

July 16, 2024

Filed Electronically

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: RIN 1210-AC04 – Abandoned Plan Regulations

To Whom it May Concern:

The Investment Company Institute (ICI)¹ hereby submits comments on amendments to the Abandoned Plan Program, published by the Department of Labor (Department) as Interim Final Rules (IFR) on May 17, 2024.² The Department in the IFR indicated that it is seeking public comment to help it evaluate potential further improvements to the rule.

ICI strongly supports efforts to promote retirement security for US workers. As a trade association representing the asset management industry, ICI is especially attuned to the needs of retirement savers because the industry plays a significant role in US retirement saving by making available the investment products through which pension plans, defined contribution (DC) plans and individual retirement accounts (IRAs) invest. Total US retirement assets were \$39.9 trillion as of March 31, 2024, with our members managing a large portion of those assets through regulated funds, collective investment trusts, and separate accounts.

¹ The [Investment Company Institute](http://www.ici.org) (ICI) is the leading association representing the asset management industry in service of individual investors. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage \$35.2 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 100 million investors. Members manage an additional \$9.4 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to certain collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London and carries out its international work through [ICI Global](http://www.ici.org).

² 89 Fed. Reg. 43636 (May 17, 2024).

ICI previously submitted comments to the Department on the Abandoned Plan Program in 2005, 2007, and 2013.³ We appreciate the Department's consideration of these comments. We make recommendations in three areas as to which the IFR requests comments.

- The Pension Benefit Guaranty Corporation's (PBGC) Missing Participants Program for Defined Contribution Plans pursuant to 29 CFR § 4050.201–207 (PBGC Program) should be formally incorporated into the Abandoned Plan Program but should not be a required distribution method.
- The Department should permit the in-kind distribution of Code section 403(b)(7) individual custodial accounts to participants and beneficiaries who do not affirmatively elect a distribution or a direct rollover to an eligible retirement plan.
- The Abandoned Plan Program should not impose an ongoing recordkeeping requirement on QTAs. Rather, it should require (as suggested in the IFR) that a QTA include with its Special Terminal Report for Abandoned Plans (STRAP) information regarding the location of distributions of the accounts of missing participants.

1. The Department Should Formally Include the PBGC Program In the Abandoned Plan Program as a Distribution Option

We recommend the Department formally incorporate the PBGC Program into the Abandoned Plan Program as an available distribution option. We appreciate the Department's issuance of FAB 2021-01, as well as the statement in the preamble to the IFR that the Department is continuing its temporary enforcement policy as reflected in FAB 2021-01. Our members have expressed a strong preference, however, that the policy reflected in FAB 2021-01 be incorporated into any final regulation. Unlike a regulation, which requires a formal process to amend it, a FAB (or, for that matter, a statement of the Department's enforcement policy in the preamble to a regulation) can be changed due to shifting Department positions. Were the Department instead to simply reiterate in the preamble to any future final regulation that the temporary enforcement policy is being continued, we are concerned that this would not accord sufficient permanence to the use of the PBGC Program for institutions to rely on it in structuring their QTA operations.

We also urge the Department to not make the PBGC Program a mandatory or default distribution method for any plans. Our members have indicated that, as a general matter, IRAs are the preferred distribution method for accounts in abandoned plans that belong to missing or non-

³ Letter from David Abbey, Senior Counsel – Pension Regulation, ICI, to Office of Regulations and Interpretations, EBSA, date February 11, 2013 (comment letter on proposed regulation), available at <https://www.ici.org/system/files/attachments/27050.pdf> (“2013 Letter”); Letter from Elena Barone Chism, Assistant Counsel – Pension Regulation, ICI, to Jeffrey Turner, Chief, Division of Regulations, EBSA, dated June 14, 2007, available at <https://www.ici.org/system/files/attachments/27050.pdf> (attachment) (“2007 Letter”); Letter from Thomas T. Kim, Associate Counsel, ICI, to EBSA, dated May 9, 2005, available at <https://www.ici.org/comment-letter/ici-comment-letter-proposed-regulations-orphan-plans-may-2005> (“2005 Letter”).

responsive participants and beneficiaries. IRAs can efficiently and cost-effectively be established for multiple (and sometimes numerous) plan participants in this category, and firms already have systems in place to facilitate transfers of balances to IRA providers. However, it is important that the PBGC Program remain an option as it helps ensure that all participant assets can be transferred. The PBGC Program is of particular use in cases where participant level information is incomplete. For example, while the PBGC Program will accept assets where the QTA is unable to provide a valid Social Security number or last known address information, IRAs and state unclaimed asset programs generally are not available in these cases.

