

Fact Sheet



U.S. Department of Labor
Employee Benefits Security Administration
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Proposed Amendments to Abandoned Plan Program

The Department is proposing to expand the Abandoned Plan Program to assist bankruptcy trustees in distributing assets from bankrupt companies' individual account retirement plans. Bankruptcy trustees would be able to use the Program's streamlined plan termination and benefit distribution procedures. By extending the Program to plans of companies in Chapter 7 bankruptcy, the proposal would enable bankruptcy trustees to better discharge their fiduciary obligations, distribute retirement benefits to participants more quickly and efficiently, and decrease the likelihood that participants' accounts would be reduced by excessive and unnecessary fees.

I. Background

The Employee Benefits Security Administration (EBSA) is responsible for administering and enforcing the fiduciary, reporting, and disclosure provisions of Title I of ERISA. The agency oversees approximately 707,000 private pension plans, including 512,000 participant-directed individual account plans, such as 401(k)-type plans.

Significant business events, such as bankruptcies, mergers, and acquisitions, sometimes result in employers, particularly small employers, abandoning their individual account pension plans (e.g., 401(k) plans). When this happens, the plans' custodians, such as banks, insurers, and mutual fund companies, are left holding the assets of these abandoned plans but lack authority to terminate such plans and make benefit distributions – even in response to participant demands. In these situations, participants and beneficiaries have great difficulty accessing the benefits they have earned.

In 2006, EBSA established the Abandoned Plan Program (Program) to address this problem. The Program consists of three regulations (29 CFR 2578.1; 29 CFR 2550.404a-3; and 29 CFR 2520.103-13) and a class exemption (PTE 2006-06), which provide standards for determining when a plan is abandoned, simplified procedures for winding up the plan and distributing benefits to participants and beneficiaries, and guidance on who may initiate and carry out the winding-up process. As currently in effect, the Program only applies to financial institutions holding assets of the plans abandoned by their sponsors. The proposed amendments would allow bankruptcy trustees to use the Program. Bankruptcy trustees under Federal Bankruptcy law often must assume the duties of the plan administrator for plans of companies in Chapter 7 bankruptcy.

II. Current Abandoned Plan Program

Plan Abandonment

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, 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 Program. 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 Program establishes specific procedures that QTAs must follow, including:

1. Determining whether the plan in fact is abandoned.
2. Notifying EBSA of the abandonment prior to termination and winding up of the plan.
3. Winding up the 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.
4. Notifying EBSA after winding up the plan and filing a summary terminal report.

The QTA may receive reasonable compensation for its services.

A QTA is not required to amend a plan to accommodate the termination.

The Program includes model notices that the QTA may use.

Distribution Safe Harbor for Missing Participants

The Program establishes a fiduciary safe harbor for distributions from terminating individual account plans (whether or not abandoned) on behalf of missing participants. In most cases, the account of a missing participant will be transferred directly to an individual retirement plan. In some cases, accounts of \$1,000 or less may be distributed to a bank account or state unclaimed property fund on behalf of the missing participant.

Fiduciary Liability

QTAs that follow the Program will be considered generally to have satisfied the prudence requirements of ERISA with respect to winding-up activities.

A QTA does not have an obligation to conduct an inquiry or review to determine whether or what breaches of fiduciary responsibility may have occurred with respect to a plan prior to becoming the QTA for such plan.

A QTA is not required to collect delinquent contributions on behalf of the plan, provided that the QTA informs EBSA of known delinquencies.

Since more than one entity may be holding assets of a plan, the regulations provide a safe harbor for other asset custodians who cooperate with the QTA.

Annual Reporting Relief

The Program 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. Instructions

on how to file the summary terminal report are available under the Abandoned Plan Program section of EBSA's Web site at www.dol.gov/ebsa.

Class Exemption

The Program includes a class exemption that provides conditional relief from ERISA's prohibited transaction restrictions. The exemption permits the QTA to select and pay itself:

- For services provided prior to becoming a QTA.
- For services provided in connection with terminating and winding up an abandoned plan.
- For distributions from an abandoned plan to IRAs or other accounts maintained by the QTA upon a participant's failure to provide direction.

Administration

The Program is administered by EBSA national and regional offices.

III. Expanding the Program to Cover Chapter 7 Plans

The proposed amendments expand the current Program to plans of companies that are in liquidation under Chapter 7 of the U.S. Bankruptcy Code ("Chapter 7 plans"). A few changes to the Program are needed to reflect differences between these plans and other plans abandoned by their sponsors. The primary changes are:

- A Chapter 7 plan would be considered "abandoned" on the date the plan sponsor's bankruptcy proceeding commences (i.e., when a bankruptcy court enters an order for relief pursuant to the U.S. Bankruptcy Code).
- The bankruptcy trustee may terminate and wind up the plan himself or appoint an eligible designee (i.e., a financial institution holding the plan's assets to assume these duties). The bankruptcy trustee retains a duty to monitor the eligible designee, for which the trustee may be compensated.
- A bankruptcy trustee (or eligible designee based on information provided by the bankruptcy trustee) would have to determine whether it makes economic sense to collect delinquent contributions (e.g., whether the plan would collect more than it costs to collect the delinquencies) and would have a duty to attempt to collect the delinquencies if it makes sense financially to do so.
- A bankruptcy trustee (or eligible designee) would have to report any activity he or she believes may be evidence of other fiduciary breaches that involve plan assets by a prior plan fiduciary (e.g., embezzlement).