DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2520, 2550, and 2578

RIN 1210–AB47

Amendments to the Abandoned Plan Regulations

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Proposed regulations.

SUMMARY: This document contains proposed amendments to three regulations previously published under the Employee Retirement Income Security Act of 1974 that facilitate the termination of, and distribution of benefits from, individual account pension plans that have been abandoned by their sponsoring employers. The principal amendments propose to permit bankruptcy trustees to use the Department's Abandoned Plan Program to terminate and wind up the plans of sponsors in liquidation under chapter 7 of the U.S. Bankruptcy Code. In addition, other technical amendments are proposed to improve the operation of the regulations. If adopted, the amendments would affect employee benefit plans, primarily small defined contribution plans, participants and beneficiaries, service providers, and individuals appointed to serve as trustees under chapter 7 of the U.S. Bankruptcy Code.

DATES: Written comments should be received by the Department of Labor on or before February 11, 2013.

ADDRESSES: Written comments may be submitted to the addresses specified below. All comments will be made available to the public. Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously. Comments may be submitted to the Department of Labor, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: e-ORI@dol.gov*. Include RIN 1210–AB47 in the subject line of the message.
- *Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Abandoned Plans.

All submissions received must include the agency name and Regulation Identifier Number (RIN) for this rulemaking (RIN 1210–AB47). Comments received will be made available to the public, posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and made available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Stephanie Ward Cibinic or Melissa R. Dennis, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Executive Summary

Pursuant to Executive Order 13563, this section of the preamble contains an executive summary of the rulemaking and related prohibited transaction class exemption (published elsewhere in the notice section of today's **Federal Register**) in order to promote public understanding and to ensure an open exchange of information and perspectives. Sections B through G of this preamble, below, contain a more detailed description of the regulatory provisions and need for the rulemaking as well as its costs and benefits.

1. Purpose of Regulatory Action

In 2006, the Department of Labor (the Department) issued regulations establishing a program to facilitate the termination of and distribution of benefits from individual account plans that have been abandoned by their sponsors. In conjunction with the regulations, the Department also issued a class exemption that permits certain transactions associated with these types of terminations and distributions. The regulations and the class exemption (hereinafter referred to collectively as the Abandoned Plan Program or Abandoned Plan Regulations, unless otherwise indicated) currently are not available to plans whose sponsors are in liquidation under chapter 7 of the U.S. Bankruptcy Code (hereinafter referred to as chapter 7 plans). Since the establishment of the Abandoned Plan Program, on-going challenges associated with terminating and winding up chapter 7 plans have persuaded the Department that the Abandoned Plan Program should be expanded. This proposed rulemaking, along with the proposed amendments to the related class exemption, would help abate these challenges by making the Abandoned Plan Program available to bankruptcy trustees who, under the U.S. Bankruptcy Code, may have responsibility for administering such plans. The Secretary of Labor would make these amendments under her authority at section 505 of ERISA to prescribe such regulations as she finds necessary or appropriate to carry out the statute's provisions. The Secretary also has the authority to issue exemptions from ERISA's prohibited transaction rules in accordance with section 408(a) of ERISA and section 4975(c)(2) of the Internal Revenue Code and pursuant to the exemption procedures established in 29 CFR part 2570, subpart B.

2. Summary of Major Provisions

The major provisions of this rulemaking include the proposed amendments contained in paragraph (j) of proposed 29 CFR 2578.1. Pursuant to these proposed amendments, chapter 7 plans would be considered abandoned upon the Bankruptcy Court's entry of an order for relief with respect to the plan sponsor's bankruptcy proceeding. The bankruptcy trustee or a designee would be eligible to terminate and wind up such plans under procedures similar to those provided under the Department's current Abandoned Plan Regulations. If the bankruptcy trustee winds up the plan under the Abandoned Plan Program, the trustee's expenses would have to be consistent with industry rates for similar services ordinarily charged by qualified termination administrators that are not bankruptcy trustees. The proposed amendment to the class exemption would permit bankruptcy trustees, as with qualified termination administrators under the current Abandoned Plan Regulations, to pay themselves from the assets of the plan (a prohibited transaction) for terminating and winding up a chapter 7 plan under an industry rates standard.

3. Summary of Costs and Benefits

The Department estimates that the costs attributable to amending the Abandoned Plan Program to cover chapter 7 plans will be $64,000 annually. The Department believes the benefits of expanding the program will significantly outweigh the costs. Expanding the program will encourage the orderly and efficient termination of chapter 7 plans and distribution of account balances, thereby enhancing the retirement income security of participants and beneficiaries in these plans. Absent the standards and procedures set forth in the amendments, some bankruptcy trustees may lack the

necessary guidance to properly update plan records, calculate account balances, select and monitor service providers, distribute benefits, pay fees/expenses, and otherwise efficiently terminate and wind up chapter 7 plans. In addition, significant cost savings would result from the amendments because chapter 7 plans no longer would incur costly audit fees required to file the Form 5500 Annual Return/Report. The Department's full cost/benefit analysis is set forth below in Section G of this preamble, entitled ''Regulatory Impact Analysis.''

B. Background

On April 21, 2006, the Department of Labor (the Department) issued three regulations (the Abandoned Plan Regulations) that collectively facilitate the orderly, efficient termination of, and distribution of benefits from, individual account pension plans that have been abandoned by their sponsoring employers.[1] The first of these regulations, codified at 29 CFR 2578.1, establishes standards for determining when individual account plans may be considered ''abandoned'' and procedures by which financial institutions (so-called ''qualified termination administrators'' or ''QTAs'') holding the assets of such plans may terminate the plans and distribute benefits to participants and beneficiaries, with limited liability under title I of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1002 et seq. The second regulation, codified at 29 CFR 2550.404a–3, provides a fiduciary safe harbor for qualified termination administrators to make distributions on behalf of participants and beneficiaries who fail to elect a form of benefit distribution (these participants and beneficiaries are sometimes referred to as missing participants or beneficiaries). The third regulation, codified at 29 CFR 2520.103–13, establishes a simplified method for filing a terminal report for abandoned individual account plans. Also on April 21, 2006, the Department granted a prohibited transaction exemption, PTE 2006–06, which facilitates the goal of the Abandoned Plan Regulations by permitting a qualified termination administrator, who meets the conditions in the exemption, to, among other things, select itself or an affiliate to carry out the termination and winding up activities specified in the Abandoned Plan Regulations, and to pay itself or an affiliate fees for those services.[2]

For the reasons set forth in the 2006 preamble, the Abandoned Plan Regulations strictly limit who may be a qualified termination administrator.[3] Specifically, in order to be a qualified termination administrator, an entity, first, must be eligible to serve as a trustee or issuer of an individual retirement plan within the meaning of section 7701(a)(37) of the Internal Revenue Code (Code) and, second, must hold assets of the plan on whose behalf it will serve as the qualified termination administrator.[4] As a result of these conditions, bankruptcy trustees ordinarily do not qualify as qualified termination administrators under the Abandoned Plan Regulations. This fact was acknowledged when the Department published the Abandoned Plan Regulations in 2006.[5]

However, for several reasons, the Department is revisiting its earlier decision to preclude bankruptcy trustees from serving as qualified termination administrators. Pursuant to 11 U.S.C. 704(a)(11), enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Public Law 109–8, 119 Stat. 23, when an entity that sponsors an individual account plan is liquidated under chapter 7 of title 11 of the United States Code, the court administering the liquidation proceeding (and/or U.S. Trustee) will appoint a bankruptcy trustee to, among other things, continue to perform the obligations that would otherwise be required of the bankrupt entity with respect to the plan. Therefore, the bankruptcy trustee often is responsible for administering the plan, which may include taking the steps necessary to terminate the plan, wind up the affairs of the plan, and distribute plan benefits.[6] While the U.S. Bankruptcy Code imposes these obligations on bankruptcy trustees, it does not provide guidance or standards for carrying out such activities.

The Department believes that when the sponsor of an individual account plan is in liquidation in a chapter 7 bankruptcy case, the plan should be terminated and wound up in an orderly and efficient manner. However, in bankruptcy cases, as with abandoned plans generally, usually the sponsor is not in a position to carry out this function. Although the trustee of the sponsor's bankruptcy estate has the requisite legal authority, the Department has observed that such trustees may be unaware of their responsibilities and often are unfamiliar with ERISA, or how properly to terminate and wind up a plan. The frequent result is delay in distributing benefits to participants and beneficiaries and excessive cost to the plan.

In the Department's view, a bankruptcy trustee responsible for administering a chapter 7 debtor's employee benefit plan is a fiduciary with respect to the plan for purposes of ERISA. Thus, when taking steps to wind up the affairs of the plan, the trustee must act consistently with ERISA's fiduciary standards. The Department is proposing these regulations (which are in the form of amendments to the Abandoned Plan Regulations), and the accompanying prohibited transaction exemption amendment, in order to provide a process for the bankruptcy trustee to terminate the plan, distribute benefits to participants and beneficiaries, and pay necessary expenses, including to itself, in a manner that helps the bankruptcy trustee meet its fiduciary obligations.

C. Overview of Proposed Rulemaking

In general, this rulemaking proposes to extend the basic framework of the Abandoned Plan Regulations to plans (i.e., chapter 7 plans) whose sponsors are undergoing liquidation under chapter 7 of title 11 of the United States Code.[7] The provisions of the existing

[1] 71 FR 20820. See also 73 FR 58459 for subsequent amendments with regard to distributions on behalf of a missing non-spouse beneficiary.

[2] 71 FR 20855.

[3] See 71 FR 20821 (''given the authority and control over plans vested in QTAs under the regulation, QTAs must be subject to standards and oversight that will reduce the risk of losses to the plans' participants and beneficiaries'').

[4] Section 7701(a)(37) of the Code describes an ''individual retirement plan'' as an individual retirement account described in section 408(a) of the Code, and an individual retirement annuity described in section 408(b) of the Code. Section 408(a) of the Code describes the term ''individual retirement account'' as meaning a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, if certain requirements are met. Section 408(b) of the Code describes the term ''individual retirement annuity'' as meaning an annuity contract, or an endowment contract, which meets certain requirements.

[5] For example, in responding to commenters who argued in favor of conferring qualified termination administrator status on bankruptcy trustees in liquidation cases when the debtor also is the plan administrator, the Department, in the preamble to the Abandoned Plan Regulations, stated its view at that time that such individuals are empowered by virtue of their appointment to take the steps necessary to terminate and wind up the affairs of a plan and, therefore, do not need the authority conferred by the Abandoned Plan Regulations. See 71 FR 20821.

[6] A bankruptcy trustee who undertakes these plan responsibilities is a fiduciary within the meaning of section 3(21) of ERISA.

[7] The proposed extension is limited to plans whose sponsors entered liquidation under chapter 7 of title 11 of the United States Code on the theory that such plans are effectively being abandoned by the sponsor as a result of the liquidation. Nonetheless, the Department requests comment on

Abandoned Plan Regulations would apply to chapter 7 plans in much the same way they apply now to abandoned plans, except to the extent that they are modified by this proposal to reflect fundamental differences between abandoned plans and chapter 7 plans. In this regard, the most significant amendments to the existing Abandoned Plan Regulations are contained in proposed paragraph (j) of 29 CFR 2578.1. Other less significant or conforming amendments are needed to other parts of § 2578.1 and to the other two regulations (§ 2550.404a–3 and § 2520.103–13) constituting the Abandoned Plan Regulations. Section D of this preamble describes the major proposed changes (the so-called chapter 7 amendments) to the Abandoned Plan Regulations. This rulemaking, however, also proposes to make certain technical changes to the Abandoned Plan Regulations that are unrelated to chapter 7 plans. These amendments are discussed in section E of this preamble. Section F of this preamble discusses the results of the Department's consultation on this proposal with the Internal Revenue Service. Section G contains a detailed Regulatory Impact Analysis. For purposes of readability, the proposed rulemaking republishes the Abandoned Plan Regulations in their entirety, as revised, rather than the specific amendments only.

D. Special Rules for Chapter 7 Plans

1. Discussion of Major Changes to 29 CFR 2578.1—Termination of Abandoned Individual Account Plans

(a) In General

Proposed paragraph (j) of § 2578.1 contains the special rules for chapter 7 plans. This paragraph contains four subparagraphs. Subparagraph (1) sets forth rules for when such plans may be considered abandoned and who may serve as qualified termination administrators. These rules are in lieu of the general rules in paragraphs (b) and (g) of § 2578.1, which do not apply to chapter 7 plans. Subparagraph (2) sets forth the content requirements for the notice of plan abandonment that qualified termination administrators of chapter 7 plans must send to the Department. These content requirements are in lieu of the content requirements in paragraph (c)(3) of § 2578.1, which apply to abandoned plans in general. Subparagraph (3) sets forth special rules for winding up chapter 7 plans. These special rules are in lieu of some, but not all, of the winding up procedures in paragraph (d) of § 2578.1. Subparagraph (4) contains a rule of accountability that is applicable to bankruptcy trustees. The requirements of each of these subparagraphs are described in detail below.

(b) Timing of Abandonment

Proposed paragraph (j)(1)(i) is a timing rule. It provides that a chapter 7 plan shall be considered abandoned upon the entry of an order for relief. No other findings must be made. The bankruptcy trustee then may establish itself or an eligible designee as the qualified termination administrator. Whether to establish itself or an eligible designee as the qualified termination administrator is optional on the part of the bankruptcy trustee. Abandonment status, on the other hand, is not optional; it is achieved by operation of law upon the entry of an order for relief. Proposed paragraph (j)(1)(i) contains a limitation on this status. If at any time before the plan is deemed terminated (plans generally will be deemed to be terminated on the ninetieth (90th) day following the date of the letter from EBSA acknowledging receipt of the notice of plan abandonment), the plan sponsor's chapter 7 proceeding is dismissed or converted to a proceeding under chapter 11 of title 11 of the United States Code, the plan shall not be considered abandoned pursuant to paragraph (j)(1).[8] The Department believes that a plan should not be considered abandoned merely because its sponsor is in reorganization.[9]

(c) Who May Serve as a Qualified Termination Administrator

Proposed paragraph (j)(1)(ii) makes it clear that bankruptcy trustees may serve as qualified termination administrators even if they do not satisfy the rule in paragraph (g) of § 2578.1 that allows only large financial institutions and other asset custodians described in section 7701(a)(37) of the Code to be qualified termination administrators. Except as provided in paragraph (j), a bankruptcy trustee serving as qualified termination administrator would follow the same termination and winding-up procedures in the Abandoned Plan Regulations as would any other qualified termination administrator. The proposal also allows a bankruptcy trustee the option of designating someone else to serve as the qualified termination administrator. In this regard, however, the proposal strictly limits who the bankruptcy trustee may designate. Proposed paragraph (j)(1)(ii) provides that an ''eligible designee'' is any person or entity designated by the bankruptcy trustee that is eligible to serve as a trustee or issuer of an individual retirement plan, within the meaning of section 7701(a)(37) of the Code, and that holds assets of the chapter 7 plan. Thus, an eligible designee could be the plan's asset custodian at the time of abandonment or another entity chosen later by the bankruptcy trustee.[10] The bankruptcy trustee would be responsible for the selection and monitoring of any eligible designee in accordance with section 404(a)(1) of ERISA.

(d) Notice of Abandonment

Proposed paragraph (j)(2) provides that, in accordance with the deemed termination provisions in paragraph (c)(1) and (c)(2) of § 2578.1, the qualified termination administrator must furnish to the Department a notice of plan abandonment that meets the content requirements in paragraph (j)(2). This notice essentially is the same as the notice of plan abandonment described in paragraph (c)(3) of § 2578.1 except for modifications that take into account information specific to chapter 7 plans and bankruptcy trustees. A proposed model ''Notification of Plan Abandonment and Intent to Serve as Qualified Termination Administrator'' reflecting the content requirements of proposed paragraph (j)(2) is being added for chapter 7 plans as Appendix C. Therefore, Appendices C and D have been re-proposed as Appendix D and Appendix E respectively. Paragraph (j)(2)(i) provides that the notice must include the name and contact information of the bankruptcy trustee and, if applicable, the name and contact information of the eligible designee acting as the qualified termination

whether there are other similar situations that could or should be covered by the Abandoned Plan Regulations. For example, should the Regulations cover plans whose sponsors are undergoing liquidation under a chapter 11 plan of liquidation? Should the Regulations cover situations when a plan's sponsor enters receivership pursuant to applicable state or federal law (e.g., FDIC receivership)? If the Regulations should be extended to situations beyond the situations covered by the proposed extension, please specifically identify the situation, why the situation should be covered, the costs and benefits of covering the situation, and, if applicable, any state or federal law relevant to the situation.

