DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2520, 2550, and 2578

RIN 1210–AC04

Abandoned Plan Regulations

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Interim final rules with request for comments.

SUMMARY: This rulemaking amends the Abandoned Plan Program regulations that provide streamlined procedures for the termination of, and distribution of benefits from, individual account pension plans that have been abandoned by their sponsoring employers. The regulations, which were adopted in 2006 under the Employee Retirement Income Security Act of 1974, as amended (''ERISA''), did not cover individual account pension plans whose sponsors are in liquidation under chapter 7 of the U.S. Bankruptcy Code. These interim final rules expand the regulations to cover these plans so that bankruptcy trustees may use the Abandoned Plan Program's streamlined procedures to terminate and wind them up. Other technical amendments also are being made to improve the efficiency and operation of the Abandoned Plan Program. The amendments will affect employee benefit plans (primarily small defined contribution plans), participants and beneficiaries, service providers, and individuals appointed to serve as bankruptcy trustees under chapter 7 of the U.S. Bankruptcy Code. The Department is also issuing an amendment to PTE 2006–06, the prohibited transaction exemption accompanying the Abandoned Plan Program regulations, elsewhere in this issue of the **Federal Register**.

DATES:

Effective Date. These interim final rules are effective on July 16, 2024.

Comment Due Date. Comments on these interim final rules are due on July 16, 2024.

ADDRESSES: Interested persons are encouraged to submit their comments on these interim final rules online. You may submit comments, identified by RIN 1210–AC04, by either of the following methods:

Federal eRulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments.

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, Attn: Amendments to the Abandoned Plan Program regulations interim final rules RIN 1210–AC04.

Instructions: All submissions must include the agency name and Regulatory Identifier Number (RIN 1210–AC04) for this rulemaking. If you submit comments online, do not submit paper copies. *Warning:* Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records that are posted online as received and can be retrieved by most internet search engines.

Docket: Comments will be available to the public, without charge, online at the Federal eRulemaking Portal at *http://www.regulations.gov,* on the Department's website at *http://www.dol.gov/agencies/ebsa,* and at the Public Disclosure Room, Employee Benefits Security Administration, Room N–1513, 200 Constitution Ave., NW, Washington, DC 20210. The plain-language summary of the interim final rules of not more than 100 words in length required by the Providing Accountability Through Transparency Act of 2023, and any other background documents, also can be accessed at the Federal eRulemaking Portal at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas M. Hindmarch or Jason Dewitt, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Summary Overview

On April 21, 2006, the Department of Labor issued three regulations that established the Employee Benefits Security Administration's (EBSA) Abandoned Plan Program to facilitate the orderly and efficient termination of, and distribution of benefits from, individual account pension plans that have been abandoned by their sponsoring employers.[1]

The first regulation establishes standards for determining when individual account plans may be considered ''abandoned'' and procedures by which financial institutions, called ''qualified termination administrators'' (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 (ERISA).[2] The second regulation provides a fiduciary safe harbor for QTAs 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.'' [3] The third regulation establishes a simplified method for filing a terminal report for abandoned individual account plans.[4]

The 2006 regulations were accompanied by a prohibited transaction exemption, PTE 2006–06, which facilitates the goal of the Abandoned Plan Program by permitting a QTA who meets the conditions in the exemption to select itself or an affiliate to carry out the termination and winding-up activities specified in the 2006 regulations. The exemption also allows a QTA to pay itself or an affiliate for those services.[5]

For the reasons set forth in the 2006 preamble, the Abandoned Plan Program regulations strictly limit who may be a QTA.[6] To be a QTA, an entity must:

(1) 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 and

(2) hold assets of the plan on whose behalf it will serve as the QTA.[7]

As a result of these conditions, bankruptcy trustees ordinarily do not qualify as QTAs under the Abandoned Plan Program regulations. This means the regulations and the class exemption generally are not available with respect to plans whose sponsors are in liquidation under chapter 7 of the Bankruptcy Code. This was expressly acknowledged and discussed in the preamble when the Department published the Abandoned Plan Program regulations in 2006.[8]

For several reasons, the Department decided to revisit its decision to preclude bankruptcy trustees from serving as QTAs. The Department believed and continues to believe that when an individual account plan

[1] 71 FR 20820. *See also,* 73 FR 58459 (Oct. 7, 2008) for subsequent amendments with regard to distributions on behalf of a missing non-spouse beneficiary.

[2] 29 CFR 2578.1.

[3] 29 CFR 2550.404a–3. This safe harbor also is available to fiduciaries of terminated individual account plans that are not abandoned.

[4] 29 CFR 2520.103–13.

[5] *See* PTE 2006–06, 71 FR 20855 (Apr. 21, 2006) as amended at 73 FR 58629 (Oct. 7, 2008) (distributions on behalf of a missing non-spouse beneficiary).

[6] 71 FR at 20821.

[7] 29 CFR 2578.1(g).

[8] 71 FR at 20821.

sponsor is in liquidation in a chapter 7 bankruptcy case, the plan should be terminated and wound up in an orderly and efficient manner. In bankruptcy cases, as with abandoned plans generally, the sponsor usually is not able to carry out this function. Instead, the Department expected that, in chapter 7 bankruptcy cases, the appointed bankruptcy trustee would take the necessary steps to terminate the plan, wind up its affairs, and distribute plan benefits.

The issue of the bankruptcy trustee's authority to terminate and wind up the plan was addressed by the enactment of 11 U.S.C. 704(a)(11) as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA).[9] Under that provision, when an entity that sponsors an individual account plan is liquidated under chapter 7 of the Bankruptcy Code, the appointed bankruptcy trustee administering the liquidation proceeding is required to continue to perform the plan administration obligations that would otherwise be required of the bankrupt entity.[10]

Based on its experience administering the Abandoned Plan Program, the Department concluded that the termination of individual account plans of sponsors in liquidation under chapter 7 (Chapter 7 ERISA Plans) could be improved by including bankruptcy trustees as QTAs and providing streamlined termination and winding up procedures that are applicable to them [11] Thus, on December 12, 2012, the Department published proposed amendments to the 2006 regulations.[12] The purpose of the regulatory action was to advance the interests of participants and beneficiaries by:

(1) facilitating the orderly and efficient termination of Chapter 7 ERISA Plans,

(2) reducing administrative burden and costs imposed on Chapter 7 ERISA Plans that terminate in accordance with the regulations, and

(3) providing an avenue for bankruptcy trustees to discharge their duties under ERISA and the Bankruptcy Code with respect to Chapter 7 ERISA Plans.

Other technical amendments were also proposed to improve the operation of the program.

The Department received seven written comment letters on the 2012 proposal, on behalf of bankruptcy trustees, service providers and financial institutions, the Federal Deposit Insurance Corporation (FDIC) in its receivership role, and plan participant representatives. The commenters generally supported the program's expansion to include Chapter 7 ERISA Plans and identified several areas in which they thought the proposal could be improved. The written comments on the 2012 proposal are available on the Department's website.[13]

The Department has concluded that expanding the Abandoned Plan Program regulations to cover Chapter 7 ERISA Plans and making other technical changes in response to the public comments would result in an improved Abandoned Plan Program. The Department acknowledges that it has been over 10 years since the comment period closed. However, the purposes of the regulatory action and the rationale for the changes discussed in the 2012 proposal continue to be relevant, and the program's expansion to include Chapter 7 ERISA Plans and adoption of certain other technical improvements would advance the interests of participants and beneficiaries in abandoned plans.

The Department is relying on its earlier proposal, its consideration of comments on that proposal, and its understanding of the challenges facing these plans to finalize these interim final rules. The Department acknowledges the delay in finalizing the rules and therefore also believes another round of public comments would help it evaluate the further program expansions suggested by some stakeholders and other possible program improvements to address potential changes in marketplace circumstances and stakeholder experiences with abandoned plans. Accordingly, the Department is adopting these amendments to the Abandoned Plan Program regulations in the form of interim final rules with a request for comments.

B. Abandoned Plan Program Special Rules for Chapter 7 ERISA Plans—§ 2578.1

The new provisions for Chapter 7 ERISA Plans are contained in paragraph (j) of 29 CFR 2578.1. The amendments extend the Abandoned Plan Program's termination and winding up procedures to Chapter 7 ERISA Plans. New paragraph (j) is largely an overlay on the existing program. This overlay approach enabled the Department to adapt the 2006 regulations to Chapter 7 ERISA Plans without overhauling the framework of the Abandoned Plan Program.

In terminating a Chapter 7 ERISA Plan, a QTA would generally apply the ''winding up procedures'' in paragraph (d) of § 2578.1 except to the extent that such procedures are modified by paragraph (j). Paragraph (j) provides that such plans are deemed abandoned upon the bankruptcy court's entry of an order for relief in the plan sponsor's liquidation proceeding. Paragraph (j) then allows the bankruptcy trustee or an ''eligible designee'' to be the QTA, terminate and wind up the plan using the streamlined procedures, and pay itself reasonable compensation from plan assets for these services. A corresponding edit to paragraph (e) of § 2578.1 makes clear that the limited relief from ERISA's fiduciary liability provisions applies to a bankruptcy trustee that complies with paragraph (j)(7). When EBSA has determined that the QTA (whether bankruptcy trustee or eligible designee) has completed its responsibilities under the program, EBSA will provide a letter to the QTA entitled Receipt of Final Notice.

