Signed at Washington, DC, this 22nd day of April, 2024.

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Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

[Application Number D–11657]

ZRIN 1210–ZA20

Prohibited Transaction Exemption 2006–06 for Services Provided in Connection With the Termination of Abandoned Individual Account Plans

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Exemption amendment.

SUMMARY: This document gives notice of an amendment to prohibited transaction exemption (PTE) 2006–06, a class exemption issued under the Employee Retirement Income Security Act of 1974 (ERISA). The exemption permits a ''qualified termination administrator'' (QTA) of an individual account pension plan that has been abandoned by its sponsoring employer to select itself to provide services to the plan in connection with the plan's termination and pay itself fees for the services. This amendment to PTE 2006–06 permits chapter 7 trustees who elect to be QTAs to rely on the exemption. This amendment to PTE 2006–06 also permits ''eligible designees'' of such chapter 7 trustees to rely on the exemption. The amendment is issued in connection with amendments to three related regulations under ERISA, published elsewhere in this issue of the **Federal Register**, that provide streamlined procedures for the termination of, and distribution of benefits from, abandoned individual account pension plans. The amendment would affect employee pension benefit plans (primarily small defined contribution plans), participants and beneficiaries of such plans, service providers, and individuals appointed to serve as bankruptcy trustees under chapter 7 of the U.S. Bankruptcy Code.

DATES: This amendment will be effective on July 16, 2024.

FOR FURTHER INFORMATION CONTACT: Susan Wilker, telephone (202) 693–8540, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Summary Overview

On April 21, 2006, the Department of Labor issued three regulations that established the Employee Benefits Security Administration's (EBSA) Abandoned Plan Program to facilitate the orderly and efficient termination of, and distribution of benefits from, individual account pension plans that have been abandoned by their sponsoring employers.[1] The first regulation (the QTA Regulation) establishes standards for determining when individual account plans may be considered ''abandoned'' and procedures by which financial institutions, called ''qualified termination administrators'' (QTAs) holding the assets of such plans may terminate the plans and distribute benefits to participants and beneficiaries, with limited liability under Title I of the Employee Retirement Income Security Act (ERISA).[2] The second regulation (the Safe Harbor Regulation) provides a fiduciary safe harbor for QTAs to make distributions on behalf of participants and beneficiaries who fail to elect a form of benefit distribution. These participants and beneficiaries are sometimes referred to as ''missing participants.'' [3] The third regulation establishes a simplified method for filing a terminal report for abandoned individual account plans.[4]

The 2006 regulations were accompanied by a class prohibited transaction exemption, PTE 2006–06, that facilitates the goal of the 2006 regulations by permitting a QTA who meets the exemption's conditions to (1) select itself or an affiliate to carry out the termination and winding up activities specified in the 2006 regulations, and (2) pay fees to itself or an affiliate for those services. In addition, PTE 2006–06 permits QTAs to receive fees in connection with establishing an individual retirement plan or other account and selecting the initial investment product for missing participants. These activities are prohibited under the following provisions of Title I of ERISA (and parallel Code provisions) in the absence of a prohibited transaction exemption:

- ERISA section 406(a)(1)(C), which prohibits a plan fiduciary from causing the plan to engage in a transaction that constitutes a direct or indirect furnishing of goods, services, or facilities between the plan and a party in interest;
- ERISA section 406(a)(1)(D), which prohibits a fiduciary from entering into a transaction that constitutes a direct or indirect transfer of plan assets to a party in interest, or the use of plan assets by or for the benefit of a party in interest;
- ERISA section 406(b)(1), which prohibits a plan fiduciary from dealing with the assets of the plan in the fiduciary's own interest or for the fiduciary's own account; and
- ERISA section 406(b)(2), which prohibits a plan fiduciary from acting, in any transaction involving the plan, on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or its participants or beneficiaries.

On December 12, 2012, the Department published proposed amendments to the 2006 regulations and the associated PTE 2006–06.[5] The purpose of proposed amendments to the 2006 regulations was to advance the interests of participants and beneficiaries by:

(1) facilitating the orderly and efficient termination of individual account plans whose sponsors are in liquidation under chapter 7 of the Bankruptcy Code (''Chapter 7 ERISA Plans''); [6]

(2) reducing administrative burden and costs imposed on Chapter 7 ERISA Plan Plans that terminate in accordance with the regulations; and

(3) providing an avenue for bankruptcy trustees to discharge their duties under ERISA and the Bankruptcy Code with respect to Chapter 7 ERISA Plans.

The purpose of the proposed amendments to PTE 2006–06 was to supplement the amendments to the 2006 regulations by providing the necessary prohibited transaction relief to facilitate the termination of Chapter 7 ERISA Plans.

The Department received seven written comment letters on the 2012 proposed amendments, several of which raised issues related to the proposed amendment to PTE 2006–06 that are

[1] 71 FR 20820. *See also,* 73 FR 58459 (Oct. 7, 2008) for subsequent amendments with regard to distributions on behalf of a missing non-spouse beneficiary.

[2] 29 CFR 2578.1.

[3] 29 CFR 2550.404a–3. This safe harbor also is available to fiduciaries of terminated individual account plans that are not abandoned.

[4] 29 CFR 2520.103–13.

[5] 77 FR 74063; 77 FR 74056.

[6] The proposal referred to these plans as ''chapter 7 plans.'' The new term ''Chapter 7 ERISA Plans'' is used for avoidance of confusion regarding the term chapter 7 plan used in the bankruptcy context.

available on the Department's website.[7] The Department considered the issues raised by the commenters in granting this amendment to PTE 2006–06. The Department also issued interim final amendments to the 2006 regulations with a request for comment (referred to as the ''Regulations'')[8] that appear elsewhere in this issue of the **Federal Register**.

In granting this amendment to PTE 2006–06, the Department has determined that the amendment is administratively feasible, in the interests of plans and their participants and beneficiaries, and protective of the rights of plan participants and beneficiaries as required by ERISA section 408(a) and Internal Revenue Code (Code) section 4975(c)(2).[9]

B. Fiduciary Status of Bankruptcy Trustees and Prohibited Transactions

In bankruptcy cases, as with abandoned plans generally, the sponsor usually is not in a position to carry out the activities associated with formally terminating the plan. Instead, the Department expected that, in chapter 7 bankruptcy cases, the appointed bankruptcy trustee would take the necessary steps to terminate the plan, wind up its affairs, and distribute plan benefits. The issue of the bankruptcy trustee's authority to terminate and wind up the plan was addressed by the enactment of 11 U.S.C. 704(a)(11) as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.[10] Under that provision, when an entity that sponsors an individual account plan is liquidated under chapter 7 of the Bankruptcy Code, the appointed bankruptcy trustee administering the liquidation proceeding is required to continue to perform the plan administration obligations that would otherwise be required of the bankrupt entity.[11]

Such obligations include taking the steps necessary to terminate the plan, wind up the affairs of the plan, and distribute plan benefits to participants and beneficiaries. A bankruptcy trustee who undertakes these plan responsibilities is a fiduciary within the meaning of ERISA section 3(21)[12] who is obligated under ERISA section 404 to act prudently and solely in the interests of plan participants and beneficiaries.