[8] On the other hand, a plan would not cease to be considered abandoned under proposed paragraph (j)(1) if the sponsor's chapter 7 proceeding is converted to a proceeding under chapter 11 after the plan is deemed terminated. In such circumstances, the qualified termination administrator would be expected to continue winding up the affairs of the plan in accordance with the Abandoned Plan Regulations.

[9] But see note 7.

[10] Any eligible designee should be selected and holding the assets of the chapter 7 plan by the time of the furnishing of the notice of plan abandonment to the Department under paragraph (j)(2) of the proposed amendments.

administrator pursuant to proposed paragraph (j)(1). Paragraph (j)(2)(ii) requires information about the chapter 7 plan that the qualified termination administrator is winding up. Paragraph (j)(2)(iii) requires a statement that the plan is considered to be abandoned due to an entry of an order for relief under chapter 7 of the U.S. Bankruptcy Code, and a copy of the notice or order entered in the case reflecting the bankruptcy trustee's appointment to administer the plan sponsor's chapter 7 case. Paragraph (j)(2)(iv)(A) and (B) require the estimated value of the plan's assets as of the entry of an order for relief; the name, employer identification number (EIN), and contact information for the entity holding the plan's assets; and the length of time plan assets have been held by such entity, if held for less than 12 months. Paragraph (j)(2)(iv)(C) and (D) require identification of any assets with respect to which there is no readily ascertainable fair market value, as well as information, if any, concerning the value of such assets, and an identification of known delinquent contributions. Paragraph (j)(2)(v) requires the name and contact information of known service providers to the plan. It also requires an identification of any services considered necessary to wind up the plan, the name of the service provider(s) that is expected to provide such services, and an itemized estimate of expenses for winding up services expected to be paid out of plan assets by the qualified termination administrator. Paragraph (j)(2)(vi) requires a statement indicating that the information provided in the notice is true and complete based on the knowledge of the person electing to be the qualified termination administrator, and that the information is being provided by the qualified termination administrator under penalty of perjury.

(e) Winding-Up Procedures

(i) In General

Paragraph (d) of § 2578.1 sets forth specific steps that a qualified termination administrator must take to wind up an abandoned plan and, with respect to most such steps, the standards applicable to carrying out the particular activity. Under the proposal, paragraph (d) applies to chapter 7 plans except as modified by the provisions in proposed paragraph (j)(3).

(ii) Delinquent Contributions

Proposed paragraph (j)(3)(i) contains a conditional requirement to collect delinquent contributions. Specifically, this paragraph provides that the qualified termination administrator of a chapter 7 plan shall, consistent with the duties of a fiduciary under section 404(a)(1) of ERISA, take reasonable and good faith steps to collect known delinquent contributions on behalf of the plan, taking into account the value of the plan assets involved, the likelihood of a successful recovery, and the expenses expected to be incurred in connection with collection. If the bankruptcy trustee designates an eligible designee as defined in proposed paragraph (j)(1)(ii), the bankruptcy trustee shall at the time of such designation notify the eligible designee of any known delinquent contributions. This collection requirement includes both participant contributions withheld from employee paychecks, but not forwarded by the debtor to the plan, as well as delinquent employer contributions owed by the debtor. This collection requirement applies to any qualified termination administrator to a chapter 7 plan whether it is a bankruptcy trustee or an eligible designee.[11]

The Department's present belief is that bankruptcy trustees, by virtue of their knowledge and control of the debtor's estate and of the debtor's ERISA plan, are in the best position both to know of the liquidating sponsor's delinquent contribution debts to the plan and to collect these delinquencies (or to notify the eligible designee so that it can collect them). However, the Department is interested in knowing whether, and under what circumstances, the qualified termination administrator's duty to collect would unavoidably conflict with any duties the bankruptcy trustee may have under the U.S. Bankruptcy Code as the representative of the debtor's estate. Please be specific about when, if ever, such conflicts might arise, whether and why such conflicts are disabling, and the specific provisions of the U.S. Bankruptcy Code that impose the conflicting obligations.

(iii) Reporting Fiduciary Breaches

Proposed paragraph (j)(3)(ii) contains a requirement to report activity to the Department that may be evidence of fiduciary breaches by prior plan fiduciaries. Specifically, the qualified termination administrator of a chapter 7 plan (whether a bankruptcy trustee or eligible designee) must report known delinquent contributions (employer and employee) owed to the plan, and any activity that the qualified termination administrator believes may be evidence of other fiduciary breaches by a prior plan fiduciary that involve plan assets. Thus, for example, evidence of embezzlement by a prior plan fiduciary would be required to be reported. The proposal limits the reporting requirement to evidence of any fiduciary breaches that ''involve plan assets'' by a prior plan fiduciary. This limitation is intended to prevent a reporting requirement when no plan assets are involved. The Department intends to use this information to pursue and remedy fiduciary breaches where appropriate. Beyond this reporting requirement, a qualified termination administrator to a chapter 7 plan ordinarily will have no further obligations under the Abandoned Plan Regulations with respect to such prior breaches, except with respect to collecting delinquent contributions owed to the plan.[12]

Information concerning fiduciary breaches must be reported in conjunction with the filing of the notice of plan abandonment (paragraph (j)(2)) or the final notice (paragraph (d)(2)(ix)). If the qualified termination administrator uses the model notices, such information may be included in the sections designated for other information. If the bankruptcy trustee designates an eligible designee, the bankruptcy trustee must provide the eligible designee with records under the control of the bankruptcy trustee to enable the eligible designee to carry out its responsibility to report information about fiduciary breaches. In the case of an eligible designee, if after the eligible designee completes the winding up of the plan, the bankruptcy trustee, in administering the debtor's estate, discovers additional information not already reported in the notification required in paragraphs (j)(2) or (d)(2)(ix) that it believes may be evidence of fiduciary breaches that involve plan assets by a prior plan fiduciary, the bankruptcy trustee must report such activity to EBSA in a time and manner specified in instructions developed by EBSA's Office of Enforcement. This supplemental reporting requirement is needed to address circumstances when

[11] Under this provision, an eligible designee's duty to collect delinquent contributions is limited expressly to those delinquent contributions it knows about based on the information provided by the bankruptcy trustee at the time of the designation. Thus, an eligible designee would have no duty to collect delinquent contributions if the bankruptcy trustee failed to disclose them to the eligible designee. Nothing in this section imposes an obligation on the eligible designee to conduct an inquiry or review to determine whether there are delinquent contributions with respect to the plan. See § 2578.1(e)(2).

[12] As discussed above, proposed paragraph (j)(3)(i) imposes on a qualified termination administrator to a chapter 7 plan a conditional duty to collect delinquent contributions.

the bankruptcy trustee discovers information concerning fiduciary breaches after the eligible designee has completed the termination and winding up process.

(iv) Notification and Distribution Requirements

The notification and distribution requirements applicable to chapter 7 plans under the proposal essentially are the same as the notification and distribution requirements applicable to non-chapter 7 plans under the existing Abandoned Plan Regulations, except as follows. First, proposed paragraph (j)(3)(iii) adds a requirement that participants must be informed that plan termination has occurred as a result of liquidation under the U.S. Bankruptcy Code. Second, proposed paragraph (j)(3)(iv) adds a requirement that the Department must receive certain information about the identity of the bankruptcy trustee and, if applicable, the eligible designee.

Third, proposed paragraph (j)(3)(v) does not grant a bankruptcy trustee the ability to designate itself or an affiliate as the transferee of distribution proceeds. The Abandoned Plan Regulations provide that qualified termination administrators must distribute benefits in accordance with the form of distribution elected by the participant or beneficiary, and when the participant or beneficiary fails to make an election, the qualified termination administrator has the ability to designate itself or an affiliate as the transferee of the distribution proceeds. (See paragraph (d)(2)(vii)(C) of § 2578.1.) Typically this would occur where the qualified termination administrator has its own proprietary investment vehicle, such as an individual retirement plan within the meaning of section 7701(a)(37) of the Code. The proposal does not extend this option to bankruptcy trustees based on the Department's understanding that bankruptcy trustees do not maintain proprietary investment vehicles within the meaning of section 7701(a)(37) of the Code.

(v) Payment of Reasonable Fees

Proposed paragraph (j)(3)(vi) addresses fees that a bankruptcy trustee may pay to itself, or others, from the plan's assets in connection with following the termination and winding-up procedures in the proposed amendments. Subparagraph (A) of paragraph (j)(3)(vi) contains the applicable standard in cases where the bankruptcy trustee is the qualified termination administrator. Subparagraph (B) of paragraph (j)(3)(vi) contains the applicable standard in cases when the bankruptcy trustee appoints an eligible designee to serve as the qualified termination administrator.[13] The different standards in these subparagraphs are needed for two reasons: first, expense rates normally charged by bankruptcy trustees for administering estates of chapter 7 debtors may not be appropriate for purposes of carrying out the duties and responsibilities under the proposed amendments with respect to ERISA plans, and second, bankruptcy trustees are not likely to have significant experience in terminating and winding up the affairs of such plans. Finally, subparagraph (C) of paragraph (j)(3)(vi) regulates payments to the bankruptcy trustee by the eligible designee.

Pursuant to proposed paragraph (j)(3)(vi)(A), the qualified termination administrator (i.e., when the bankruptcy trustee is the QTA) is permitted to pay, from plan assets, no more than the reasonable expenses of carrying out his or her authority and responsibility under the proposed amendments. Expenses of plan administration shall be considered reasonable if they are for services necessary to wind up the affairs of the plan and distribute benefits (see § 2578.1(d)(2)(v)(B)(*1*)), if they are consistent with industry rates for the same or similar services ordinarily charged by qualified termination administrators who are not bankruptcy trustees (see proposed paragraph (j)(3)(vi)(A)), and if their payment would not constitute a prohibited transaction (see § 2578.1(d)(2)(v)(B)(*3*)). This standard is intended to make clear that bankruptcy trustees should look to the rates ordinarily charged by qualified termination administrators who are not bankruptcy trustees, e.g., banks and other asset custodians. Samples of these rates are available to the public in filings made to the Department.[14] These filings may be a helpful source of information for bankruptcy trustees.

The standard in proposed paragraph (j)(3)(vi)(A) (i.e., that expenses must be consistent with industry rates for the same or similar services ordinarily charged by qualified termination administrators who are not bankruptcy trustees) is intended to provide clarity and flexibility with respect to decisions regarding fee and expense payments by bankruptcy trustees who elect to be qualified termination administrators. In determining these fees and expenses, bankruptcy trustees still will have to make an inquiry into, and objectively determine, whether any particular fee or expenditure is reasonable using the standard in proposed paragraph (j)(3)(vi)(A). In this regard, the Department specifically requests comments on whether proposed paragraph (j)(3)(vi)(A) provides sufficient clarity as to the type and amount of fees and expenses that may be paid from plan assets in connection with terminating and winding up a plan under this proposal. For example, will bankruptcy trustees have difficulty determining industry rates for termination and winding up services despite the public filings mentioned above? Are these filings searchable in a helpful way to bankruptcy trustees? If proposed paragraph (j)(3)(vi)(A) does not provide sufficient clarity, please explain why not and identify any alternatives that should be considered by the Department.

Proposed paragraph (j)(3)(vi)(C) provides that an eligible designee may pay from plan assets to a bankruptcy trustee the reasonable expenses that the bankruptcy trustee incurs in selecting and monitoring the eligible designee. This provision follows from the requirement in proposed paragraph (j)(1)(ii) that the bankruptcy trustee is responsible for the selection and monitoring of the eligible designee. Whether an expense is ''reasonable'' ordinarily depends on the facts and circumstances surrounding the particular expense. However, the Department notes that the rates charged to the plan by the bankruptcy trustee for selecting and monitoring the eligible designee are to be judged in relation to the rates charged by a plan fiduciary for similar services, rather than the generally higher fees charged by bankruptcy trustees for legal services provided to the bankruptcy estate. In any event, pursuant to proposed paragraph (j)(3)(vi)(C), the eligible designee would apply the rules in paragraph (d)(2)(v) of § 2578.1 in determining whether the payment to the bankruptcy trustee for monitoring services is reasonable. While the Department believes that it would be appropriate for bankruptcy trustees to expect remuneration for providing monitoring services, the Department

[13] Proposed paragraph (j)(3)(vi)(B) merely confirms that an eligible designee may use the more generally applicable safe harbor at paragraph (d)(2)(v) of § 2578.1 without the special modifications contained in proposed paragraph (j)(3)(v)(A) for bankruptcy trustees.

[14] Under § 2520.103–13, qualified termination administrators must file the Special Terminal Report for Abandoned Plans (STRAP). STRAPs contain total termination expenses paid by a plan and a separate schedule identifying each service provider and the amount received by that service provider, itemized by expense. STRAPs currently are available on the Department's Web site (see *http://askebsa.dol.gov/AbandonedPlanSearch/UI/QTASearchResults.aspx).*

intends to review closely such remuneration to ensure that arrangements under the proposed amendments are not contrary to the interests of participants and beneficiaries.

(f) Rule of Accountability

Proposed paragraph (j)(4) contains a rule of accountability. The rule provides that a bankruptcy trustee acting as qualified termination administrator, or an eligible designee, shall not, through waiver or otherwise, seek a release from liability under ERISA, or assert a defense of derived judicial immunity (or similar defense) in any action brought against the bankruptcy trustee or eligible designee arising out of its conduct under the proposed amendments. The Department is aware that bankruptcy trustees sometimes request from the bankruptcy court comfort orders seeking relief from ERISA fiduciary liability in their roles as administrators to plans. However, bankruptcy trustees who wind up chapter 7 plans under the Abandoned Plan Regulations benefit from the limited exposure to ERISA liability provided by the regulations. (See paragraph (e) of § 2578.1.) The Department believes the regulatory framework, as constructed, serves to minimize to the greatest extent possible the liability and exposure of qualified termination administrators who carry out their responsibilities in accordance with the provisions of the Abandoned Plan Regulations.[15] As a condition to receiving the benefit of the limited liability provided by the Abandoned Plan Regulations, a bankruptcy trustee would not be permitted to seek a release from liability under ERISA. Paragraph (j)(4) does not prevent a bankruptcy trustee from asking a court to resolve an actual dispute involving a plan or to obtain an order required under the U.S. Bankruptcy Code. However, it does bar a trustee from seeking a ruling from a court for approval of its actions, where a trustee has the power to act without judicial approval. For example, a bankruptcy trustee may not seek court approval of the amount to pay a professional from assets of the plan, but must exercise his or her own judgment. In addition, a bankruptcy trustee may not claim it is not subject to suit for breach of fiduciary duty as to the amount of a payment from an ERISA plan because it previously obtained a court order approving the amount of the payment.

[15] 71 FR 20806.

2. Discussion of Changes to 29 CFR 2550.404a–3—Safe Harbor for Distributions From Terminated Individual Account Plans

The Abandoned Plan Regulations, in relevant part, provide that, with respect to missing and nonresponsive participants or beneficiaries,[16] qualified termination administrators shall distribute benefits in the form of direct rollovers to individual retirement plans within the meaning of section 7701(a)(37) of the Code. (See § 2578.1(d)(2)(vii)(B).) However, the Abandoned Plan Regulations also contain a special rule for small account balances of $1,000 or less.[17] Under the special rule, a qualified termination administrator may make distributions to certain bank accounts (interest-bearing federally insured bank or savings association accounts) or to State unclaimed property funds. (See 29 CFR 2550.404a–3(d)(1)(iii).) The proposal would add paragraph (d)(iv) to § 2550.404a–3 to make clear that the special rule also is available in the case of chapter 7 plans.

3. Discussion of Changes to 29 CFR 2520.103–13—Special Terminal Report for Abandoned Plans

The Abandoned Plan Regulations provide for simplified reporting to the Department for qualified termination administrators that wind up the affairs of abandoned plans. (See 29 CFR 2520.103–13.) The time savings resulting from this abbreviated reporting requirement reduces administrative costs for abandoned plans and preserves account balances, resulting in increased benefits to participants and beneficiaries. The proposed amendments would revise these simplified reporting requirements to make clear that they are available to chapter 7 plans. Specifically, the proposal would revise paragraph (b)(1) of § 2520.103–13 to include identification information about the bankruptcy trustee as well as the qualified termination administrator, if the qualified termination administrator is not the bankruptcy trustee.