Paragraph (j) allows and in some cases mandates the bankruptcy trustee to appoint an ''eligible designee'' to terminate and wind up the plan under the streamlined procedures of the Abandoned Plan Program. Paragraph (j) recognizes only two types of eligible designees:

- an entity that can serve as a QTA under paragraph (g) of § 2578.1 (*i.e.,* an entity 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 plan on whose behalf it will serve as the QTA).
- a person who has served within the previous five years as a bankruptcy trustee in a case under chapter 7 of the Bankruptcy Code (referred to herein as the ''independent bankruptcy trustee practitioner'').

If appointed, the eligible designee would serve as the plan's QTA and

[9] Public Law 109–8, 119 Stat. 23.

[10] Section 704(a)(11) refers to whether the debtor (or any entity designated by the debtor) serves as the administrator (as defined in ERISA section 3) of an employee benefit plan. ERISA section 3(16) defines the ''administrator'' as the plan sponsor in the absence of any designation in the plan document of another person as administrator.

[11] The proposal referred to these plans as ''chapter 7 plans.'' The new term ''Chapter 7 ERISA Plans'' is used in these interim final rules for avoidance of confusion regarding the term ''plan'' used in the bankruptcy context.

[12] 77 FR 74063. The Department also published in the same issue of the **Federal Register** proposed amendments to class exemption PTE 2006–06 addressing the various transactions related to the proposed amendments to the regulations. 77 FR 74055.

[13] Available at *www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB47.*

would terminate and wind up the plan in accordance with these interim final rules. In this regard, the eligible designee's responsibilities in winding up the affairs of the plan would be the same as those of the bankruptcy trustee if it had elected to act as the QTA. While the United States Trustee Program maintains oversight authority of the bankruptcy trustee under 28 U.S.C. 586, including the performance of trustee duties under 11 U.S.C. 704,[14] the Department emphasizes that the use of the Abandoned Plan Program and winding up procedures under paragraphs (d) and (j) of section 2578.1 are governed by ERISA (and subject to Department oversight).

The eligible designee is acting under the authority of ERISA and 29 CFR 2578.1(j) and the designation under the IFR does not confer upon any party to the bankruptcy proceeding the ability to make a claim upon any bond held by the eligible designee under the Federal Rules of Bankruptcy Procedure.[15] The Department views the bankruptcy trustees' and eligible designees' activities under the Abandoned Plan Program as subject to ERISA and Department oversight. This would include, for example, a bankruptcy trustee's designation of an independent bankruptcy trustee practitioner as an eligible designee, a bankruptcy trustee's or eligible designee's hiring of plan service providers, and a bankruptcy trustee's or eligible designee's decision to pay itself or another service provider from plan assets.[16]

While the procedures and requirements in these interim final rules are voluntary, in the Department's view, a bankruptcy trustee that follows the interim final rules should generally be able to reduce its administrative burden and costs.[17] A more detailed description of the cost savings attributable to relieving the bankruptcy trustee from the obligation to file annual reports can be found in the Regulatory Impact Analysis section of this preamble.

1. Bankruptcy Trustee as Qualified Termination Administrator—§ 2578.1(j)(3)

These interim final rules generally adopt the provision from the 2012 proposal that allows the bankruptcy trustee in the case to elect to serve as the QTA. For purposes of the interim final rules, the bankruptcy trustee in the case includes the interim trustee appointed after the order for relief is entered, as well as an elected trustee if applicable.[18] The bankruptcy trustee would have to satisfy the winding up procedures in paragraphs (d) and (j) of § 2578.1 as discussed herein. A bankruptcy trustee that satisfies the conditions of the interim final rules is entitled to reasonable compensation for its services and also is entitled to the fiduciary liability relief provided by paragraph (e) of § 2578.1.

As stated above, commenters were generally supportive of the program's expansion to include Chapter 7 ERISA Plans. One commenter expressed the view that the goals of the Abandoned Plan Program could be furthered by reducing the role of the bankruptcy trustee as much as possible in favor of having another QTA (*i.e.,* the plan's asset custodian eligible to serve under paragraph (g)) wind up these plans. The commenter stated that a chapter 7 bankruptcy trustee must always remain ''disinterested'', which meant that the trustee could not represent the interests of both the bankruptcy estate and an adverse party to the estate at the same time. The commenter cited several specific concerns with a bankruptcy trustee having ongoing responsibilities to an ERISA plan until its termination. The concerns included the trustee's lack of expertise in monitoring ERISA plan termination; perceived conflicts between a trustee's role with respect to the bankruptcy estate and as QTA for the terminating ERISA plan; and interaction between the requirements of the proposal and the established practices of seeking bankruptcy court approval for any ''out-of-the-ordinary-course-activity'' in administering the bankruptcy estate. The commenter also expressed concern that an ongoing role for the bankruptcy trustee could conflict with its obligation to close the estate expeditiously. For these reasons, the commenter believed that a chapter 7 bankruptcy trustee's responsibilities should be discharged by the appointment of an asset custodian eligible designee as QTA and the provision of information in the trustee's possession to the QTA.

The Department has carefully considered this comment and has made some changes in these interim final rules, as discussed below, including requiring that the bankruptcy trustee appoint an eligible designee to be the QTA in certain circumstances. In considering the potential breadth of the changes, the Department was mindful of the fact that, in BAPCPA, Congress assigned the obligations of an ERISA plan administrator to chapter 7 bankruptcy trustees. Therefore, it does not appear that Congress saw a fundamental conflict between a trustee's role with respect to the bankruptcy estate and its role in terminating the ERISA plan. As a result of this statutory assignment of responsibility, the Department does not believe it is appropriate to adopt a framework in which the chapter 7 bankruptcy trustee would have no ongoing obligation to the plan after appointment of an eligible designee.[19]

2. Appointing an Eligible Designee as QTA—§ 2578.1 (j)(4) and (j)(5)

The 2012 proposal featured a provision that allowed bankruptcy trustees to appoint eligible designees to wind up Chapter 7 ERISA Plans, rather than the bankruptcy trustee serving as the QTA. Although, as discussed in the following preamble sections, public comments disagreed on the proper scope and effect of such an appointment, commenters focusing on the appointment provision generally

[14] Bankruptcy administrators oversee the administration of bankruptcy cases filed in Alabama and North Carolina.

[15] *See* 11 U.S.C. 322; Federal Rule of Bankruptcy Procedure 2010.

[16] *See Kirschenbaum* v. *U.S. Dept. of Labor (In re Robert Plan Corp.),* 777 F.3d 594 (2d Cir. 2015) (bankruptcy courts do not have jurisdiction to award compensation to a chapter 7 bankruptcy trustee and retained professionals out of assets in a 401(k) plan governed by ERISA).

[17] A bankruptcy trustee that decides not to use the streamlined procedures of the program will not have the fiduciary relief provided under the program with respect to the termination and winding up of the plan and will have to complete and file all annual reports (past due or otherwise) and furnish the attendant summary annual reports to participants as would be required of any other plan administrator. The Department expects that the costs savings to the plan and its participants and beneficiaries will also be an important factor for bankruptcy trustees in deciding to use the program.

[18] *See* 11 U.S.C. 702(b) and (d).

[19] One commenter argued that § 704(a)(11) does not make the chapter 7 bankruptcy trustee the plan administrator but rather requires it to ''perform the obligation required of the administrator[.]'' In this circumstance, the Department does not believe there is a meaningful distinction between the two. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Report of the Committee on the Judiciary House of Representatives, to accompany S. 256, states at p. 19: ''[T]he bill streamlines the appointment of an ERISA administrator for an employee benefit plan, under certain circumstances, to minimize the disruption that results when an employer files for bankruptcy relief.'' The report states at page 96: ''Subsection (a) of section 446 of the Act amends Bankruptcy Code section 521(a) to require a debtor, unless a trustee is serving in the case, to serve as the administrator (as defined in the Employee Retirement Income Security Act of 1974) of an employee benefit plan if the debtor served in such capacity at the time the case was filed. Section 446(b) amends Bankruptcy Code section 704 to require the chapter 7 trustee to perform the obligations of such administrator in a case where the debtor or an entity designated by the debtor was required to perform such obligations. Section 446(c) amends Bankruptcy Code section 1106(a) to require a chapter 11 trustee to perform these obligations.'' Report is available at *www.congress.gov/congressional-report/109th-congress/house-report/31/1.*

supported the idea. Accordingly, these interim final rules adopt the appointment feature with certain modifications.

(a) Who may be an eligible designee?

These interim final rules change the 2012 proposal's limits on who may be an eligible designee. An eligible designee is an important position under the interim final rules because, after accepting its appointment, the eligible designee serves as the QTA and is responsible for terminating and winding up the plan in accordance with the interim final regulations.

Under the proposal, an ''eligible designee'' was strictly limited to 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 ERISA Plan. Thus, an eligible designee could be the plan's asset custodian at the time of abandonment, or another entity chosen by the bankruptcy trustee.