The Department has concluded that expanding the Abandoned Plan Program regulations to cover Chapter 7 ERISA Plans and making other technical changes in response to the public comments would result in an improved Abandoned Plan Program. The Department acknowledges that it has been over 10 years since the comment period closed for the 2012 proposal. However, the purposes of the Department's regulatory action and its rationale for the 2012 proposal continue to be relevant and would advance the interests of participants and beneficiaries in abandoned plans. The Department is relying on the 2012 proposal, its consideration of comments on that proposal, and its understanding of the challenges facing Chapter 7 ERISA Plans in granting this exemption. Although, the procedures and requirements in the program are voluntary, in the Department's view, a bankruptcy trustee that follows the Regulations should generally be able to reduce its administrative burden and costs that are associated with terminating an abandoned plan.

C. Description of the Amendment

1. Summary of Major Changes in This Granted Exemption Amendment

This amendment to PTE 2006–06 expands the types of service providers that are eligible to serve as QTAs to include bankruptcy trustees and entities designated by bankruptcy trustees to terminate and wind up the affairs of plans according to the Regulations (referred to as ''eligible designees''). This amendment would permit these parties to rely on PTE 2006–06 to select and pay themselves fees for services provided in terminating and winding up the affairs of a plan. Furthermore, for the accounts of missing participants of an abandoned plan, the amendment will permit certain eligible designees to select themselves or an Affiliate[13] (and receive fees) to establish an Individual Retirement Plan[14] or other account and to select the initial investment product. The prohibited transaction relief provided by the exemption is available only if the exemption conditions are satisfied, which are designed to protect the interests of the plans and their participants and beneficiaries as required by ERISA section 408(a) and Code section 4975(c)(2).

2. Definition of ''Qualified Termination Administrator''

To be a QTA that is eligible for the prohibited transaction relief under the original version of PTE 2006–06, an entity was required to (i) be eligible to serve as a trustee or issuer of an individual retirement plan or other account, within the meaning of Code section 7701(a)(37) and (ii) hold assets of the plan that is considered abandoned. Bankruptcy trustees ordinarily would not be eligible for the exemptive relief as QTAs under this definition.

As noted above, the Regulations are amended elsewhere in this issue of the **Federal Register** to include bankruptcy trustees and their eligible designees. Therefore, the final amendment likewise expands the exemption's QTA definition to include a bankruptcy trustee in a liquidation proceeding under chapter 7 of title 11 of the United States Code with responsibility under 11 U.S.C. 704(a)(11) to administer one or more individual account plans sponsored by the entity that is the subject of the proceeding, who elects to be a QTA under 29 CFR 2578.1(j)(6).[15]

The Regulations expand the group of entities that can serve as a QTA by

[7] Available at *https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB47.*

[8] The Department intends that PTE 2006–06 will cover transactions related to the interim final regulations or any subsequent final regulations published thereafter. The Department will consider proposing an additional amendment to PTE 2006–06 if it makes changes to the Abandoned Plan Program that impact the relief available under this exemption.

[9] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. (2018), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor. Therefore, this amendment is issued solely by the Department.

[10] Public Law 109–8, 119 Stat. 23.

[11] 11 U.S.C. 704(a)(11) refers to whether the debtor (or any entity designated by the debtor) serves as the administrator (as defined in ERISA section 3) of an employee benefit plan. ERISA section 3(16) defines the ''administrator'' as the plan sponsor in the absence of any designation in the plan document of another person as administrator.

[12] In this regard, section 3(21)(A)(i) of ERISA provides that a person is a ''fiduciary'' with respect to a plan to the extent he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets. In addition, section 3(21)(A)(iii) of ERISA provides that a person is a ''fiduciary'' with respect to a plan to the extent he has any discretionary authority or discretionary responsibility in the administration of such plan.

[13] Affiliate is defined to include: (1) Any person directly or indirectly controlling, controlled by, or under common control with, the person; or (2) Any officer, director, partner or employee of the person. The terms ''controlling, controlled by, or under common control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual. *See* Sections V(e) and V(f) of this exemption amendment.

[14] Section V(b) of this exemption defines Individual Retirement Plan to mean: an individual retirement plan described in section 7701(a)(37) of the Code. For purposes of Section III of this exemption, the term ''Individual Retirement Plan'' shall also include an inherited individual retirement plan (within the meaning of section 402(c)(11) of the Code) established to receive a distribution on behalf of a non-spouse beneficiary. Notwithstanding the foregoing, the term ''Individual Retirement Plan'' shall not include an employee benefit plan covered by Title I of ERISA.

[15] Eligible designees are defined in 29 CFR 2578.1(j)(4)(i) and (ii).

allowing the bankruptcy trustee to also appoint as an eligible designee either a traditional asset custodian or a person, other than the bankruptcy trustee of the plan sponsor's case, who has served within the previous five years as a bankruptcy trustee in a case under chapter 7 of the Bankruptcy Code (referred to as the ''independent bankruptcy trustee practitioner''). This amendment correspondingly expands the prohibited transaction relief in PTE 2006–06 by including these ''eligible designees'' in the exemption's definition of QTA.[16]

The Department also added a new clarification which indicates that if a bankruptcy trustee designates an eligible designee, it shall not be considered a QTA with respect to the relief provided in this exemption. The Department is making this additional modification to the QTA definition because the QTA Regulation considers the bankruptcy trustee and the eligible designee to be the QTA for certain purposes.[17] In connection with the exemption, however, the Department determined that once an eligible designee is appointed, the eligible designee should be the only entity authorizing appropriate payments to the bankruptcy trustee.

