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**29 CFR Parts 2550 and 2578
Amendments to Safe Harbor for
Distributions From Terminated Individual
Account Plans and Termination of
Abandoned Individual Account Plans To
Require Inherited Individual Retirement
Plans for Missing Nonspouse
Beneficiaries; Final Rule**

DEPARTMENT OF LABOR**Employee Benefits Security Administration****29 CFR Parts 2550 and 2578**

RIN 1210-AB16

Amendments to Safe Harbor for Distributions From Terminated Individual Account Plans and Termination of Abandoned Individual Account Plans To Require Inherited Individual Retirement Plans for Missing Nonspouse Beneficiaries**AGENCY:** Employee Benefits Security Administration, Labor.**ACTION:** Interim final rule with request for comments.

SUMMARY: This document contains an interim final rule amending regulations under the Employee Retirement Income Security Act of 1974 (ERISA or the Act) that provide guidance and a fiduciary safe harbor for the distribution of benefits on behalf of participants or beneficiaries in terminated and abandoned individual account plans. The Department is amending these regulations to reflect changes enacted as part of the Pension Protection Act of 2006, Public Law 109-280, to the Internal Revenue Code of 1986 (the Code), under which a distribution of a deceased plan participant's benefit from an eligible retirement plan may be directly transferred to an individual retirement plan established on behalf of the designated nonspouse beneficiary of such participant. Specifically, the amended regulations require as a condition of relief under the fiduciary safe harbor that benefits for a missing, designated nonspouse beneficiary be directly rolled over to an individual retirement plan that fully complies with Code requirements. This interim final rule will affect fiduciaries, plan service providers, and participants and beneficiaries of individual account pension plans.

DATES: Effective and Applicability Dates: The amendments made by this rule are effective March 19, 2007. This interim final rule is applicable to distributions made on or after March 19, 2007.

Comment Date: Written comments must be received by April 2, 2007.

ADDRESSES: To facilitate the receipt and processing of comments, the Department encourages interested persons to submit their comments electronically by e-mail to *ORI@dol.gov*, or by using the Federal eRulemaking portal at

www.regulations.gov (follow instructions for submission of comments). Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting comments on paper should send or deliver their comments (at least three copies) to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, *Attn:* Amendments to Distribution Safe Harbor and Abandoned Plans Regulation for Missing Nonspouse Beneficiaries. All comments received will be available to the public, without charge, online at *www.regulations.gov* and *www.dol.gov/ebsa*, and at the Public Disclosure Room, Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Ward, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693-8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:**A. Background**

This interim final rule amends two regulations under ERISA that facilitate the termination of individual account plans, including abandoned individual account plans, and the distribution of benefits from such plans. The first regulation, codified at 29 CFR 2550.404a-3, provides plan fiduciaries of terminated plans and qualified termination administrators (QTAs) of abandoned plans with a fiduciary safe harbor for making distributions on behalf of participants or beneficiaries who fail to make an election regarding a form of benefit distribution, commonly referred to as missing participants or beneficiaries. The second regulation, codified at 29 CFR 2578.1, establishes a procedure for financial institutions holding the assets of an abandoned individual account plan to terminate the plan and distribute benefits to the plan's participants or beneficiaries, with limited liability.¹ Appendices to these two regulations contain model notices for notifying participants or beneficiaries of the plan's termination and distribution options.