[16] In this context, a missing or nonresponsive participant or beneficiary is a participant or beneficiary who fails to elect a form of distribution within 30 days from the date the notice of plan termination is furnished by the qualified termination administrator.

[17] The justification for the special rule is set forth in the preamble to the Abandoned Plan Regulations. See 71 FR 20828. The conditions related to the special rule are set forth at 29 CFR 2550.404a–3(d)(1)(iii).

E. Technical Amendments Unrelated to Chapter 7 Plans

The Abandoned Plan Regulations require qualified termination administrators to state whether they, or any affiliate, are, or in the past 24 months were, the subject of an investigation, examination, or enforcement action by the Department, the Internal Revenue Service, or the Securities and Exchange Commission concerning their conduct as a fiduciary or party in interest with respect to any ERISA covered plan. (See § 2578.1(c)(3)(i)(C).) This statement must be included in the notice of plan abandonment furnished to the Department before a plan can be terminated and wound up under the Abandoned Plan Regulations. Although such information does not alone bar a person from serving as a qualified termination administrator, the statement serves as a flagging mechanism to help the Department identify potential arrangements that are not in the best interests of plan participants and beneficiaries. However, the Department is proposing to eliminate this requirement for the following reasons. First, the Department generally can determine from its own records whether a person is, or in the past 24 months was, the subject of an investigation concerning his conduct as a fiduciary or party in interest with respect to any ERISA covered plan. Second, by definition, qualified termination administrators tend to be large financial institutions with many affiliations and, therefore, it may be costly for them to prepare an accurate statement. Third, the requirement appears to deter some qualified persons from serving as qualified termination administrators. In this regard, some individuals have expressed a reluctance to affirm in a notice to the federal government that they or an affiliate are or were under an investigation, examination, or enforcement action by the Department, the Internal Revenue Service, or the Securities and Exchange Commission concerning their conduct as a fiduciary or party in interest with respect to any ERISA covered plan. Because the Department believes that this requirement now is unnecessary and may even discourage the use of the Abandoned Plan Program, it is proposing to remove the requirement from the Abandoned Plan Regulations.

In conjunction with the proposed removal of the investigation statement in § 2578.1(c)(3)(i)(C) referenced above, the Department intends to remove a part of the definition of the term ''affiliate'' in § 2578.1(h). In the Abandoned Plan

Regulations, the term ''affiliate'' for general purposes of § 2578.1 means any person directly or indirectly controlling, controlled by, or under common control with, the person, or any officer, director, partner or employee of the person. (See § 2578.1(h)(1).) However, for the specific purpose of the requirement for qualified termination administrators to state whether they, or any affiliate are, or in the past 24 months were, the subject of an investigation, examination, or enforcement action by the Department, the Internal Revenue Service, or the Securities and Exchange Commission concerning the their conduct as a fiduciary or party in interest with respect to any ERISA covered plan, the Abandoned Plan Regulations contain a narrower definition in § 2578.1(h)(2). Given the proposal to eliminate this statement regarding investigations, the Department also is proposing to eliminate the narrower definition of ''affiliate.'' The generally applicable definition of the term ''affiliate'' would remain in effect. (See modifications in the proposal to paragraph (h) of § 2578.1.)

The Abandoned Plan Regulations generally require the qualified termination administrator to distribute a missing or nonresponsive participant's account balance to an individual retirement plan in the participant's name. (See § 2578.1(d)(2)(vii).) An exception exists for account balances of $1,000 or less, which may be transferred to an interest-bearing, federally-insured bank or savings association account or to the unclaimed property fund of a State, if certain conditions are satisfied. (See § 2550.404a–3(d)(1)(iii).) Sometimes a qualified termination administrator will know that a missing participant whose account balance is greater than $1,000 is deceased and that there is no named beneficiary, or that the named beneficiary also is deceased. In such circumstances, the Abandoned Plan Regulations require the qualified termination administrator to transfer the participant's account balance to an individual retirement plan even if it is unlikely that anyone will ever claim these benefits. The Department has been advised that, in some cases, providers of individual retirement plans will not accept such distributions. The Department is concerned that obstacles like this prevent abandoned plans from being completely terminated and could prevent qualified entities from serving as qualified termination administrators, leaving participants in abandoned plans with no ability to access their retirement benefits. This proposal, therefore, conditionally would permit qualified termination administrators to transfer the account balances of decedents to an appropriate bank account or a state's unclaimed property fund, regardless of the size of the account balance. Such a transfer would be permitted only if the qualified termination administrator reasonably and in good faith finds that the participant and, if applicable, the named beneficiary, are deceased, and includes in the Final Notice to EBSA the identity of the deceased participant and/or beneficiary and the basis for the finding. (See proposed paragraph (d)(1)(v) of § 2550.404a–3.) The Department is soliciting public comments specifically on whether the proposed conditions sufficiently safeguard the rights of participants and beneficiaries. For example, should a qualified termination administrator be prohibited from these transfers if it has actual knowledge that a descendent of the deceased has a claim?

The final step in winding up an abandoned plan under the Abandoned Plan Regulations is filing the Special Terminal Report for Abandoned Plans (STRAP) under § 2520.103–13. As stated in the preamble to the Abandoned Plan Regulations, the purpose of this provision is to provide annual reporting relief relating to abandoned plan filings by qualified termination administrators.[18] The contents of the STRAP include, for example, total assets of the plan as of the deemed termination date, termination expenses paid by the plan, and the total amount of distributions. To file the STRAP, a qualified termination administrator must use the Form 5500 and either the Schedule I or a ''Schedule QTA.'' Instructions for filing the STRAP are not included in the instructions to the Form 5500 Annual Return/Report of Employee Benefit Plan. Specific instructions for completing and filing the STRAP are on EBSA's Web site at *http://www.dol.gov/ebsa/publications/APterminalreport.html.* This proposal would amend paragraph (c)(2) of § 2520.103–13 to clarify and update the specific location of these instructions.

F. Internal Revenue Service

As it did in connection with the existing Abandoned Plan Regulations, the Department conferred with representatives of the Internal Revenue Service regarding the qualification requirements under the Code as applied to plans that are terminated pursuant to 29 CFR 2578.1, as modified by the proposed amendments contained in this document. The Internal Revenue Service advised that it would not challenge the qualified status of any plan terminated under § 2578.1 or take any adverse action against, or seek to assess or impose any penalty on, the qualified termination administrator, the plan, or any participant or beneficiary of the plan (including the qualified status of any chapter 7 plan terminated under these proposed amendments) as a result of such termination, including the distribution of the plan's assets, provided that the qualified termination administrator satisfies three conditions. First, the qualified termination administrator, based on plan records located and updated in accordance with § 2578.1(d)(2)(i), reasonably determines whether, and to what extent, the survivor annuity requirements of sections 401(a)(11) and 417 of the Code apply to any benefit payable under the plan and takes reasonable steps to comply with those requirements (if applicable). Second, each participant and beneficiary has a nonforfeitable right to his or her accrued benefits as of the date of deemed termination under § 2578.1(c)(1), subject to income, expenses, gains, and losses between that date and the date of distribution. Third, participants and beneficiaries must receive notification of their rights under section 402(f) of the Code. This notification should be included in, or attached to, the notice described in § 2578.1(d)(2)(vi). Notwithstanding the foregoing, as indicated in the preamble to the final Abandoned Plan Regulations (71 FR 20827), the Internal Revenue Service reserves the right to pursue appropriate remedies under the Code against any party who is responsible for the plan, such as the plan sponsor, plan administrator, or owner of the business, even in its capacity as a participant or beneficiary under the plan.[19]

The Internal Revenue Service also advised the Department that chapter 7 bankruptcy trustees using the Abandoned Plan Program would not be expected to use the Employee Plans Compliance Resolution System (EPCRS) as a condition to this relief.

G. Regulatory Impact Analysis

1. Background and Need for Regulatory Action

As stated earlier in this preamble, this document contains proposed amendments to three previously published Abandoned Plan Regulations that facilitate the termination of, and distribution of benefits from, individual account pension plans that have been abandoned by their sponsoring

[18] 71 FR 20830.

[19] See 71 FR 20827 (further discussion of the Department's response to commenters on the three IRS conditions).

employers. The amendments primarily propose to: (1) Permit bankruptcy trustees to use the Department's Abandoned Plan Regulations to terminate and wind up the plans of sponsors in liquidation under chapter 7 of the U.S. Bankruptcy Code; (2) eliminate the requirement that qualified termination administrators state in a notice to the Department whether they, or any affiliate are, or in the past 24 months were, the subject of an investigation, examination, or enforcement action by the Department, the Internal Revenue Service, or the Securities and Exchange Commission concerning their conduct as a fiduciary or party in interest with respect to any ERISA covered plan; and (3) conditionally permit qualified termination administrators to transfer the account balances of decedents to an appropriate bank account or a state's unclaimed property fund regardless of the size of the account balance. The need for these regulatory changes is explained in detail above in the ''Background'' section and in the overview sections, C through F, of this preamble.

2. Executive Order 12866 and 13563 Statement

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing and streamlining rules, and of promoting flexibility. It also requires federal agencies to develop a plan under which the agencies will periodically review their existing significant regulations to make the agencies' regulatory programs more effective or less burdensome in achieving their regulatory objectives. The Department has identified the amendments to the Abandoned Plan Regulations as a retrospective regulatory review project consistent with the principals of Executive Order 13563. The Department believes that the proposed changes to the Abandoned Plan Regulations would improve the overall efficiency of the Abandoned Plan Program, increase its usage, and substantially reduce burdens and costs on bankruptcy trustees terminating the plans of sponsors in chapter 7 liquidation, the plans of bankrupt sponsors, and the participants in these plans.

Under Executive Order 12866, ''significant'' regulatory actions are subject to the requirements of the executive order and review by the Office of Management and Budget (OMB). Section 3(f) of the executive order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this proposed rule is not a ''significant regulatory action'' under section 3(f) of the executive order. Accordingly, OMB has not reviewed this regulatory action or the Department's assessment of its costs and benefits, which is presented below.

3. Number of Affected Entities

As stated above, the proposed amendments to the Abandoned Plan Regulations would extend the framework of the regulations to chapter 7 plans. In order to estimate the number of entities affected by the Abandoned Plan Regulations as amended by the proposal, the Department must determine the number of abandoned plans that would be eligible to be terminated and wound up under the Abandoned Plan Program. At the inception of the Abandoned Plan Program in 2006, the Department based its estimate of the number of eligible plans upon Form 5500 data. Because the Department has over five years of experience with the Abandoned Plan Program, it now can base its estimate on data from EBSA's Office of Enforcement. These data show that in fiscal year 2007, the Department received 70 applications from potential qualified termination administrators to wind up abandoned plans. The number of applications increased to 331 in fiscal year 2010. Based on the foregoing, the Department estimates that approximately 330 plans covering 1,980 participants (330 plans × 6 participants per plan) would be terminated and wound up under the Abandoned Plan Program each year if the program remains unchanged.

The Department believes that there will be a 50 percent increase in the number of applications to the Abandoned Plan Program if plans of sponsors entering liquidation are permitted to be terminated and wound up under the Abandoned Plan Program. This would increase the total number of applications to 495 plans (330 plans × 1.5), and the number of affected participants to 2,970 (495 plans × 6 participants per plan), assuming that chapter 7 plans have roughly the same number of participants as other eligible plans. The Department welcomes comments regarding these estimates.

4. Costs

The Department estimates that the cost associated with extending the Abandoned Plan Program to chapter 7 plans would total approximately $64,000. These costs only would be imposed on the estimated 165 chapter 7 plans that chose to participate in the program. The Department also has updated its costs and benefits estimate for the entire Abandoned Plan Program to reflect its experience with the program since its inception in 2006. The Department estimates that the 330 abandoned plans participating in the Abandoned Plan Program would incur the following costs: $127,000 in annual costs attributable to abandoned plans' qualified termination administrator filings and notices; $4.48 million attributable to fiduciaries of the approximately 39,000 terminating plans (other than abandoned and chapter 7 plans) continuing to use the Safe Harbor for Distributions from Terminated Individual Account Plans (29 CFR 2550.404a–3), of which $3.52 million is equivalent hour burden cost attributable to in-house clerical staff and benefit managers' time; and $961,000 in mailing cost to distribute the required notices to approximately 3.1 million participants. Overall, the Department estimates that the costs of the regulations and class exemption, as amended by the proposal, would total approximately $4.67 million ($3.52 million in annual equivalent costs and $1.15 million in annual cost burden) but, as stated above, only $64,000 of such costs relate to the proposed amendments. These costs are quantified and discussed in more detail in the Paperwork Reduction Act section, below.

5. Benefits

The proposed amendments provide critical guidance that will encourage the orderly and efficient termination of

chapter 7 plans and distribution of account balances, thereby increasing the retirement income security of participants and beneficiaries in such plans. Absent the standards and procedures set forth in the Abandoned Plan Regulations, some bankruptcy trustees may lack the necessary guidance to properly terminate chapter 7 plans and distribute benefits to participants and beneficiaries. Specifically, the Abandoned Plan Regulations clarify the bankruptcy trustee's obligations as qualified termination administrator with respect to updating plan records, calculating account balances, selecting and monitoring service providers, distributing benefits, and paying fees and expenses.

The Department believes that providing this guidance and allowing bankruptcy trustees to serve or designate others to serve as qualified termination administrators will lead to administrative cost savings for trustees that choose to participate in the Abandoned Plan Program. The Department has not quantified these benefits because it does not have sufficient information regarding the characteristics of chapter 7 plans.[20] The Department expects that bankruptcy trustees will decide to participate in the Abandoned Plan Program based on their individual assessment of whether it would be more cost effective to terminate a plan inside or outside of the program.

One of the most significant cost savings that would result from the proposed amendments is that chapter 7 plans no longer would incur costly audit fees that otherwise would diminish plan assets, because bankruptcy trustees will file one streamlined termination report at the end of the winding up process in lieu of the Form 5500 Annual Return/Report.

Other benefits associated with bankruptcy trustees' participation in the Abandoned Plan Program are that the proposed rule would require that a qualified termination administrator of a chapter 7 plan (whether a bankruptcy trustee or eligible designee): (1) Take reasonable and good faith steps to collect known delinquent contributions on behalf of the plan, taking into account the value of plan assets involved, the likelihood of a successful recovery, and the expenses expected to be incurred in connection with the collection of contributions, and (2) report to the Department known delinquent contributions (employer and employee) owed to the plan, and any activity that the qualified termination administrator believes may be evidence of other fiduciary breaches by a prior plan fiduciary that involve plan assets.

With respect to abandoned plans other than chapter 7 plans, the orderly termination of plans will produce quantitative benefits by maximizing account balances payable to participants and beneficiaries because prompt, efficient termination of abandoned plans would eliminate future administrative expenses that would otherwise diminish the plan's assets. In addition, the regulations' specific standards and procedures for terminating abandoned plans will reduce termination costs. Both of these quantitative benefits will reduce the extent to which plan assets are drawn upon to pay plan expenses.

The Department estimates the benefits for such plans by comparing the ongoing administrative costs of maintaining an abandoned plan with the cost of terminating such a plan under the Abandoned Plan Regulations. The magnitude of the costs for a qualified termination administrator to wind up the affairs of an abandoned plan under the Abandoned Plan Regulations is meaningful only when compared to the savings of future administrative expenses that would result from the plan's termination. A comparison of termination costs with administrative savings is complicated by the fact that termination costs will be incurred only once, while the savings in eliminated administrative costs will accrue throughout the years during which the plan would have continued to exist in its abandoned state. In order to assess the balance of costs and benefits, the Department has estimated the present value of future ongoing administrative expenses using a five percent discount rate over a period of three years after termination. The actual duration of abandonment cannot be determined with certainty; however, the Department believes that a period of one to five years provides a reasonable basis to illustrate the potential administrative cost savings that could arise in future years from the termination of abandoned plans.

In order to determine the average costs for winding up abandoned plans under the Abandoned Plan Regulations, the Department examined the Special Terminal Reports for Abandoned Plans STRAPs filed by qualified termination administrators participating in the Abandoned Plan Program since its inception in 2006. These STRAPs indicate that average termination costs were $700 and that 60 percent of the plans incurred termination costs of less than $200. As stated above, the Department estimates that 330 plans would terminate under the Abandoned Plan Program if it remained unchanged, therefore, termination costs would total approximately $231,000 (330 plans × $700 termination costs per plan).

