

Fact Sheet



U.S. Department of Labor
Employee Benefits Security Administration
Updated May 2024

Abandoned Individual Account Plan Regulations and Class Exemption

Significant business events—such as bankruptcies, mergers, and acquisitions—too often result in employers, particularly small employers, abandoning the retirement plans they sponsored for their employees. Generally speaking, an abandoned plan is a plan without a responsible plan sponsor or plan administrator.

When a plan is abandoned, custodians may be left holding its assets. But these custodians, such as banks, insurers, and mutual fund companies, generally do not have the authority to terminate the plans and make benefit distributions – even in response to participant demands. This means that plan participants and beneficiaries have great difficulty accessing the retirement benefits they have earned.

In 2006, the Department of Labor’s Employee Benefits Security Administration (EBSA) adopted the Abandoned Plan Program to help custodians efficiently wind up the affairs of abandoned individual account plans so that benefit distributions are made to participants and beneficiaries.

In 2024, the Department amended the Abandoned Plan Program to make it available to Chapter 7 bankruptcy trustees who administer a bankrupt company’s plan. Under federal bankruptcy law, if a company in liquidation administered an individual account retirement plan such as a 401(k) plan, the company’s Chapter 7 bankruptcy trustee must continue to perform plan administration functions.

These amendments are effective July 16, 2024, and may be relied upon by Chapter 7 bankruptcy trustees on or after that date. The Department is seeking additional comments on these amendments, through July 16, 2024.

This Fact Sheet provides information on the Abandoned Plan Program, as amended, and the associated prohibited transaction exemption, PTE 2006-06. Additional information about the program is available here: [Abandoned Plans | U.S. Department of Labor \(dol.gov\)](https://www.dol.gov/ebsa/abandoned-plans).

Overview of the Abandoned Plan Program Regulations

The Abandoned Plan Program regulations:

- establish standards for determining when a plan is abandoned,
- create simplified procedures for winding up the plan and distributing benefits, and
- provide guidance on who may initiate and carry out the winding-up process.

This overview describes the general rules for terminating abandoned plans and the special rules for terminating plans whose sponsor is in Chapter 7 bankruptcy.

General Rules

These rules generally apply to many abandoned plan situations. However, some of the rules are different for Chapter 7 bankruptcy cases. See the **Special Rules** section below for details.

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.

Determination of Abandonment: Only a qualified termination administrator (QTA) may determine whether a plan is abandoned under the regulations. 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 (for example, a 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 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; and
- filing a summary terminal report.

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

The regulations include model notices that the QTA may use.

Fiduciary Liability: QTAs that follow the regulations will generally be considered to have satisfied the prudence requirements of the Employee Retirement Income Security Act (ERISA) with respect to the plan's winding-up activities.

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

A QTA is also not required to collect delinquent contributions on the plan's behalf, as long as the QTA informs EBSA of known delinquencies.

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

Distribution Safe Harbor for Missing Participants: The regulations establish a fiduciary safe harbor for distributions from terminating individual account plans (abandoned or not) on behalf of missing participants.

Under the Abandoned Plan Program, a missing participant's account can be transferred directly to an individual retirement plan. In some cases, a missing participant's account may be distributed to a bank account or state unclaimed property fund to facilitate the abandoned plan's termination and winding up.

The Department is continuing its temporary enforcement policy under which it will not pursue violations of ERISA section 404(a) against QTAs when a missing or non-responsive participant's or beneficiary's account balance is transferred to the Pension Benefit Guaranty Corporation's Missing Participants Program for Defined Contribution Plans, instead of an IRA, bank account, or state unclaimed property fund.¹

Annual Reporting Relief: The regulations also provide annual reporting relief. QTAs do not have to file a Form 5500 Annual Report on an abandoned plan's behalf, either in the terminating year or any previous plan years. However, the QTA must file a special terminal report at the end of the winding-up process.