3. The ''Designating Bankruptcy Trustee''

The amendment includes a new defined term for a ''Designating Bankruptcy Trustee.''[18] A Designating Bankruptcy Trustee is a bankruptcy trustee that designates an eligible designee instead of serving as the QTA itself.[19] Importantly, this amendment would allow the Designating Bankruptcy Trustee to provide services to the plan before designating an eligible designee. These services could include making reasonable and diligent efforts to determine whether the plan is owed any employee or employer contributions, notifying the eligible designee of its findings with respect to missing or delinquent contributions, establishing procedures to ensure the eligible designee has reasonable access to records in possession of the bankruptcy trustee which are needed to wind up the plan, selecting an eligible designee, and subsequently monitoring eligible designees in accordance with ERISA section 404(a)(1)(A) and (B). As noted in the QTA Regulation, the duty to monitor the eligible designee is ongoing throughout the termination and winding up process.

From a prohibited transaction standpoint, the Department determined there may be uncertainty regarding an eligible designee's decision to pay the Designating Bankruptcy Trustee with plan assets. This is due, at least in part, to the role of the bankruptcy trustee in the QTA Regulation. To avoid this uncertainty and facilitate the use of the Abandoned Plan Program and PTE 2006–06 when an eligible designee is selected, this amendment includes specific prohibited transaction relief for this scenario that is described in the next section, below.

4. Covered Transactions and Conditions—Overview

The prohibited transaction relief provided by the amended exemption would permit four general categories of transactions in connection with termination services. First, it would permit the QTA to select itself or an Affiliate to provide services to the plan. Second, it would permit the QTA to pay fees to itself or an Affiliate for those services. Third, it would permit the QTA to pay fees to itself for services provided before the plan's deemed termination.[20] Finally, it would permit the QTA to pay fees to a Designating Bankruptcy Trustee for services provided to the plan. Without the availability of the prohibited transaction exemption, QTAs, their Affiliates, and bankruptcy trustees would be unable to use plan assets as a source of compensation for their services, even though those plan assets are usually the only available source of payment.

The amended exemption would also permit certain distribution transactions. First, an asset custodian QTA could designate itself or an Affiliate as the provider of an Individual Retirement Plan, other account, or a federally insured bank or savings association account for the distribution of benefits if participants and beneficiaries do not respond to the QTA regarding how they would like their benefits distributed.[21] Second, the amended exemption would permit the asset custodian QTA to select a proprietary investment product as the initial investment in connection with such distributions. Third, the QTA or its Affiliate may receive fees in connection with establishing and maintaining the Individual Retirement Plan or other account. Fourth, the QTA may pay investment fees to itself or an Affiliate as a result of investment in a qualifying proprietary investment product.

(a) Termination Services and Payment of Fees—Generally

Section I(a) of the amended exemption provides prohibited transaction relief for a QTA to select and pay itself fees for services to the plan, subject to the conditions in Sections II and IV.[22] Generally, the exemption would permit a QTA to use its authority to select itself or an Affiliate to provide services to the plan and to pay itself or an Affiliate fees for services performed as the QTA. Prohibited transaction relief under Section I(a) is available to all entities that may serve as a QTA according to the QTA Regulation. Therefore, if the applicable conditions are satisfied, a bankruptcy trustee could select itself to be the QTA and also pay itself for the QTA services it provides to the plan. Similarly, if the bankruptcy trustee appoints an eligible designee to be the QTA, the eligible designee could pay itself for services it provides to the plan.

The amended exemption also provides prohibited transaction relief for plan-related services provided by a bankruptcy trustee before a formal determination is made regarding who will be the QTA.[23] If the bankruptcy trustee becomes the QTA, the exemption would permit the bankruptcy trustee to pay itself for the non-QTA services that were performed before it becomes the QTA. The Department provides this relief to ensure that necessary plan services can continue to be performed while a decision is made regarding the selection of a QTA. Relatedly, the amended exemption also permits the eligible designee to pay the bankruptcy trustee for services provided

[16] *See* Section V(a) of this exemption amendment.

[17] *See* 29 CFR 2578.1(e)(4).

[18] *See* Section V(h) of this exemption amendment.

[19] As noted above, the QTA Regulation indicates that the bankruptcy trustee and eligible designee are both considered the QTA for certain purposes. The Department's limitations with respect to the bankruptcy trustee being considered the QTA for purposes of this exemption do not modify or otherwise supersede the QTA Regulation.

[20] *See* 29 CFR 2578.1(c).

[21] As explained in more detail below with respect to Section I(b), this prohibited transaction relief is available only to eligible designee QTAs that are asset custodians. It is not available for QTAs that are bankruptcy trustees. It is also not available for eligible designees that are independent bankruptcy trustee practitioners.

[22] Section I(a) provides prohibited transaction relief for ERISA sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) and the taxes imposed by Code section 4975(a) and (b) by reason of Code section 4975(c)(1)(A) through (E).

[23] As noted above and described in the QTA Regulation, these services include making reasonable and diligent efforts to determine whether the plan is owed any employee or employer contributions, notifying the eligible designee of its findings with respect to missing or delinquent contributions, establishing procedures to ensure the eligible designee has reasonable access to records in possession of the bankruptcy trustee which are needed to wind up the plan, and selecting and monitoring eligible designees in accordance with ERISA section 404(a)(1)(A) and (B).

to the plan if the eligible designee is the QTA. This includes paying the bankruptcy trustee for services provided to the plan before the eligible designee provided notice to the Department of its intention to serve as QTA [24] or for ongoing services provided after the notice is submitted (such as monitoring the QTA).

Section II of the amended exemption includes conditions for covered termination services and the corresponding receipt of fees. Section II(a) provides prohibited transaction relief only if the requirements of the QTA Regulation are satisfied. Section II(b) provides that when the QTA, its Affiliate, and any Designating Bankruptcy Trustee are paid fees and expenses, they must comply with the applicable provisions regarding reasonable expenses of the QTA Regulation. Therefore, for QTAs that are not chapter 7 bankruptcy trustees or their eligible designees, the exemption cross references paragraph (d)(2)(v)(B)(2)(i) and (ii) of the QTA Regulation. For chapter 7 bankruptcy trustee QTAs and their eligible designees, the exemption cross references paragraph (j)(7)(iv) of the QTA Regulation.[25]

The fee provisions in the QTA Regulation generally provide that plan assets may be used to pay reasonable expenses of plan termination. What is reasonable is judged in light of industry rates for ordinary plan administration under ERISA.[26] Consequently, these provisions do not allow a bankruptcy trustee or eligible designee to charge attorney hourly rates for plan administration activities of termination and winding up the plan.

