

Fact Sheet

U.S. Department of Labor

Employee Benefits Security Administration

March 2005

Abandoned Individual Account Plan Proposed Regulations and Class Exemption

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 individual account pension plans (e.g., 401(k) plans). When this happens, custodians such as banks, insurers, mutual fund companies, etc. are left holding the assets of these abandoned plans but do not have the authority to terminate such plans and make benefit distributions. Participants and beneficiaries are left with no ability to access the benefits they have earned. In response, the Labor Department's Employee Benefits Security Administration (EBSA) has proposed rules to facilitate a voluntary, safe and efficient process for winding up the affairs of abandoned individual account plans, so that benefit distributions are made to participants and beneficiaries.

Overview of Proposed Regulations

- The proposed regulations establish standards for determining when a plan is abandoned, simplified procedures for winding up the affairs of the plan and distributing benefits to participants and beneficiaries, and guidance on who may initiate and carry out the winding-up process.

Plan Abandonment

- A plan generally will be considered abandoned under the proposal if no contributions to or distributions from the plan have been made for a period of at least 12 consecutive months and, following reasonable efforts to locate the plan sponsor, it is determined that the sponsor no longer exists, cannot be located, or is unable to maintain the plan.

Determinations of Abandonment

- Only a qualified termination administrator (QTA) may determine whether a plan is abandoned under the proposal. To be a QTA, 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 (e.g., bank, trust company, mutual fund family, or insurance company).

Termination and Winding-Up Process

- The regulations establish specific procedures that QTAs must follow, including:
 - Notifying EBSA prior to, 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 and their rights and options
 - Distributing benefits to participants and beneficiaries
 - Filing a summary terminal report
- A QTA is not required to amend a plan to accommodate the termination.

- The rules include model notices that the QTA may use.

Rollover Safe Harbor for Missing Participants

- The regulations establish a fiduciary safe harbor for the investment of rollover distributions from terminated plans to IRAs for missing participants.

Fiduciary Liability and Annual Reporting Relief

- QTAs that follow the regulation will be considered to have satisfied the prudence requirements of ERISA with respect to winding-up activities.
- The regulation provides annual reporting relief, under which QTAs are not responsible for filing a Form 5500 Annual Report on behalf of an abandoned plan, either in the terminating year or any previous plan years; but the QTA must complete and file a summary terminal report at the end of the winding-up process.

Proposed Class Exemption

- Accompanying the proposed regulations is a proposed class exemption that would provide conditional relief from ERISA's prohibited transaction restrictions.
- The proposal would cover transactions where the QTA selects and pays itself to provide services in connection with terminating an abandoned plan, and for selecting and paying itself in connection with rollovers from abandoned plans to IRAs maintained by the QTA, including payment of investment fees as a result of the investment of the IRA's assets in a proprietary investment product.

Contact Information

Any questions about the proposed regulation, contact EBSA's Office of Regulations and Interpretations at (202) 693-8500. Questions about the proposed exemption, contact EBSA's Office of Exemption Determinations at (202) 693-8540.