The safe harbor regulation provides that both a fiduciary and a QTA will be

deemed to have satisfied ERISA's prudence requirements under section 404(a) of the Act if the conditions of the safe harbor are met with respect to the distribution of benefits on behalf of missing participants from terminated individual account plans.² In general, the regulation provides that a fiduciary or QTA qualifies for the safe harbor if a distribution is made to an individual retirement plan within the meaning of section 7701(a)(37) of the Code. See § 2550.404a-3(d)(1)(i). However in April 2006, when the Department published this safe harbor regulation, a distribution of benefits from an individual account plan to a nonspouse beneficiary was not considered an eligible rollover distribution under the provisions of section 402(c) of the Code and, therefore, could not be rolled over into an individual retirement plan.³ As a result, the safe harbor regulation mandated, among other requirements, the distribution of benefits on behalf of a missing nonspouse beneficiary to an account that was not an individual retirement plan. See § 2550.404a-3(d)(1)(ii). Consequently, such distributions were subject to income tax and mandatory tax withholding in the year distributed into the account.⁴

The Pension Protection Act changed the characterization of certain distributions from tax exempt plans and trusts to permit such distributions to qualify for eligible rollover distribution treatment.⁵ Section 829 of the Pension Protection Act amended section 402(c) of the Code to permit the direct rollover of a deceased participant's benefit from an eligible retirement plan to an individual retirement plan established on behalf of a designated nonspouse beneficiary.⁶ These rollover distributions would not trigger immediate income tax consequences and mandatory tax withholding for the nonspouse beneficiary.

In light of the Pension Protection Act's changes to the Code allowing a rollover distribution on behalf of a nonspouse beneficiary into an inherited individual retirement plan with the resulting deferral of income tax consequences, the Department is amending the regulatory safe harbor for distributions from a terminated

² 71 FR 20830 n. 21.

³ See 26 CFR 1.402(c)-2, Q&A-12.

⁴ 71 FR 20828 n.14.

⁵ Section 829 of the Pension Protection Act.

⁶ Section 829 of the Pension Protection Act requires that the individual retirement plan established on behalf of a nonspouse beneficiary must be treated as an inherited individual retirement plan within the meaning of Code § 408(d)(3)(C) and must be subject to the applicable mandatory distribution requirements of Code § 401(a)(9)(B).

¹ Under § 2578.1(d)(2)(vii)(B), a QTA is directed to make distributions in accordance with the safe harbor regulation.

individual account plan, including an abandoned plan, at 29 CFR 2550.404a-3. These amendments require that a deceased participant's benefit be directly rolled over to an inherited individual retirement plan established to receive the distribution on behalf of a missing, designated nonspouse beneficiary. These amendments eliminate the prior safe harbor condition that required a distribution on behalf of a missing nonspouse beneficiary to be made only to an account other than an individual retirement plan. See § 2550.404a-3(d)(1)(ii). Therefore, when these amendments become applicable, a distribution on behalf of a missing nonspouse beneficiary would satisfy this condition of the safe harbor only if directly rolled into an individual retirement plan that satisfies the requirements of new section 402(c)(11) of the Code.⁷

Conforming changes are made to the content requirements of the mandated participant and beneficiary termination notice and its model notice under the safe harbor (at the Appendix to § 2550.404a-3). The amendments to 29 CFR 2578.1 also make conforming changes to the content of the required participant and beneficiary termination notice and model notice for abandoned plans (at Appendix C to § 2578.1).

Concurrently with publication of this rule, the Department is publishing proposed amendments to PTE 2006-06,⁸ which, when finalized, will clarify that the exemption provides relief to a QTA that designates itself or an affiliate as the provider of an inherited individual retirement plan for a missing, designated nonspouse beneficiary pursuant to the exemption's conditions. As noted in the preamble to the proposed amendments, however, the Department interprets PTE 2006-06 as currently available to the QTA for its self-selection as an inherited individual retirement plan provider subject to the conditions of the exemption.

