

## Overview of Pension Plan Terminations

Quantitative due diligence has to be performed in assessing funded status on a termination basis and plan sponsor has to decide to terminate a qualified defined benefit pension plan. Also several actuarial, legal and other administrative duties as well as governmental filings are necessary to effectuate plan termination. Overall process is time consuming and complex. This article provides overview of various tasks, responsibilities and timing considerations.

### Freeze Plan Benefit Accruals

Most plan sponsors will want to freeze benefit accruals and provide participants with required advance notice. This limits plan from additional liability (benefit accruals) which may result if plan termination process does not go exactly as planned. Once participants are timely notified of benefit accrual freeze, benefit promises under plan are definitely determinable (i.e., frozen) and plan termination process can commence.

### Finalize Accrued Benefit Calculations

Once plan freeze date is determined, final accrued benefit for each plan participant should be calculated. First step is to obtain demographic (accurate and complete census file with all information necessary to calculate accrued benefits) and plan information. Current plan document and all amendments, administrative procedure manuals, and summary plan descriptions should provide ample education and documentation for calculating accrued benefits under plan. If any discrepancies between plan documentation, precedent, and current calculation results, a filing under Internal Revenue Services (IRS) Employee Plans Compliance Resolution System may be warranted. Refer to IRS Revenue Procedure 2008-50 for information on correction procedures.

### Establish Short-Term Investment Philosophy

With a pending plan termination, investment horizon has shortened. Plan asset managers, investment committee, trustees, etc. should strategize on investment mix for short-term until all plan assets are distributed from trust. This considerably mitigates inherent risks (and conceptually rewards) pertaining to asset fluctuations.

### Amend Plan Document

Plan document needs to be amended and/or restated to incorporate current legislative requirements. Expertise of qualified ERISA legal counsel is recommended to ensure all applicable provisions of plan are up-to-date.

### Plan Termination-Governmental Filings

Two primary governmental entities involved in terminating a pension plan are the IRS and Pension Benefit Guaranty Corporation (PBGC). PBGC website has all forms and instructions (and quite helpful guidance too) necessary to meet PBGC Standard Termination filing requirements. IRS website has all forms and instructions pertaining to application for a favorable determination letter. Refer to <http://www.pbgc.gov/practitioners/plan-terminations/content/page13260.html> and <http://www.irs.gov/formspubs/index.html>

### Meeting IRS and PBGC Plan Termination Requirements

A filing for an IRS favorable determination letter upon plan termination is not mandatory. Most practitioners recommend filing for a favorable determination letter from IRS to ensure plan's qualification requirements have been met and to receive IRS blessing. A filing is required with PBGC. Several IRS and PBGC filing requirements as well as participant notices must each be timely filed and sent. Primary requirements:

- 1 PBGC Notice of Intent to Terminate (NOIT)** – This informs participants of plan sponsors intent to terminate plan. It is issued to all affected participants (employees, former employees, retirees, beneficiaries, and labor organizations) at least 60, but not more than 90, days in advance of proposed plan termination date.
- 2 PBGC Notice of Plan Benefit (NOPB)** – NOPB reports plan benefit information to participant. It contains all specific detailed data used to determine participants plan benefit as well information pertaining to plan termination and their options with respect to benefit receipt. Additionally, if a lump sum is offered, estimated lump sum and actuarial basis for determining such are reported on the NOPB. NOPB is issued to all affected participants (employees, former employees, retirees, beneficiaries, alternate payees, etc.) on or before date Standard Termination Notice is filed with PBGC.
- 3 IRS Notice to Interested Parties** – This informs participants of plan sponsors intent to file plan termination with IRS. It is issued to all affected participants (employees, former employees, retirees, beneficiaries, and labor organizations) at least 7, but not more than 21, days prior to filing IRS Form 5310.

- 4 IRS Form 5310 and 6088** – IRS Form 5310 (Application for Determination for Terminating Plan) and IRS Form 6088 (Distributable Benefits from Employee Pension Benefit Plans) are two forms required to be completed and filed as soon as possible after proposed plan termination date. A User Fee (File form 8717) accompanies IRS filing – fee is based on type of plan submitted and demonstrations attached. The 5310 and 6088 report basic plan information (type of plan, coverage, rationale for terminating, etc.) and plan benefit data for the top 25 paid participants. Note: To safeguard against unforeseen delays in distributing benefits, IRS filing should be made prior to PBGC Standard Termination Notice filing in order to qualify for an extended distribution deadline.
- 5 PBGC Standard Termination Notice (Form 500 and Schedule EA-S)** – Standard Termination Notice must be filed within 180 days of proposed plan termination date. Form 500 contains basic information pertaining to plan termination and certifications that Standard Termination notices have been provided plan participants. A certification on Schedule EA-S by the Enrolled Actuary that plan has sufficient assets to meet benefit obligations is required.
- 6 Annuity Placement** – For those participants not offered or paid a lump sum, plan sponsor must satisfy benefit commitment to participant by selecting an insurance company and terminally funding benefits by paying insurance company a premium. Certain requirement must be met when selecting an insurance company. Placement of the annuities is one area plan sponsor and/or Enrolled Actuary will need guidance. A knowledgeable insurance agent coupled with financial and actuarial expertise will provide necessary due diligence and rigor to effectuate settling plan obligations with a “safest available” insurance company and meet fiduciary standards of ERISA. Refer to Department of Labor Internal Bulletin 95-1.
- 7 PBGC Notice of Annuity Information** – A Notice of Annuity Information provides participants information pertaining to chosen insurance company for which annuities have been placed. Notice must be issued at least 45 days prior to actual distribution.
- 8 PBGC Post Distribution Certification** – This is last step with plan termination. Plan sponsor certifies to PBGC that all benefit liabilities have been settled (lump sums and/or annuity placement) and confirms Notice of Annuity Information was timely issued.

#### Ongoing Administration

During plan termination process plan must continue to be administered. Retiring participants benefits should commence in accord with their election, IRS and PBGC annual reporting requirements must be met and minimum required contributions should be made.

#### For Further Information

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