Instructions on how to file the special terminal report are available under the Abandoned Plan Program section of EBSA's website at [Abandoned Plans | U.S. Department of Labor \(dol.gov\)](https://www.dol.gov/ebsa/abandoned-plans).

Special Rules for Retirement Plans of Sponsors in Chapter 7 Bankruptcy

Plan Abandonment: In the case of a plan whose sponsor is in Chapter 7 bankruptcy, a pension plan is considered "abandoned" when a bankruptcy court enters an order for relief in the plan sponsor's Chapter 7 case.

QTA: The Chapter 7 bankruptcy trustee or an "eligible designee" may be the QTA and receive the limited relief from ERISA's fiduciary liability provisions.

Eligible designee: An eligible designee can be either:

- a custodian QTA (an entity that holds the plan's assets and is eligible as a trustee or issuer of an individual retirement plan under the Internal Revenue Code), or
- an independent bankruptcy trustee practitioner (a person other than the bankruptcy trustee of the plan sponsor's case who, within the previous 5 years, has served as a bankruptcy trustee in a chapter 7 bankruptcy case).

Termination and Winding-Up Process: The bankruptcy trustee's responsibilities as a QTA are the generally same as those described above in the General Rules with certain different obligations described here.

- The bankruptcy trustee must make reasonable and diligent efforts to determine whether the plan is owed any contributions (employer or employee) and the amount that is owed.
- If the bankruptcy trustee determines that the delinquent contributions are greater than a de minimis amount,² the bankruptcy trustee must appoint an eligible designee to terminate and wind

¹ See Field Assistance Bulletin 2021-01, available at [http://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-01](https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-01).

² A de minimis amount is defined as \$2,000 or less or any amount greater than \$2,000 if the property from which to collect delinquent contributions is equal to or less than \$2,000.

up the plan. The eligible designee must take reasonable steps to collect the delinquent contributions on the plan’s behalf.

- The bankruptcy trustee is responsible for selecting and monitoring the eligible designee in accordance with ERISA’s fiduciary duties.
- The bankruptcy trustee must report to the Department any activity that the bankruptcy trustee believes may be evidence of a fiduciary breach involving plan assets by a prior plan fiduciary.

Class Exemption

In connection with the regulations, the Department granted a class exemption, PTE 2006-06, that provides conditional relief from ERISA’s prohibited transaction restrictions for QTAs. In 2024, the Department amended PTE 2006-06 to provide relief for QTAs that are bankruptcy trustees and their eligible designees.

The exemption covers transactions where the QTA selects and pays itself:

- for services rendered prior to becoming a QTA,
- for services in connection with terminating and winding up an abandoned plan, and
- for distributions from abandoned plans to IRAs or other accounts maintained by a custodian QTA resulting from a participant’s failure to provide direction.

The exemption amendments are effective July 16, 2024 and—like the Abandoned Plan Program regulation amendments—may be relied upon by Chapter 7 bankruptcy trustees on or after that date.

Online Filing System

The amendments also announce a new optional online method to submit required notices to the Department. The Department will issue a press release when the online system becomes available.

Administration

EBSA’s national and regional offices will administer the Abandoned Plan Program.

Notifications under the program should be sent via one of the following methods, if not sent through the online filing system.

Email	Mail
qtanotices@dol.gov	Abandoned Plan Coordinator U.S. Department of Labor Employee Benefits Security Administration Office of Enforcement 200 Constitution Avenue, NW, Suite N-5671 Washington, DC 20210

Contact Information

For more information about ...	Contact:
The Abandoned Plan Program	EBSA 1-866-444-3272
The regulations	EBSA's Office of Regulations and Interpretations (202) 693-8500
The class exemption	EBSA's Office of Exemption Determinations (202) 693-8540

This fact sheet has been developed by the U.S. Department of Labor, Employee Benefits Security Administration, Washington, DC 20210. It will be made available in alternate format upon request: Voice telephone: (202) 693-8664; TTY: (202) 501-3911. In addition, the information in this fact sheet constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.