The QTA Regulation contains a limited exception to the general rule regarding fees that would apply to services provided by the eligible designee in connection with the duty to collect delinquent contributions on behalf of the plan. Under the exception, the fees must be consistent with rates ordinarily charged by firms or individuals representing or assisting a bankruptcy trustee in performing similar collection services on behalf of an estate in a chapter 7 proceeding. This limited exception applies to activities such as filing proofs of claims, tracing assets, responding to objections, motion practice, and litigation on behalf of the plan, but it does not apply to determining whether the plan is owed contributions. The act of determining whether a plan is owed a contribution is a routine act of plan administration and is therefore covered under the general rule rather than the exception.

(b) Termination Services and Payment of Fees—Before Notice of Intent To Serve as QTA

Additional conditions apply to transactions in which a QTA pays itself fees for services provided to a plan before submitting notice to the Department of its intent to act as the QTA.[27] Section II(c) requires any such services to be performed in good faith according to an executed written agreement or otherwise in full compliance with the QTA Regulation. The QTA must represent under penalty of perjury that such services were actually performed and/or will actually be performed (in the case of services provided after notice but before deemed termination). This condition specifically requires a prospective representation for such services in the notice of intent to serve as QTA.[28] The Department believes this will avoid uncertainty as to services that will be performed after notice is provided to the Department but before the deemed termination. If past services were performed according to a contract, a copy of the executed contract that authorized such services must be provided to the Department along with the notice.

For transactions in which the eligible designee QTA pays the Designating Bankruptcy Trustee, the exemption requires the services to be performed by the Designating Bankruptcy Trustee in full compliance with the QTA Regulation. Additionally, the Designating Bankruptcy Trustee must represent under penalty of perjury that the services were actually performed and/or will actually be performed (in the case of services provided after notice but before deemed termination). The Designating Bankruptcy Trustee must provide this written representation to the QTA for the QTA to submit to the Department.

(c) Distribution Transactions

Section I(b) provides prohibited transaction relief for an asset custodian QTA to designate itself or an Affiliate as the provider of an Individual Retirement Plan, other account, or a federally insured bank or savings association account for the distribution of benefits.[29] Section I(b) is available only to eligible designees that are asset custodians and QTAs, as defined in section V(a)(1) and V(a)(2)(ii) of this amendment. The relief in Section I(b) is not available to QTAs that are bankruptcy trustees or independent bankruptcy trustee practitioners. In the 2012 proposed exemption amendment, the Department noted that bankruptcy trustees do not maintain proprietary investment vehicles; thus, the relief in Section I(b) was not proposed to extend to bankruptcy trustees. The Department did not receive comments on this issue with respect to the 2012 proposed exemption amendment, so the Department has maintained the same scope of relief in Section I(b) of this amendment.

Generally, the prohibited transaction relief in Section I(b) applies only if the participant or beneficiary has otherwise failed to notify the QTA regarding how they want to take their distribution. The relief in Section I(b) is subject to the additional conditions of Sections III and IV. More specifically, Section I(b) permits a QTA to use its authority in connection with the termination of an abandoned individual account plan to designate itself or an Affiliate as the service provider of (1) an Individual Retirement Plan, (2) an inherited Individual Retirement Plan in the case of a distribution on behalf of a non-spouse beneficiary as described in paragraph (d)(1)(ii) of the Safe Harbor Regulation, or (3) an interest bearing, federally insured bank or savings association account for a distribution described in paragraph (d)(1)(iii) of the Safe Harbor Regulation.[30]

Section I(b) also permits a QTA to engage in certain activities in connection with establishing an Individual Retirement Plan or other account. First, the QTA may make the initial investment of a participant's or beneficiary's account balance in its or its Affiliate's propriety investment product. Second, the QTA or its Affiliate may receive fees in connection

[24] *See* 29 CFR 2578.1(j)(6).

[25] This amendment cross references these provisions instead of restating them to avoid any potential confusion regarding the standards and to accommodate future amendments to the QTA Regulation that would not otherwise require an amendment to PTE 2006–06. If, in the future, the Department makes changes to the QTA Regulation in the cross-referenced provisions, the Department will consider whether the statutory exemption requirements in ERISA section 408(a) and Code section 4975(c)(2) necessitate proposing an amendment to the exemption.

[26] *See* 29 CFR 2578.1(d)(2)(v).

[27] *See* Section I(a)(3) of this exemption amendment.

[28] *See* paragraph 29 CFR 2578.1(c)(3) of the QTA Regulation or in the case of a QTA described in Section V(a)(2)(i) of this exemption, 29 CFR 2578.1(j)(6).

[29] Section I(b) of the amended exemption provides relief from the restrictions of ERISA sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) and the taxes imposed by Code section 4975(a) and (b) by reason of Code section 4975(c)(1)(A) through (E).

[30] *See* 29 CFR 2550.404a–3.

with establishing and maintaining the Individual Retirement Plan or other account. Third, the QTA may pay investment fees to itself or an Affiliate as a result of investment in a proprietary investment product that qualifies as an Eligible Investment Product defined in Section V(c).

Section III provides conditions for the transactions described in Section I(b) and was not altered by the 2012 proposed exemption amendment. This final amendment makes minor ministerial changes to Section III, such as the addition of headings to facilitate the ease of use of the exemption.

Section III(a) requires compliance with the QTA Regulation, and Section III(b) requires additional notifications to participants or beneficiaries to accompany the notice to participants and beneficiaries described in the QTA Regulation.[31] Section III(c) requires each Individual Retirement Plan or other account to be established and maintained for the exclusive benefit of the Individual Retirement Plan account holder or other account holder or their beneficiaries. This requirement is consistent with Code section 408(a) and ensures that the establishment of such plans or accounts does not conflict with the basic purpose for which Congress afforded them special tax benefits (*i.e.,* to provide retirement savings for account holders and their beneficiaries).

Section III(d) requires the terms of the Individual Retirement Plan or other account to be no less favorable than those available to comparable Individual Retirement Plans or other accounts established for reasons other than the receipt of a rollover distribution described in the QTA Regulation. This exemption condition applies to all terms, including the fees and expenses for establishing and maintaining the Individual Retirement Plan or other account.

Section III(e) requires distributions to be invested in an Eligible Investment Product as defined in section V(c) of this amendment.[32] The definition of Eligible Investment Product was not changed as part of this amendment.

Section III(f) requires the rate of return or investment performance of plans or accounts established in connection with QTA Regulation to be the same as other similar type of plans or accounts. This condition was designed to work in tandem with the requirement in Section III(d). It ensures fees are not hidden within separately designed investment products provided only to plans or accounts established under the QTA Regulation.