Under these interim final rules, the bankruptcy trustee may appoint either a plan asset custodian described above or an independent bankruptcy trustee practitioner to be the eligible designee. An independent bankruptcy trustee practitioner is not the trustee for that particular chapter 7 case, but has served within the previous five years as a bankruptcy trustee in a case under chapter 7 of the Bankruptcy Code. The person could have served as a bankruptcy trustee in a case under chapter 7 pursuant to an appointment by the United States Trustee (or a bankruptcy administrator, if applicable) to a panel for chapter 7 liquidations, pursuant to an election, or by another reason such as being the bankruptcy trustee in a chapter 11 case that converts to a chapter 7 case. In addition, to be an eligible designee, the independent bankruptcy trustee practitioner must acknowledge its ERISA fiduciary status in writing.[20]

The decision to appoint an eligible designee to be the QTA is voluntary on the part of the bankruptcy trustee unless it determines that the Chapter 7 ERISA Plan is owed delinquent contributions (employer and employee) of more than a de minimis amount, as defined in the interim final rules. In that case, the interim final rules require the bankruptcy trustee to appoint an eligible designee. This change responds to comments expressing concern about potential conflicts of interest if the same bankruptcy trustee is assigned to represent the interests of the estate and to terminate the ERISA plan, and more specifically, the requirement to take reasonable steps to collect delinquent contributions on behalf of the plan unless such amounts are de minimis. The interim final rule mandates appointment of an eligible designee in these circumstances so as to address commenters' perceived potential for a conflict of interest on the part of the bankruptcy trustee. The Department stresses, however, that the bankruptcy trustee retains fiduciary responsibility under section 404(a) of ERISA for prudently and loyally selecting and monitoring the eligible designee.

These interim final rules also define ''eligible designee'' to address comments asking for clarification that an entity or person is not an eligible designee unless it acknowledges and accepts that designation. Some commenters were concerned that a bankruptcy trustee could force an entity to be an eligible designee and suggested that a bankruptcy trustee's appointment of and acceptance by the eligible designee should be formalized in writing. In response to these comments, the interim final rules clarify in paragraphs (j)(4)(i) and (ii) of § 2578.1 that, in addition to the other specified conditions, an eligible designee must accept such designation in writing. The Department does not believe it is necessary to prescribe rules for exactly how a bankruptcy trustee and an eligible designee should effect the designation and acceptance. However, the Department seeks comment on whether a model acceptance would be useful.

(b) What conditions are necessary to appoint an eligible designee?

The conditions to appoint an eligible designee are set forth in paragraphs (j)(5)(ii) through (v) of § 2578.1.

First, prior to designating an eligible designee, a bankruptcy trustee must make reasonable and diligent efforts to determine whether the plan is owed any contributions (employer and employee). Whether the plan is owed more than a ''de minimis'' amount of contributions will determine whether an eligible designee must be appointed. It will also determine whether the eligible designee as QTA must take reasonable steps to collect 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. Whether the trustee's efforts to make this determination are ''reasonable and diligent'' will depend on the facts and circumstances of the case.

One commenter indicated that bankruptcy trustees may in some cases have difficulty obtaining records from the debtor's former management. Unfortunately, the Department's experience confirms that inadequate or missing records can be a common situation with abandoned plans, and this can impact the ability to determine whether delinquent contributions are owed. The Department recognizes that when a bankruptcy trustee is locating, updating, or recreating records to determine if any contributions are owed to the plan, they could incur a cost that will exceed the amount of any delinquent contributions. Consequently, the Department is of the view that a bankruptcy trustee will not have failed to make reasonable and diligent efforts to determine whether the plan is owed any contributions merely because the trustee reasonably concludes in good faith that it is impossible, or would involve significant cost to the plan in relation to the plan's total assets, to update or locate the necessary records to make the necessary determination. The bankruptcy trustee, after making such conclusion, may proceed for purposes of the obligation to collect delinquent contributions (discussed below) as if the plan is owed no more than a de minimis amount of contributions.

Second, at the time of the designation, the bankruptcy trustee must notify the eligible designee of its findings with respect to the amount of delinquent contributions. This notification applies regardless of whether the eligible designee is an asset custodian or an independent bankruptcy trustee practitioner, and it will enable the eligible designee to take appropriate action.

Third, the bankruptcy trustee must establish procedures for the eligible designee to have reasonable access to documents in the bankruptcy trustee's possession that may be needed to wind up the plan. There is no specific list of documents contemplated by this provision, but examples include payroll records, participant lists, plan documents, trust statements, or other similar records.

Fourth, the bankruptcy trustee is responsible for selecting and monitoring the eligible designee in accordance with ERISA section 404(a)(1)(A) and (B). One commenter expressed the view that chapter 7 bankruptcy trustees in general do not have expertise regarding the termination of ERISA plans. The

[20] See *U.S. Department of Justice, Executive Office for United States Trustees, Handbook for Chapter 7 Trustees, p. 2–1.* (October 1, 2012), for a discussion of eligibility to serve on a panel.

commenter argued that the chapter 7 trustee's obligation to the plan should terminate upon an eligible designee's appointment. As discussed above, the Department does not believe that terminating the chapter 7 bankruptcy trustee's obligation upon appointment of an eligible designee would be consistent with the structure designed by Congress. Accordingly, in the interim final rules, the duty to monitor the eligible designee is ongoing throughout the termination and winding up process until all plan assets are distributed.

Fifth, a reporting condition attaches to the bankruptcy trustee even after the eligible designee has terminated the plan. If the bankruptcy estate is still open after the eligible designee winds up the plan and the bankruptcy trustee, either directly or through monitoring and communicating with the eligible designee, discovers evidence of a fiduciary breach by a prior plan fiduciary (*e.g.,* the debtor) during this period, the bankruptcy trustee must notify the Department of this evidence. See discussion of paragraph (j)(7)'s reporting requirement below.

3. Winding up the Affairs of the Plan—§ 2578.1(d) and (j)(7)

(a) In General

The ''winding up'' steps for Chapter 7 ERISA Plans are in paragraphs (d) and (j)(7) of § 2578.1. These rules generally are the same as the rules for abandoned plans in the 2006 regulations, though there are two noteworthy differences.

The first major difference is with respect to delinquent contributions. These interim final rules require a QTA of a Chapter 7 ERISA Plan that is owed more than a de minimis amount of contributions (which would be determined based on both employer and employee contributions, combined) to take reasonable steps to collect delinquent contributions on behalf of the Chapter 7 ERISA 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. To avoid potential conflicts of interest between the bankruptcy trustee's duties to the bankruptcy estate and the bankruptcy trustee's duties to the Chapter 7 ERISA Plan, paragraph (j) of these interim final rules mandates that the bankruptcy trustee appoint an eligible designee when there is an obligation to collect delinquent contributions (*i.e.,* the amount of delinquent contributions is more than de minimis).

The second major difference is with respect to reporting evidence of a fiduciary breach that involves plan assets by a prior plan fiduciary. These interim final rules require any QTA to a Chapter 7 ERISA Plan to report to the Department any activities that the QTA believes may be evidence of fiduciary breaches by a prior plan fiduciary (*e.g.,* the debtor).

The justification for these two differences is that bankruptcy trustees, by virtue of their knowledge and control of the debtor's estate and ERISA plan, are in a position to:

(1) know of the liquidating sponsor's delinquent contributions and to facilitate the collection of these delinquencies, and

(2) discover evidence of fiduciary breaches by prior plan fiduciaries.

Paragraph (j)(5)(i) of § 2578.1 contains two alternative tests to define what is considered a de minimis amount of delinquent contributions, for purposes of the requirement to collect the contributions described above.

The first test focuses directly on the amount of contributions owed to the plan and provides that delinquent contribution amounts are de minimis if they are $2,000 or less. As noted above, this would be determined taking into account both delinquent employee and employer contributions. The Department estimates that $2,000 fairly represents what it typically would cost to review the bankruptcy case and to file a liquidated proof of claim, two steps ERISA's fiduciary standards would require in bankruptcy cases with delinquent contributions in need of protection. As such, the first test allows a plan owed only $2,000 or less in delinquent contributions to avoid potentially costly collection efforts.

The second test focuses on the ''net worth'' of the source of recovery. The test provides that delinquent contribution amounts greater than $2,000 are to be considered de minimis if the property from which to collect delinquent contributions is an amount (*i.e.,* a realizable value) that is equal to or less than $2,000 net of all enforceable liens and applicable exemptions. In effect, delinquent contributions (whatever the actual amount) are considered de minimis in amount when property in the bankruptcy case is likely equal to or less than the $2,000 de minimis amount. Although the plan has a legitimate claim against the bankruptcy estate, this test dispenses with the need to pursue a claim where it is reasonably evident there is insufficient property of value from which to collect delinquent contributions or to cover the plan's cost of filing a liquidated proof of claim. As part of the general request for comments in Section F of the preamble below, the Department is specifically asking for comment on the definition of ''de minimis'' in these interim final rules.

The de minimis rule in these interim final rules was added in response to comments expressing concern about the bankruptcy trustee's obligations to collect delinquent contributions. One commenter opposed placing any responsibility to collect delinquent contributions on chapter 7 bankruptcy trustees. The commenter noted that outside of the bankruptcy context, QTAs are obligated only to report known delinquencies to the Department, rather than taking steps to collect the delinquent contributions. The commenter also asserted that bankruptcy trustees do not generally have working knowledge of the prior business operations of the debtor.

Commenters also addressed whether the requirement to collect delinquent contributions creates a conflict of interest for chapter 7 bankruptcy trustees. One commenter asserted that bankruptcy trustees would face a conflict of interest in every case in which there is a reasonable likelihood that there are unpaid plan contributions due from the debtor or any other potential liability that the debtor (and now the bankruptcy estate) owes the plan. The commenter suggested, as one possibility, that a panel of chapter 7 trustees with special training could be appointed to liquidate ERISA plans. As another alternative, the commenter suggested that chapter 7 trustees should be permitted to provide the Department with a list of delinquencies they have reasonably discovered. On the other hand, a different commenter did not see any conflict between the role of the chapter 7 trustee and the obligation to collect delinquent contributions, as the commenter stated that the contributions due to ERISA plans that are attributable to workers' deferred wages are not the property of the estate under the Bankruptcy Code. The commenter further stated that because employer contributions are claims entitled to priority under the Bankruptcy Code, it is particularly important for the chapter 7 trustee to determine whether any delinquent employer contributions are owed to the plan. The commenter suggested that the chapter 7 trustee's obligations to collect delinquent employer contributions should be phrased as the trustee's obligation to pay amounts consistent with the payment priorities in section 507(a)(4) and (a)(5) of the Bankruptcy Code, and to file a claim for any excess amounts.

