



TERMINATING PLANS

AUTOMATIC ROLLOVER IRAS MAKE RETIREMENT PLAN ADMINISTRATION EASIER WHEN COMPANIES TERMINATE QUALIFIED PLANS

There are circumstances — mergers, acquisitions, and bankruptcies, among others—that cause companies to reevaluate and, in some cases, terminate their qualified retirement plans.

Terminating a plan is a business decision, not a fiduciary decision. A company is not acting in a fiduciary capacity when it determines the future of its qualified plan(s). However, once it decides to terminate its plan, the plan's administrator or, in some instances, another party, dons the fiduciary hat and proceeds to terminate the plan while acting on behalf and in the best interests of plan participants.¹

For terminating plans, one of the fiduciary's most important responsibilities is simply to let participants know the plan is terminating and how the plan will be distributing benefits. The plan administrator must notify all plan participants of the changes that are taking place, and receive distribution instructions from participants before initiating any distributions. It sounds like a straightforward task. Often, it is not.

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SUMMARY OF CONCLUSIONS

The Missing Participant Dilemma

- When plans attempt to communicate with participants, they often discover that they cannot reach many of them.
- One expert has suggested that 10 percent to 15 percent of a typical plan's data is outdated or of poor quality, making it difficult to contact all participants.
- The Department of Labor has outlined the steps that must be taken by plan administrators to find missing or non-responsive participant.

The Preferred Choice: IRA Rollovers

- One reason, IRA rollovers may be a preferred distribution option is because state escheatment laws can make non-responsive account holder's assets likely to be claimed by the state.
- The DOL safe harbor for automatic rollover IRAs provides a way for plan sponsors to reduce plan costs, simplify plan administration, and preserve missing participants' retirement savings while minimizing the plan's fiduciary liability.

Choose Your IRA Custodian Carefully

- Choosing an IRA custodian requires the exercise of fiduciary judgment.
- Selecting the initial investment for the IRA is also a fiduciary duty.

THE MISSING PARTICIPANT DILEMMA

When plans attempt to communicate with participants, they often discover that they cannot reach many of them. There are various reasons a participant can be unreachable (the industry refers to this as being 'missing' or 'non-responsive'). A non-responsive participant may be a former employee who has changed residence or marital status and failed to notify the plan, for example. One expert has suggested that

CONTENTS

02	SUMMARY OF CONCLUSIONS
03	THE MISSING PARTICIPANT DILEMMA
04	THE PREFERRED CHOICE: IRA ROLLOVERS
05	Bankruptcies
06	Abandoned Plans
07	Choose Your IRA Custodian Carefully
07	A Solution That Makes Sense
08	REFERENCES

10 percent to 15 percent of a typical plan's data is outdated or of poor quality, making it difficult to contact all participants.²

When participants are missing or non-responsive, steps must be taken to find them. Department of Labor (DOL) issued Field Assistance Bulletin (FAB) 2014-01 updated guidance for locating participants of terminating defined contribution plans. At a minimum, plan administrators must:³

- Send notices by certified mail
- Check other plan and employer records for the participant
- Contact the participant's designated beneficiary
- Use free electronic search tools

After a plan administrator exhausts these options for finding missing participants, the accounts can be rolled over into individual retirement accounts (IRAs), interest-bearing bank accounts, or a state's unclaimed property fund.

THE PREFERRED CHOICE: IRA ROLLOVERS

One reason, IRA rollovers may be a preferred distribution option is because state escheatment laws can make non-responsive account holder's assets likely to be claimed by the state. Also, IRA rollovers are more likely to preserve former participants' assets than any other option because the assets remain tax-deferred, and any earnings continue to grow tax-deferred.

Rollovers appeal to many plan sponsors, as well, because the DOL safe harbor for automatic rollover IRAs provides a way for them to reduce plan costs, simplify plan administration, and preserve missing participants' retirement savings while minimizing the plan's fiduciary liability. Here are a few examples of the ways in which IRA rollovers can make plan administration easier when companies terminate qualified plans.

Mergers & Acquisitions

The PWC 2015 U.S. CEO Survey found that chief executive officers are "fast-tracking alliances to create value that a single company cannot achieve on its own." Fifty-four percent of CEOs planned to complete a merger or acquisition during 2015.

That may explain why merger and acquisition activity has been so robust. Through May 31, 2015, there were more than 4,600 mergers and acquisitions valued at about \$875 billion. That's a nine percent increase over 2014.⁴