B. Request for Comments

The Department invites comments from interested persons on all aspects of the interim final rule. To facilitate the receipt and processing of comments, the Department encourages interested persons to submit their comments electronically by e-mail to ORI@dol.gov, or by using the Federal eRulemaking portal at www.regulations.gov (follow instructions for submission of comments). Persons submitting

comments electronically are encouraged not to submit paper copies. Persons interested in submitting comments on paper should send or deliver their comments (at least three copies) to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, *Attn:* Amendments to Distribution Safe Harbor and Abandoned Plans Regulation for Missing Nonspouse Beneficiaries. All comments will be available to the public, without charge, at www.regulations.gov and www.dol.gov/ebsa, and in the Public Disclosure Room, N-1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

C. Amendments Relating to the Safe Harbor for Distributions From Terminated Individual Account Plans

1. Section 2550.404a-3(d)—Conditions

Paragraph (d)(1)(ii) of this section requires that the distribution of benefits on behalf of a nonspouse beneficiary of a participant be made to “an account (other than an individual retirement plan)” because historically such distribution was not eligible for rollover into an individual retirement plan. This condition is being revised to require that the distribution of benefits on behalf of a designated nonspouse beneficiary be rolled over into an inherited individual retirement plan that complies with the requirements of section 402(c)(11) of the Code, as permitted under the Pension Protection Act for distributions occurring after December 31, 2006.

Paragraph (d)(1)(iii)(C) of this section permits as an alternative distribution option that certain small benefits on behalf of a nonspouse beneficiary of a participant be distributed to “an account (other than an individual retirement plan)” that a financial institution, other than the qualified termination administrator, provides to the public at the time of the distribution. This alternative option is similarly being revised to require the rollover of benefits on behalf of a designated nonspouse beneficiary to an inherited individual retirement plan.

Paragraph (d)(2)(ii)(A) of this section is being revised to incorporate the appropriate cross references to individual retirement plan and inherited individual retirement plan and eliminate reference to “other account.”

Paragraphs (d)(2)(iii), (d)(2)(iv) and (d)(3) of this section are being revised to

incorporate the appropriate cross references to individual retirement plan and inherited individual retirement plan, and bank or savings association accounts for certain small amounts.

2. Section 2550.404a-3(e)—Notice to Participants and Beneficiaries

Paragraphs (e)(1)(iv), (e)(1)(v) and (e)(1)(vi) of this section are being revised to incorporate the appropriate cross references to individual retirement plan and inherited individual retirement plan and eliminate reference to “other account.”

3. Section 2550.404a-3(f)—Model Notice

The appendix to this section contains a Notice of Plan Termination for terminated individual account plans other than abandoned plans that currently includes an optional paragraph referring to distributions to nonspouse beneficiaries. This paragraph is being deleted because distributions to nonspouse beneficiaries will no longer be required to be made to accounts other than individual retirement plans. A parenthetical is being added to the fourth paragraph to clarify that individual retirement plans established on behalf of missing, designated nonspouse beneficiaries are inherited individual retirement plans.

D. Amendments Relating to the Termination of Abandoned Individual Account Plans

1. Section 2578.1(d)(2)(vi)—Notify Participants

Paragraph (d)(2)(vi)(A)(5)(ii) of this section is being revised to incorporate the appropriate cross reference to conditions for rollovers on behalf of nonspouse beneficiaries in § 2550.404a-3(d)(1)(ii).

Paragraphs (d)(2)(vi)(A)(5)(iii) and (d)(2)(vi)(A)(6) of this section are being revised to incorporate the appropriate cross references to individual retirement plan and inherited individual retirement plan in § 2550.404a-3(d)(1)(i) and (d)(1)(ii) and eliminate reference to “account.”

Paragraphs (d)(2)(vi)(A)(7) and (d)(2)(vi)(A)(8) of this section are being revised to incorporate the appropriate cross references to individual retirement plan and inherited individual retirement plan in § 2550.404a-3(d)(1)(i) and (d)(1)(ii).

2. Section 2578.1(i)—Model notices

Appendix C to this section contains a Notice of Plan Termination for abandoned plans that currently includes an optional paragraph (“Option 2”) referring to distributions to nonspouse

⁷ See also I.R.S. Notice 2007-07 (January 10, 2007).