After consideration of these comments, the Department continues to

believe that the bankruptcy trustee's knowledge and control over the debtor's estate in combination with its obligations under BAPCPA justify the interim final rules' requirement to designate an eligible designee as the QTA to take reasonable steps to collect delinquent contributions of more than a de minimis amount. This approach is not based on the belief that chapter 7 bankruptcy trustees have access to information on the business' operation *prior to* the entity filing for bankruptcy, but rather on the bankruptcy trustee's existing control and access to current information. However, the obligation will not attach if the plan is owed no more than a de minimis amount of contributions. Further, the interim final rules in certain instances mandate that the bankruptcy trustee appoint an eligible designee to assume its responsibilities under the program with respect to the plan to avoid placing the bankruptcy trustee in conflict with the bankruptcy estate.[21] In such cases, the bankruptcy trustee would still be under an obligation to cooperate with the designee in the performance of those duties.

(b) Payment of Fees and Expenses

Because the winding up rules in the interim final rules are essentially the same for Chapter 7 ERISA Plans as they are for abandoned plans, the provisions governing payment of fees and expenses from plan assets also are essentially the same for both kinds of plans. The fee provisions generally provide that plan assets may be used to pay reasonable expenses of plan termination. What is reasonable is judged in light of industry rates for ordinary plan administration under ERISA.[22] Consequently, these provisions do not allow a bankruptcy trustee or eligible designee to charge attorney-level rates for plan administration activities of termination and winding up the plan.

Several commenters addressed this aspect of the proposal. One commenter expressed support for the proposal on the bases that that there should be no reason for chapter 7 trustees to charge higher fees for ordinary plan administration services and the fee limitation would help preserve the value of participants' retirement savings. Other commenters believed that chapter 7 bankruptcy trustees should not be limited to charging plan administration industry rates for their services, since their compensation would normally be higher for bankruptcy case administration. One commenter indicated the fee provisions would be a disincentive for chapter 7 bankruptcy trustees to take an active role in the termination and winding up activities. Another commenter asserted that chapter 7 trustee compensation is routinely reviewed by the presiding bankruptcy judge and the Department would be permitted to object in bankruptcy proceedings if it thought a trustee's compensation exceeded statutory limits.

The Department declines to make the specific changes requested by the commenters but has revised these interim final rules to include a limited exception to the general rule regarding fees. The limited exception would apply to services provided by the eligible designee in connection with the duty to collect delinquent contributions on behalf of the plan. Under the exception, the fees must be consistent with rates ordinarily charged by firms or individuals representing or assisting a bankruptcy trustee in performing similar collection services on behalf of an estate in a chapter 7 proceeding. This limited exception applies to activities such as filing proofs of claims, tracing assets, responding to objections, motion practice, and litigation on behalf of the plan, but it does not apply to determining whether the plan is owed contributions. The act of determining whether a plan is owed a contribution is a routine act of plan administration and is therefore covered under the general rule rather than the exception.

4. Rule of Accountability—§ 2578.1(j)(8)

The interim final rules retain the rule of accountability from the proposal. Paragraph (j)(8) provides that the bankruptcy trustee or eligible designee shall not, for themselves or the other, through waiver or otherwise, seek a release from liability under ERISA, or assert a defense of derived immunity (or similar defense) in any action brought against the bankruptcy trustee or eligible designee arising out of its conduct under the regulation.

The rule of accountability, as proposed, was based on the fact that the ERISA plan and its assets are not part of the estate. Accordingly, the rule merely sought to preserve this legal distinction by preventing bankruptcy trustees from using bankruptcy courts to insulate themselves from liability under ERISA for fiduciary breaches.[23]

The Department received several comments on the proposed rule of accountability. One commenter supported the proposed rule on the basis that paragraph (e) of § 2578.1 already limits ERISA liability for QTAs. Another commenter expressed concern that the rule of accountability would result in bankruptcy trustees' unwillingness to participate in the Abandoned Plan Program because the commenter believed the rule would interfere with the trustee's ability to seek bankruptcy court approval even when required to do so by the Bankruptcy Code. The commenter provided an example stating that bankruptcy trustees must seek bankruptcy court approval to hire appraisers, real estate brokers and auctioneers. The commenter recommended that the Department require that the Department be provided sufficient notice to object and have an opportunity to be heard regarding any proposed action in the bankruptcy court.

The Department does not believe the rule of accountability interferes with action required under the Bankruptcy Code. As stated in the preamble to the proposal, paragraph (j)(8) does not prevent a bankruptcy trustee from asking a court to resolve an actual dispute involving a plan or from obtaining an order required under the U.S. Bankruptcy Code. However, the rule of accountability would bar a trustee from seeking a ruling from a court for approval of its actions as a QTA. For example, as discussed above, the Department does not believe a bankruptcy court has jurisdiction to approve the payment to a professional from assets of the plan.

The Department continues to believe that the rule of accountability strikes the correct balance by permitting bankruptcy trustees to continue existing practices under the Bankruptcy Code while preventing them from seeking additional comfort from a bankruptcy court regarding compliance with ERISA as set forth in the Abandoned Plan Program. Beyond this principle, the Department did not adopt the commenter's suggestion to eliminate the rule of accountability in favor of the Department receiving notice and opportunity to be heard regarding any proposed action in the bankruptcy court.

One commenter expressed the view that the proposal did not go far enough in ensuring that bankruptcy courts do

[21] One commenter sought from the Department a list of approved QTAs; however, the Department does not keep such a list.

[22] 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 website (see *https://www.askebsa.dol.gov/AbandonedPlanSearch/*).

[23] *See Kirschenbaum,* 777 F.3d at 597.

not relieve chapter 7 trustees from their obligations to plans. The commenter asked the Department to include additional information providing guidance on the manner in which the Department would prevent bankruptcy courts from discharging bankruptcy trustees from acting as fiduciaries with respect to the plans. As noted above, the Department believes it has struck an appropriate balance in this regard and therefore the Department has not included additional statements or information on this issue.

The Department seeks commenters' views on the construct of the rule of accountability in these interim final rules and whether specific changes are recommended.

C. Technical Comments Unrelated to the Expansion to Chapter 7 ERISA Plans

Several comment letters raised technical issues dealing with the Abandoned Plan Program in general, as opposed to Chapter 7 ERISA Plans specifically. The major comments are addressed below.

1. Removal of Statement of Investigation From the Notice of Plan Abandonment—§ 2578.1(c)(3)

Consistent with the proposal, these interim final rules remove the requirement that a QTA state whether it or any affiliate is, or in the past 24 months was, 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. QTAs were required to include this statement in the notice of plan abandonment furnished to the Department before a plan could be deemed terminated and wound up.[24]

Although such information alone would not bar a person from serving as a QTA, the statement served as a flagging mechanism to help the Department identify arrangements that potentially were not in the best interests of plan participants and beneficiaries. However, in the preamble to the 2012 proposal, the Department stated that generally it can determine from its own records whether a person is, or in the past 24 months was, the subject of such an investigation. Additionally, some otherwise qualified persons have expressed reluctance to serve as a QTA if they must affirm in a notice to the federal government that they or an affiliate are or were under such an investigation, examination, or enforcement action.[25]

The Department proposed to remove the requirement as unnecessary in light of other information sources available to the Department. The Department received two comments supporting the removal of the required statement of investigation. There were no comments opposing elimination of the requirement. Therefore, for the reasons stated in the proposal, the Department is removing the required investigation statement. In conjunction with removing the statement, the Department is removing a definition of the term ''affiliate'' from paragraph (h)(2) of § 2578.1 of the 2006 regulations, which was applicable only to the investigation statement. The generally applicable definition of the term ''affiliate'' in paragraph (h)(1) of § 2578.1 remains in effect.

2. Forfeitures/Small Accounts—§ 2578.1(d)(2)(ii)

With respect to applying the forfeiture provision in paragraph (d)(2)(ii) of section 2578.1 of the 2006 regulations, one commenter asked for clarification that a QTA can employ a de minimis exception for very small accounts where the cost of locating a participant would use up the account balance. The commenter noted that the general guidelines for winding up the affairs of a plan currently permit a QTA to treat as forfeited an account balance that is less than the estimated share of plan expenses allocable to the account.[26] The commenter asked for clarification or revision to the provision so that the rule would cover the estimated costs of locating the participant in addition to the estimated share of plan expenses allocable to the account.

Although forfeitures are permitted under these interim final rules, they are permitted only after a reasoned judgment that a participant's allocable share of anticipated plan expenses is likely to exceed their account balance. The Department's view is that it is not reasonable to assume that every participant with a small account balance will be missing. Therefore, allocating a predetermined search cost for participants whom the QTA has no reason to believe are missing would not ordinarily be considered reasonable for purposes of the forfeiture provision.

On the other hand, if a QTA were to determine that it must search for a specific participant—for example, if a Notice of Plan Termination sent to that participant was returned ''undeliverable''—the reasonable cost of searching for the participant would be a permissible plan expense and could be allocated entirely to the account of the missing participant in accordance with the principles in EBSA Field Assistance Bulletin 2003–03.[27] Accordingly, the Department determined that no changes are needed to the 2006 regulations, which leave such forfeiture determinations to a case-by-case determination based on the relevant facts and circumstances.