Example 1: Assume a customer opens a new Individual Retirement Plan and invests in a one-year certificate of deposit that returns 2.0%. The one-year certificate of deposit that returns 2.0% is also available to an Individual Retirement Plan established at the same time in accordance with the QTA Regulation. This is a permissible investment option.

Example 2: Assume a customer opens a new Individual Retirement Plan and invests in a one-year certificate of deposit that returns 2.0%. For Individual Retirement Plans established under the QTA Regulation, all certificates of deposit have a 5% lower return so that the one-year certificate of deposit only returns 1.9%. This is *not* a permissible investment option.

Section III(g) does not permit the Individual Retirement Plan or other account to pay a sales commission in connection with the acquisition of an Eligible Investment Product. Furthermore, Section III(h) indicates that the Individual Retirement Plan account holder or other account holder must be able to transfer their account balance to a different investment offered by the QTA or its Affiliate within a reasonable period of time after their request. In connection with the request, the QTA or its Affiliate may not assess any penalty against the principal amount of the account balance. According to those same standards, the Individual Retirement Plan account holder or other account holder must be able to transfer their account balance to an Individual Retirement Plan established with a different financial institution.

Finally, Section III(i) includes restrictions on fees and expenses associated with the Individual Retirement Plan or other account including with respect to investment of assets. This provision requires equal treatment for any such charges, which includes but is not limited to: establishment charges, maintenance fees, investment expenses, termination costs, and surrender charges. The fees and expenses may not exceed those charged by the QTA for comparable Individual Retirement Plans or other accounts established for reasons other than the receipt of a rollover distribution made pursuant to the QTA Regulation. Relatedly, fees and expenses associated with the Individual Retirement Plan or other account, other than establishment charges, may be charged only against the income earned by the Individual Retirement Plan or other account and may not be charged against principal. Finally, fees and expenses may not exceed reasonable compensation within the meaning of Code section 4975(d)(2).

5. Recordkeeping

Section IV of the amended exemption contains a recordkeeping requirement that is mostly unchanged from the proposed amendment. The Department made a minor modification in Section IV(a) by replacing the phrase ''determination of plan abandonment and its election'' with ''intent'' so that the recordkeeping requirement clearly applies to the new categories of QTAs (*i.e.,* chapter 7 bankruptcy trustees and eligible designees). Ultimately, this means that any party serving as a QTA must maintain records to enable certain persons to determine whether the applicable conditions of the class exemption have been satisfied. The records must be available for examination by the Department of the Treasury, the Department, and any account holder of an Individual Retirement Plan or other account established pursuant to this exemption or any duly authorized representative of such account holder.

D. Other Ministerial Changes

The Department is also making a few ministerial changes to the exemption that will not substantively alter the conditions or relief provided under the exemption. Specifically, the Department has capitalized most of the defined terms, added the word ''Section'' to each section, modified the text of the headings slightly, added headings in Sections II and III to facilitate ease of use of the exemption, and made other edits to improve readability. The Department also removed the reference to ''spouse'' in Section III(c) because the

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[31] See 29 CFR 2578.1(d)(2)(vi).

[32] This is an investment product designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity. For this purpose, the product must be offered by a Regulated Financial Institution and shall seek to maintain, over the term of the investment, the dollar value that is equal to the amount invested in the product by the Individual Retirement Plan or other account. An Eligible Investment Product includes money market funds maintained by registered investment companies, and interest-bearing savings accounts and certificates of deposit of a bank or similar financial institution. In addition, it would also include ''stable value products'' issued by a financial institution that are fully benefit-responsive to the Individual Retirement Plan account holder or other account holder (*i.e.,* that provide a liquidity guarantee by a financially responsible third party of principal and previously accrued interest for liquidations or transfers initiated by the Individual Retirement Plan account holder or other account holder exercising their right to withdraw or transfer funds under the terms of an arrangement that does not include substantial restrictions to the account holder to access the Individual Retirement Plan or other account's assets).

exclusive benefit rule in Code section 408(a) does not separately reference a spouse.

E. Discussion of Comments

While the Department did not receive any comments on the 2012 proposed amendment's expansion to bankruptcy trustees, it received several comments on other aspects of the 2012 proposed amendment. One commenter requested elimination of a condition in the exemption limiting the amount of fees and expenses that may be charged when a QTA recommends itself or an affiliate as a provider of an Individual Retirement Plan or other account. The condition in Section III(i)(2) requires fees and expenses charged to the Individual Retirement Plan or other account may only be taken from the income earned by the Individual Retirement Plan or other account with the exception of establishment charges.

The Department considered a similar request to remove Section III(i)(2) when it first granted PTE 2006–06. The Department continues to believe that removal of this condition is not warranted because the Regulations provide significant flexibility for small account balances to be distributed by methods other than through a rollover to an Individual Retirement Plan or other account sponsored by the QTA or its affiliate. For example, participant account balances of $1,000 or less that are below the minimum amount required for investment in the QTA's Individual Retirement Plan investment product may be distributed to: (i) an interest-bearing federally insured bank or savings association account in the name of the participant or beneficiary; (ii) the unclaimed property fund of the State in which the participant's or beneficiary's last known address is located; or (iii) to an unaffiliated Individual Retirement Plan if the Individual Retirement Plan is also offered to the public at the time of the distribution. The Department continues to believe that Section III(i)(2) is necessary to preserve the principal balance of missing and non-responsive participants and beneficiaries (consistent with protecting the retirement savings for participants and their beneficiaries). Section III(i)(2) also provides a valuable safeguard against potential conflicts of interest associated with a QTA's selection of its own or its affiliate's Individual Retirement Plan or account and initial investment product.

Another commenter requested clarification that providers of Individual Retirement Plans or investment accounts who are not affiliated or related to a QTA and accept distribution accounts from a QTA into their own proprietary investment products, are not subject to the same fee and expense restrictions described in Section III(i)(2) of the exemption. The Department responds that the scenario described by the commenter does not appear to involve a prohibited transaction, and parties only are required to rely on the exemption (including complying with Section III(i)(2)) if the receipt of compensation in connection with these transactions involves a prohibited transaction.

F. Regulatory Impact Analysis

1. Background and Need for Regulatory Action

As stated earlier in this preamble, this document contains an amendment to PTE 2006–06 which expands the types of service providers that are eligible to serve as QTAs to include bankruptcy trustees and entities designated by bankruptcy trustees to terminate and wind up the affairs of plans according to the Regulations that facilitate the termination of, and distribution of benefits from, individual account pension plans that have been abandoned by their sponsoring employers. The need for the amendments is explained in detail above in this preamble, as well as the preamble to the 2012 proposal and preamble to the Regulations that appear elsewhere in this issue of the **Federal Register**.