⁸ 71 FR 20856 (April 21, 2006).

beneficiaries. This optional paragraph is being deleted because distributions to nonspouse beneficiaries will no longer be required to be made to accounts other than individual retirement plans. To conform to this change, the instructions for "Option 1" are being revised to delete reference to "participant's spouse." "Option 3" is renumbered as "Option 2" and the instructions are revised to eliminate reference to "(or special account for non-spousal beneficiaries if you are a beneficiary other than the participant's spouse)" and "(or special non-spousal account)." A parenthetical is being added to Option 1 and Option 2 to clarify that individual retirement plans established on behalf of missing, designated nonspouse beneficiaries are inherited individual retirement plans. "Option 4" is renumbered as "Option 3."

E. Good Cause Finding That Proposed Rulemaking Unnecessary

Rulemaking under section 553 of the Administrative Procedure Act (APA) ordinarily involves publication of a notice of proposed rulemaking in the **Federal Register** and the public is given an opportunity to comment on the proposed rule. The APA authorizes agencies to dispense with proposed rulemaking procedures, however, if they find both good cause that such procedures are impracticable, unnecessary, or contrary to the public interest, and incorporate a statement of the finding with the underlying reasons in the interim final rule issued.

In this case, the Department finds that it is unnecessary to undertake proposed rulemaking with regard to the amendments to the regulatory safe harbor for distributions from a terminated individual account plan, including an abandoned plan. The Department believes such rulemaking is unnecessary because it views these amendments to an existing regulatory scheme as technical, noncontroversial and merely adaptive of recent Code changes allowing distributions on behalf of missing nonspouse beneficiaries of deceased participants to be rolled over into tax-advantaged individual retirement plans. The Department therefore finds for good cause that notice and public procedure is unnecessary. It is publishing these amendments as an interim final rule and is including a request for comment.

F. Regulatory Impact Analysis

Summary

By conforming regulations pertaining to distributions from certain terminated plans with recent changes to the Code,

this interim final rule preserves for certain nonspouse beneficiaries of deceased participants the opportunity to take advantage of preferential tax treatment newly permitted by the Pension Protection Act for distributions after December 31, 2006. Nonspouse beneficiaries will benefit from the preservation, on their behalf, of tax-favored savings set aside for retirement. This interim final rule also will affect plan fiduciaries, including QTAs, by altering the procedures applicable to certain termination distributions. The Department anticipates that, rather than increasing costs, these amendments will reduce compliance costs modestly for plan fiduciaries and QTAs. Because the rule's new distribution procedures for terminated plans apply only to the narrow group of nonspouse beneficiaries who have not returned a distribution election, the Department believes that the rule's economic impact will be small, overall, but positive.⁹

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a "significant regulatory action" is an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (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 novel legal or policy issues arising out of legal mandates, the President's priorities, or

the principles set forth in the Executive Order. The Department has determined that this regulatory action is not economically significant within the meaning of section 3(f)(1) of the Executive Order. However, the Office of Management and Budget (OMB) has determined that the action is significant within the meaning of section 3(f)(4) of the Executive Order, and the Department, accordingly, provides the following assessment of its potential costs and benefits.

Costs

Plan fiduciaries and QTAs generally are not expected to change their use of service providers in connection with the termination and winding-up of plans as a result of the amendments made by this interim final rule. In addition, costs related to selecting institutions and establishing appropriate accounts and investments for benefits directly transferred to an inherited individual retirement plan are expected to be the same as costs related to establishing other types of accounts on behalf of nonspouse beneficiaries. The safeguards included in the safe harbor regulation to preserve assets, such as requiring that fees and expenses do not exceed certain limits, apply to both individual retirement plans and other accounts. Fiduciaries and QTAs that currently select separate institutions for making tax-deferred and taxable distributions may have modest administrative cost savings as a result of this rule because they will be able to distribute nonspouse benefits to inherited individual retirement plans with the same institutions to which other tax-deferred distributions are made.

