different cases in that time of which about nine are still active. I wish to comment on several areas, the first is overall fees associated with closing abandoned plans.

In our experience, the older the plan the more costs we incur in closing the plan. The first issue is always the locating and verifying of participants. We have had cases where common names make it more challenging to locate, combined with people who claim to be participants who are not, so consequently each participant must be identified and their identity verified. In some cases, we can locate the participant however they have a grudge with the company and don't want to cooperate because of some dispute they don't want to resolve. Others argue about the total amount they are to receive, argue about the prior trustees and anything you can imagine. Some participants make the plan their life's work and call virtually every day to discuss something. Some participants die or simply disappear.

We also have Qualified Domestic Relations Orders, child support, and other litigation to contend with making it virtually impossible to estimate fees. We would never take a case based on the estimated costs you propose. While they seem reasonable for a well managed plan, abandoned plans are usually poorly managed in the first place, which is often why they are abandoned. We estimate that we spend on average two hours processing each participant account if the information is current and there are no issues to resolve. The average is about five hours per participant on a plan that has been without a trustee for five years or more. On average, I'm guessing it's approximately four hours per participant, from first contact to distribution. Where our costs escalate is when there is little record keeping and we've got to reconstruct the amounts due each participant. Cases of this type are often ten or more hours per participant, depending on the condition of the records.

Furthermore, we often discover additional ERISA violations that we must discuss with the DOL and decide what action to take. Often plans will invest in some type of illiquid asset that is difficult to sell, or requires some type of active management.

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Real estate partnerships are especially complicated because they are often fraudulent with hidden prohibited transactions.

I believe your cost estimates are more correct if the plan has been maintained by the TPA, and that records are kept up to date, including current participant information, however we've never had a plan like that. If they are abandoned, there are usually serious problems, including self dealing, erroneous 5500s and other problems that must be addressed. In one case, immediately upon my appointment, the IRS stepped in for a full audit before we had time to look at any records. They didn't care that I was appointed by the DOL.

The most recent issue was with plans that call for annuities for amounts above a certain threshold, including all prior distributions and in this case, we had no records of prior distributions to use in that determination. Furthermore, it simply isn't practical with the small amounts often found in abandoned plans.

While we applaud the efforts to change the rules regarding terminating abandoned plans, the costs associated are extremely unrealistic for most cases and we simply wouldn't take any more cases if the fees were fixed on this basis.

Thank you for your time and attention.

Sincerely,

Thomas J. Nault
Trustee
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