In order to assess the benefits of the proposed amendments, the Department also must estimate the ongoing administrative expenses that would have been incurred by abandoned plans if such plans were not terminated under the Abandoned Plan Program. Since the inception of the Abandoned Plan Program in 2006, the average asset level of plans terminating under the program is $54,000. Data from a recent Investment Company Institute report prepared by Deloitte LLP indicate that 401(k) plans with under $1 million in assets pay approximately 1.41 percent of total net assets in annual administrative fees. Given that over 99 percent of the plans had under $1 million in assets at the time of termination, 1.41 percent would be a reasonable estimate to use to determine administrative expenses that would have been incurred by abandoned plans. Assuming plans that are terminated and wound up under the Abandoned Plan Program pay fees at roughly the same rate as other small plans, the Department estimates that average ongoing administrative expenses would be approximately $760 per year ($54,000 × .0141).

Based on the foregoing, the present value of administrative expenses that otherwise would have been paid over the three years following termination exceeds the termination cost by approximately $1,470 ($2,170 of ongoing administrative expenses discounted at five percent over three years minus $700 up front termination costs = $1,470) generating expected savings for plan participants and beneficiaries of approximately $490,000 ($1,470 × 330 plans). In subsequent years, the savings resulting from eliminating ongoing administrative expenses that would have been incurred if abandoned plans were not terminated under the proposed amendments would further add to that differential.

Benefits Associated with Amendment to Safe Harbor for Distributions from Terminated Individual Account Plans (29 CFR 2550.404a–3): This section provides a safe harbor under which plan fiduciaries (including qualified termination administrators) of terminated individual account plans can directly transfer a missing or nonresponsive participant's account balance directly to appropriate

[20] The Department invites public comments regarding the characteristics of chapter 7 plans that may participate in the Abandoned Plan Program.

investment vehicles in the participant's name. An exception exists for account balances of $1,000 or less, which may be transferred to an interest-bearing, federally-insured bank or savings association account or to the unclaimed property fund of a state, if certain conditions are satisfied. As stated above in this preamble, § 2550.404a–3 is being amended to conditionally permit qualified termination administrators to transfer the account balances of decedents to an appropriate bank account or a state's unclaimed property fund, regardless of the size of the account balance. The proposed amendments would remove an obstacle to greater usage of the Abandoned Plan Program by eliminating the need to establish costly individual retirement plans for the account balances of known deceased participants that are over $1,000 when it is unlikely that anyone will claim the funds in such plans.

Benefits Associated with Amendment to Eliminate Statement of Past or Present Investigations: As stated above in this preamble, § 2578.1 is being amended to remove the under investigation statement in the notice of plan abandonment from the qualified termination administrator to the Department (see § 2578.1(c)(3)(i)(C)). The Department believes that, at present, this statement is unnecessary and may even discourage use of the Abandoned Plan Program. The statement is unnecessary because EBSA's Office of Enforcement is able to run searches with only de minimis cost to determine whether potential qualified termination administrators are under investigation by the Department. By encouraging more potential qualified termination administrators to wind up abandoned plans in accordance with the Abandoned Plan Regulations, the Department believes abandoned plan terminations will occur more efficiently, and more participants and beneficiaries of abandoned plans will gain access to their benefits.

6. Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Department is soliciting comments concerning the information collection request (ICR) included in the proposed rule on the amendments to the Abandoned Plan Regulations. A copy of the ICR may be obtained by contacting the PRA addressee shown below. The Department has submitted a copy of the proposed rule to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are interested particularly in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. OMB requests that comments be received within 30 days of publication of the proposed rule to ensure their consideration.

PRA Addressee: Address requests for copies of the ICR to G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N–5718, Washington, DC 20210. Telephone (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers. ICRs submitted to OMB also are available at *http://www.RegInfo.gov.*

The Department has assumed that most of the tasks that will be undertaken by qualified termination administrators in connection with abandoned plan terminations are the same as those required in normal plan administration, such as calculating or distributing benefits, and therefore are not accounted for as burden in this analysis because they are either part of the usual business practices of plans or have already been accounted for in ICRs for other statutory and regulatory provisions under title I of ERISA.

The Abandoned Plan Regulations require a qualified termination administrator to send up to five notices in the process of terminating and winding up an abandoned plan. Before winding up an abandoned plan, the qualified termination administrator (other than the qualified termination administrator of a chapter 7 plan) must make reasonable efforts to locate or communicate with the plan sponsor, such as by sending a notice to the last known address of the plan sponsor notifying the sponsor of the intent to terminate and wind up the plan and allowing the sponsor an opportunity to respond. Following the qualified termination administrator's finding of abandonment, or when there is an entry of an order for relief for a chapter 7 plan, the qualified termination administrator must send notice to the Department of its eligibility to serve as qualified termination administrator to wind up the abandoned plan and provide other specified plan information. The qualified termination administrator then sends a notice to the participants and beneficiaries in the plan, written in a manner calculated to by understood by the average plan participant, that their plan is being terminated, what is their account balance and the date on which it was calculated by the qualified termination administrator, a description of the distribution options available under the plan and a request that the participant or beneficiary elect a form of distribution and inform the qualified termination administrator of such election, what will happen to their account if the participant or beneficiary fails to make a distribution election within 30 days of receipt of the notice, and other information regarding their rights under the plan's termination. Upon terminating and distributing the assets of the plan, the qualified termination administrator must send a final notice to the Department stating that the plan has been terminated. The qualified termination administrator attaches to the final notice a STRAP. The Department has estimated the burden as a cost burden to the plan because the qualified termination administrator uses plan assets to pay for these notices and other costs of winding up the plan. These notices are information collection requests (ICRs) subject to the PRA. The hour and cost burden associated with these ICRs are

summarized in the following table discussed below.

COST BURDEN OF RULE

	Bankrupt plans Chapter 7 (new to this RIA)	Abandoned plans—non Chapter 7 (in previous RIA)	Terminating plans (in previous RIA)	Total
Notice to Plan Sponsor	$0	$5,500	$0	$5,500
Notice to DOL	8,700	17,300	0	26,000
Bankrupt Plans (Court Order)	3,200	0	0	3,200
Notice to Participants	3,600	7,200	0	10,700
Final Notice	3,300	6,700	0	10,000
Bankrupt Plans (Fiduciary Breach)	600	0	0	600
Form 5500 Terminal Report	35,600	71,200	0	106,800
Safe Harbor	0	0	4,480,000	4,480,000
Class Exemption Familiarization	9,400	18,700	0	28,100
Total	64,000	127,000	4,480,000	4,670,000

Notice to Plan Sponsor: This notice requirement only applies to plans that are not chapter 7 plans. The Department estimates that for each of these estimated 330 plans, a qualified termination administrator may utilize 10 minutes of clerical staff time at an hourly labor rate of $28.21 to fill in the needed information on the plan sponsor notice, and five minutes of a financial professional's time at an hourly labor rate of $66.36 to review and sign the notice.[21] This results in approximately 83 hours of clerical staff time with an associated cost burden of $1,600 (55 hours x $28.21 per hour) and 27.5 hours of a financial professional's time with an associated cost burden of $1,800 (27.5 hours × $66.36 per hour).[22]

The rule requires plan sponsor notices to be sent by a method requiring acknowledgement of receipt. Therefore, mailing costs include $6.35 for postage and email receipt of delivery. The mailing costs include paper and print costs of five cents per page for the one page notice. Therefore, the materials and mailing costs are estimated to be $2,100 for the 330 notices. As indicated in the chart above, there are $5,500 in total costs associated with this requirement ($1,600 clerical, $1,800 financial professional and $2,100 in mailing costs) all imposed on plans filing under the Abandoned Plan Program.

Notice of plan abandonment to the Department: The Department estimates that for each of the estimated 495 plans, a qualified termination administrator may utilize 30 minutes of a clerical worker's time at an hourly rate of $28.21 to fill in the needed information on the notice. It also is assumed that 30 minutes of a financial professional's time with an hourly rate of $66.36 will be required to prepare required plan information, and to review and sign the forms. This results in about 248 hours (495 plans × .5 hours) of clerical staff time with an associated cost burden of $7,000 (495 plans × .5 hours × $28.21 per hour), and 248 hours (495 plans × .5 hours) of a financial professional's time with an associated cost burden of $16,400 (495 plans × .5 hours × $66.36 per hour).

The Department assumes that approximately 80 percent of these initial notices to the Department will be sent by mail and that the rest will be submitted electronically (495 plans × .8 fraction by mail = 396 plans send notice by mail). Therefore, mailing costs include $6.35 for postage and email receipt of delivery. The mailing costs include paper and print cost of five cents per page. The model notice is three pages. Therefore, the materials and mailing cost are estimated to be $2,600 (396 plans × ($6.35 + 3 pages × $.05 per page)) for the 396 notices that will be mailed. The total costs of this component are therefore $26,000[23] ($8,700 of which are new costs attributable to the chapter 7 plans, which are ⅓ of the affected plans, and $17,300 of which are cost attributable to ⅔ of the affected plans that are not chapter 7 plans).

Notice of bankruptcy trustee's appointment—Chapter 7 Plans: For the estimated 165 chapter 7 plans, an additional cost would be incurred for the qualified termination administrator to attach a copy of the notice on the case docket or order for relief reflecting the bankruptcy trustee's appointment to administer the plan sponsor's chapter 7 liquidation case as well as identification information regarding the bankruptcy trustee. The Department estimates that it will take 15 minutes of a financial professional's time to prepare the statement and collect required documents and five minutes of clerical time to make required copies. This is expected to impose an additional hour burden of approximately 41 hours (165 plans × .25) on the financial professionals and a cost burden of $2,700 (41 hours × $66.36 per hour) on the financial professionals. For the clerical professionals, the hour burden is estimated at 14 hours (165 plans × .0833 hours) and associated cost burden is $400 (14 hours × $28.21 per hour).

Material requirements are expected to be 10 pages, costing $66 in total ($0.50 per affected plan × .80 fraction of plans that submit initial notices by paper × 165 plans). The proposed rule requires the notice or order entered in the case reflecting the bankruptcy trustee's appointment to be included with the initial notice. Thus, the total cost of this filing requirement is $3,200 ($2,700 + $400 + $66), all of which is for the 165 Chapter 7 plans.

Notice to Participants and Beneficiaries: The ERISA Advisory Council in the Report of the Working Group on Orphan Plans had indicated most abandoned plans are small plans with 25 or fewer participants and

[21] The Department estimates 2012 hourly labor rates to include wages, other benefits, and overhead based on data from the National Occupational Employment Survey (June 2011, Bureau of Labor Statistics) and the Employment Cost Index (September 2011, Bureau of Labor Statistics); the 2010 estimated labor rates are then inflated to 2012 labor rates.

[22] Any discrepancies in calculations in this section and the table above result from rounding. Estimates are rounded to the nearest $10, $100, $1,000, or $10,000. Hour estimates also are rounded in the text.

[23] $26,000 = $7,000 for clerical cost time + $16,400 for financial professional time + $2,600 for mailing.

beneficiaries. Thus, initially the Department conservatively estimated that there were 20 participants per plan impacted by the Abandoned Plan Regulations. However, after the inception of the Abandoned Plan Program, updated filings data provided by the Office of Enforcement show that in no year were there on average more than six participants per filing plan. The Department estimates that, using this updated information, approximately 330 plans will apply each year if the Abandoned Plan Regulations remain unchanged. This covers a maximum of 1,980 participants (330 plans × 6 participants per plan). With bankruptcy trustees being permitted to wind up the plans of sponsors in chapter 7 liquidation under the Abandoned Plan Regulations, the Department estimates that there will be a 50 percent increase in applications, bringing the total number of filings up to 495 (330 plans × 1.5). Assuming that chapter 7 plans have roughly the same number of participants as abandoned plans, the total number of participants affected would be 2,970 (495 plans × 6 participants per plan).

The Department estimates that for each of the estimated 495 terminating plans, a QTA may utilize 5 minutes of a financial professional's time to review the notices. Clerical staff will spend on average 30 minutes preparing and mailing the notices (5 minutes per participant × 6 participants). This results in approximately 248 hours (495 plans × 6 participants per plan × .0833 hours per participant) of clerical staff time with an associated cost burden of $7,000 (248 hours × $28.21 per hour) and 41 hours (495 plans × .0833 hours per plan) of a financial professional's time with an associated cost burden of approximately $2,700 (41 hours × $66.36 per hour).

The model notice to participants is two pages. Therefore, the mailing and material costs are estimated to be 55 cents per mailing (2 × $.05 + $0.45). Of the 2,970 participants (495 plans × 6 participants per plan), 38 percent are expected to receive their notices electronically. The Department estimates that 1,840 participants will receive the notice by mail, creating a mailing cost burden of $1,000. In total, the cost burden from the notice to the participants and beneficiaries requirement is approximately $10,700.[24] Because ⅓ of the affected plans are chapter 7 plans, $3,600 of the burden is expected to be for the chapter 7 plans and $7,100 for the ⅔ of affected plans that are abandoned.

Final Notice: The Department estimates that for each of the estimated 495 terminating plans, a qualified termination administrator will utilize 10 minutes of a financial professional's time to review the forms. Clerical staff will spend, on average, 10 minutes per notice preparing and mailing the notices. This results in about 83 hours (495 plans × .167 hours) of clerical staff time with an associated cost burden of $2,300 (83 hours × $28.21 per hour) and 83 hours of a financial professional's time (495 plans × .167 hours) with an associated cost burden of $5,500 (83 hours × $66.36 per hour).

The Department assumes that, as a usual and customary business practice, the final notice to the Department will be sent by a method requiring acknowledgement of receipt. The model final notice is two pages. Therefore, the material costs are estimated to be $.10 per plan and postage of $6.35 per plan. For the 70 percent of plans that are expected to submit their applications by mail, total mailing costs are estimated to be $2,200 for the 495 notices (($6.35 per plan for mailing +$.10 for materials) × 495 plans × .70 fraction of plans submitting by mail). Thus, there is approximately $10,000 in total costs for the final notice. Of that total, approximately $3,300 is dedicated to the ⅓ of affected plans that are chapter 7 plans and $6,700 is attributable to the 330 qualified termination administrator filings for the ⅔ of plans that are abandoned.

Reporting Requirement for Prior Plan Fiduciary Breaches: As discussed earlier in this preamble, the proposed amendments would require qualified termination administrators to chapter 7 plans (whether they are bankruptcy trustees or eligible designees) to report to the Department known delinquent contributions (employer and employee) owed to the plan, and any activity that the qualified termination administrator believes may be evidence of other fiduciary breaches by a prior plan fiduciary that involve plan assets. This information must be reported in conjunction with the filing of the final notice or notice of plan abandonment. If a bankruptcy trustee designates an eligible designee as defined in paragraph (j)(1)(ii) of the proposal, the bankruptcy trustee shall provide the eligible designee with records under the control of the bankruptcy trustee to enable the eligible designee to carry out its responsibilities. If, after the eligible designee completes the winding up of the plan, the bankruptcy trustee, in administering the debtor's estate, discovers additional information that it believes may be evidence of fiduciary breaches by a prior plan fiduciary that involve plan assets, the bankruptcy trustee shall report such activity to the Department.

While the Department has no basis for estimating the percentage of arrangements where the qualified termination administrator must report known delinquent contributions or a past fiduciary breach, the Department assumes for purposes of this analysis that a report will be required in 10 percent of the applications from chapter 7 plans. Thus, given that there are an estimated 165 chapter 7 plans utilizing the exemption, the Department estimates that 17 plans will need to prepare and send this notice. The Department anticipates that one-half hour of a financial professional's time will be required to prepare the notice and five minutes of clerical time will be required to send the notice. The Department therefore estimates that the burden for plans to send the notice to EBSA's Office of Enforcement will be approximately 10 hours (17 plans × (.5 financial professional hours per plan + .0833 clerical hours per plan)) with a cost of $600 for trustees (17 plans × .5 financial professional hours × $66.36/hour + 17 plans × .0833 clerical hours × $28.21/hour) to send the notice. The Department anticipates that most of these notices will be filed with the final notice; therefore, this analysis includes no additional mailing cost. Each notice is expected to cost $0.10 (2 × $0.05). The Department estimates that 70 percent of the plans are expected to submit the final filing by mail, resulting in an additional material cost burden of $1.19 (17 × .7 fraction submitting by mail × $.10). Thus, this new requirement amounts to a cost burden of approximately $600, which is exclusively imposed on chapter 7 plans.