Plan fiduciaries and QTAs also will have reduced administrative costs as a result of not having to comply with otherwise applicable mandatory tax withholding requirements under the Code. The distribution of benefits to an account other than an individual retirement plan is considered a lump sum distribution under the Code, requiring a plan administrator to withhold a percentage of the taxable amount and send the withheld amount to the Internal Revenue Service as income tax withholding. This requirement to withhold does not apply to distributions made to inherited individual retirement plans. As the safe harbor regulation requires the rollover of distributions, except for certain small benefits, the administrative costs associated with mandatory tax withholding will be reduced.

⁹ As described earlier, the Department is publishing, concurrently with publication of this rule, proposed amendments to PTE 2006-06, which will establish under the conditions of the exemption that a QTA may designate itself or an affiliate as the provider of an inherited individual retirement plan for a nonspouse beneficiary who has not returned a distribution election. In assessing the economic costs and benefits of this interim final rule, the Department has taken into account the proposed amendments to PTE 2006-06, which will make explicit the availability of the conditional relief to parties that follow the amended rules with respect to nonspouse distributions, a result that the Department believes will assist in the achievement of the purposes underlying the regulations.

Benefits

When the Department published the safe harbor regulation for distributions from terminated individual account plans in April 2006, it was designed, in part, to prevent participants and beneficiaries of terminated plans, insofar as then possible under the Code, from losing the favorable tax treatment otherwise accorded distributions from qualified plans. As a result, the safe harbor regulation generally mandated that benefits on behalf of a participant or spouse be distributed to an individual retirement plan. Tax laws then in effect prevented the Department from extending this favorable tax treatment to nonspouse beneficiaries. This interim final rule, which takes into account the Pension Protection Act change enabling a nonspouse beneficiary to be treated as inheriting an individual retirement plan, will benefit nonspouse beneficiaries by enabling them to have continued tax-deferral of retirement savings, similar to that available to participants and spouses.

As described earlier in the preamble, nonspouse beneficiaries will benefit from continued deferral of income taxes and distributions that are not subject to mandatory tax withholding. Under the new tax rules, distributions from an inherited individual retirement plan will have to be made under the Code's minimum distribution rules. While these distribution rules are generally more restrictive than what is allowed for participants and spouses, the Department believes that the additional period of tax deferral permitted under the new tax rules will be a significant benefit to nonspouse beneficiaries. Because benefits will continue to be held in tax-advantaged retirement vehicles, the interim final rule also serves to preserve retirement savings. At the same time, nonspouse beneficiaries retain the benefit of being able to make a distribution election and to elect a lump sum distribution if they choose.

Based on the foregoing assessment, the Department concludes that promulgation of this interim final rule will provide substantial benefits without imposing additional costs.

Paperwork Reduction Act

The information collections included in this interim final rule, together with information collections included in PTE 2006-06, are currently approved by the Office of Management and Budget (OMB) under OMB control number 1210-0127. This approval is currently scheduled to expire on April 30, 2008. The interim final rule makes minor changes to the content requirements of

the participant and beneficiary termination notices, as described earlier in the preamble. These conforming changes, which involve the deletion or substitution of a small number of words in each notice, do not increase the burden of the information collections and do not constitute a substantive or material modification of the existing information collection request approved under OMB control number 1210-0127. Accordingly, the Department has not made a submission for OMB approval of a revision in the burden estimates in connection with this interim final rule or the proposed amendments to PTE 2006-06, published simultaneously with this interim final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to 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.*) and are likely to have a significant economic impact on a substantial number of small entities. Because these amendments are being published as an interim final rule, without prior notice and comment, the Regulatory Flexibility Act does not apply. Furthermore, because the interim final rule imposes no additional costs on employers or plans, the Department believes that it would not have a significant impact on a substantial number of small entities. Accordingly, the Department believes that no regulatory flexibility analysis would be required in any case under the RFA.

