



Donna Hanlon
Assistant General Counsel

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Office of Regulations and Interpretations
Employee Benefits Administration
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Washington, DC 20210
ATTN: Abandoned Plan Regulation

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Ladies and Gentlemen:

Fidelity Investments ("Fidelity")¹ appreciates the opportunity to comment on the proposed regulations and exemption relating to the termination of abandoned individual account plans. As directed trustee and record keeper for thousands of plans, Fidelity is keenly aware of the difficulties in administering orphan plans and commends the Department's efforts to provide important guidance that will facilitate the termination of these plans and the distribution of benefits to participants and beneficiaries. Fidelity currently is record keeper and directed trustee for nearly 100 plans that appear to be abandoned plans within the meaning of the proposed regulations.

Fidelity's comments, set forth below, relate to the following issues as to which clarification or additional guidance would be desirable: 1) unallocated forfeiture and other accounts; 2) vesting issues and past violations of tax/ERISA requirements; 3) expense allocations; 4) illiquid securities; 5) de minimis account balances; 6) beneficiary designations; and 7) the effective date of the final guidance.

(1) Unallocated Accounts

In Fidelity's experience, many abandoned plans have unallocated forfeiture or suspense accounts² with no provision for the allocation of these amounts among participant accounts upon termination of the plan. In order to terminate such an abandoned plan, qualified termination administrators ("QTAs") need guidance on the appropriate method for allocating these amounts to the extent the unallocated amounts exceed the expenses of the plan termination and no allocation method is otherwise stated in the plan document.

¹ Fidelity is a group of affiliated companies several members of which provide trustee, record keeping, and other administrative services to retirement plans subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

² Such amounts may include, for example, Section 415 suspense accounts and amounts that were received by the plan but never allocated among participants (e.g. settlement proceeds of class action litigation, demutualization proceeds).



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Fidelity suggests that the proposed regulations be revised to permit a QTA to allocate such amounts on a per capita basis among the individuals who are participants in the plan as of the date of the plan termination. A per capita allocation to current participants would provide a clear rule for QTAs, as well as a uniform allocation method for such amounts for all abandoned plans. In Fidelity's experience, many orphan plans are small plans that either do not have a profit sharing contribution on which to model the allocation of these amounts or that allocate profit sharing contributions based on participant compensation levels. Such compensation data generally will be unavailable to the QTA in the case of an abandoned plan. Finally, limiting the allocation of these amounts to current participants only will simplify the administration of the termination of an abandoned plan by eliminating the need to establish accounts for former participants.

(2) Vesting and Other Past Tax/ERISA Violations

Fidelity believes that the proposed regulations should clarify that participant accounts will be deemed vested on the date of the plan termination and that the QTA has no fiduciary responsibility to determine if, under applicable tax rules, earlier vesting may have been required based on the plan's particular facts and circumstances.

For example, contributions to a plan that is determined to be abandoned may have ceased long before that determination is made by the QTA, particularly in the case of plans that have been abandoned prior to the effective date of the final regulations. Similarly, there may have been large scale reductions in a plan sponsor's work force leading up to plan abandonment which, under the facts and circumstances, led to a partial termination prior to the deemed termination. In either case, tax rules may have required the plan to vest participants on a date earlier than the date of the termination. Fidelity believes that the regulations should clearly relieve the QTA from any fiduciary responsibility to review the record and establish a vesting date earlier than the termination date.

Similar clarification should be made with respect to the QTA's duty to remedy other past tax and ERISA violations. In the course of winding down a plan, a QTA may discover problems with respect to the way a plan was administered in the past (e.g. misapplied vesting rules, participant contributions that were not remitted to the plan, etc.). Fidelity is concerned that a QTA might be held responsible as a fiduciary for finding and correcting such problems and suggests that the limitation of liability set forth in the proposed regulations be expanded to relieve the QTA from any responsibility for or liability associated with plan administration problems prior to the abandonment.



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determination to the extent that QTA was otherwise not responsible for plan administration.

(3) Expense Allocations

Fidelity believes the guidance should be revised to clarify the manner and timing for allocation of plan termination expenses. For ease of administration of the termination process, Fidelity would suggest a per capita allocation to be made prior to any distributions from the plan.

(4) Illiquid Assets

The assets of an abandoned plan may include illiquid assets. In particular, in the case of a bankrupt employer sponsor, assets of the plan may include securities in the form of employer stock that has been de-listed but nonetheless may trade OTC at pennies per share. These securities are generally thinly traded; they often cannot be sold or selling may take an unreasonably long period of time. In either case, the holding of these securities and other illiquid assets restricts the QTA's ability to wind up the abandoned plan's affairs and distribute account balances.

Fidelity believes that the QTA should not be precluded from terminating and winding up an abandoned plan in these circumstances and requests specific guidance on how to handle illiquid assets if, after good faith efforts to sell the assets within a reasonable period of time, the QTA is unable to do so. In the case of de-listed employer securities, Fidelity believes a reasonable solution would be to permit a QTA that is unable to liquidate such assets within 60 days of the deemed plan termination to either distribute the assets in-kind to participants without regard to whether this form of distribution is permissible under the plan, or if in-kind distribution is not possible (e.g. because there is no longer a transfer agent), to treat the securities as worthless and proceed with plan distributions accordingly. In Fidelity's experience, it is unlikely that de-listed securities of an employer in bankruptcy will recover in value where the employer has been found to have abandoned the plan.

(5) De Minimis Accounts

Frequently, in the context of plan terminations, the cost of making a distribution from a plan exceeds the amount of the distribution itself. Moreover, in Fidelity's experience, participants with de minimis account balances are often missing or unresponsive and it is unlikely that an IRA provider will be willing to accept rollover of



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these small account balances. For this reason, Fidelity believes it would simplify the winding up process if the final regulation established a de minimis threshold for distributions under which account balances that are below a certain dollar amount could be applied towards plan termination expenses or allocated among other plan participants.

The Department currently uses a \$20.00 de minimis threshold in its Voluntary Fiduciary Correction Program for corrective distributions to participants. Fidelity suggests that this de minimis threshold be adopted under the proposed regulations as well.

(6) Beneficiary Designations

If a QTA is unable to obtain accurate or complete plan records, beneficiary designations made by participants may not be available. Fidelity suggests that the proposed regulations be revised to clearly state that in such cases, the assets of deceased participants are to be distributed in accordance with the terms of the plan documents as if the participant did not have a designated beneficiary at the time of his or her death.

(7) Effective Date

As drafted, the proposed guidance would not become effective until 60 days after the date of publication of the final rules in the Federal Register. Fidelity believes the guidance should be effective immediately upon publication of the final rules so that those QTAs who wish to begin termination proceedings immediately can take advantage of the guidance.

Thank you for your consideration of these comments.

Very truly yours,

A handwritten signature in cursive script that reads "Donna Hanlon".

Donna Hanlon
Assistant General Counsel

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