

OVERVIEW OF ABANDONED PLANS

AUTOMATIC ROLLOVER PROGRAM

DOL RULES FOR ABANDONED PLANS

The Department of Labor (DOL) has developed a new set of rules that are a response to the growing number of “orphaned” defined contribution plans. The DOL recognized that significant business events, such as bankruptcies, mergers, acquisitions and other similar transactions affecting the status of an employer, too often result in employers, particularly small employers, abandoning their retirement plans (e.g., 401(k) plans).

When a defined contribution plan is orphaned, or abandoned, financial service providers such as custodians, banks, insurers, mutual fund companies, etc. are left holding the assets of these abandoned plans. These organizations do not have the authority to terminate such plans, nor can they make benefit distributions even in response to participant demands.

The Employee Benefits Security Administration (EBSA) developed rules to provide for a voluntary, safe and efficient process for winding up the affairs of abandoned individual account plans so that benefit distributions can be made.

Highlights of the DOL rules include:

- What qualifies as an Abandoned Plan
- Who can serve as a Qualified Termination Administrator
- Termination procedures and model notices for orphaned plans
- Reduced Form 5500 Reporting Regulations
- “Safe Harbor” rules for rolling over accounts in terminated plans
- Mechanisms for paying plan expenses

QUALIFIED TERMINATION ADMINISTRATOR

The regulations provide that a Qualified Termination Administrator (QTA) may determine whether a plan is abandoned under the regulations. A QTA is an eligible IRA custodian, such as a bank, trust company, broker dealer or insurance company. Specifically, an entity must hold the plan’s assets and be eligible as a trustee or issuer of an individual retirement plan under the Internal Revenue Code.

ABANDONED PLAN

A plan generally will be considered abandoned if no contributions to or distributions from the plan have been made for a period of at least 12 consecutive months and it is determined that the sponsor no longer exists, cannot be located, or is unable to maintain the plan. The QTA can also rely on other information, such as a bankruptcy filing.

TERMINATION AND WINDING-UP PROCESS

After it is determined that the plan is abandoned, the QTA then sends the first notice to the Plan Sponsor, the “Notice of Intent to Terminate the Plan”. This notice provides the Plan Sponsor with 30 days to object to the termination of the plan.

After the 30 day period the QTA provides the Department of Labor with a notice of abandonment, “Notification of Plan Abandonment”. Unless the QTA hears from the DOL, the plan will be deemed to have been terminated 90 days after the Notice of Plan Abandonment has been filed with the DOL.

The regulations establish specific procedures that QTAs must follow in the termination and winding-up process, including:

- Notifying EBSA prior to, and after, terminating and winding up a plan
- Locating and updating plan records
- Identifying and retaining service providers
- Paying expenses
- Calculating benefits payable to participants and beneficiaries
- Notifying participants and beneficiaries of the termination, their rights and options
- Distributing benefits to participants and beneficiaries
- Filing a summary special terminal report
- A QTA is not required to amend a plan to accommodate the termination
- A QTA is not required to collect delinquent contributions, but is required to notify the DOL of their existence

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DEPARTMENT OF LABOR MODEL NOTICES

The regulations include model notices that the QTA may use to establish a fiduciary safe harbor for distributions from terminating individual account plans (whether or not abandoned) on behalf of missing participants.

- Notice of Intent to Terminate Plan – This notice is used to inform a plan sponsor of a proposed termination, pursuant to § 2578.1(b)(5).
- Notice of Plan Abandonment and Intent to Serve as QTA – This notice is used to inform EBSA that a party has stepped forward and elects to serve as a qualified termination administrator for a particular plan, pursuant to § 2578.1(c)(3).
- Notice of Plan Termination – This notice is used to inform participants and beneficiaries of the termination, pursuant to § 2578.1(d)(2)(vi).
- Final Notice – This notice is filed with the EBSA informing the DOL that the termination process has been completed and that all benefits have been distributed, pursuant to § 2578.1(d)(2)(ix).

The Department of Labor also provides the specific instructions for QTAs in the Special Terminal Report Instructions for Abandoned Plans. This report outlines specific reporting requirements set forth in § 2520.103-13. The regulations do not require the filing of Form 5500, although the Form 5500 itself can be used to file the Special Terminal Report.

ROLLOVER OF ACCOUNTS

The abandoned plan regulations are based on those relied upon to terminate plans in general. The rules allow the rollover of a balance into an IRA. The rules are basically the same as those which allow the mandatory distribution automatic rollover safe harbor, except for the fact that any account can be rolled over regardless of size.

FEES AND EXPENSES

Accompanying the regulations is a class exemption that provides conditional relief from ERISA's prohibited transaction restrictions. The exemption covers transactions where the QTA selects and pays itself for services rendered prior to becoming a QTA, and to provide services in connection with terminating and winding up an abandoned plan. This includes the transfer of distributions from abandoned plans to IRAs or other accounts maintained by the QTA.



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COMPANY PROFILE

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