In this regard, the Department also seeks comment on the current provision in 2578.1(d)(2)(ii)(B) for allocating expenses to participant accounts in the absence of a governing plan document provision. The provision permits expenses to be allocated on a pro rata basis (proportionately in the ratio that each individual account balance bears to the total of all individual account balances) or per capita basis (allocated equally to all accounts). Do commenters believe that this flexibility is appropriate? For example, should the Department consider adding provisions to the regulation that would provide guidelines for the types of fees and circumstances that would be appropriate for per capita versus pro rata methods of allocation?

3. Distribution Alternatives/Missing Participants

Under the 2006 regulations, missing participant accounts were generally required to be distributed to individual retirement plans. In the case of a distribution by a QTA in 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 QTA to the public at the time of the distribution, the QTA may distribute a missing or non-responsive participant's account balance to:

(i) an interest-bearing federally insured bank or savings association account in the name of the participant or beneficiary;

[24] See paragraph (c)(3)(i)(C) of § 2578.1 in the 2006 final regulations.

[25] *See* 77 FR 74068.

[26] 29 CFR 2578.1(d)(1)(ii).

[27] Whether the cost of a particular search is reasonable depends on the facts and circumstances of the case. The Department, however, notes that a QTA should avoid search methods that cost more than the participant's account balance. *See* EBSA Field Assistance Bulletin 2014–01. For example, if the cost of a particular search method were to exceed the missing participant's account balance, the QTA should consider less costly search methods, such as those identified in FAB 2014–01. However, if the QTA reasonably determines that the cost of any of the available search methods would exceed the missing participant's account balance, the QTA may avoid a search and treat the account as forfeited under paragraph (d)(2)(ii) of section 2578.1.

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

(iii) an individual retirement plan offered by a financial institution other than the QTA to the public at the time of the distribution.[28]

Commenters requested that the Department raise the $1,000 threshold to $5,000 and eliminate the condition that the amount be less than the minimum amount required to be invested in an individual retirement plan product offered by the QTA to the public at the time of the distribution. This would allow QTAs to distribute more accounts of missing or non-responsive participants to bank or savings accounts or State unclaimed property funds than under the current rule. According to the commenters, individual retirement plans (*e.g.,* IRAs) for very small balances are not profitable or widely available, and though some financial institutions offer IRAs with low minimum-balance requirements, they tend to do so only as a way to create and maintain relationships with customers who, unlike missing and non-responsive participants, are likely to regularly contribute to and grow their accounts. The commenters suggested that their recommended changes could increase the likelihood that more asset custodians would elect to serve as QTAs than under the current system, thereby eliminating more abandoned plans.

The Department is not adopting the commenters' suggestions at this time but seeks additional comment on the merits of various distribution options. The Department's regulations regarding default distributions and the Abandoned Plan Program historically have preferred IRAs to other distribution options for several reasons. A distribution that qualifies as an eligible rollover distribution from a qualified plan, which is handled by a trustee-to-trustee transfer into an individual retirement plan, will avoid immediate taxation. An eligible direct rollover results in the deferral of income tax, avoids 20 percent mandatory withholding, and avoids any 10 percent additional tax for early distributions that might otherwise apply.[29] Funds in the individual retirement plan continue to grow on a tax-deferred basis so that funds are not subject to federal income tax until distributed.[30]

In contrast, funds transferred to a bank/savings account or State unclaimed property fund generally are subject to income taxation, mandatory income tax withholding, and a possible additional tax for premature distributions. Moreover, any interest that accrues after the transfer would generally be subject to income taxation upon accrual.[31]

Another option is the Pension Benefit Guaranty Corporation's Missing Participants Program for Defined Contribution Plans pursuant to 29 CFR 4050.201–207 (PBGC Program). In Field Assistance Bulletin 2021–01, the Department provided a temporary enforcement policy under which it will not pursue violations under section 404(a) of ERISA against either responsible plan fiduciaries of terminating defined contribution plans or QTAs of abandoned plans when a missing or non-responsive participant's or beneficiary's account balances are transferred to the PBGC Program rather than to an IRA, certain bank accounts, or to a State unclaimed property fund, as specified in 29 CFR 2550.404a–3. The plan fiduciary or QTA must comply with the guidance in the FAB and act in accordance with a good faith, reasonable interpretation of section 404 of ERISA with respect to matters not specifically addressed in the FAB.

The Department is continuing that temporary enforcement policy under these interim final rules. As described below in its general request for comments in Section F, the Department requests comment on whether the PBGC Program gives missing participants a better chance than the other available distribution options of being reunited with their retirement savings and should therefore be formally incorporated into the Department's regulation at 29 CFR 2550.404a–3. The Department further requests comments on whether the PBGC Program should be used as a replacement for all other distribution options in the case of plans eligible for the PBGC Program.

Also, with respect to missing participants, the Department requests comments on the methods of providing the participant notices required under 2550.404a–3. One commenter asserted that notices provided before an involuntary cash out distribution are provided by certified mail. The Department seeks comment on whether this is the common way of providing notice in that context. The Department also seeks comment on whether QTAs are generally unable to rely on the electronic disclosure safe harbors in 29 CFR 2520.104b–1 because they are unable to satisfy the conditions for the safe harbors, and if so, whether additional guidance would be useful on the use of electronic disclosure technologies to provide notices under the Abandoned Plan Program regulations.

4. Distributions/Missing Participants/ IRAs Offered by Institutions Other Than the QTA—Paragraph (d)(2)(vii)(B)(1) of § 2578.1 & 2550.404a–3

One commenter asked for clarification on whether a QTA must accept distributions above $1,000 on behalf of missing or non-responsive participants or if they may instead distribute the account balance to an individual retirement plan offered by an institution other than the QTA.

Although the interim final rules generally contemplate that a QTA will designate itself as the provider of an individual retirement plan for such participants, this outcome is not required under the interim final rules (or the 2006 regulations). A QTA may distribute such account balances to an individual retirement plan offered by an institution other than the QTA, provided that the conditions of the interim final rules are satisfied, including those set forth in § 2550.404a–3. A QTA would be responsible as a fiduciary for the selection of this provider, as set forth in paragraph (e) of § 2578.1 (entitled ''Limited liability'').

5. Distributions/Deceased Participants—§ 2550.404a–3(d)(1)(v)

Sometimes a QTA will know that a missing participant whose account balance is greater than $1,000 is deceased and that there is no designated beneficiary, or the beneficiary also is deceased. In such circumstances, the 2006 regulations require the QTA 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 was advised that, in some cases, providers of individual retirement plans will not accept such distributions.

The 2012 proposal contained a special rule to address this situation. As proposed, the special rule would conditionally permit QTAs 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, instead of to an individual retirement plan. The conditions allowed such a transfer if the QTA reasonably and in good faith finds that the participant and named

[28] Paragraphs 2578.1(d)(vii)(B)(1) and 2550.404a–3(d).

[29] *See* Code §§ 402(a), 3405(c), and 72(t).

[30] Depending on state law, state and local income taxes also may be subject to deferral.

[31] *See e.g.,* IRS Rev. Rul. 2020–24, Withholding and Reporting With Respect to Payments From Qualified Plans to State Unclaimed Property Funds.

beneficiary, if applicable, were deceased, and includes in the Final Notice filed with the Department the identity of the deceased participant (and beneficiary as applicable) and the basis for the finding.[32] The proposal's preamble solicited comments on whether the proposed conditions sufficiently safeguard the rights of participants and beneficiaries and asked in particular whether a QTA should be prohibited from making these transfers if the QTA has actual knowledge that a descendant of the deceased participant or beneficiary has a claim.

Commenters raised three general concerns about the workability of the special rule. First, QTAs often do not have beneficiary designation forms in their possession because the responsibility for maintenance of such forms was retained by the sponsor or delegated to another person who either cannot be located or no longer maintains possession of the records. Thus, in this scenario, QTAs cannot determine whether a living beneficiary exists. Second, often the participant's estate is designated (either affirmatively or by default) as the participant's beneficiary, and because estates cannot be ''deceased'' in the normal sense of that word, commenters indicated that the special rule should not be available in this circumstance. Third, QTAs sometimes are on notice that a descendant of the deceased participant or beneficiary claims to have a valid right under probate law and such descendant may or may not be a designated beneficiary under the plan terms and ERISA. In these circumstances, the commenters cautioned against outcomes that could lead to escheatment.

After considering the public comments, these interim final rules adopt the proposal's special rule permitting transfer of the deceased participant's account balance to an appropriate bank account or State unclaimed property fund in the name of the participant, even if the account balance exceeds $1,000, but with several modifications in response to the matters raised by the commenters intended to facilitate the termination and winding up of abandoned plans.

The first modification clarifies that the special rule is available for situations when, despite reasonable and good faith efforts, the QTA is unable to locate plan records that identify a beneficiary. See § 2550.404a–3(d)(1)(v)(A)(*2*). The interim final rules make clear that the special rule is available in these circumstances only if the QTA first conducts a reasonable search, consistent with the requirements of section 404 of ERISA, for the participant's beneficiary designation form.

Second, the special rule was expanded to cover situations when the beneficiary is the estate of the participant, without regard to whether the designation was affirmative or by default. See § 2550.404a–3(d)(1)(v)(B). However, availability of the special rule in these circumstances, depends on the QTA meeting certain conditions.

One condition is that the QTA first must make reasonable and good faith efforts to determine whether or not an estate exists before a transfer is permitted under the special rule. These interim final rules do not specify a method for satisfying this condition, as it will depend on the facts and circumstances of the particular case. However, the mere fact that an executor or administrator of an estate has not affirmatively contacted the QTA would not be sufficient evidence for the QTA to reach the requisite finding required by the condition.