Special Terminal Report for Abandoned Plans (29 CFR 2520.103–13): The Department estimates that it will take small plans 3.25 hours to file the STRAP in accordance with the instructions on the Department's web site. It is assumed that a financial accounting professional will perform this task resulting in an hour burden of 1,600 hours and a cost burden of $66.36 per hour resulting in a cost burden of $106,800 (3.25 hours × $66.36 per hour × 495 plans). For STRAPs submitted electronically, no burden is estimated for paper or mailing costs. For the assumed 70 percent of plans that submit their STRAPs by mail, the additional costs will be approximately $100 (495 plans × 6 pages per terminal report × $.05/page × .70 fraction of plans that

[24] $7,000 in clerical costs + $2,700 in financial professional costs + $1,000 in mailing costs.

submit final notices by mail). Thus, the total cost associated with the report is approximately $106,800 ($106,700 in financial accounting costs and $100 in material costs). Of this total, $35,600 is attributable to the ⅓ of plans that are chapter 7 plans and $71,200 is attributable to the ⅓ of plans that are abandoned. Only the chapter 7 plan costs represent new costs.

Safe Harbor for Distributions from Terminated Individual Account Plans (29 CFR 2550.404a–3): The PRA analysis also includes the burden associated with the notice to participants as required under ''The Safe Harbor for Distributions from Terminated Individual Account Plans.'' To meet the safe harbor, fiduciaries of terminating plans (other than abandoned plans) must furnish a notice to participants and beneficiaries informing them of the plan's termination and the options available for distribution of their account balances. The Department estimates that 3.1 million participants and beneficiaries will receive notices from approximately 39,000 plan sponsors.[25] The Department estimates that clerical professionals will spend, on average, two minutes per notice preparing and distributing the notices. The benefits manager will spend approximately 10 minutes preparing the notice. This results in an equivalent cost burden of $3.5 million calculated as follows: $2.92 million per year (3.1 million participants × .033 hours per participant × $28.21 per hour) in clerical time, and $607,000 (39,000 plans × .167 hours per plan × $93.31 per hour) in benefit manager costs. In addition, the Department assumes that each participant will receive a one page notice by first class mail resulting in a cost burden of $961,000 (3.1 million notices × ($0.45 for postage + ($0.05 per page × 1 page) × 0.62). Thus, with the updated numbers, total cost burden for terminating plans is $4.48 million. This total includes $3.49 million in equivalent costs from plan clerical time ($2.92 million) and plan benefit manager time ($607,000). There is also $961,000 in cost attributable to mailing the notices. These costs are not attributable to the proposed amendments allowing chapter 7 trustees to participate in the Abandoned Plan Program. They reflect the Department's revised estimates of the entire Abandoned Plans Program and take into account the most recent Form 5500 data.

[25] These estimates for the number of participants and sponsors are based on 2008 Form 5500 Data filings.

Abandoned Plan Class Exemption, PTE 2006–06: PTE 2006–06 permits a qualified termination administrator of an individual account plan that has been abandoned by its sponsoring employer to select itself or an affiliate to provide services to the plan in connection with the termination of the plan, and to pay itself or an affiliate fees for these services, provided that such fees are consistent with the conditions of the exemption. The exemption also permits a qualified termination administrator to: designate itself or an affiliate as a provider of an individual retirement plan or other account; select a proprietary investment product as the initial investment for the rollover distribution of benefits for a participant or beneficiary who fails to make an election regarding the disposition of such benefits; and pay itself or its affiliate in connection with the rollover.

Currently, PTE 2006–06 and the accompanying Abandoned Plan Regulations do not cover plans of sponsors involved in chapter 7 bankruptcy proceedings. In this regard, bankruptcy trustees do not meet the definition of qualified termination administrator as set forth in the existing Abandoned Plan Regulations and the class exemption. The proposed amendments expand the definition of qualified termination administrator to include bankruptcy trustees and certain persons designated by them to act as qualified termination administrators in terminating and winding up the affairs of abandoned plans. The Department believes that the proposed amendments to the Abandoned Plan Regulations and PTE 2006–06 will incentivize many bankruptcy trustees to carryout plan terminations consistent with ERISA, which will ultimately benefit participants and beneficiaries of such plans by ensuring abandoned plans are terminated in an orderly and cost-effective manner.

Compliance with the proposed amendments to the Abandoned Plan Regulations is a condition of the proposed amendment to the class exemption; therefore the costs and benefits that would be associated with complying with the proposed amendment to the class exemption have been described and quantified in connection with the economic impact of the proposed regulatory amendments. In its current and proposed amendment form, PTE 2006–06 requires, among other things, that fees and expenses paid to the qualified termination administrator and an affiliate in connection with the termination of an abandoned plan are consistent with industry rates for such or similar services, and are not in excess of rates ordinarily charged by the qualified termination administrator (or affiliate) for the same or similar services provided to customers that are not plans terminated pursuant to the Abandoned Plan Regulations, if the qualified termination administrator (or affiliate) provides the same or similar services to such other customers. The class exemption, in its current and proposed amendment form, also requires that qualified termination administrators ensure that the records necessary to determine whether the conditions of the exemption have been met are maintained for a period of six years, so that they may be available for inspection by any account holder of an individual retirement plan or other account established pursuant to this exemption, or any duly authorized representative of such account holder, the Internal Revenue Service, and the Department. Banks, insurance companies, and other financial institutions that provide services to abandoned plans and their participants and beneficiaries are required to act in accordance with customary business practices, which would include maintaining the records required under the terms of the class exemption, both in its current and proposed amendment form. Accordingly, the recordkeeping burden attributable to the proposed amendment will be handled by the qualified termination administrator and is expected to be small. However, there is an additional cost to directing this process. The Department assumes that a supervisor must devote time to each case in order to study the details of the individual plan, determine whether there have been any violations, and ensure that these details are properly incorporated into the notices. Assuming that all qualified termination administrators will take advantage of the proposed exemption, the hour burden attributable to supervisory duties for qualified termination administrators of abandoned plans (including familiarization costs for new qualified termination administrators) is expected to be one half hour for each qualified termination administrator, or 248 hours. Assuming a financial manager's wage rate of $113.39 per hour, this supervisory cost is expected to total $28,100 ($113.39 × 248). Approximately $9,400 of this cost (⅓ of the costs since 165 of the 495 estimated affected plans are chapter 7 plans) is expected to be attributable to financial manager costs dealing with chapter 7 plans and the remaining $18,700 of costs are attributable to financial

managers dealing with the ⅔ of abandoned plans.

Also, in certain limited circumstances, both the current exemption and proposed amendment to PTE 2006–06 require qualified termination administrators to provide the Department with a statement under penalty of perjury that services were performed and a copy of the executed contract between the qualified termination administrator and a plan fiduciary or plan sponsor. The Department does not include burden for these requirements as the burden is small, and the statement and contract can be included with other notices sent to the Department.

Type of Review: Proposed Revision of Existing Collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Notices for Terminated Abandoned Individual Account Plans.

OMB Number: 1210–0127

Affected public: Individuals or households; business or other for-profit; not-for-profit institutions.

Respondents: 39,495.

Responses: 3,103,960.

Frequency of Response: One time.

Estimated Total Burden Hours: 109,833.

Equivalent Costs of Hour Burden: $3,520,000.

Cost Burden: $ 1,150,000.

7. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 et seq.) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, EBSA proposes to continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA that permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans, covering fewer than 100 participants and which satisfy certain other requirements.

Further, while some large employers may have small plans, in general small employers maintain most small plans. Thus, EBSA believes that assessing the impact of these proposed rules on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business which is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 et seq.). EBSA therefore requests comments on the appropriateness of the size standard used in evaluating the impact of these proposed rules on small entities.

EBSA has preliminarily determined that these proposed rules may have a significant beneficial economic impact on a substantial number of small entities. In an effort to provide a sound basis for this conclusion, EBSA has prepared the following initial regulatory flexibility analysis. To the Department's knowledge, there are no federal regulations that might duplicate, overlap, or conflict with the provisions of the proposed amendments to the Abandoned Plan Regulations.

As explained earlier in the preamble, currently, the Abandoned Plan Program does not extend to plans sponsored by employers undergoing liquidation under chapter 7 of title 11 of the United States Code. Over the years, the Department has observed that, on numerous occasions, bankruptcy trustees have not terminated abandoned plans in an orderly and efficient manner. In many instances, such trustees are unaware of their fiduciary obligations under ERISA with respect to terminating plans of debtors and processes through which to wind up such plans.

The Department believes that the participants and beneficiaries would benefit from removing existing impediments that prevent chapter 7 bankruptcy trustees from terminating and winding up abandoned plans. Therefore, the Department is proposing to amend the Abandoned Plan Regulations (the three regulations and the related class exemption) to enable bankruptcy trustees to terminate abandoned plans in a manner consistent with ERISA and current regulations. The amendments would provide bankruptcy trustees with the option to serve as qualified termination administrators or to designate as a qualified termination administrator any person or entity that is eligible to serve as a trustee or issuer of an individual retirement plan and that holds assets of the chapter 7 plan. The Department believes that these amendments will help to preserve the assets of such abandoned plans, thereby maximizing benefits ultimately payable to participants and beneficiaries.

As described earlier in the preamble, the Department estimates that 330 abandoned plans (other than chapter 7 plans) would file under the Abandoned Plan Program. Essentially all abandoned plans are assumed to be small plans. Therefore, the more detailed discussion earlier in the preamble on the costs and benefits of the proposed amendments is applicable to this analysis of costs and benefits under the RFA. In summary, the net benefits of terminating an estimated 330 abandoned plans per year under the proposed amendments is $490,000. Thus, the estimated beneficial impact per plan is approximately $1,500 ($490,000/330 plans) before accounting for fees in individual retirement accounts to which participants and beneficiaries could rollover their distributed account balances. This net benefit analysis is an update of the 2006 estimate, with new information submitted to the Department's Office of Enforcement informing the analysis.

8. Congressional Review Act

This proposed amendment is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.) and, if finalized, will be transmitted to the Congress and the Comptroller General for review.

9. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, the proposed rule does not include any Federal mandate that will result in expenditures by state, local, or tribal governments in the aggregate of more than $100 million, adjusted for inflation, or increase expenditures by

the private sector of more than $100 million, adjusted for inflation.

10. Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the proposed rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects

29 CFR Part 2520

Accounting, Employee benefit plans, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Investments, Investments foreign, Party in interest, Pensions, Pension and Welfare Benefit Programs Office, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and Trustees.

29 CFR Part 2578

Employee benefit plans, Pensions, Retirement.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 29 CFR chapter XXV as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for part 2520 is revised to read as follows:

Authority: 29 U.S.C. 1021–1025, 1027, 1029–31, 1059, 1134 and 1135; and Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012). Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Sec. 2520.101–4 also issued under 29 U.S.C. 1021(f). Sec. 2520.101–6 also issued under 29 U.S.C. 1021(k) and Pub. L. 109–280, § 502(a)(3), 120 Stat. 780, 940 (2006). Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788.

2. Revise § 2520.103–13 to read as follows:

§ 2520.103–13 Special terminal report for abandoned plans.

(a) *General.* The terminal report required to be filed by the qualified termination administrator pursuant to § 2578.1(d)(2)(viii) of this chapter shall consist of the items set forth in paragraph (b) of this section. Such report shall be filed in accordance with the method of filing set forth in paragraph (c) of this section and at the time set forth in paragraph (d) of this section.

(b) *Contents.* The terminal report described in paragraph (a) of this section shall contain:

(1) Identification information concerning the bankruptcy trustee and, if applicable, any eligible designee acting as the qualified termination administrator pursuant to § 2578.1(j)(1)(ii), and the plan being terminated.

(2) The total assets of the plan as of the date the plan was deemed terminated under § 2578.1(c) of this chapter, prior to any reduction for termination expenses and distributions to participants and beneficiaries.

(3) The total termination expenses paid by the plan and a separate schedule identifying each service provider and amount received, itemized by expense.

(4) The total distributions made pursuant to § 2578.1(d)(2)(vii) of this chapter and a statement regarding whether any such distributions were transfers under § 2578.1(d)(2)(vii)(B) of this chapter.

(5) The identification, fair market value and method of valuation of any assets with respect to which there is no readily ascertainable fair market value.

(c) *Method of filing.* The terminal report described in paragraph (a) shall be filed:

(1) On the most recent Form 5500 available as of the date the qualified termination administrator satisfies the requirements in § 2578.1(d)(2)(i) through § 2578.1(d)(2)(vii) of this chapter; and

(2) In accordance with the instructions on EBSA's Web site (*http://www.dol.gov/ebsa/publications/APterminalreport.html*) pertaining to terminal reports of qualified termination administrators.

(d) *When to file.* The qualified termination administrator shall file the terminal report described in paragraph (a) within two months after the end of the month in which the qualified termination administrator satisfies the requirements in § 2578.1(d)(2)(i) through § 2578.1(d)(2)(vii) of this chapter.

(e) *Limitation.* (1) Except as provided in this section, no report shall be required to be filed by the qualified termination administrator under part 1 of title I of ERISA for a plan being terminated pursuant to § 2578.1 of this chapter.

(2) Filing of a report under this section by the qualified termination administrator shall not relieve any other person from any obligation under part 1 of title I of ERISA.

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

3. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135, sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 and Secretary of Labor's Order No. 1–2011, 77 FR 1088 (Jan. 9, 2012). Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404a–2 also issued under sec. 657, Pub. L. 107–16, 115 Stat. 38. Sections 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C. 1104. Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1). Sec. 2550.408b–19 also issued under sec. 611, Pub. L. 109–280, 120 Stat. 780, 972. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

4. Revise § 2550.404a–3 to read as follows:

§ 2550.404a–3 Safe harbor for distributions from terminated individual account plans.

(a) *General.* (1) This section provides a safe harbor under which a fiduciary (including a qualified termination administrator, within the meaning of § 2578.1(g) or (j)(1)(ii) of this chapter) of a terminated individual account plan, as described in paragraph (a)(2) of this section, will be deemed to have satisfied its duties under section 404(a) of the Employee Retirement Income Security Act of 1974, as amended (the Act)), 29

U.S.C. 1001 et seq., in connection with a distribution described in paragraph (b) of this section.

(2) This section shall apply to an individual account plan only if—

(i) In the case of an individual account plan that is an abandoned plan within the meaning of § 2578.1 of this chapter, such plan was intended to be maintained as a tax-qualified plan in accordance with the requirements of section 401(a), 403(a), or 403(b) of the Internal Revenue Code of 1986 (Code); or

(ii) In the case of any other individual account plan, such plan is maintained in accordance with the requirements of section 401(a), 403(a), or 403(b) of the Code at the time of the distribution.

(3) The standards set forth in this section apply solely for purposes of determining whether a fiduciary meets the requirements of this safe harbor. Such standards are not intended to be the exclusive means by which a fiduciary might satisfy his or her responsibilities under the Act with respect to making distributions described in this section.

(b) *Distributions.* This section shall apply to a distribution from a terminated individual account plan if, in connection with such distribution:

(1) The participant or beneficiary, on whose behalf the distribution will be made, was furnished notice in accordance with paragraph (e) of this section or, in the case of an abandoned plan, § 2578.1(d)(2)(vi) of this chapter, and

(2) The participant or beneficiary failed to elect a form of distribution within 30 days of the furnishing of the notice described in paragraph (b)(1) of this section.

(c) *Safe harbor.* A fiduciary that meets the conditions of paragraph (d) of this section shall, with respect to a distribution described in paragraph (b) of this section, be deemed to have satisfied its duties under section 404(a) of the Act with respect to the distribution of benefits, selection of a transferee entity described in paragraph (d)(1)(i) through (iii) of this section, and the investment of funds in connection with the distribution.

(d) *Conditions.* A fiduciary shall qualify for the safe harbor described in paragraph (c) of this section if:

(1) The distribution described in paragraph (b) of this section is made to any of the following transferee entities—

(i) To an individual retirement plan within the meaning of section 7701(a)(37) of the Code;

(ii) In the case of a distribution on behalf of a designated beneficiary (as defined by section 401(a)(9)(E) of the Code) who is not the surviving spouse of the deceased participant, to an inherited individual retirement plan (within the meaning of section 402(c)(11) of the Code) established to receive the distribution on behalf of the nonspouse beneficiary; or

(iii) In the case of a distribution by a qualified termination administrator (other than a bankruptcy trustee described in § 2578.1(j)(1)(ii)) with respect to which the amount to be distributed is $1,000 or less and that amount is less than the minimum amount required to be invested in an individual retirement plan product offered by the qualified termination administrator to the public at the time of the distribution, to:

(A) An interest-bearing federally insured bank or savings association account in the name of the participant or beneficiary,

(B) The unclaimed property fund of the State in which the participant's or beneficiary's last known address is located, or

(C) An individual retirement plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) offered by a financial institution other than the qualified termination administrator to the public at the time of the distribution.