Congressional Review Act Statement

The interim final rule being issued here is subject to the provisions of 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 Congress and the Comptroller General for review. The interim final rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it does not 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.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), the interim final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or impose an annual burden exceeding \$100 million on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires Federal agencies to adhere to specific criteria 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 interim final 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 interim 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.

List of Subjects

29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Investments, Investments foreign, Party in interest, Pensions, Pension and Welfare Benefit Programs Office, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and Trustees.

29 CFR Part 2578

Employee benefit plans, Pensions, Retirement.

■ For the reasons set forth in the preamble, the Department of Labor amends 29 CFR chapter XXV as follows:

Title 29—Labor

Subchapter F—Fiduciary
Responsibility Under the Employee
Retirement Income Security Act of 1974

**PART 2550—RULES AND
REGULATIONS FOR FIDUCIARY
RESPONSIBILITY**

■ 1. The authority citation for part 2550 continues to read as follows:

Authority: 29 U.S.C. 1135; and Secretary of Labor's Order No. 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2550.401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), 3 CFR, 1978 Comp. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), 3 CFR, 1978 Comp. 332. Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404c–1 also issued under 29 U.S.C. 1104. Sec. 2550.407c–3 also issued under 29 U.S.C. 1107. Sec. 2550.404a–2 also issued under 26 U.S.C. 401 note (sec. 657, Pub. L. 107–16, 115 Stat. 38). Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332, Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

■ 2. Amend § 2550.404a–3 by revising (d)(1)(ii), (d)(1)(iii)(C), (d)(2)(ii)(A), (d)(2)(iii), (d)(2)(iv), (d)(3), (e)(1)(iv), (e)(1)(v), (e)(1)(vi) and the appendix to read as follows:

**§ 2550.404a–3 Safe Harbor for
Distributions from Terminated Individual
Account Plans.**

* * * * *
(d) * * *
(1) * * *

(ii) In the case of a distribution on behalf of a designated beneficiary (as defined by section 401(a)(9)(E) of the Code) who is not the surviving spouse of the deceased participant, to an inherited individual retirement plan

(within the meaning of section 402(c)(11) of the Code) established to receive the distribution on behalf of the nonspouse beneficiary; or

(iii) * * *
* * * * *

(C) An individual retirement plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) offered by a financial institution other than the qualified termination administrator to the public at the time of the distribution.

(2) * * *
(ii) * * *

(A) 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 (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section), and

* * * * *

(iii) All fees and expenses attendant to the transferee plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) or account (described in paragraph (d)(1)(iii)(A) of this section), including investments of such plan, (e.g., establishment charges, maintenance fees, investment expenses, termination costs and surrender charges), shall not exceed the fees and expenses charged by the provider of the plan or account for comparable plans or accounts established for reasons other than the receipt of a distribution under this section; and

(iv) The participant or beneficiary on whose behalf the fiduciary makes a distribution shall have the right to enforce the terms of the contractual agreement establishing the plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) or account (described in paragraph (d)(1)(iii)(A) of this section), with regard to his or her

transferred account balance, against the plan or account provider.

(3) Both the fiduciary's selection of a transferee plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) or account (described in paragraph (d)(1)(iii)(A) of this section) and the investment of funds would not result in a prohibited transaction under section 406 of the Act, unless such actions are exempted from the prohibited transaction provisions by a prohibited transaction exemption issued pursuant to section 408(a) of the Act.

(e) * * *
(1) * * *

(iv) A statement explaining that, if a participant or beneficiary fails to make an election within 30 days from receipt of the notice, the plan will distribute the account balance of the participant or beneficiary to an individual retirement plan (i.e., individual retirement account or annuity described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) and the account balance will be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity;

(v) A statement explaining what fees, if any, will be paid from the participant or beneficiary's individual retirement plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section), if such information is known at the time of the furnishing of this notice;

(vi) The name, address and phone number of the individual retirement plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) provider, if such information is known at the time of the furnishing of this notice; and

* * * * *

BILLING CODE 4510–29–P

APPENDIX TO § 2550.404a-3

NOTICE OF PLAN TERMINATION

[Date of notice]

[Name and last known address of plan participant or beneficiary]

Re: [Name of plan]

Dear [Name of plan participant or beneficiary]:

This notice is to inform you that [name of the plan] (the Plan) has been terminated and we are in the process of winding it up.