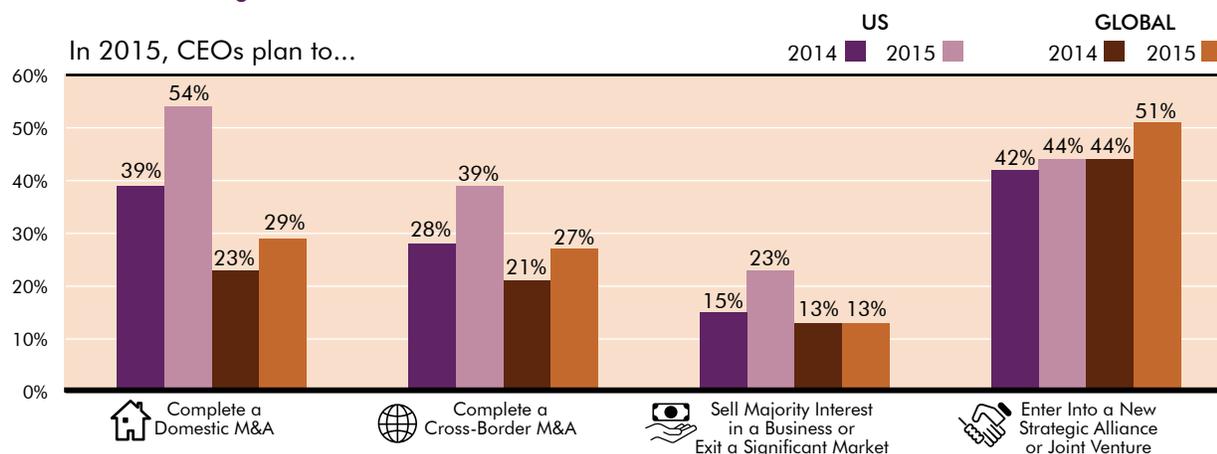
A critical aspect of any merger or acquisition is analyzing and deciding how to manage qualified retirement plans. Practical Law reported, "Typically the structure of the transaction will determine what approach the parties take regarding their qualified retirement plans and associated liabilities. However, there are certain circumstances where the liabilities or obligations associated with these plans are so great that their existence determines the structure of the deal."⁷

In general, the acquiring company's transition team works with their ERISA counsel to:

- Conduct due diligence
- Review existing plan benefits
- Develop an overall benefits strategy
- Form a transition team that includes internal contacts and plan service providers
- Communicate and execute the transition

Plan design, liabilities, protected benefits, and other issues may lead to a strategic decision to terminate a

US CEOs Plan on Being Active, if Not the Most Active, Dealmakers



Q: Which of the following restructuring activities do you plan to initiate in the coming 12 months?
 Base: 1,322 CEOs globally and 103 US CEOs (2015); 1,344 CEOs globally and 162 US CEOs (2014).
 Source: PwC, 2015 US CEO Survey, January 2015. ©2015 PwC. All rights reserved.

“Typically the structure of the transaction will determine what approach the parties take regarding their qualified retirement plans and associated liabilities. However, there are certain circumstances where the liabilities or obligations associated with these plans are so great that their existence determines the structure of the deal.”

target company’s qualified plan(s), partially or in their entirety. Because it might not be possible to terminate a plan after a deal closes, experts recommend terminating the plan in advance.⁸

Clearly, having the option to rollover missing and non-responsive participants’ assets into IRAs could prove critical if a merger or acquisition is to proceed apace.

Bankruptcies

The number of Chapter 11 bankruptcies, which are business reorganizations, and the number of Chapter 7 bankruptcies, which are business liquidations, have fallen consistently during the past five years. That’s

good news for plan participants. While a Chapter 11 bankruptcy might not affect a company’s qualified plans, Chapter 7 bankruptcies result in companies liquidating their assets and ceasing to exist. The result is the termination or, in some unfortunate cases, the abandonment of qualified retirement plans.

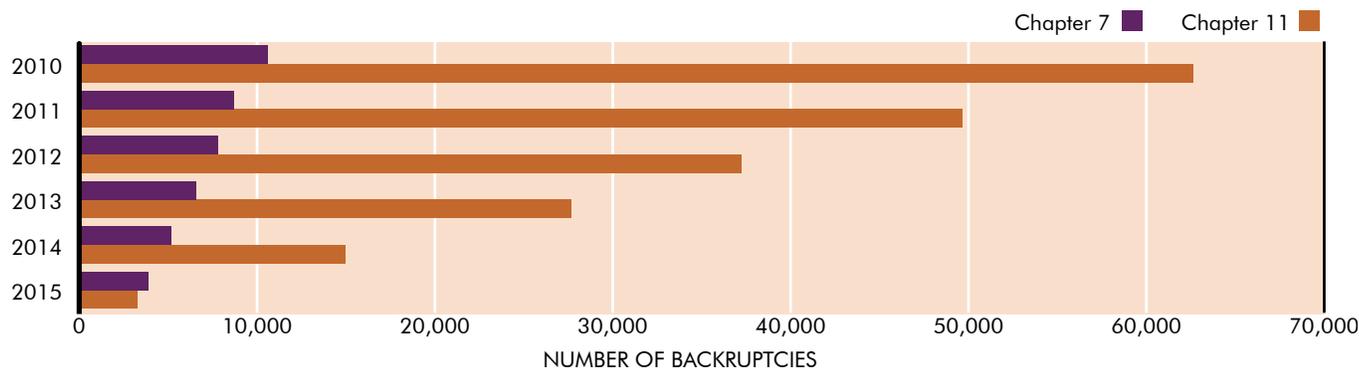
A qualified retirement plan maintained by a bankrupt company falls under the purview of a panel trustee. The panel trustee, often a bankruptcy attorney or accountant, has fiduciary responsibility and is responsible for performing as a plan administrator would—in the best interests of participants.⁹

Whether they try to go it alone or rely on a plan’s service providers, panel trustees remain responsible for the providers’ performance and their fees. Therefore, it is essential that panel trustees have a good understanding of the plan’s termination and distribution process.