(iv) In the case of a distribution by a bankruptcy trustee as described in § 2578.1(j)(1)(ii) with respect to which the amount to be distributed is $1,000 or less and the bankruptcy trustee, after reasonable and good faith efforts, is unable to locate an individual retirement plan provider who will accept the distribution, to either distribution option described in paragraph (d)(1)(iii)(A) or (B) of this section.

(v) Notwithstanding paragraphs (d)(1)(iii) and (iv) of this section, the $1,000 threshold may be disregarded in any particular case if the qualified termination administrator reasonably and in good faith finds that the participant and, if applicable, the named beneficiary are deceased; and if the qualified termination administrator also includes in the notice described in § 2578.1(d)(2)(ix)(G) (the Final Notice) the identity of the deceased participant and beneficiary and the basis behind the finding.

(2) Except with respect to distributions to State unclaimed property funds (described in paragraph (d)(1)(iii)(B) of this section), the fiduciary enters into a written agreement with the transferee entity which provides:

(i) The distributed funds shall be invested in an investment product designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity (except that distributions under paragraph (d)(1)(iii)(A) of this section to a bank or savings account are not required to be invested in such a product);

(ii) For purposes of paragraph (d)(2)(i) of this section, the investment product shall—

(A) Seek to maintain, over the term of the investment, the dollar value that is equal to the amount invested in the product by the individual retirement plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section), and

(B) Be offered by a State or federally regulated financial institution, which shall be: a bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation; a credit union, the member accounts of which are insured within the meaning of section 101(7) of the Federal Credit Union Act; an insurance company, the products of which are protected by State guaranty associations; or an investment company registered under the Investment Company Act of 1940;

(iii) All fees and expenses attendant to the transferee plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) or account (described in paragraph (d)(1)(iii)(A) of this section), including investments of such plan, (e.g., establishment charges, maintenance fees, investment expenses, termination costs and surrender charges), shall not exceed the fees and expenses charged by the provider of the plan or account for comparable plans or accounts established for reasons other than the receipt of a distribution under this section; and

(iv) The participant or beneficiary on whose behalf the fiduciary makes a distribution shall have the right to enforce the terms of the contractual agreement establishing the plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) or account (described in paragraph (d)(1)(iii)(A) of this section), with regard to his or her transferred account balance, against the plan or account provider.

(3) Both the fiduciary's selection of a transferee plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) or account (described in paragraph (d)(1)(iii)(A) of this section) and the investment of funds would not result in a prohibited transaction under section 406 of the Act, or if so prohibited such actions are exempted from the prohibited transaction provisions by a prohibited transaction exemption issued pursuant to section 408(a) of the Act.

(e) *Notice to participants and beneficiaries.* (1) *Content.* Each participant or beneficiary of the plan shall be furnished a notice written in a manner calculated to be understood by the average plan participant and containing the following:

(i) The name of the plan;

(ii) A statement of the account balance, the date on which the amount was calculated, and, if relevant, an indication that the amount to be distributed may be more or less than the amount stated in the notice, depending on investment gains or losses and the administrative cost of terminating the plan and distributing benefits;

(iii) A description of the distribution options available under the plan and a request that the participant or beneficiary elect a form of distribution and inform the plan administrator (or other fiduciary) identified in paragraph (e)(1)(vii) of this section of that election;

(iv) A statement explaining that, if a participant or beneficiary fails to make an election within 30 days from receipt of the notice, the plan will distribute the account balance of the participant or beneficiary to an individual retirement plan (i.e., individual retirement account or annuity described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) and the account balance will be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity;

(v) A statement explaining what fees, if any, will be paid from the participant or beneficiary's individual retirement plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section), if such information is known at the time of the furnishing of this notice;

(vi) The name, address and phone number of the individual retirement plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) provider, if such information is known at the time of the furnishing of this notice; and

(vii) The name, address, and telephone number of the plan administrator (or other fiduciary) from whom a participant or beneficiary may obtain additional information concerning the termination.

(2) *Manner of furnishing notice.* (i) For purposes of paragraph (e)(1) of this section, a notice shall be furnished to each participant or beneficiary in accordance with the requirements of § 2520.104b–1(b)(1) of this chapter to the last known address of the participant or beneficiary; and

(ii) In the case of a notice that is returned to the plan as undeliverable, the plan fiduciary shall, consistent with its duties under section 404(a)(1) of ERISA, take steps to locate the participant or beneficiary and provide notice prior to making the distribution. If, after such steps, the fiduciary is unsuccessful in locating and furnishing notice to a participant or beneficiary, the participant or beneficiary shall be deemed to have been furnished the notice and to have failed to make an election within 30 days for purposes of paragraph (b)(2) of this section.

(f) *Model notice.* The appendix to this section contains a model notice that may be used to discharge the notification requirements under this section. Use of the model notice is not mandatory. However, use of an appropriately completed model notice will be deemed to satisfy the requirements of paragraph (e)(1) of this section.

BILLING CODE 4510–29–P

APPENDIX TO § 2550.404a-3

NOTICE OF PLAN TERMINATION

[*Date of notice*]

[*Name and last known address of plan participant or beneficiary*]

Re: [*Name of plan*]

Dear [*Name of plan participant or beneficiary*]:

This notice is to inform you that [*name of the plan*] (the Plan) has been terminated and we are in the process of winding it up.

We have determined that you have an interest in the Plan, either as a plan participant or beneficiary. Your account balance in the Plan on [*date*] is/was [*account balance*]. We will be distributing this money as permitted under the terms of the Plan and federal regulations. {*If applicable, insert the following sentence:* The actual amount of your distribution may be more or less than the amount stated in this notice depending on investment gains or losses and the administrative cost of terminating your plan and distributing your benefits.}

Your distribution options under the Plan are {*add a description of the Plan's distribution options*}. It is very important that you elect one of these forms of distribution and inform us of your election. The process for informing us of this election is {*enter a description of the Plan's election process*}.

If you do not make an election within 30 days from your receipt of this notice, your account balance will be transferred directly to an individual retirement plan (inherited individual retirement plan in the case of a nonspouse beneficiary). {*If the name of the provider of the individual retirement plan is known, include the following sentence:* The name of the provider of the individual retirement plan is [*name, address and phone number of the individual retirement plan provider*].} Pursuant to federal law, your money in the individual retirement plan would then be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. {*If fee information is known, include the following sentence:* Should your money be transferred into an individual retirement plan, [*name of the financial institution*] charges the following fees for its services: {*add a statement of fees, if any, that will be paid from the participant or beneficiary's individual retirement plan*}.}

For more information about the termination, your account balance, or distribution options, please contact [*name, address, and telephone number of the plan administrator or other appropriate contact person*].

Sincerely,
[*Name of plan administrator or appropriate designee*]

BILLING CODE 4510–29–C

PART 2578—RULES AND REGULATIONS FOR ABANDONED PLANS

5. The authority citation for part 2578.1 continues to read as follows:

Authority: 29 U.S.C. 1135; 1104(a); 1103(d)(1).

6. Revise § 2578.1 to read as follows:

§ 2578.1 Termination of abandoned individual account plans.

(a) *General.* The purpose of this part is to establish standards for the termination and winding up of an individual account plan (as defined in section 3(34) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act)) with respect to which (1) a qualified termination administrator has determined there is no responsible plan sponsor or plan administrator within the meaning of section 3(16)(B) and (A) of the Act, respectively, to perform such acts, or (2) an order for relief under chapter 7 of title 11 of the United States Code has been entered with respect to the plan sponsor.

(b) *Finding of abandonment.* (1) A qualified termination administrator (as defined in paragraph (g) of this section) may find an individual account plan to be abandoned when:

(i) Either: (A) No contributions to, or distributions from, the plan have been made for a period of at least 12 consecutive months immediately preceding the date on which the determination is being made; or

(B) Other facts and circumstances (such as communications from participants and beneficiaries regarding distributions) known to the qualified termination administrator suggest that the plan is or may become abandoned by the plan sponsor; and

(ii) Following reasonable efforts to locate or communicate with the plan sponsor, the qualified termination administrator determines that the plan sponsor:

(A) No longer exists;

(B) Cannot be located; or

(C) Is unable to maintain the plan.

(2) Notwithstanding paragraph (b)(1) of this section, a qualified termination administrator may not find a plan to be abandoned if, at any time before the plan is deemed terminated pursuant to paragraph (c) of this section, the qualified termination administrator receives an objection from the plan sponsor regarding the finding of abandonment and proposed termination.

(3) A qualified termination administrator shall, for purposes of paragraph (b)(1)(ii) of this section, be deemed to have made a reasonable effort to locate or communicate with the plan sponsor if the qualified termination administrator sends to the last known address of the plan sponsor, and, in the case of a plan sponsor that is a corporation, to the address of the person designated as the corporation's agent for service of legal process, by a method of delivery requiring acknowledgement of receipt, the notice described in paragraph (b)(5) of this section.

(4) If receipt of the notice described in paragraph (b)(5) of this section is not acknowledged pursuant to paragraph (b)(3) of this section, the qualified termination administrator shall be deemed to have made a reasonable effort to locate or communicate with the plan sponsor if the qualified termination administrator contacts known service providers (other than itself) of the plan and requests the current address of the plan sponsor from such service providers and, if such information is provided, the qualified termination administrator sends to each such address, by a method of delivery requiring acknowledgement of receipt, the notice described in paragraph (b)(5) of this section.

(5) The notice referred to in paragraph (b)(3) of this section shall contain the following information:

(i) The name and address of the qualified termination administrator;

(ii) The name of the plan;

(iii) The account number or other identifying information relating to the plan;

(iv) A statement that the plan may be terminated and benefits distributed pursuant to 29 CFR 2578.1 if the plan sponsor fails to contact the qualified termination administrator within 30 days;

(v) The name, address, and telephone number of the person, office, or department that the plan sponsor must contact regarding the plan;

(vi) A statement that if the plan is terminated pursuant to 29 CFR 2578.1, notice of such termination will be furnished to the U.S. Department of Labor's Employee Benefits Security Administration;

(vii) The following statement: ''The U.S. Department of Labor requires that you be informed that, as a fiduciary or plan administrator or both, you may be personally liable for costs, civil penalties, excise taxes, etc. as a result of your acts or omissions with respect to this plan. The termination of this plan will not relieve you of your liability for any such costs, penalties, taxes, etc.''; and

(viii) A statement that the plan sponsor may contact the U.S. Department of Labor for more information about the federal law governing the termination and winding-up process for abandoned plans and the telephone number of the appropriate Employee Benefits Security Administration contact person.

(c) *Deemed termination.* (1) Except as provided in paragraph (c)(2) of this section, if a qualified termination administrator finds (pursuant to paragraph (b)(1) of this section) that an individual account plan has been abandoned, or if a plan is considered abandoned due to the entry of an order for relief under chapter 7 of title 11 of the United States Code (pursuant to paragraph (j)(1)(i) of this section), the plan shall be deemed to be terminated on the ninetieth (90th) day following the date of the letter from EBSA acknowledging receipt of the notice of plan abandonment, described in paragraph (c)(3) or (j)(2) of this section.

(2) If, prior to the end of the 90-day period described in paragraph (c)(1) of this section, the Department notifies the qualified termination administrator that it—

(i) Objects to the termination of the plan, the plan shall not be deemed terminated under paragraph (c)(1) of this section until the qualified termination administrator is notified that the Department has withdrawn its objection; or

(ii) Waives the 90-day period described in paragraph (c)(1), the plan shall be deemed terminated upon the qualified termination administrator's receipt of such notification.

(3) Following a qualified termination administrator's finding, pursuant to paragraph (b)(1) this section, that an individual account plan has been abandoned, the qualified termination administrator shall furnish to the U.S. Department of Labor a notice of plan abandonment that is signed and dated by the qualified termination administrator and that includes the following information:

(i) *Qualified termination administrator information.* (A) The name, EIN, address, and telephone number of the person electing to be the qualified termination administrator, including the address, email address, and telephone number of the person signing the notice (or other contact person, if different from the person signing the notice);

(B) A statement that the person (identified in paragraph (c)(3)(i)(A) of this section) is a qualified termination administrator within the meaning of paragraph (g) of this section and elects to terminate and wind up the plan (identified in paragraph (c)(3)(ii)(A) of

this section) in accordance with the provisions of this section;

(ii) *Plan information.* (A) The name, address, telephone number, account number, EIN, and plan number of the plan with respect to which the person is electing to serve as the qualified termination administrator;

(B) The name and last known address and telephone number of the plan sponsor; and

(C) The estimated number of participants and beneficiaries with accounts in the plan;

(iii) *Findings.* A statement that the person electing to be the qualified termination administrator finds that the plan (identified in paragraph (c)(3)(ii)(A) of this section) is abandoned pursuant to paragraph (b) of this section. This statement shall include an explanation of the basis for such a finding, specifically referring to the provisions in paragraph (b)(1) of this section, a description of the specific steps (set forth in paragraphs (b)(3) and (b)(4) of this section) taken to locate or communicate with the known plan sponsor, and a statement that no objection has been received from the plan sponsor;

(iv) *Plan asset information.* (A) The estimated value of the plan's assets held by the person electing to be the qualified termination administrator;

(B) The length of time plan assets have been held by the person electing to be the qualified termination administrator, if such period of time is less than 12 months;

(C) An identification of any assets with respect to which there is no readily ascertainable fair market value, as well as information, if any, concerning the value of such assets; and

(D) An identification of known delinquent contributions pursuant to paragraph (d)(2)(iii) of this section;

(v) *Service provider information.* (A) The name, address, and telephone number of known service providers (e.g., record keeper, accountant, lawyer, other asset custodian(s)) to the plan; and

(B) An identification of any services considered necessary to carry out the qualified termination administrator's authority and responsibility under this section, the name of the service provider(s) that is expected to provide such services, and an itemized estimate of expenses attendant thereto expected to be paid out of plan assets by the qualified termination administrator; and

(vi) *Perjury statement.* A statement that the information being provided in the notice is true and complete based on the knowledge of the person electing to be the qualified termination administrator, and that the information is being provided by the qualified termination administrator under penalty of perjury.

(d) *Winding up the affairs of the plan.* (1) In any case where an individual account plan is deemed to be terminated pursuant to paragraph (c) of this section, the qualified termination administrator shall take steps as may be necessary or appropriate to wind up the affairs of the plan and distribute benefits to the plan's participants and beneficiaries.

(2) For purposes of paragraph (d)(1) of this section, except as provided pursuant to paragraph (j)(3) of this section (relating to chapter 7 plans), the qualified termination administrator shall:

(i) *Update plan records.* (A) Undertake reasonable and diligent efforts to locate and update plan records necessary to determine the benefits payable under the terms of the plan to each participant and beneficiary.

(B) For purposes of paragraph (d)(2)(i)(A) of this section, a qualified termination administrator shall not have failed to make reasonable and diligent efforts to update plan records merely because the administrator determines in good faith that updating the records is either impossible or involves significant cost to the plan in relation to the total assets of the plan.

(ii) *Calculate benefits.* Use reasonable care in calculating the benefits payable to each participant or beneficiary based on plan records described in paragraph (d)(2)(i) of this section. A qualified termination administrator shall not have failed to use reasonable care in calculating benefits payable solely because the qualified termination administrator—

(A) Treats as forfeited an account balance that, taking into account estimated forfeitures and other assets allocable to the account, is less than the estimated share of plan expenses allocable to that account, and reallocates that account balance to defray plan expenses or to other plan accounts in accordance with (d)(2)(ii)(B) of this section;

(B) Allocates expenses and unallocated assets in accordance with the plan documents, or, if the plan document is not available, is ambiguous, or if compliance with the plan is unfeasible,

(*1*) Allocates unallocated assets (including forfeitures and assets in a suspense account) to participant accounts on a per capita basis (allocated equally to all accounts); and

(*2*) Allocates expenses on a pro rata basis (proportionately in the ratio that each individual account balance bears to the total of all individual account balances) or on a per capita basis (allocated equally to all accounts).

(iii) *Report delinquent contributions.* (A) Notify the Department of any known contributions (either employer or employee) owed to the plan in conjunction with the filing of the notification required in paragraph (c)(3), (j)(2), or (d)(2)(ix) of this section.