We have determined that you have an interest in the Plan, either as a plan participant or beneficiary. Your account balance in the Plan on [date] is/was [account balance]. We will be distributing this money as permitted under the terms of the Plan and federal regulations. *{If applicable, insert the following sentence: The actual amount of your distribution may be more or less than the amount stated in this notice depending on investment gains or losses and the administrative cost of terminating your plan and distributing your benefits.}*

Your distribution options under the Plan are *{add a description of the Plan's distribution options}*. It is very important that you elect one of these forms of distribution and inform us of your election. The process for informing us of this election is *{enter a description of the Plan's election process}*.

If you do not make an election within 30 days from your receipt of this notice, your account balance will be transferred directly to an individual retirement plan (inherited individual retirement plan in the case of a nonspouse beneficiary). *{If the name of the provider of the individual retirement plan is known, include the following sentence: The name of the provider of the individual retirement plan is [name, address and phone number of the individual retirement plan provider].}* Pursuant to federal law, your money in the individual retirement plan would then be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. *{If fee information is known, include the following sentence: Should your money be transferred into an individual retirement plan, [name of the financial institution] charges the following fees for its services: {add a statement of fees, if any, that will be paid from the participant or beneficiary's individual retirement plan}.}*

For more information about the termination, your account balance, or distribution options, please contact [name, address, and telephone number of the plan administrator or other appropriate contact person].

Sincerely,
[Name of plan administrator or appropriate designee]

Subchapter G—Administration and Enforcement Under the Employee Retirement Income Security Act of 1974

PART 2578—RULES AND REGULATIONS FOR ABANDONED PLANS

■ 3. The authority citation for part 2578.1 continues to read as follows:

Authority: 29 U.S.C. 1135; 1104(a); 1103(d)(1).

■ 4. Amend § 2578.1 by revising (d)(2)(vi)(A)(5)(ii), (d)(2)(vi)(A)(5)(iii), (d)(2)(vi)(A)(6), (d)(2)(vi)(A)(7), (d)(2)(vi)(A)(8) and Appendix C to read as follows:

§ 2578.1 Termination of Abandoned Individual Account Plans

* * * * *

- (d) * * *
- (2) * * *
- (vi) * * *

(A) * * *

(5) * * *

(ii) To an inherited individual retirement plan described in § 2550.404a-3(d)(1)(ii) of this chapter (in the case of a distribution on behalf of a distributee other than a participant or spouse),

(iii) In any case where the amount to be distributed meets the conditions in § 2550.404a-3(d)(1)(iii), to an interest-bearing federally insured bank account, the unclaimed property fund of the State of the last known address of the participant or beneficiary, or an individual retirement plan (described in § 2550.404a-3(d)(1)(i) or (d)(1)(ii) of this chapter) or

* * * * *

(6) In the case of a distribution to an individual retirement plan (described in § 2550.404a-3(d)(1)(i) or (d)(1)(ii) of this chapter) a statement explaining that the account balance will be invested in an

investment product designed to preserve principal and provide a reasonable rate of return and liquidity;

(7) A statement of the fees, if any, that will be paid from the participant or beneficiary's individual retirement plan (described in § 2550.404a-3(d)(1)(i) or (d)(1)(ii) of this chapter) or other account (described in § 2550.404a-3(d)(1)(iii)(A) of this chapter), if such information is known at the time of the furnishing of this notice;