The Department has examined the effects of these amendments as required by Executive Order 12866,[33] Executive Order 13563,[34] the Congressional Review Act,[35] the Paperwork Reduction Act of 1995,[36] the Regulatory Flexibility Act,[37] section 202 of the Unfunded Mandates Reform Act of 1995,[38] and Executive Order 13132.[39]

2. Executive Orders 12866 and 13563 Statement

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing and streamlining rules, and of promoting flexibility. It also requires federal agencies to develop a plan under which the agencies will periodically review their existing significant regulations to make the agencies' regulatory programs more effective or less burdensome in achieving their regulatory objectives. The Department identified the amendments to the 2006 regulations as part of a retrospective regulatory review project consistent with the principles of Executive Order 13563. The changes will improve the overall efficiency of the program established under the 2006 regulations, increase its usage, and substantially reduce burdens and costs on bankruptcy trustees (or their designees) terminating the plans of sponsors in chapter 7 liquidation, the plans of bankrupt sponsors, and the participants in these plans.

Under Executive Order 12866, ''significant'' regulatory actions are subject to the requirements of the executive order and review by the Office of Management and Budget (OMB). As amended by Executive Order 14094[40] entitled ''Modernizing Regulatory Review,'' section 3(f) of the executive order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities; (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

3. Affected Entities

The group of entities affected by the amendments consists of affected abandoned plans as defined under the 2006 regulations, Chapter 7 ERISA Plans

[33] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

[34] Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011).

[35] 5 U.S.C. 804(2) (1996).

[36] 44 U.S.C. 3506(c)(2)(A) (1995).

[37] 5 U.S.C. 601 *et seq.* (1980).

[38] 2 U.S.C. 1501 *et seq.* (1995).

[39] Federalism, 64 FR 43255 (Aug. 10, 1999).

[40] 88 FR 21879 (April 6, 2023).

newly eligible to utilize the abandoned plan rules, and the financial firms and bankruptcy trustees who serve as QTAs.

4. Benefits

The key benefit of the amendment to PTE 2006–06 is facilitation of the benefits provided by the Regulations, as explained in the Regulatory Impact Analysis that accompanies the Regulations, published elsewhere in this issue of the **Federal Register**. Without the accompanying amendment to PTE 2006–06, certain of the benefits of the Regulations may be impeded due to the existence of prohibited transactions.

5. Costs

The cost of the amendment to PTE 2006–06 is captured in the Regulatory Impact Analysis that accompanies the Regulations, published elsewhere in this issue of the **Federal Register**. The only additional cost associated with this amendment to PTE 2006–06 is related to a new condition that is applicable in cases where a Designating Bankruptcy Trustees provides services to the plan. In that situation, the Designating Bankruptcy Trustee must represent under penalty of perjury that such services were actually performed and/or will actually be performed and provide the QTA with such representation for the QTA to provide to the Department in the notice of intent to serve as qualified termination administrator. As noted in the Paperwork Reduction Act section of the preamble to the Regulations, the Department did not include a cost burden for this new condition because it is expected to be de minimis and included in other notices sent to the Department.

G. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), the Department solicited comments concerning the information collection requirements (ICRs) included in the December 12, 2012, proposed amendments to the 2006 regulations at 77 FR 74063 and the proposed amendments to the class exemption PTE 2006–06 at 77 FR 74055. At the same time, the Department also submitted the ICR to OMB in accordance with 44 U.S.C. 3507(d).

The amendment to PTE 2006–06 would only be used by QTAs that also take advantage of the amendments to the Regulations, published elsewhere in this issue of the **Federal Register**. The Department has combined the hour and cost burdens associated with the proposed amendment to PTE 2006–06 with the hour and cost burden associated with the Regulations, under existing OMB Control Number 1210–0127.

By using a single ICR, the Department believes that the regulated community will gain a better understanding of the overall burden impact of terminating abandoned plans pursuant to the amendments. The specific burden for PTE 2006–06 includes the penalty of perjury statements required to be submitted by the QTA and/or Designating Bankruptcy Trustee and a recordkeeping requirement for QTAs. The hour and cost burden for the ICR is described more fully in the preamble to the Regulations under the Paperwork Reduction Act section. A copy of the ICR for OMB Control Number 1210–0127 may be obtained by contacting the PRA addressee listed in the following sentence or at *www.RegInfo.gov.* For additional information, contact: James Butikofer, Office of Research and Analysis, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210; or *ebsa.opr@dol.gov.* The OMB will consider all comments that they receive on or before June 17, 2024. Comments and recommendations for the information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

H. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) applies to most Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). Unless an agency certifies that such a rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present a final regulatory flexibility analysis at the time of the publication of the rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations, and governmental jurisdictions. For purposes of analysis under the RFA, the Department considers a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(3) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for welfare benefit plans that cover fewer than 100 participants. While some large employers may have small plans, in general, small employers maintain most small plans. Thus, the Department believes that assessing the impact of these final regulations on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). The Department requested comments on the appropriateness of this size standard at the proposed rule stage and received no adverse responses.

Due to the small number of small plans involved and relatively low cost per plan, the Assistant Secretary of the Employee Benefit Security Administration hereby certifies under 5 U.S.C. 605 that this amended exemption in combination with the Regulations will not have a significant economic impact on a substantial number of small entities.[41]

I. Congressional Review Act

This amendment is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to the Congress and the Comptroller General for review. The exemption is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

J. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the rule does not include any Federal mandate that will result in expenditures by state, local, or tribal governments in the aggregate of more than $100 million, adjusted for inflation, or increase expenditures by the private sector of more than $100 million, adjusted for inflation.

[41] 2,506 abandoned plans each year divided by the roughly 6 million establishments with less than 50 participants results in less than 0.05%.

K. Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

L. General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) and Code section 4975(c)(2) does not relieve a fiduciary, or other party in interest or disqualified person with respect to a plan, from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404 which require, among other things, that a fiduciary act prudently and discharge their duties respecting the plan solely in the interests of the participants and beneficiaries of the plan. Additionally, the fact that a transaction is the subject of an exemption does not affect the requirements of Code section 401(a), including that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with ERISA section 408(a) and Code section 4975(c)(2), and based on the entire record, the Department finds that this exemption is administratively feasible, in the interests of Plans, their participants and beneficiaries, and IRA owners, and protective of the rights of participants and beneficiaries of the Plan and IRA owners;

(3) The amended exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The amended exemption is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

The Department is granting the following amendment on its own motion, pursuant to its authority under ERISA section 408(a) and Code section 4975(c)(2) and in accordance with procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637 (October 27, 2011)).[42]

Amended Exemption

Section I. Covered Transactions

(a) Provided the conditions of Section II and IV are satisfied, the restrictions of ERISA sections 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2), and the taxes imposed by Internal Revenue Code (Code) section 4975(a) and (b), by reason of section 4975(c)(1)(A) through (E), shall not apply to a Qualified Termination Administrator (as defined in paragraph (a)(1) or (a)(2) of Section V and referred to as a QTA) using its authority in connection with the termination of an abandoned individual account plan pursuant to the Department's regulation at 29 CFR 2578.1, relating to the Termination of Abandoned Individual Account Plans (the QTA Regulation)[43] to:

(1) Select itself or an affiliate to provide services to the plan;

(2) Receive fees for the services performed as a QTA;

(3) Pay itself fees for services provided to the plan before the deemed termination of the plan; and

(4) Pay fees to the Designating Bankruptcy Trustee for services provided to the plan; and

(b) Provided that the conditions set forth in Sections III and IV of this exemption are satisfied, the restrictions of ERISA sections 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2), and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to a QTA (as defined in paragraph (a)(1) or (a)(2)(ii) of Section V) using its authority in connection with the termination of an abandoned individual account plan pursuant to the QTA Regulation to:

(1) Designate itself or an affiliate as: (i) provider of an Individual Retirement Plan; (ii) provider, in the case of a distribution on behalf of a designated beneficiary (as defined by Code section 401(a)(9)(E)) who is not the surviving spouse of the deceased participant, of an inherited Individual Retirement Plan (within the meaning of Code section 402(c)(11)) established to receive the distribution on behalf of the non-spouse beneficiary under the circumstances described in paragraph (d)(1)(ii) of the Safe Harbor Regulation for Terminated Plans (29 CFR 2550.404a-3) (the Safe Harbor Regulation); or (iii) provider of an interest bearing, federally insured bank or savings association account maintained in the name of the participant or beneficiary, in the case of a distribution described in paragraph (d)(1)(iii) of the Safe Harbor Regulation, for the distribution of the account balance of the participant or beneficiary of the abandoned individual account plan who does not provide direction as to the disposition of such assets;

(2) Make the initial investment of the account balance of the participant or beneficiary in the QTA's or its affiliate's proprietary investment product;

(3) Receive fees in connection with the establishment or maintenance of the Individual Retirement Plan or other account; and

(4) Pay itself or an affiliate investment fees as a result of the investment of the Individual Retirement Plan or other account assets in the QTA's or its affiliate's proprietary investment product.

Section II. Conditions for Provision of Covered Termination Services and Receipt of Fees

(a) *QTA Regulation.* The requirements of the QTA Regulation are met. The QTA provides, in a timely manner, any other reasonably available information

[42] Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 (2018)) generally transferred the authority of the Secretary of the Treasury to grant administrative exemptions under Code section 4975 to the Secretary of Labor. Procedures Governing the Filing and Processing of Prohibited Transaction Exemption Applications were amended effective April 8, 2024 (29 CFR part 2570, subpart B (89 FR 4662 (January 24, 2024)).

[43] The Department intends that this exemption will cover transactions related to the interim final regulations published in this edition of the **Federal Register** as well as any subsequent final regulations published thereafter. The Department will consider amending this exemption if changes are made to the final regulation that impact the relief available under this exemption.

requested by the Department regarding the proposed termination.

(b) *Fees and expenses.* Fees and expenses paid to the QTA and its affiliate, and any Designating Bankruptcy Trustee, in connection with the termination of the plan and the distribution of benefits comply with paragraphs (d)(2)(v)(B)(2)(i) and (ii) of the QTA Regulation or paragraph (j)(7)(iv) of the QTA Regulation, as applicable;

(c) *Fees for services before the deemed termination of the plan.* In the case of a transaction described in Section I(a)(3):

(1) Such services: (i) were performed in good faith pursuant to the terms of a written agreement executed before the service provider became a QTA; or (ii) were performed pursuant to the QTA Regulation; and

(2) The QTA, in the notice of plan abandonment and intent to serve as qualified termination administrator described in paragraph (c)(3) of the QTA Regulation or in the case of a QTA described in Section V(a)(2)(i), the notice of intent to serve as qualified termination administrator described in paragraph (j)(6) of the QTA Regulation: (i) represents under penalty of perjury that such services were actually performed and/or will be performed (in the case of services provided after the notice but before deemed termination); and (ii) in the case of Section II(c)(1)(i) above, provides the Department with a copy of the executed contract between the QTA and a plan fiduciary or the plan sponsor that authorized such services.

(d) *Paying the Designating Bankruptcy Trustee.* In the case of a transaction described in Section I(a)(4):

(1) Such services were performed by the Designating Bankruptcy Trustee pursuant to the QTA Regulation; and

(2) The Designating Bankruptcy Trustee represents under penalty of perjury that such services were actually performed and/or will actually be performed and provides the QTA with such representation for the QTA to provide to the Department in the notice of intent to serve as qualified termination administrator described in paragraph (j)(6) of the QTA Regulation.

Section III. Conditions for Covered Distribution Transactions

(a) *QTA Regulation.* The conditions of the QTA Regulation (29 CFR 2578.1) are met.

(b) *Notice to participants and beneficiaries.* In connection with the notice to participants and beneficiaries described in the QTA Regulation, a statement is provided explaining that:

(1) If the participant or beneficiary fails to make an election within the 30-day period referenced in the QTA Regulation, the QTA will directly distribute the account balance to an Individual Retirement Plan or other account offered by the QTA or its affiliate;

(2) The proceeds of the distribution may be invested in the QTA's (or affiliate's) own proprietary investment product, which is designed to preserve principal and provide a reasonable rate of return and liquidity.

(c) *Exclusive benefit.* The Individual Retirement Plan or other account is established and maintained for the exclusive benefit of the Individual Retirement Plan account holder or other account holder or their beneficiaries.

(d) *Account terms, fees, and expenses.* The terms of the Individual Retirement Plan or other account, including the fees and expenses for establishing and maintaining the Individual Retirement Plan or other account, are no less favorable than those available to comparable Individual Retirement Plans or other accounts established for reasons other than the receipt of a distribution described in the QTA Regulation.

