Plan Termination

This section contains information on the requirements needed to terminate your plan, should that become necessary. This section also provides a detailed description of your role, as well as that of the plan participant and the ABA Retirement Funds program (the Program).

In This Section

<table>
<thead>
<tr>
<th>In This Section</th>
<th>See Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>FAQs</td>
<td>135</td>
</tr>
<tr>
<td>Participants’ Rights</td>
<td>137</td>
</tr>
<tr>
<td>Filing and Letters</td>
<td>138</td>
</tr>
</tbody>
</table>
## Highlights

In the chart below you will find the steps to terminate your plan.

<table>
<thead>
<tr>
<th>Steps for Terminating the Plan</th>
<th>Plan Participant’s Role</th>
<th>Plan Administrator’s Role</th>
<th>The Program’s Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Determine if plan is terminating</td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>2. Notify the Program in writing</td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>3. Distribute 204(h) notice to participants (for money purchase pension or target benefit plans)</td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>4. Decide whether to request a determination letter on the termination and, if so, notify all participants of the request</td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>5. Adopt any necessary amendments to your adoption agreement</td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>6. Fully vest all participants and restore forfeitures that occurred within the previous five years</td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>7. Reallocation remaining forfeiture balance among eligible participants</td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>8. Send election forms to participants (wait until you have received a determination letter, if one has been requested)</td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>9. Participant elects whether to withdraw or roll over account assets</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Complete Form 7 and send it to the Plan Administrator</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. Send Form to the Program</td>
<td>✓</td>
<td></td>
<td></td>
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<tr>
<td>12. Process Form</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13. Send check and confirmation notice to participant</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14. Send IRS Form 1099-R to participant and IRS</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15. Send census questionnaire after final distribution has occurred</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16. Complete and return census</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17. Send signature-ready final IRS Form 5500</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18. Sign and file final IRS Form 5500 with DOL</td>
<td>✓</td>
<td></td>
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</tbody>
</table>
FAQs

What Circumstances Might Lead to Terminating the Plan?

Although employers establish retirement plans with every intention of having a long-term retirement vehicle, there are occasions when the decision is made to terminate it. For example, a law firm might be bought or absorbed by another firm that does not wish to keep the retirement plan intact, as the new firm has its own plan. Or, a plan may be sponsored by a partnership that dissolves. These are only examples. As the circumstances for every occasion differ, it is in your best interest to consult with a benefits attorney or legal advisor to determine whether your firm is impacted by an event that may require you to terminate the plan.

When Must You Terminate the Plan?

Some, but not all, examples of occasions when the plan must be terminated are as follows:

- Firm has dissolved and is no longer doing business,
- Sole proprietor has passed away and a successor employer will not be continuing the plan, or
- Sole proprietor has retired and a successor employer will not be continuing the plan.

Partial Termination of the Plan

A partial termination of the plan may be triggered if a significant portion of the firm’s employees have severed employment due to firm-initiated turnover such as a layoff. The IRS presumes that a partial termination has occurred if the plan’s turnover rate is at least 20%. When a partial termination of the plan occurs, affected participants (e.g., those who are no longer participants due to the event) must become 100% vested. There is no requirement that the plan must be terminated or that other participants be vested or receive distributions.

What Are the First Steps?

If your firm has determined that the plan will terminate, the first step you may need to take is to notify the participants. If your plan is subject to Section 204(h) of ERISA (e.g., money purchase pension plan, target benefit plan), then the notice requirement applies. The notice must be provided at least 15 days prior to the effective date of the plan’s termination, assuming your plan has fewer than 100 participants at that time. For a plan with 100 or more participants, the notice requirement is 45 days prior to the effective date of the plan’s termination. Upon request, the Program can provide you with a sample notice applicable to your firm and plan type. See “Filing and Letters” on page 138 for a snapshot of a sample notice.
What Are the Notice Requirements to Participants?

There are no legally required advance notices for terminating a profit sharing plan. However, the Program recommends you notify participants that contributions will stop, accounts will be 100% vested and benefits will be distributed. Participants must be notified in advance if a determination letter request is being filed. Additionally, participants have to receive the normal distribution notices when benefits are distributed.