(8) The name, address and phone number of the provider of the individual retirement plan (described in § 2550.404a-3(d)(1)(i) or (d)(1)(ii) of this chapter), qualified survivor annuity, or other account (described in § 2550.404a-3(d)(1)(iii)(A) of this chapter), if such information is known at the time of the furnishing of this notice; and

* * * * *

APPENDIX C TO § 2578.1

NOTICE OF PLAN TERMINATION

[Date of notice]

[Name and last known address of plan participant or beneficiary]

Re: [Name of plan]

Dear [Name of plan participant or beneficiary]:

We are writing to inform you that the [name of plan] (Plan) has been terminated pursuant to regulations issued by the U.S. Department of Labor. The Plan was terminated because it was abandoned by [name of the plan sponsor].

We have determined that you have an interest in the Plan, either as a plan participant or beneficiary. Your account balance on [date] is/was [account balance]. We will be distributing this money as permitted under the terms of the Plan and federal regulations. The actual amount of your distribution may be more or less than the amount stated in this letter depending on investment gains or losses and the administrative cost of terminating the Plan and distributing your benefits.

Your distribution options under the Plan are {add a description of the Plan's distribution options}. It is very important that you elect one of these forms of distribution and inform us of your election. The process for informing us of this election is {enter a description of the election process established by the qualified termination administrator}.

{Select the next paragraph from options 1 through 3, as appropriate.}

{Option 1: If this notice is for a participant or beneficiary, complete and include the following paragraph provided the account balance does not meet the conditions of §2550.404a-3(d)(1)(iii).}

If you do not make an election within 30 days from your receipt of this notice, your account balance will be transferred directly to an individual retirement plan (inherited individual retirement plan in the case of a nonspouse beneficiary) maintained by {insert the name, address, and phone number of the provider if known, other wise insert the following language [a bank or insurance company or other similar financial institution]}. Pursuant to federal law, your money in the individual retirement plan would then be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. {If fee information is known, include the following sentence: Should your money be transferred into an individual retirement plan, [name of the financial institution] charges the following fees for its services: {add a statement of fees, if any, that will be paid from the participant or beneficiary's individual retirement plan}.}

{Option 2: If this notice is for a participant or beneficiary whose account balance meets the conditions of §2550.404a-3(d)(1)(iii), complete and include the following paragraph.}

If you do not make an election within 30 days from your receipt of this notice, and your account balance is \$1,000 or less, federal law permits us to transfer your balance to an interest-bearing federally insured bank account, to the unclaimed property fund of the State of your last known address, or to an individual retirement plan (inherited individual retirement plan in the case of a nonspouse beneficiary). Pursuant to federal law, your money, if transferred to an individual retirement plan would then be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. *{If known, include the name, address, and telephone number of the financial institution or State fund into which the individual's account balance will be transferred or deposited. If the individual's account balance is to be transferred to a financial institution and fee information is known, include the following sentence: Should your money be transferred into a plan or account, [name of the financial institution] charges the following fees for its services: {add a statement of fees, if any, that will be paid from the individual's account}.}*

{Option 3: If this notice is for a participant or participant's spouse whose distribution is subject to the survivor annuity requirements in sections 401(a)(11) and 417 of the Internal Revenue Code (or section 205 of ERISA), complete and include the following paragraph.}

If you do not make an election within 30 days from your receipt of this notice, your account balance will be distributed in the form of a qualified joint and survivor annuity or qualified preretirement annuity as required by the Internal Revenue Code. *{If the name of the annuity provider is known, include the following sentence: The name of the annuity provider is [name, address and phone number of the provider].}*

For more information about the termination, your account balance, or distribution options, please contact *[name, address, and telephone number of the qualified termination administrator and, if different, the name, address, and telephone number of the appropriate contact person]*.

Sincerely,

[Name of qualified termination administrator or appropriate designee]

Signed at Washington, DC, this 5th day of February, 2007.

Bradford P. Campbell,

*Acting Assistant Secretary, Employee Benefits
Security Administration, Department of
Labor.*

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