Another condition is that the QTA must reasonably and in good faith find that it is unable to establish an individual retirement plan for the benefit of the estate of the participant. For example, this might occur if a QTA were to conclude that it is precluded by law from establishing an individual retirement plan for the benefit of an estate (as opposed to an individual) or if a bankruptcy trustee is unable after reasonable efforts to locate an individual retirement plan provider who will accept such a distribution.

Third, in response to concerns about potential litigation and competing claims by descendants and others, the special rule contains a new limitation—in no circumstance is the special rule available if the QTA has actual knowledge of any claims of a person purporting to have a right to all or part of the deceased participant's account. See paragraphs (d)(1)(v)(A)(*4*) and (B)(*2*) of § 2550.404a–3. For example, this might occur if the descendant of a deceased participant contacts the QTA in writing to assert a purported interest in the decedent's account balance. The Department agrees with the commenters that, in these circumstances, the QTA is on notice of the existence of a person who is or may become eligible to receive a benefit from the plan and that a transfer under the special rule may be inconsistent with or frustrate the rights of such person.

Finally, these interim final rules adopt the requirement that the QTA must document the relevant findings under the special rule and include this information in the Final Notice to the Department. See paragraph (d)(1)(v)(c) of § 2550.404a–3. This condition serves at least two purposes. First, it protects participants and beneficiaries by ensuring a determination of death is not premature and that reasonable and diligent efforts to find designated beneficiaries occurred. Second, it also prevents abuse of the special rule, limiting the number of transfers to bank or savings accounts or State unclaimed property funds.

6. QTA's Limited Liability—§ 2578.1(e)

Several commenters also asked the Department to make additional confirmations regarding the scope of liability of QTAs. One commenter asked whether the relief afforded by the Abandoned Plan Program regulations would extend to functions that are not addressed in the regulations, such as responding to domestic relations orders relating to benefits under the plan. The Department believes that it has constructed a regulatory framework that serves to minimize to the greatest extent possible the liability and exposure of QTAs who carry out their responsibilities in accordance with the provisions of the regulation. However, the limited liability provisions focus on the QTAs' activity winding up the affairs of the plan. For areas not addressed in the Abandoned Plan Program regulations, QTAs can look to the Department's more general guidance provided through advisory opinions, information letters, field assistance bulletins, interpretive bulletins, and other compliance assistance materials already available that address duties and obligations beyond the specific winding up affairs performed by QTAs.

Another commenter asked about the liability of the QTA after the abandoned plan is terminated and assets are distributed, particularly with respect to missing participants. The commenter urged the Department to clarify that a QTA that has substantially complied with the Abandoned Plan Program regulations would have no continuing liability for subsequent actions taken by the transferee of the assets. In this regard, paragraph (e)(ii) of § 2578.1 provides that the QTA is not responsible for monitoring a service provider selected in accordance with § 2550.404a–3, which provides a safe harbor for fiduciaries in connection with distributions from terminated

[32] A commenter sought additional guidance on what would constitute a valid basis for determining that a participant is deceased. The reasonable and good faith standard is a factual standard that would require evaluation of all the surrounding circumstances.

individual account plans. However, the Department cautions that it is unable to confirm that limited liability is available for ''substantial'' compliance. The Department is also unable to confirm in response to a similar comment that fiduciary relief would necessarily be available for certain activities of the QTA even if the QTA fails to meet every applicable requirement of the program. The extent of the QTA's liability would depend on the surrounding facts and circumstances.

7. Notices and Special Terminal Report—§ 2578.1(c)(3) and (j)(6), § 2578.1(d)(2)(ix), and § 2520.103–13

In response to a comment, the Department added spaces in the model notices to identify fiduciary breaches, as is required in connection with Chapter 7 ERISA Plans under these interim final rules. Specifically, the spaces were added in the Notification of Intent to Serve as a QTA to be used in connection with Chapter 7 ERISA Plans (Appendix C to part 2578) and in the Final Notice (Appendix E to part 2578). The commenter also asked why there is a Notice of Plan Termination in Appendix D part 2578 when the Appendix A to part 2550 appears to serve the same function of providing a model notice to be used for participant contributions. The Department agrees that the two model notices serve similar functions but the model notice in Appendix D to part 2578 contains a provision specific to the QTA context. The Department believes that it is most user friendly to provide the model notice for participant contributions as an appendix to part 2578 where other model notices that are specific to the Abandoned Plan Program are located. However, the Department made other minor and clarifying edits to the model forms included in the appendices to the Abandoned Plan Program regulations.

In response to comments, these interim final rules also streamline and update the process for filing notices and reports in two significant ways. First, the Special Terminal Report for Abandoned Plans (STRAP), *see* § 2520.103–13 is now a single, stand-alone form, as opposed to a collection of data from various parts of the Form 5500 Annual Return/Report of Employee Benefit Plan. Second, the interim final rules establish a new optional online method to file the STRAP and other notices, as opposed to the existing email or paper-based system.

With respect to the STRAP, the Department added language to 29 CFR 2520.103–13(b) to clarify that content requirements of the STRAP must be provided in accordance with the instructions for the STRAP posted on the Department's website. Pursuant to § 2520.103–13(b)(1), which authorizes the collection of plan information, the Department added a question to the STRAP to assist the Department in understanding the types of defined contribution plans that are terminated under the Abandoned Plan Program (*e.g.,* single-employer, multiemployer, multiple-employer, 401(k), 403(b) plans, etc.). These interim final rules add new paragraphs (b)(6) and (7) to § 2520.103–13, which ask for the total number of distributions and the number of distributions to missing participants included in that total. Because the Department often requests this information, these interim final rules add this information requirement to the STRAP to improve the efficiency of the program. In this regard, the Department is considering including a provision in the final rules that would either explicitly require QTAs to maintain records regarding the location of distributions of the accounts of missing participants, or that would require such information be provided in the STRAP. The Department seeks comment on these potential requirements as well as the extent to which QTAs currently maintain records on the location of these accounts and the length of time that the records are kept.

Since the STRAP is now a stand-alone form, the Department can no longer rely on the penalties and perjury statement embedded in the Form 5500 Annual Report. Accordingly, new paragraph (b)(8) adds a penalties and perjury statement to the content requirements of § 2520.103–13.

The Department also eliminated from the STRAP the requirements to report plan administrator identification information, whether the plan is collectively bargained, and the effective date of the plan. The Department concluded that information is not needed on the STRAP and should be available from prior Form 5500 filings for the plan or can be requested from the QTA to the extent the information is relevant in a particular case under the Abandoned Plan Program. The STRAP form and the instructions will be available on the Abandoned Plan Program section of EBSA's website.

The new optional online filing system—called the ''Abandoned Plan Program Online Filing System''—will provide a more efficient alternative method for QTAs to submit required notices to the Department because it will streamline the process. The Department will issue a press release when the online filing system becomes available. At that time, instructions for completing and filing notices and the STRAP through the online filing system will be available on the Abandoned Plan Program section of EBSA's website. The online system also will benefit the Department by enabling its staff to more efficiently receive, process, and review notices and STRAPs, which in turn will benefit QTAs and participants of the plans they are winding up. The Department expects that QTAs who opt to electronically submit notices and the STRAP will make fewer errors due to the web-based procedures and instructions that can ensure greater accuracy of data. The Department also expects transcription and other errors by the Department will be fewer because of the automated process that will occur when submissions are received electronically.

The new online filing system is voluntary under these interim final rules pending the adoption of the final rules. The Department is inclined to make the online filing system the exclusive method of filing Abandoned Plan Program notices and the STRAP. Accordingly, the Department is interested in receiving comments on whether it should make electronic filing mandatory as part of the final rules.

D. Internal Revenue Code Qualification Requirements

As it did in connection with the existing Abandoned Plan Program, the Department conferred with representatives of the Internal Revenue Service (IRS) regarding the qualification requirements under the Internal Revenue Code as applied to plans that are terminated pursuant to 29 CFR 2578.1, as modified by these interim final rules. The IRS has informed the Department that the modification in these interim final rules does not impact the correction principles currently memorialized in section 6.02(2)(e)(i) of Revenue Procedure 2021–30, 2021–31 IRB 172. Section 6.02(2)(e)(i) of Revenue Procedure 2021–30 provides that the permitted correction for a failure that results from the employer having ceased to exist, no longer maintaining the plan, or for similar reasons is to terminate the plan and distribute plan assets to participants and beneficiaries in accordance with standards and procedures substantially similar to those set forth in § 2578.1, applicable to individual account plans, provided that the following four conditions are met. First, the correction must comply with standards and procedures substantially similar to those set forth in § 2578.1. Second, the QTA, based on plan records located and updated in accordance with

§ 2578.1(d)(2)(i), must have reasonably determined whether, and to what extent, the survivor annuity requirements of sections 401(a)(11) and 417 of the Internal Revenue Code apply to any benefit payable under the plan and must take reasonable steps to comply with those requirements (if applicable). Third, each participant and beneficiary must have been provided a nonforfeitable right to their accrued benefits as of the date of deemed termination under § 2578.1(c)(1), subject to investment gains and losses between that date and the date of distribution. Fourth, participants and beneficiaries must receive notification of their rights under section 402(f) of the Internal Revenue Code. Notwithstanding the foregoing, as set forth in Section 6.02(2)(e)(i) of Revenue Procedure 2021–30, the IRS reserves the right to pursue appropriate remedies under the Internal Revenue 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.