In addition, we recognize that the Department may have concern that a transfer to an IRA provider might be inferior to a transfer to the PBGC Program, by limiting a former participant or beneficiary's ability to search for and locate his or her account—as is possible under the PBGC Program. However, the addition of a requirement to include distribution location information in a QTA's STRAP filing, as we recommend below, should eliminate any such concern as this information could then be searchable on the Department's public website for abandoned plans.

2. The Abandoned Plan Program Should Permit the Distribution of Code Section 403(b)(7) Individual Custodial Accounts

IRS Revenue Ruling 2020-23 implements Section 110 of the SECURE Act, which directed the Secretary of the Treasury to issue guidance providing that, if an employer terminates the plan under which amounts are contributed to a custodial account under subparagraph (A) of section 403(b)(7), the plan administrator or custodian may distribute an individual custodial account (ICA) in kind to a participant or beneficiary of the plan and the distributed custodial account shall be maintained by the custodian on a tax-deferred basis as an individually-registered section 403(b)(7) custodial account that is no longer linked to the abandoned employer plan, similar to the treatment of fully-paid individual annuity contracts under Revenue Ruling 2011-7, until amounts are actually paid to the participant or beneficiary. Section 110 addressed a concern as to how one can complete the termination of a 403(b) plan when the plan includes ICAs, where neither the custodian nor the sponsoring employer has the authority or desire to force participants to take distributions. This lack of authority is based on the terms of the ICAs, which may not permit distribution other than as directed by a participant or beneficiary. This scenario can arise where the participant is missing, or where the participant is either unresponsive or unwilling to liquidate or move assets.

We recommend the Department permit the in-kind distribution of Code section 403(b)(7) individual custodial accounts (in a manner consistent with Revenue Ruling 2020-23) to participants and beneficiaries who do not affirmatively elect a distribution or a direct rollover to an eligible retirement plan. This approach will ensure appropriate tax treatment of the ICA, while facilitating the efficient termination of abandoned, ERISA-governed 403(b) plans holding ICAs. To ensure consistency with the Revenue Ruling, we recommend the Department confirm with the Department of Treasury and the Internal Revenue Service that termination of an abandoned 403(b) plan by a QTA would meet the requirements of Revenue Ruling 2020-23 and 26 CFR § 1.403(b)-10.

3. The Final Regulation Should Provide that Including Distribution Information in the STRAP Satisfies a QTA's Recordkeeping Obligations

The IFR asks whether the final regulation should include a provision to explicitly require either that QTAs “maintain records regarding the location of distributions of the accounts of missing participants,” or that this information be included in STRAP.⁴ Our members have indicated that including this information in the STRAP is a preferred option. Including these records in the STRAP will provide a central repository (the Department) for the location of all QTA distributions, helping ensure their future availability should any questions arise.

Along with including any such records in the STRAP, any final regulation also should make the following clear. First, the QTA's obligation to provide (and any attendant liability for not providing) information for the STRAP should not extend to any information not readily available to the QTA. As the Department is aware, abandoned plans do not necessarily come with comprehensive participant level information. Were a QTA required to reconstruct information not readily available, it would both materially increase costs for the QTA and risk significant delays in making funds available for use by plan participants. Any attendant liability for incomplete plan records should properly rest with the plan's fiduciary, which was responsible for maintaining this information in the first instance. Second, once the QTA has submitted the STRAP the QTA should have no ongoing recordkeeping obligations as QTA and no obligation to provide additional information.

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We appreciate the Department's consideration of our recommendations. If you have any questions, please do not hesitate to contact Elena Chism at 202/326-5821 (elena.chism@ici.org) or David Cohen at 202/326-5361 (david.cohen@ici.org).

Sincerely,

/s/ Elena Chism

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⁴ 89 Fed. Reg. at 43645.