(e) *Eligible Investment Product.* Except in the case of a QTA providing a bank or savings account pursuant to Section I(b)(1)(iii) of the exemption, the distribution proceeds are invested in an Eligible Investment Product(s), as defined in Section V(c) of this class exemption.

(f) *Investment performance.* The rate of return or the investment performance of the Individual Retirement Plan or other account is no less favorable than the rate of return or investment performance of an identical investment(s) that could have been made at the same time by comparable Individual Retirement Plans or other accounts established for reasons other than the receipt of a distribution described in the QTA Regulation.

(g) *No sales commissions.* The Individual Retirement Plan or other account does not pay a sales commission in connection with the acquisition of an Eligible Investment Product.

(h) *Transferring account.* The Individual Retirement Plan account holder or other account holder must be able to transfer their account balance to a different investment offered by the QTA or its affiliate, or to a different financial institution not related to the QTA or its affiliate, within a reasonable period of time after their request and without penalty to the principal amount of the investment.

(i) *Fees and expenses.* (1) Fees and expenses attendant to the Individual Retirement Plan or other account, including the investment of the assets of such plan or account, (*e.g.,* establishment charges, maintenance fees, investment expenses, termination costs, and surrender charges) shall not exceed the fees and expenses charged by the QTA for comparable Individual Retirement Plans or other accounts established for reasons other than the receipt of a distribution made pursuant to the QTA Regulation;

(2) Fees and expenses attendant to the Individual Retirement Plan or other account, with the exception of establishment charges, may be charged only against the income earned by the Individual Retirement Plan or other account; and

(3) Fees and expenses attendant to the Individual Retirement Plan or other account are not in excess of reasonable compensation within the meaning of Code section 4975(d)(2).

Section IV. Recordkeeping

(a) The QTA maintains or causes to be maintained, for a period of six (6) years from the date the QTA provides notice to the Department of its intent to serve as the QTA described in the QTA Regulation, the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the applicable conditions of this exemption have been met. Such records must be readily available to assure accessibility by the persons identified in paragraph (b) of this Section.

(b) Notwithstanding any provisions of ERISA section 504(a)(2) and (b), the records referred to in paragraph (a) of this section are unconditionally available at their customary location for examination during normal business hours by—

(1) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service; and

(2) Any account holder of an Individual Retirement Plan or other account established pursuant to this exemption, or any duly authorized representative of such account holder.

(c) A prohibited transaction will not be considered to have occurred if due to circumstances beyond the control of the QTA, the records necessary to enable the persons described in paragraph (b) to determine whether the conditions of the exemption have been met are lost or destroyed, and no party in interest other than the QTA shall be subject to the civil penalty that may be assessed under ERISA section 502(i) or to the taxes imposed by Code sections 4975(a) and (b), the records are not maintained or are not available for examination as required by paragraph (b).

(3) None of the persons described in paragraph (b)(2) of this Section shall be authorized to examine the trade secrets of the QTA or its affiliates or commercial or financial information that is privileged or confidential.

Section V. Definitions

(a) A termination administrator is *qualified* and considered a ''*QTA*'' for purposes of this exemption only if:

(1)(i) It is eligible to serve as a trustee or issuer of an individual retirement plan, within the meaning of Code section 7701(a)(37), and (ii) it holds assets of the plan that is found abandoned; or

(2)(i) It is a bankruptcy trustee in a liquidation proceeding under chapter 7 of title 11 of the United States Code with responsibility under 11 U.S.C. 704(a)(11) to administer one or more individual account plans sponsored by the entity that is the subject of the proceeding, who elects to be a QTA under 29 CFR 2578.1(j)(6); (ii) it is an ''*eligible designee*,'' as defined in 29 CFR 2578.1(j)(4)(i); or (iii) it is an ''*eligible designee*'' as defined in 29 CFR 2578.1(j)(4)(ii).

If a bankruptcy trustee designates an eligible designee, then it shall not be considered a QTA with respect to the relief provided in this exemption.

(b) The term ''*Individual Retirement Plan*'' means an individual retirement plan described in Code section 7701(a)(37). For purposes of Section III of this exemption, the term ''Individual Retirement Plan'' shall also include an inherited individual retirement plan (within the meaning of Code section 402(c)(11)) established to receive a distribution on behalf of a non-spouse beneficiary. Notwithstanding the foregoing, the term ''*Individual Retirement Plan*'' shall not include an employee benefit plan covered by Title I of ERISA.

(c) The term ''*Eligible Investment Product*'' means an investment product designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity. For this purpose, the product must be offered by a Regulated Financial Institution as defined in paragraph (d) of this Section and shall seek to maintain, over the term of the investment, the dollar value that is equal to the amount invested in the product by the Individual Retirement Plan or other account. Such term includes money market funds maintained by registered investment companies, and interest-bearing savings accounts and certificates of deposit of a bank or similar financial institution. In addition, the term includes ''stable value products'' issued by a financial institution that are fully benefit-responsive to the Individual Retirement Plan account holder or other account holder, *i.e.,* that provide a liquidity guarantee by a financially responsible third party of principal and previously accrued interest for liquidations or transfers initiated by the Individual Retirement Plan account holder or other account holder exercising their right to withdraw or transfer funds under the terms of an arrangement that does not include substantial restrictions to the account holder's access to the Individual Retirement Plan or other account's assets.

(d) The term ''*Regulated Financial Institution*'' means an entity that: (i) is subject to state or federal regulation, and (ii) is a bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation; a credit union, the member accounts of which are insured within the meaning of section 101(7) of the Federal Credit Union Act; an insurance company, the products of which are protected by state guaranty associations; or an investment company registered under the Investment Company Act of 1940.

(e) An ''*Affiliate*'' of a person includes:

(1) Any person directly or indirectly controlling, controlled by, or under common control with, the person; or

(2) Any officer, director, partner or employee of the person.

(f) The terms ''*controlling*, controlled by, or under common control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(g) The term ''*Individual Account Plan*'' means an individual account plan as that term is defined in ERISA section 3(34).

(h) The term ''*Designating Bankruptcy Trustee*'' means a bankruptcy trustee in a liquidation proceeding under chapter 7 of title 11 of the United States Code with responsibility under 11 U.S.C. 704(a)(11) to administer one or more individual account plans sponsored by the entity that is the subject of the proceeding, that provides services to the plan but is not the QTA because of the appointment of an eligible designee.

Signed at Washington, DC, on April 22, 2024.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

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