The Department received several comments on the QTAs' responsibilities regarding the survivor annuity requirements under sections 401(a)(11) and 417 of the Internal Revenue Code. Paragraph (d)(2)(vii)(B)(2) of § 2578.1 states that with respect to distributions to participants or beneficiaries who fail to make an election as to the distribution of benefits, a QTA that determines the survivor annuity requirements apply may distribute benefits ''in any manner reasonably determined to achieve compliance with those requirements.'' This provision was included in the 2006 regulations after consultation with the IRS. Commenters on the 2012 proposal asked for additional guidance on reasonable compliance with the requirements. Commenters also indicated that QTAs may experience practical difficulties complying with the survivor annuity requirements due to lack of recordkeeping and lack of available annuity options for small amounts.

The Department believes that additional information and consultation with the IRS and the Department of the Treasury are needed, as the survivor annuity requirements are within their jurisdiction.[33] Accordingly, the Department requests additional comments on practical difficulties faced by QTAs complying with the survivor annuity requirements.

[33] *See* section 101 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App.

E. Comments on Additional Expansion of, or Procedural Changes to, the Abandoned Plan Program

1. Expand Scope of Abandoned Plan Program to Plans of Sponsors in Liquidation or Receivership

A few commenters asked that the Abandoned Plan Program be expanded to cover a broader range of plans. For instance, one commenter requested that the Department consider expanding the 2006 regulations to cover plans of debtors in liquidation under chapter 11 of the Bankruptcy Code and plans of businesses in state receivership. Another commenter requested that the Department consider expanding the 2006 regulations to cover plans of failed insured depository institutions for which the FDIC as receiver acts as the plan sponsor and administrator.

With respect to plans of debtors in liquidation under chapter 11 of the Bankruptcy Code, the Department does not believe it has a basis for concluding that plans are effectively abandoned as a result of the sponsor's chapter 11 petition. Further, expanding the scope of the 2006 regulations to a broad range of receivership situations was not included in the proposal, and the Department does not believe it has an adequate public record regarding those other circumstances to ensure the Abandoned Plan Program is properly structured to address unique or different issues that may be presented. Accordingly, the Department is not expanding the scope of the program at this time, as requested by some commenters.

Nonetheless, based on the public comments submitted, greater expansion of the program may further the interests of participants and beneficiaries in such plans, and the Department believes exploration of such possible expansions of the Abandoned Plan Program is merited. As part of the general request for comments in Section F of the preamble below, the Department is specifically asking for comments on whether—and, if so, how—to extend the framework of the Abandoned Plan Program to cover plans whose sponsors are in bankruptcy under chapter 11 of the Bankruptcy Code, or receivership under the FDIC or other applicable federal or state law.

2. Expand Definition of QTA to Other Service Providers

Outside of the bankruptcy context, the program's definition of a QTA requires the QTA to be both eligible to serve as a trustee or issuer of an individual retirement plan, within the meaning of Internal Revenue Code section 7701(a)(37), and to hold assets of the abandoned plans. Several commenters asked the Department to expand the definition of a QTA so that recordkeepers and third-party administrators could serve that role. According to the commenters, these parties may be in a greater position than the asset custodian to have data that would be useful in the process of terminating a plan, and this expansion could increase the number of plans terminated under the Abandoned Plan Program. The commenters suggested the Department could limit the expansion to parties that are regulated by the Securities and Exchange Commission (SEC), noting that the Department had previously declined to expand the definition of a QTA to recordkeepers and third-party administrators due, in part, to lack of standards and oversight.[34] One commenter noted that in the case of a plan in which the employer serves as the trustee, there may technically not be an asset custodian that ''holds'' assets of the plan, rendering these plans ineligible to participate in the Abandoned Plan Program.

The Department is not persuaded by the commenters to expand the definition of a QTA as requested at this time. The Department continues to believe that regulatory oversight of the QTA is an important safeguard of abandoned plans. Further, the Department has concerns about service providers taking custody or control of plan assets under circumstances in which they have no authorization from the plan sponsor to do so. The existing rule, under which QTAs may engage, on

[34] 71 FR at 20821 (''Although the Department recognizes the critical role that recordkeepers, third-party contract administrators and other service providers to plans can and will play in the process of winding up the affairs of an abandoned plan, the Department nonetheless believes that, 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. In developing its criteria for QTAs, the Department limited QTA status to trustees or issuers of an individual retirement plan within the meaning of section 7701(a)(37) of the Code because the standards applicable to such trustees and issuers are well understood by the regulated community and the Department is not aware of problems attributable to weaknesses in the existing Code and regulatory standards for such persons. The Department believed that the Code and regulatory standards could be adopted for purposes of this regulation without imposing unnecessary costs and burdens on either plans or potential QTAs. The Department notes that, while commenters did propose varying procedures and criteria for defining QTA status, there was no consensus among the commenters as to what regulatory standards might be applicable to such persons. For these reasons, the Department is adopting the definition of 'qualified termination administrator' without change from the proposal.'').

behalf of the plan, such service providers as are necessary for the QTA to carry out its responsibilities, remains preferable.[35] However, the Department welcomes additional comment on this issue, and in particular, how the SEC's existing regulations applicable to recordkeepers and third-party administrators would protect the interests of the abandoned plans and their participants and beneficiaries.

3. Plans With Small Asset Balances/ Plans Funded Through Annuities

One commenter encouraged the Department to consider a limited and expedited QTA process for plans with only a small amount of total assets, such as a few thousand or even a few hundred dollars. In such cases, charging the plan to cover the costs of the Abandoned Plan Program may deplete some plans' remaining assets. The commenter envisioned that parties holding the assets could provide the Department with pre-termination reports with relevant information and the Department could then approve immediate distributions to remaining participants where such persons can be located. Commenters also raised the issue of plans that are funded through annuities and noted that there does not appear to be a mechanism for a QTA to be paid from the plan's assets when the annuity contract does not permit deduction of service fees.

While the Department is sympathetic to these concerns, it has not made any changes to these interim final rules in response. A change to the program to provide a special procedure for plans with few assets would require careful consideration of how best to protect the interests of the participants and beneficiaries in these plans and would benefit from additional public comment. Additionally, there does not appear to be a ready means of adapting the program to plans funded by annuities that do not permit deduction of service fees. The Department welcomes additional comment on these areas that may inform future regulatory activity.

4. Requested Procedure for Future Program Changes

One commenter asked whether the program could be structured in a way to allow changes to be implemented more frequently and more quickly. The commenter noted that the program is currently structured as a series of regulations and a prohibited transaction exemption, which require notice and opportunity for public comment before adoption of changes, while other programs such as the Department's Delinquent Filer Voluntary Compliance Program, are published as notices.

The Department believes that the structure of the existing program in the form of regulations and a prohibited transaction exemption benefits affected parties by providing certainty beyond what could be provided in the form of an enforcement policy or other type of notice. That structure does not prevent the Department from issuing opinions or other subregulatory guidance interpreting or clarifying the program's requirements.

F. Request for Comments

The Department believes that the interim final rules address the major comments raised with respect to the 2012 proposal and improve the program, especially with respect to the inclusion of Chapter 7 ERISA Plans. However, as noted above, the Department acknowledges that the 2012 proposal was published more than 10 years ago and that these regulations have been published as interim final rules with a request for comments. This approach will enable bankruptcy trustees to begin taking advantage of the voluntary termination and winding up procedures almost immediately, while allowing for comments and possible further improvement of the Abandoned Plan Program. Although the Department will accept comments from interested persons on all aspects of these interim final rules in accordance with the instructions for submitting comments in the **ADDRESSES** section of this document, the Department specifically invites comments on the following subjects.

First, comments are requested on the two alternative tests in paragraph (j)(5)(i) of section 2578.1 for determining whether contributions are de minimis in amount, including whether the $2,000 threshold is sufficiently protective of plan participants and beneficiaries and whether the Department should add a provision for indexing that threshold for inflation. Any comments suggesting that the $2,000 threshold is too low should suggest a specific dollar threshold with supporting analysis.

Second, the Department requests comment on the requirement for eligible designees to take reasonable steps to collect 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, and the expansion of the definition of eligible designee to include an independent bankruptcy trustee practitioner.

Third, comments are requested on whether, and if so, how, to extend the framework of the Abandoned Plan Program to cover plans whose sponsors are in liquidation under chapter 11 of the Bankruptcy Code, state receivership, or receivership under the FDIC. Commenters on this issue are encouraged to explain the need for such an extension for each type of liquidation or receivership, including the anticipated costs and benefits to affected parties.

Fourth, the Department is interested in comments on whether it should incorporate the PBGC Program into 29 CFR 2578.1. On December 22, 2017, PBGC established the PBGC Program to hold retirement benefits for missing participants and beneficiaries in most terminated defined contribution plans and to help those participants and beneficiaries find and receive those benefits. See 29 CFR 4050.201–207. The PBGC cites multiple benefits of the PBGC Program, including: (1) benefits of any size can be transferred to the PBGC; (2) periodic active searches by the PBGC increase the likelihood of connecting missing participants with their benefits; (3) benefits are not diminished by ongoing maintenance fees or distribution charges; (4) transferred amounts grow with interest (at the applicable Federal mid-term rate); (5) transfers to the PBGC Program result in the deferral of income tax, avoid the 20 percent mandatory withholding, avoid any 10 percent additional tax, and grow on a tax deferred basis, and (6) lifetime income options are available for balance transfers that are non-de minimis ($7,000 after December 31, 2023). As stated in the preamble to the PBGC's final rule adopting the PBGC Program, the Department intended to look into what changes are needed to its safe harbor regulation (29 CFR 2550.404a–3) so that transfers to the PBGC by terminating individual account plans would be eligible for relief under the safe harbor.[36] Thereafter, in FAB 2021–01, the Department announced a temporary enforcement policy under which it will not pursue violations under section 404(a) of ERISA against either responsible plan fiduciaries of terminating defined contribution plans or QTAs of abandoned plans in connection with the transfer of a missing or non-responsive participant's or beneficiary's account balance to the

[35] 2578.1(d)(2)(iv).