The issue of missing participants may be exaggerated in companies that declare bankruptcy. Bankruptcy announcements often are accompanied by cost-cutting measures, including layoffs. While some employees receive pink slips, others may decide to retire or seek employment elsewhere. If human resources staffers, who may be most familiar with the company’s qualified plans, are among those who leave, matters can become even more complicated.

The Number of Corporate Bankruptcies has Fallen During the Past Five Years

Source: Epiq Systems



Improper compliance with plan fiduciary responsibilities, even for ex-employees' plan accounts, carries legal and financial risk. Cases like *LaRue v. DeWolff, Boberg & Associates*, 552 U.S. 248 (U.S. 2008), established the right for plan participants to sue plan sponsors if they think their retirement account has been mismanaged. Therefore, companies must diligently follow ERISA requirements, even for former employees' balances.

One solution to the problem of missing or non-responsive plan participants is to implement an automatic IRA rollover process. This may have significant financial benefits for the bankrupt company, improve the chances of participants being reunited with their assets (especially, if the alternative is plan abandonment), and allow the plan trustee to complete a plan termination within the parameters of its fiduciary duties.

Abandoned Plans

Sometimes, qualified retirement plans are left without plan sponsors or administrators. It may happen when a sole proprietor passes away, or a company ceases to exist. No matter the reason, a plan is deemed to be legally abandoned if there have been no deposits or distributions for 12 consecutive months.

It is difficult to quantify exactly how many abandoned

IRA rollovers are an invaluable part of many qualified retirement plan termination processes. They make it possible for plan fiduciaries to preserve missing and non-responsive participants' plan assets in tax-advantaged accounts.

plans there are in the United States. The most recent data from the U.S. Department of Labor (DOL) indicates that, during 2013, there were about 40 million inactive participants in all types of pension plans. While not all inactive participants are part of an abandoned plan, a significant percentage may be.¹⁰

When a plan has been abandoned, it is very difficult for participants to access their assets. In an effort to reunite participants with their money, the DOL passed regulations making it possible for the custodian of an abandoned plan's assets (a bank, trust company, mutual fund company, or insurance firm) to become a Qualified Termination Administrator (QTA), determine whether a plan has been abandoned, and take steps to terminate the plan. These include:¹¹

2013 Snapshot: U.S. Private Pension System

TYPE OF PLAN ⁵	Number of Plans	Total Participants (thousands)	Active Participants (thousands)	Inactive Participants (thousands)	Total Assets ⁶ (millions)
ALL PENSION PLANS	681,000	132,000	92,000	40,000	\$7,900,000
DC PLANS	637,000	92,500	77,000	15,500	\$5,000,000
401(K) PLANS	527,000	77,000	65,000	12,000	\$4,000,000

Source: U.S. Department of Labor

- Notifying EBSA before, and after, terminating and winding up a plan.
- Locating and updating plan records.
- 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 terminal report.

In our opinion, relatively few asset custodians have welcomed the opportunity to become QTAs because they have not wanted to become plan fiduciaries and accept the liabilities that accompany fiduciary responsibility.¹² For those custodians who do become QTAs, IRA rollovers may be an invaluable option. QTA regulations allow missing participants' assets to be transferred to an IRA.

CHOOSE YOUR IRA CUSTODIAN CAREFULLY

Plan sponsors and other fiduciaries must exercise

caution when choosing an IRA provider. According to FAB 2014-01, "the choice of an individual retirement plan requires the exercise of fiduciary judgment with respect to the choice of an individual retirement plan trustee, custodian or issuer to receive the distribution, as well as the choice of an initial investment in the individual retirement plan."

Before selecting a custodian, plan sponsors or trustees may want to ask a question specific to their business circumstances. These questions may include:

- Is there an account minimum?
- How many rollover accounts can your firm accommodate?
- Do you continue to seek missing participants? How do you do it?
- Will you accept rollovers from Roth 401(k) plans or allow Roth conversions?
- What transfer and administration technology do you employ?
- What is your experience with automatic rollovers?



A SOLUTION THAT MAKES SENSE

IRA rollovers are an invaluable part of many qualified retirement plan termination processes. They make it possible for plan fiduciaries to preserve missing and non-responsive participants' plan assets in tax-advantaged accounts. In addition, they make it possible

for plan sponsors to successfully terminate qualified plans before a merger or acquisition is completed, panel trustees to efficiently administer plan terminations as part of bankruptcy proceedings, and QTAs to complete abandoned plan terminations.



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About Millennium Trust Company

Founded in 2000, Millennium Trust Company celebrates 15 years of providing its clients with innovative and cutting-edge custody solutions. Millennium Trust is a leading financial services company offering niche alternative custody solutions to institutions, advisors and individuals. We serve as a complement to services offered by other custodians. Millennium's innovative solutions include rollover solutions, alternative asset custody, private fund custody and advisor support solutions.

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