A “204(h) notice” must be provided to participants in a money purchase pension plan or target benefit plan. The 204(h) notice must describe the impact of the plan termination and be provided at least 15 days in advance of the date benefit accruals will cease (45 days if the plan has 100 or more participants). Failure to give timely 204(h) notices can mean that benefits continue to accrue until timely notices are provided.

Does Your Plan’s Contribution Percentage Need to Be Amended?

If you sponsor a plan that is subject to minimum funding requirements (e.g., money purchase pension plan, defined benefit plan, target benefit plan) then the plan must first be amended to decrease the contribution percentage to zero. This should be done at least 30 days prior to the effective date of the plan termination.

Contributions to a profit sharing plan or a profit sharing plan with 401(k) feature are discretionary; therefore, the plan does not need to be amended (to decrease the contribution percentage) prior to its termination.

Does Your Plan Need to Be Amended for Changes in Law?

All plans must be amended for recent legislative changes that affect the plan’s qualification prior to termination. Please contact your benefits attorney.

What if Your Plan’s Forfeiture Account Has Assets?

In this instance, any assets in the forfeiture account will need to be reallocated among those participants who would otherwise have been eligible to receive a contribution if one were being made.

To direct the Program in the reallocation, please provide the following information:

- Participant’s name;
- Participant’s Social Security number;
- Contribution type of forfeiture allocation (your forfeiture account may contain more than one type of forfeited contribution — it is important to provide instructions for all contribution types); and
- The percent to which each participant is entitled. Forfeiture allocations must be provided in percentages rather than dollar amounts so that the entire account is depleted. Generally, a forfeiture account allocation is calculated in a ratio of each participant’s compensation to the total compensation of all eligible participants.
Participants’ Rights

As stated previously, participants become 100% vested in their accounts regardless of their service when the plan terminates, provided he or she has not been terminated from employment for at least five years. They also have the right to withdraw their account balances in full as a taxable distribution, or to roll over the account to another tax-deferred retirement vehicle. It is important to provide participants with the Benefit Request Form (Form 7) and its attachments, most specifically the Special Tax Notice Regarding Plan Payments. This notice outlines the taxes and penalties associated with receiving a taxable distribution from a qualified plan.

Once the plan has been terminated, it is important that the assets be distributed promptly. Generally, the IRS has determined that this must occur within a reasonable period of time, but no more than one year from the termination date. There is an exception to the general rule if a determination letter is filed for the terminating plan. In such case, final distribution can be deferred until six months following the issuance of the determination letter, if the date of the letter is later than one year after the plan’s termination date. If a determination letter is requested, distributions should be delayed until after the letter is received (except for ordinary distributions such as for death or termination of employment). If assets are not distributed promptly, it can compromise the validity of the termination. For example, in an audit, it may be determined that because plan assets were not distributed in a timely manner, the plan was not properly terminated. As a result, the distributed assets may become fully taxable, even if they were rolled over. As discussed in “Distributions” under Accessing Funds, there are only limited acceptable reasons for removing money from a qualified plan. If the reason provided is invalid, then the distribution is not allowed.

Therefore, if a participant delays submitting the Benefit Request Form (Form 7), even after repeated attempts to notify him or her, it is in your best interest to discuss the options available to you with your benefits attorney or legal advisor. In some instances, you may be allowed to open an individual retirement account (IRA) on behalf of the participant and make a rollover distribution without his or her consent.

Self-Managed Brokerage Accounts (SMBA)

If the participant has an SMBA, he/she can request a direct in-kind rollover of the securities held in the account (assuming the securities will be accepted by the receiving broker) by having the receiving broker send an Automated Customer Account Transfer (ACAT) directly to State Street Global Markets. This should be done after the Program has received the participant’s Benefit Request Form. The first ACAT request will automatically be rejected by the clearing house, National Financial Services Corporation, due to the fact that the assets are part of a qualified retirement plan and are subject to restrictions on distributions. NFSC will contact the Program to determine whether the participant is approved for a distribution. If the Program has received a Benefit Request Form (Form 7), approval will be given to NFSC. Then, when the receiving broker submits the ACAT a second time, it will be processed.