(B) Except as provided in paragraph (j)(3)(i) of this section, nothing in paragraph (d)(2)(iii)(A) of this section or any other provision of the Act shall be construed to impose an obligation on the qualified termination administrator to collect delinquent contributions on behalf of the plan, provided that the qualified termination administrator satisfies the requirements of paragraph (d)(2)(iii)(A) of this section.

(iv) *Engage service providers.* Engage, on behalf of the plan, such service providers as are necessary for the qualified termination administrator to wind up the affairs of the plan and distribute benefits to the plan's participants and beneficiaries in accordance with paragraph (d)(1) of this section.

(v) *Pay reasonable expenses.* (A) Pay, from plan assets, the reasonable expenses of carrying out the qualified termination administrator's authority and responsibility under this section.

(B) Expenses of plan administration shall be considered reasonable solely for purposes of paragraph (d)(2)(v)(A) of this section if:

(*1*) Such expenses are for services necessary to wind up the affairs of the plan and distribute benefits to the plan's participants and beneficiaries,

(*2*) Such expenses: (*i*) Are consistent with industry rates for such or similar services, based on the experience of the qualified termination administrator; and

(*ii*) Are not in excess of rates ordinarily charged by the qualified termination administrator (or affiliate) for same or similar services provided to customers that are not plans terminated pursuant to this section, if the qualified termination administrator (or affiliate) provides same or similar services to such other customers, and

(*3*) The payment of such expenses would not constitute a prohibited transaction under the Act or is exempted from such prohibited transaction provisions pursuant to section 408(a) of the Act.

(vi) *Notify participants.* (A) Furnish to each participant or beneficiary of the plan a notice written in a manner calculated to be understood by the average plan participant and containing the following:

(*1*) The name of the plan;

(*2*) A statement that the plan has been determined to be abandoned by the plan sponsor and, therefore, has been terminated pursuant to regulations issued by the U.S. Department of Labor;

(*3*)(*i*) A statement of the participant's or beneficiary's account balance and the date on which it was calculated by the qualified termination administrator, and

(*ii*) The following statement: ''The actual amount of your distribution may be more or less than the amount stated in this letter depending on investment gains or losses and the administrative cost of terminating your plan and distributing your benefits.'';

(*4*) A description of the distribution options available under the plan and a request that the participant or beneficiary elect a form of distribution and inform the qualified termination administrator (or designee) of that election;

(*5*) A statement explaining that, if a participant or beneficiary fails to make an election within 30 days from receipt of the notice, the qualified termination administrator (or designee) will distribute the account balance of the participant or beneficiary directly:

(*i*) To an individual retirement plan (i.e., individual retirement account or annuity),

(*ii*) To an inherited individual retirement plan described in § 2550.404a–3(d)(1)(ii) of this chapter (in the case of a distribution on behalf of a distributee other than a participant or spouse),

(*iii*) In any case where the amount to be distributed meets the conditions in § 2550.404a–3(d)(1)(iii) or (iv), to an interest-bearing federally insured bank account, the unclaimed property fund of the State of the last known address of the participant or beneficiary, or an individual retirement plan (described in § 2550.404a–3(d)(1)(i) or (d)(1)(ii) of this chapter) or

(*iv*) To an annuity provider in any case where the qualified termination administrator determines that the survivor annuity requirements in sections 401(a)(11) and 417 of the Internal Revenue Code (or section 205 of ERISA) prevent a distribution under paragraph (d)(2)(vii)(B)(*1*) of this section;

(*6*) In the case of a distribution to an individual retirement plan (described in § 2550.404a–3(d)(1)(i) or (d)(1)(ii) of this chapter) a statement explaining that the account balance will be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity;

(*7*) A statement of the fees, if any, that will be paid from the participant or beneficiary's individual retirement plan (described in § 2550.404a–3(d)(1)(i) or (d)(1)(ii) of this chapter) or other account (described in § 2550.404a–3(d)(1)(iii)(A) of this chapter), if such information is known at the time of the furnishing of this notice;

(*8*) The name, address and phone number of the provider of the individual retirement plan (described in § 2550.404a–3(d)(1)(i) or (d)(1)(ii) of this chapter), qualified survivor annuity, or other account (described in § 2550.404a–3(d)(1)(iii)(A) of this chapter), if such information is known at the time of the furnishing of this notice; and

(*9*) The name, address, and telephone number of the qualified termination administrator and, if different, the name, address and phone number of a contact person (or entity) for additional information concerning the termination and distribution of benefits under this section.

(B)(*1*) For purposes of paragraph (d)(2)(vi)(A) of this section, a notice shall be furnished to each participant or beneficiary in accordance with the requirements of § 2520.104b–1(b)(1) of this chapter to the last known address of the participant or beneficiary; and

(*2*) In the case of a notice that is returned to the qualified termination administrator as undeliverable, the qualified termination administrator shall, consistent with the duties of a fiduciary under section 404(a)(1) of ERISA, take steps to locate and provide notice to the participant or beneficiary prior to making a distribution pursuant to paragraph (d)(2)(vii) of this section. If, after such steps, the qualified termination administrator is unsuccessful in locating and furnishing notice to a participant or beneficiary, the participant or beneficiary shall be deemed to have been furnished the notice and to have failed to make an election within the 30-day period described in paragraph (d)(2)(vii) of this section.

(vii) *Distribute benefits.* (A) Distribute benefits in accordance with the form of distribution elected by each participant or beneficiary with spousal consent, if required.

(B) If the participant or beneficiary fails to make an election within 30 days from the date the notice described in paragraph (d)(2)(vi) of this section is furnished, distribute benefits—

(*1*) In accordance with § 2550.404a–3 of this chapter; or

(*2*) If a qualified termination administrator determines that the survivor annuity requirements in sections 401(a)(11) and 417 of the Internal Revenue Code (or section 205 of ERISA) prevent a distribution under paragraph (d)(2)(vii)(B)(*1*) of this section, in any manner reasonably determined to achieve compliance with those requirements.

(C) For purposes of distributions pursuant to paragraph (d)(2)(vii)(B) of this section, the qualified termination administrator may designate itself (or an affiliate) as the transferee of such proceeds, and invest such proceeds in a product in which it (or an affiliate) has an interest, only if such designation and investment is exempted from the prohibited transaction provisions under the Act pursuant to section 408(a) of the Act.

(viii) *Special Terminal Report for Abandoned Plans.* File the Special Terminal Report for Abandoned Plans in accordance with § 2520.103–13 of this chapter.

(ix) *Final Notice.* No later than two months after the end of the month in which the qualified termination administrator satisfies the requirements in paragraph (d)(2)(i) through (d)(2)(vii) of this section, furnish to the Office of Enforcement, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, a notice, signed and dated by the qualified termination administrator, containing the following information:

(A) The name, EIN, address, email address, and telephone number of the qualified termination administrator, including the address and telephone number of the person signing the notice (or other contact person, if different from the person signing the notice);

(B) The name, account number, EIN, and plan number of the plan with respect to which the person served as the qualified termination administrator;

(C) A statement that the plan has been terminated and all the plan's assets have been distributed to the plan's participants and beneficiaries on the basis of the best available information;

(D) A statement that plan expenses were paid out of plan assets by the qualified termination administrator in accordance with the requirements of paragraph (d)(2)(v) or (j)(3)(v) of this section;

(E) If fees and expenses paid by the plan exceed by 20 percent or more the estimate required by paragraph (c)(3)(v)(B) or (j)(2)(v)(B) of this section, a statement that actual fees and expenses exceeded estimated fees and expenses and the reasons for such additional costs;

(F) An identification of known delinquent contributions pursuant to paragraph (d)(2)(iii) of this section (if not already reported under paragraph

(c)(3)(iv)(D) or (j)(2)(iv)(D) of this section);

(G) For each distribution in accordance with § 2550.404a–3(d)(1)(v) (relating to distributions on behalf of deceased participants and beneficiaries), an identification of the deceased participant and, if applicable, the deceased named beneficiary, and the basis behind the finding required by § 2550.404a–3(d)(1)(v); and

(H) A statement that the information being provided in the notice is true and complete based on the knowledge of the qualified termination administrator, and that the information is being provided by the qualified termination administrator under penalty of perjury.

(3) The terms of the plan shall, for purposes of title I of ERISA, be deemed amended to the extent necessary to allow the qualified termination administrator to wind up the plan in accordance with this section.

(e) *Limited liability.* (1)(i) Except as otherwise provided in paragraph (e)(1)(ii) and (iii) of this section, to the extent that the activities enumerated in paragraphs (d)(2) and (j)(3) of this section involve the exercise of discretionary authority or control that would make the qualified termination administrator a fiduciary within the meaning of section 3(21) of the Act, the qualified termination administrator shall be deemed to satisfy its responsibilities under section 404(a) of the Act with respect to such activities, provided that the qualified termination administrator complies with the requirements of paragraph (d)(2) and (j)(3) of this section as applicable.

(ii) A qualified termination administrator shall be responsible for the selection and monitoring of any service provider (other than monitoring a provider selected pursuant to paragraph (d)(2)(vii)(B) of this section) determined by the qualified termination administrator to be necessary to the winding up of the affairs of the plan, as well as ensuring the reasonableness of the compensation paid for such services. If a qualified termination administrator selects and monitors a service provider in accordance with the requirements of section 404(a)(1) of the Act, the qualified termination administrator shall not be liable for the acts or omissions of the service provider with respect to which the qualified termination administrator does not have knowledge.

(iii) For purposes of a distribution pursuant to paragraph (d)(2)(vii)(B)(*2*) of this section, a qualified termination administrator shall be responsible for the selection of an annuity provider in accordance with section 404 of the Act.

(2) Nothing herein shall be construed to impose an obligation on the qualified termination administrator 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 qualified termination administrator for such plan.

(3) If assets of an abandoned plan are held by a person other than the qualified termination administrator, such person shall not be treated as in violation of section 404(a) of the Act solely on the basis that the person cooperated with and followed the directions of the qualified termination administrator in carrying out its responsibilities under this section with respect to such plan, provided that, in advance of any transfer or disposition of any assets at the direction of the qualified termination administrator, such person confirms with the Department of Labor that the person representing to be the qualified termination administrator with respect to the plan is the qualified termination administrator recognized by the Department of Labor.

(f) *Continued liability.* Nothing in this section shall serve to relieve or limit the liability of any person other than the qualified termination administrator due to a violation of ERISA.

(g) *Qualified termination administrator.* A termination administrator is qualified under this section only if:

(1) It is eligible to serve as a trustee or issuer of an individual retirement plan, within the meaning of section 7701(a)(37) of the Internal Revenue Code, and

(2) It holds assets of the plan that is found abandoned pursuant to paragraph (b) of this section.

(h) *Affiliate.* (1) The term affiliate means any person directly or indirectly controlling, controlled by, or under common control with, the person; or any officer, director, partner or employee of the person.

(2) For purposes of paragraph (h)(1) of this section, the term control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(i) *Model notices.* Appendices to this section contain model notices that are intended to assist qualified termination administrators in discharging the notification requirements under this section. Their use is not mandatory. However, the use of appropriately completed model notices will be deemed to satisfy the requirements of paragraphs (b)(5), (c)(3), (d)(2)(vi), (d)(2)(ix), and (j)(2) of this section.

(j) *Special rules for chapter 7 plans.* (1) Notwithstanding paragraphs (b) and (g) of this section (relating to findings of abandonment and defining the term ''qualified termination administrator,'' respectively), if the sponsor of an individual account plan is in liquidation under chapter 7 of title 11 of the United States Code:

(i) The plan (''chapter 7 plan'') shall for purposes of this section be considered abandoned upon the entry of an order for relief. However, the plan shall cease to be considered abandoned pursuant to this paragraph (j)(1) if at any time before the plan is deemed terminated pursuant to paragraph (c) of this section, the plan sponsor's chapter 7 liquidation proceeding is dismissed or converted to a proceeding under chapter 11 of title 11 of the United States Code.

(ii) The bankruptcy trustee, or an eligible designee, may be the qualified termination administrator. An ''eligible designee'' is any person or entity designated by the bankruptcy trustee that is eligible to serve as a trustee or issuer of an individual retirement plan, within the meaning of section 7701(a)(37) of the Internal Revenue Code, and that holds assets of the chapter 7 plan. The bankruptcy trustee shall be responsible for the selection and monitoring of any eligible designee in accordance with section 404(a)(1) of the Act.

(2) *Notice of Plan Abandonment.* In accordance with paragraph (c) of this section, the qualified termination administrator under this paragraph (j) shall furnish to the U.S. Department of Labor a notice of plan abandonment that is signed and dated by the qualified termination administrator and that includes the following information:

(i) *Qualified termination administrator information.* The name, address (including email address), and telephone number of the bankruptcy trustee and, if applicable, the name, EIN, address (including email address), and telephone number of any eligible designee acting as the qualified termination administrator pursuant to paragraph (j)(1)(ii) of this section;

(ii) *Plan information.* (A) The name, address, telephone number, account number, EIN, and plan number of the plan with respect to which the person is serving as the qualified termination administrator,

(B) The name and last known address and telephone number of the plan sponsor, and

(C) The estimated number of participants and beneficiaries with accounts in the plan;

(iii) *Chapter 7 information.* A statement that, pursuant to paragraph (j)(1) of this section, the plan is considered to be abandoned due to an entry of an order for relief under chapter 7 of the U.S. Bankruptcy Code, and a copy of the notice or order entered in the case reflecting the bankruptcy trustee's appointment to administer the plan sponsor's case;

(iv) *Plan asset information.* (A) The estimated value of the plan's assets as of the date of the entry of an order for relief,

(B) The name, EIN, address (including email address) and telephone number of the entity that is holding these assets, and the length of time plan assets have been held by such entity, if the period of time is less than 12 months,

(C) An identification of any assets with respect to which there is no readily ascertainable fair market value, as well as information, if any, concerning the value of such assets, and

(D) An identification of known delinquent contributions pursuant to paragraph (d)(2)(iii) of this section;

(v) *Service provider information.* (A) The name, address, and telephone number of known service providers (e.g., record keeper, accountant, lawyer, other asset custodian(s)) to the plan, and

(B) An identification of any services considered necessary to carry out the qualified termination administrator's authority and responsibility under this section, the name of the service provider(s) that is expected to provide such services, and an itemized estimate of expenses attendant thereto expected to be paid out of plan assets by the qualified termination administrator; and

(vi) *Perjury statement.* A statement that the information being provided in the notice is true and complete based on the knowledge of the person electing to be the qualified termination administrator, and that the information is being provided by the qualified termination administrator under penalty of perjury.

(3) *Winding up the affairs of the plan.* The qualified termination administrator shall comply with paragraph (d) of this section except as follows:

(i) *Delinquent contributions.* The qualified termination administrator of a plan described in paragraph (j)(1)(i) of this section shall, consistent with the duties of a fiduciary under section 404(a)(1) of ERISA, take reasonable and good faith steps to collect known delinquent contributions on behalf of the plan, taking into account the value of the plan assets involved, the likelihood of a successful recovery, and the expenses expected to be incurred in connection with collection. If the bankruptcy trustee designates an eligible designee as defined in paragraph (j)(1)(ii) of this section, the bankruptcy trustee shall at the time of such designation notify the eligible designee of any known delinquent contributions.

(ii) *Report fiduciary breaches.* The qualified termination administrator of a plan described in paragraph (j)(1)(i) of this section shall report known delinquent contributions (employer and employee) owed to the plan, and any activity that the qualified termination administrator believes may be evidence of other fiduciary breaches that involve plan assets by a prior plan fiduciary. This information must be reported to the Employee Benefits Security Administration in conjunction with the filing of the notification required in paragraph (j)(2) or (d)(2)(ix) of this section. If a bankruptcy trustee designates an eligible designee as defined in paragraph (j)(1)(ii) of this section, the bankruptcy trustee shall provide the eligible designee with records under the control of the bankruptcy trustee to enable the eligible designee to carry out its responsibilities under paragraph (j)(3)(ii) of this section. If, after the eligible designee completes the winding up of the plan, the bankruptcy trustee, in administering the debtor's estate, discovers additional information not already reported in the notification required in paragraphs (j)(2) or (d)(2)(ix) of this section that it believes may be evidence of fiduciary breaches that involve plan assets by a prior plan fiduciary, the bankruptcy trustee shall report such activity to the Employee Benefits Security Administration in a time and manner specified in instructions developed by the Office of Enforcement, Employee Benefits Security Administration, U.S. Department of Labor.

(iii) *Participant notification.* In lieu of the statement required by paragraph (d)(2)(vi)(A)(*2*) of this section, the notice shall include a statement that the plan sponsor is in liquidation under chapter 7 of title 11 of the United States Code and, therefore, the plan has been terminated by the bankruptcy trustee (or its eligible designee).

(iv) *Final notice.* In lieu of the content requirements in paragraph (d)(2)(ix)(A) of this section (relating to the qualified termination administrator), the final notice shall include, the name, address (including email address), and telephone number of the bankruptcy trustee and, if applicable, the name, EIN, address (including email address), and telephone number of the eligible designee.

(v) *Distributions.* Paragraph (d)(2)(vii)(C) of this section (relating to the ability of a qualified termination administrator to designate itself as the transferee of distribution proceeds in accordance with § 2550.404a–3) is not applicable in the case of a qualified termination administrator that is the plan sponsor's bankruptcy trustee.

(vi) *Pay reasonable expenses.* (A) If the bankruptcy trustee is the qualified termination administrator, in lieu of the requirements in paragraph (d)(2)(v)(B)(*2*) of this section, expenses shall be consistent with industry rates for such or similar services ordinarily charged by qualified termination administrators defined in paragraph (g) of this section.

(B) If the bankruptcy trustee designates an eligible designee, as defined in paragraph (j)(1)(ii) of this section, to serve as the qualified termination administrator, the requirements in paragraph (d)(2)(v) of this section (as opposed to the requirements in paragraph (j)(3)(vi)(A) of this section) apply to expenses that the eligible designee pays to itself or others.

(C) The eligible designee may pay, from plan assets, the bankruptcy trustee for reasonable expenses incurred in selecting and monitoring the eligible designee.

(4) The bankruptcy trustee or eligible designee shall not, through waiver or otherwise, seek a release from liability under ERISA, or assert a defense of derived judicial immunity (or similar defense) in any action brought against the bankruptcy trustee or eligible designee arising out of its conduct under this regulation.

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APPENDIX A TO § 2578.1

NOTICE OF INTENT TO TERMINATE PLAN

[*Date of notice*]

[*Name of plan sponsor*]
[*Last known address of plan sponsor*]

Re: [*Name of plan and account number or other identifying information*]

Dear [*Name of plan sponsor*]:

We are writing to advise you of our concern about the status of the subject plan. Our intention is to terminate the plan and distribute benefits in accordance with federal law if you do not contact us within 30 days of your receipt of this notice. See 29 CFR 2578.1.

Our basis for taking this action is that our records reflect that there have been no contributions to, or distributions from, the plan within the past 12 months. *{If the basis for sending this notice is under § 29 CFR 2578.1(b)(1)(i)(B), complete and include the sentence below rather than the sentence above.}* Our basis for taking this action is *{provide a description of the facts and circumstances indicating plan abandonment}*.

We are sending this notice to you because our records show that you are the sponsor of the subject plan. The U.S. Department of Labor requires that you be informed that, as a fiduciary or plan administrator or both, you may be personally liable for all costs, civil penalties, excise taxes, etc. as a result of your acts or omissions with respect to this plan. The termination of this plan by us will not relieve you of your liability for any such costs, penalties, taxes, etc. Federal law also requires us to notify the U.S. Department of Labor, Employee Benefits Security Administration, of the termination of any abandoned plan. For information about the federal law governing the termination of abandoned plans, you may contact the U.S. Department of Labor at 1.866.444.EBSA (3272).

Please contact [*name, address, and telephone number of the person, office, or department that the sponsor must contact regarding the plan*] within 30 days in order to prevent this action.

Sincerely,

[*Name and address of qualified termination administrator or appropriate designee*]

APPENDIX B To § 2578.1
PLANS FOUND ABANDONED PURSUANT TO 29 CFR 2578.1(b)

NOTIFICATION OF PLAN ABANDONMENT AND INTENT TO SERVE AS QUALIFIED TERMINATION ADMINISTRATOR

[*Date of notice*]

Abandoned Plan Coordinator, Office of Enforcement
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW, Suite 600
Washington, DC, 20210

Re:	Plan Identification	Qualified Termination Administrator
	[*Plan name and plan number*]	[*Name*]
	[*EIN*]	[*Address*]
	[*Plan account number*]	[*E-mail address*]
	[*Address*]	[*Telephone number*]
	[*Telephone number*]	[*EIN*]

Abandoned Plan Coordinator:

Pursuant to 29 CFR 2578.1(b), we have determined that the subject plan is or may become abandoned by its sponsor. We are eligible to serve as a Qualified Termination Administrator for purposes of terminating and winding up the plan in accordance with 29 CFR 2578.1, and hereby elect to do so.

We find that {*check the appropriate box below and provide additional information as necessary*}:

☐ There have been no contributions to, or distributions from, the plan for a period of at least 12 consecutive months immediately preceding the date of this letter. Our records indicate that the date of the last contribution or distribution was {*enter appropriate date*}.

☐ The following facts and circumstances suggest that the plan is or may become abandoned by the plan sponsor {*add description below*}:

_____
_____
_____
_____

We have also determined that the plan sponsor {*check appropriate box below*}:

☐ No longer exists

☐ Cannot be located

☐ Is unable to maintain the plan

We have taken the following steps to locate or communicate with the known plan sponsor and have received no objection {*provide an explanation below*}:

_____

_____

_____

Part I – Plan Information

1. Estimated number of individuals (participants and beneficiaries) with accounts under the plan: [*number*]

2. Plan assets held by Qualified Termination Administrator:
   A. Estimated value of assets: [*value*]
   B. Months we have held plan assets, if less than 12: [*number*]
   C. Hard to value assets {*select "yes" or "no" to identify any assets with no readily ascertainable fair market value, and include for those identified assets the best known estimate of their value*}:

		Yes	No	
(a)	Partnership/joint venture interests	☐	☐	[*value*]
(b)	Employer real property	☐	☐	[*value*]
(c)	Real estate (other than (b))	☐	☐	[*value*]
(d)	Employer securities	☐	☐	[*value*]
(e)	Participant loans	☐	☐	[*value*]
(f)	Loans (other than (e))	☐	☐	[*value*]
(g)	Tangible personal property	☐	☐	[*value*]

3. Name and last known address and telephone number of plan sponsor:

_____

_____

_____

4. Other:

_____

_____

_____

Part II – Known Service Providers of the Plan

Name	Address	Telephone
1.		
2.		
3.		

Part III – Services and Related Expenses to be Paid

Services	Service Provider	Estimated Cost
1.		
2.		
3.		

Part IV – Contact Person {*enter information only if different from signatory*}:

[*Name*]
[*Address*]
[*E-mail address*]
[*Telephone number*]

Under penalties of perjury, I declare that I have examined this notice and to the best of my knowledge and belief, it is true, correct and complete.

[*Signature*]
[*Title of person signing on behalf the Qualified Termination Administrator*]
[*Address, e-mail address, and telephone number*]

APPENDIX C To § 2578.1
PLANS FOUND ABANDONED PURSUANT TO 29 CFR 2578.1(j)

NOTIFICATION OF PLAN ABANDONMENT AND INTENT TO SERVE AS QUALIFIED TERMINATION ADMINISTRATOR

[*Date of notice*]

Abandoned Plan Coordinator, Office of Enforcement
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW, Suite 600
Washington, DC, 20210

Re:	Plan Identification	Qualified Termination Administrator
	[*Plan name and plan number*]	[N*ame*]
	[*EIN*]	[*Address*]
	[*Plan account number*]	[*E-mail address*]
	[*Address*]	[*Telephone number*]
	[*Telephone number*]	[*EIN*]

{*If applicable, include and complete the following pursuant to 29 CFR 2578.1(j)(2)(i) unless the same as Qualified Termination Administrator information above*}:

Bankruptcy Trustee
[*Name*]
[*Address*]
[*E-mail address*]
[*Telephone number*]

Abandoned Plan Coordinator:

Pursuant to 29 CFR 2578.1(j)(1), the subject plan is considered abandoned because the sponsor of the plan is in liquidation pursuant to a chapter 7 bankruptcy proceeding.

{*Insert as applicable*: [I have been appointed to administer the plan sponsor's case under chapter 7 of the U.S. Bankruptcy Code, and attached is a copy of the notice or order entered in the case reflecting my appointment. As the bankruptcy trustee administering this case, I am eligible to serve as Qualified Termination Administrator for purposes of terminating and winding up the plan in accordance with 29 CFR 2578.1, and hereby elect to do so.]
or
[A bankruptcy trustee has been appointed to administer the plan sponsor's case under chapter 7 of the U.S. Bankruptcy Code, and attached is a copy of the notice or order entered in the case

reflecting the trustee's appointment. We have been designated by the bankruptcy trustee and are eligible to serve as Qualified Termination Administrator for purposes of terminating and winding up the plan in accordance with 29 CFR 2578.1, and hereby elect to do so.]}

Part I – Plan Information

1. Estimated number of individuals (participants and beneficiaries) with accounts under the plan: [*number*]
2. Name, EIN, address and email address of the entity holding plan assets (if the entity is not the QTA):

_____

_____

_____

A. Estimated value of plan assets as of the date of the entry of an order for relief under chapter 7 of the U.S. Bankruptcy Code: [*value*]

B. Months entity has held plan assets, if less than 12: [*number*]

C. Hard to value assets {*select "yes" or "no" to identify any assets with no readily ascertainable fair market value, and include for those identified assets the best known estimate of their value*}:

		Yes	No	
(a)	Partnership/joint venture interests	☐	☐	[*value*]
(b)	Employer real property	☐	☐	[*value*]
(c)	Real estate (other than (b))	☐	☐	[*value*]
(d)	Employer securities	☐	☐	[*value*]
(e)	Participant loans	☐	☐	[*value*]
(f)	Loans (other than (e))	☐	☐	[*value*]
(g)	Tangible personal property	☐	☐	[*value*]

3. Name and last known address and telephone number of plan sponsor:

_____

_____

_____

4. Other:

_____

_____

_____

Part II – Known Service Providers of the Plan

	Name	Address	Telephone
1.			
2.			
3.			

Part III – Services and Related Expenses to be Paid

Services	Service Provider	Estimated Cost
1.		
2.		
3.		

Part IV – Contact Person {*enter information only if different from signatory*}:

[*Name*]
[*Address*]
[*E-mail address*]
[*Telephone number*]

Under penalties of perjury, I declare that I have examined this notice and to the best of my knowledge and belief, it is true, correct and complete.

[*Signature*]
[*Title of person signing on behalf the Qualified Termination Administrator*]
[*Address, e-mail address, and telephone number*]

APPENDIX D TO § 2578.1

NOTICE OF PLAN TERMINATION

[*Date of notice*]

[*Name and last known address of plan participant or beneficiary*]

Re: [*Name of plan*]

Dear [*Name of plan participant or beneficiary*]:

{*Insert as applicable* [We are] *or* [I am]} writing to inform you that the [*name of plan*] (Plan) has been terminated pursuant to regulations issued by the U.S. Department of Labor. The Plan was terminated because it was abandoned by [*name of the plan sponsor*]. {*For plans abandoned pursuant to 29 CFR 2578.1(j)(1), replace the sentence immediately preceding with the sentence immediately following*}: The Plan was terminated because [name of the plan sponsor] is in bankruptcy and the business is shutting down.

We have determined that you have an interest in the Plan, either as a plan participant or beneficiary. Your account balance on [*date*] is/was [*account balance*]. We will be distributing this money as permitted under the terms of the Plan and federal regulations. The actual amount of your distribution may be more or less than the amount stated in this letter depending on investment gains or losses and the administrative cost of terminating the Plan and distributing your benefits.

Your distribution options under the Plan are {*add a description of the Plan's distribution options*}. It is very important that you elect one of these forms of distribution and inform us of your election. The process for informing us of this election is {*enter a description of the election process established by the qualified termination administrator*}.

{*Select the next paragraph from options 1 through 3, as appropriate.*}

{*Option 1: If this notice is for a participant or beneficiary, complete and include the following paragraph provided the account balance does not meet the conditions of §2550.404a-3(d)(1)(iii) or (iv).*}

If you do not make an election within 30 days from your receipt of this notice, your account balance will be transferred directly to an individual retirement plan (inherited individual retirement plan in the case of a nonspouse beneficiary) maintained by {*insert the name, address, and phone number of the provider if known, otherwise insert the following language* [a bank or insurance company or other similar financial institution]}. Pursuant to federal law, your money in the individual retirement plan would then be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. {*If fee information is known, include the following sentence*: Should your money be transferred into an individual retirement plan, [*name of the financial institution*] charges the following fees for its services:

{*add a statement of fees, if any, that will be paid from the participant or beneficiary's individual retirement plan*}.}

{*Option 2: If this notice is for a participant or beneficiary whose account balance meets the conditions of §2550.404a-3(d)(1)(iii) or (iv), complete and include the following paragraph.*}

If you do not make an election within 30 days from your receipt of this notice, and your account balance is $1,000 or less, federal law permits us to transfer your balance to an interest-bearing federally insured bank account, to the unclaimed property fund of the State of your last known address, or to an individual retirement plan (inherited individual retirement plan in the case of a nonspouse beneficiary). Pursuant to federal law, your money, if transferred to an individual retirement plan would then be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. {*If known, include the name, address, and telephone number of the financial institution or State fund into which the individual's account balance will be transferred or deposited. If the individual's account balance is to be transferred to a financial institution and fee information is known, include the following sentence*: Should your money be transferred into a plan or account, [*name of the financial institution*] charges the following fees for its services: {*add a statement of fees, if any, that will be paid from the individual's account*}.}

{*Option 3: If this notice is for a participant or participant's spouse whose distribution is subject to the survivor annuity requirements in sections 401(a)(11) and 417 of the Internal Revenue Code (or section 205 of ERISA), complete and include the following paragraph.*}

If you do not make an election within 30 days from your receipt of this notice, your account balance will be distributed in the form of a qualified joint and survivor annuity or qualified preretirement annuity as required by the Internal Revenue Code. {*If the name of the annuity provider is known, include the following sentence*: The name of the annuity provider is [*name, address and phone number of the provider*].}

For more information about the termination, your account balance, or distribution options, please contact [*name, address, and telephone number of the qualified termination administrator and, if different, the name, address, and telephone number of the appropriate contact person*].

Sincerely,
[*Name of qualified termination administrator or appropriate designee*]

APPENDIX E To § 2578.1

FINAL NOTICE

[*Date of notice*]

Abandoned Plan Coordinator, Office of Enforcement
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW, Suite 600
Washington, DC, 20210

Re: Plan Identification
[*Plan name and plan number*]
[*Plan account number*]
[*EIN*]

Qualified Termination Administrator
[*Name*]
[*Address and e-mail address*]
[*Telephone number*]
[*EIN*]

{*If applicable, complete and include the following pursuant to 29 CFR 2578.1(j)(3)(iv) unless the same as Qualified Termination Administrator information above* }:

Bankruptcy Trustee
[*Name*]
[*Address*]
[*E-mail address*]
[*Telephone number*]

Abandoned Plan Coordinator:

General Information

The termination and winding-up process of the subject plan has been completed pursuant to 29 CFR 2578.1. Benefits were distributed to participants and beneficiaries on the basis of the best available information pursuant to 29 CFR 2578.1(d)(2)(i). Plan expenses were paid out of plan assets pursuant to 29 CFR 2578.1(d)(2)(v) or 29 CFR 2578.1(j)(3)(vi).

{*Include and complete the next section, entitled "Contact Person," only if the contact person is different from the signatory of this notice.*}

Contact Person

[*Name*]
[*Address and e-mail address*]
[*Telephone number*]

{*Include and complete the next section, entitled "Expenses Paid" only if fees and expenses paid by the plan exceeded by 20 percent or more the estimate required by 29 CFR 2578.1(c)(3)(v)(B) or 29 CFR 2578.1(j)(2)(v)(B).*}

Expenses Paid

The actual fees and/or expenses paid in connection with winding up the Plan exceeded by {*insert either*: [20 percent or more] *or* [*enter the actual percentage*]} the estimate required by 29 CFR 2578.1(c)(3)(v)(B) or 29 CFR 2578.1(j)(2)(v)(B). The reason or reasons for such additional costs are {*provide an explanation of the additional costs*}.

Other

_____
_____
_____

Under penalties of perjury, I declare that I have examined this notice and to the best of my knowledge and belief, it is true, correct and complete.

[*Signature*]
[*Title of person signing on behalf the Qualified Termination Administrator*]
[*Address, e-mail address, and telephone number*]
Attachment

Signed at Washington, DC, this 3rd day of December, 2012.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2012–29500 Filed 12–11–12; 8:45 am]

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