Important Note:

If the participant's account contains an outstanding loan balance(s), the loan(s) will be deemed distributed once a withdrawal or rollover distribution takes place. That means that the outstanding loan balance(s) will be reported on Form 1099-R as a taxable distribution for the year in which the distribution took place. Under the Basic Plan Document, the loan will not be rolled over.
Filing and Letters

Filing a Final IRS Form 5500

Once the final distribution has occurred from the plan and no further assets remain, the Program automatically will issue a census questionnaire as of the last day of the month in which the assets were distributed. This is deemed to be the end of a short plan year (unless the final distribution occurs coincident with the actual end of your normal plan year). Your completion of the census will enable us to prepare the final IRS Form 5500. Even if you had not been filing Form 5500 due to the size of your plan, you are always required to file the final Form. The return will be marked “final,” which notifies the government that the plan has terminated. The final Form 5500 will be sent to you on the first day of the sixth month following the close of the short plan year. It is due to be filed seven months after the close of the short plan year.

Filing for a Determination Letter on the Plan’s Termination

Just as you can file for a determination letter on the plan’s qualification, you can also request that the IRS review and approve your plan’s termination. To file, your plan must be updated for any recent changes in law. Requesting IRS review and approval is not required, but it is always recommended. In the event of an audit, the auditor will request a copy of any determination letter that was obtained as a result of the plan’s termination. Some employers decide not to proceed with the termination until a determination letter has been issued. This is an issue with which your benefits attorney or legal advisor can provide assistance.

Is Your Firm’s Plan Terminating?

Don’t forget that the participant can roll over his or her account balance into the ABA Rollover IRA. To request a package of information, the participant can call the Participant Services Line at (800) 348-2272 or e-mail the Program at abaretirement@us.ing.com.
SAMPLE Notice of Plan Termination

From the Plan Administrator to the plan participants

Notice of Plan Termination

NAME OF PLAN

DATE

On ________________, the (Name of Firm) (the “Firm”) adopted (or will adopt) an Amendment to the (Name of Plan) (the “Plan”). The Amendment makes changes to the Plan that will have a significant impact on (1) eligibility to participate in the Plan and (2) the benefits provided under the Plan.

The Amendment is effective ________________.

In accordance with the requirements of Section 4980F of the Internal Revenue Code, the provisions of the Amendment are described below.

(a) The Amendment Closes the Plan to New Participants

The Amendment closes the Plan to new Participants. No one can enter the Plan (or reenter the Plan after (effective date)). [Insert an example that accurately reflects the Plan’s eligibility rules. For example, “Employees hired or rehired after (effective date), cannot become Participants.”]

(b) The Amendment Freezes the Plan Benefits as of (effective date)

Under the Plan’s current benefit formula, (insert description of the Plan’s allocation formula. For example, “the Plan Account of each Participant who completes a Year of Service in a Plan Year (calendar year) is credited with a contribution equal to ________% of his Compensation for the Plan Year. Each Participant’s Plan Account is adjusted for investment gains and losses on a daily basis.”)

No contributions will be credited to any Participant’s Plan Account for any calendar year beginning after (effective date). Plan Accounts will continue to be adjusted for investment results until they are distributed.

The Plan Accounts of Participants who are Employees on (effective date), will be 100% vested and non-forfeitable as of (effective date). [Note: The Plan may also be required to vest former Participants, depending on Plan provisions.]

(c) The Amendment Terminates the Plan as of (effective date)

Plan Accounts will be distributed [as soon as administratively possible] or [after the IRS has issued a favorable determination letter with respect to the termination of the Plan].

[If a Money Purchase Pension Plan] Before Plan Accounts are distributed, each Participant will be given a choice between (1) receiving his or her Plan Account in a lump sum distribution and (2) directing the Plan Administrator to use his or her Plan Account to purchase an annuity contract from an insurance company.

Please refer to your Summary Plan Description for more information about the current provisions of the Plan, including definitions of the terms used in this Notice.

Please contact _______________________ at _____________ if you have any questions.

A copy of the Amendment is available upon request. There will be a small copying charge. A copy of the current Summary Plan Description for the Plan is also available upon request. There is no charge for the Summary Plan Description.
Confirmation of Plan Termination

From the Plan Administrator to the Program

NAME OF FIRM

CONFIRMATION OF PLAN TERMINATION

DATE

I, (Name), the undersigned, being the sole proprietor/partner of (Name of Firm), hereby confirm the following:

CONFIRMED: That the (Name of Firm) (Plan Type) be and it hereby is terminated effective as of (Date).

________________________________
Name
Sole Proprietor/Partner