[36] 82 FR 60800. Previously, the PBGC Program covered only the PBGC-insured single-employer defined benefit plans as part of the standard termination process. The PBGC Program was expanded to cover defined contribution plans (*e.g.,* 401(k) plans), and certain other defined benefit plans that terminate on or after January 1, 2018.

PBGC in accordance with the PBGC Program rather than to an IRA, certain bank accounts, or to a State unclaimed property fund, as specified in 29 CFR 2550.404a–3. Such plan fiduciaries and QTAs must comply with the guidance in the FAB and act in accordance with a good faith, reasonable interpretation of section 404 of ERISA with respect to matters not specifically addressed in the FAB. As noted above, the Department is continuing the temporary enforcement policy under these interim final rules and is specifically interested in stakeholder views on whether the PBGC Program should be formally incorporated into the Department's regulation at 29 CFR 2550.404a–3 as an alternative to other available distribution options for missing or non-responsive participants and beneficiaries or perhaps as a replacement for plans that meet the requirements of the PBGC Program for all other distribution options for such persons. The goal of the change would be to give missing participants a better chance than under other distribution options of being reunited with their retirement savings. For example, the PBGC Program would establish a known, centralized repository that would preserve a participant's account balance and, where the account exceeds certain threshold amounts ($7,000 after December 31, 2023), permit missing participants to elect distribution in the form of an annuity to ensure lifetime income as well as in a lump sum. The PBGC Program also could reduce administrative burdens in particular on abandoned defined contribution plans, especially with respect to small accounts, accounts of deceased participants, and accounts subject to the Internal Revenue Code's joint and survivor annuity rules.

To the extent commenters support the transfer of the accounts of missing and non-responsive participants to the PBGC under the Abandoned Plan Program, the Department is interested in comments addressing additional changes to 29 CFR 2578.1 that would facilitate such transfers. For example, should the Department consider modifying the definition of a QTA to allow third party administrators (TPAs) or other entities that do not currently satisfy paragraph (g) of 29 CFR 2578.1 to act as a QTA solely for the purposes of winding up an abandoned plan by transferring all of the accounts of missing and non-responsive participants to the PBGC? [37] If so, what conditions should be imposed on TPAs or other entities? For example, should the TPA or other entity be required to demonstrate in the notice of intent to serve as QTA that it has the authority under existing documentation to direct the custodian to pay distributions to participants and beneficiaries?

Fifth, to the extent commenters do not support replacing all the current distribution options under 29 CFR 2550.404a–3 with the PBGC Program, the Department is interested in comments on whether the current Abandoned Plan Program options for distributions to State unclaimed property funds should be expanded. The Department has engaged over time with a range of stakeholders on issues surrounding missing and unresponsive participants, including State unclaimed property funds. See, *e.g.,* GAO Report 19–88 ''Federal Action Needed to Clarify Tax Treatment of Unclaimed 401(k) Plan Savings Transferred to States (January 2019); and Report of the ERISA Advisory Council, ''Voluntary Transfers of Uncashed Checks from ERISA Plans to State Unclaimed Property Programs'' (November 2019). The ERISA Advisory Council concluded that State unclaimed property funds ''have a number of features that may decrease the risk of the funds being depleted by account fees and increase the likelihood that [m]issing [p]articipants will be reunited with their lost retirement savings.'' [38] Following the ERISA Advisory Council report, the National Association of Unclaimed Property Administrators [39] proposed that the Department develop a uniform, nationwide regulation for the voluntary transfer to unclaimed property funds of uncashed lump sum distribution checks, cash outs of $5,000 or less pursuant to Internal Revenue Code § 411(a)(11), required minimum distributions, and plan mandated lump sum distributions at normal retirement age.[40] The Department is interested in comments on the merits of such a limited voluntary option being added to the Abandoned Plan Program.[41]

Sixth, the Department is interested in whether 29 CFR 2550.404a–3 should be amended to permit the distribution of Code section 403(b) individual annuity contracts and Code section 403(b)(7) individual custodial accounts. A terminating Code section 403(b) plan must distribute all accumulated benefits to all participants and beneficiaries as soon as administratively practicable after termination of the plan.[42] The IRS has addressed terminating 403(b) plans in Revenue Ruling 2011–7, 2011–10 IRB 534, including issues related to delivery to participants or beneficiaries of a fully paid individual annuity contract or an individual certificate evidencing fully paid benefits under a group annuity contract. Revenue Ruling 2020–23, 2020–47 IRB 1028, involved a terminating Code section 403(b) plan with 403(b)(7) custodial accounts where the plan made in-kind distributions of individual custodial accounts (ICAs) to those participants and beneficiaries who did not affirmatively elect a distribution or a direct rollover to an eligible retirement plan.[43] The Department is

[37] Paragraph (g) defines a *qualified termination administrator as an entity that* (1) 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) holds assets of the plan that is found abandoned pursuant to paragraph (b).

[38] ERISA Advisory Council Report—*Voluntary Transfers of Uncashed Checks from ERISA Plans to State Unclaimed Property Programs* (November 2019) at p. 39.

[39] The National Association of Unclaimed Property Administrators (NAUPA) is a network of the National Association of State Treasurers (NAST) which leads and facilitates collaboration among administrators in their efforts to reunite unclaimed property with the rightful owner. NAUPA's membership consists of unclaimed property administrators representing the governments of all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, several Canadian provinces, and Kenya.

[40] The Department has issued opinions and other guidance that takes the position that section 514 of ERISA preempts State unclaimed property laws that require a plan fiduciary of an ERISA employee pension benefit plan to distribute or transfer the accrued benefits of a missing participant to the state. Advisory Opinion 94–41A (Dec. 7, 1994); Advisory Opinion 79–30A (May 14, 1979); Advisory Opinion 78–32A (Dec. 22, 1978); Information Letter to Mr. Willis E. Sullivan, III Chair, Drafting Committee to Revise Uniform Unclaimed Property Act National Conference of Commissioners on Uniform State Laws (March 3, 1995).

[41] The Department also notes that the SECURE 2.0 Act of 2022 requires the Department to establish and maintain an online searchable database, to be called the Retirement Savings Lost and Found, that will, among other things allow individuals to search for the contact information of the administrators of certain types of retirement plans, with respect to which the individual is or was a participant or beneficiary. As it moves forward with the development of the Retirement Savings Lost and Found, the Department intends to evaluate its impact on the Abandoned Plan Program.

[42] 26 CFR 1.403(b)–10(a)(1).

[43] Section 110 of Division O of the Further Consolidated Appropriations Act, 2020, Public Law 116–94, 133 Stat. 2534 (2019) known as the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), directed the Secretary of the Treasury to issue guidance providing that the plan administrator or custodian of a terminating Code section 403(b) plan with 403(b)(7) custodial accounts may distribute an ICA in kind to a participant or beneficiary of the plan. Section 110 also provided that the in-kind distribution of the ICA would be tax-deferred, similar to the treatment of fully paid individual annuity contracts under Rev. Rul. 2011–7, until amounts are actually paid to the participant or beneficiary. Contemporaneous with the publication of Rev. Rul. 2020–23, the IRS published Notice 2020–80, 2020–47 IRB 1060

interested in comments on whether the Abandoned Plan Program should expressly address distribution of an annuity contract or an ICA to a missing or non-responsive participant or beneficiary compared to a default rollover to an individual retirement plan or a transfer to the PBGC in the case of a Code section 403(b) plan with 403(b)(7) custodial accounts.[44] The Department is also seeking comments on whether the distribution framework set forth in 29 CFR 2550.404a–3 is consistent with Revenue Rulings 2011–7 and 2020–23.

Seventh, the Department is interested in comments on whether provisions should be added to the Abandoned Plan Program specifically addressing participants in abandoned plans for whom benefits were previously forfeited pursuant to Treasury regulation § 1.411(a)–4(b)(6), because the plan could not locate them. That regulation provides that a right to a benefit is not treated as forfeitable ''merely because the benefit is forfeitable on account of the inability to find the participant or beneficiary to whom payment is due, provided that the plan provides for reinstatement of the benefit if a claim is made by the participant or beneficiary for the forfeited benefit.''

G. Regulatory Impact Analysis

1. Background and Need for Regulatory Action

As stated earlier in this preamble, this document contains amendments to three 2006 regulations that facilitate the termination of, and distribution of benefits from, individual account pension plans that have been abandoned by their sponsoring employers. The primary effect of the amendments is to extend the 2006 regulations to Chapter 7 ERISA Plans. The amendments also make other minor, unrelated changes to the 2006 regulations to include: (1) the elimination of the requirement that QTAs 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 (2) conditional permission for QTAs to transfer the account balances of certain decedents to an appropriate bank account or a state's unclaimed property fund regardless of the size of the account balance. The need for the amendments is explained in detail above in this preamble, as well as the preamble to the 2012 proposal.

The Department has examined the effects of these amendments as required by Executive Order 12866,[45] Executive Order 13563,[46] the Congressional Review Act,[47] the Paperwork Reduction Act of 1995,[48] the Regulatory Flexibility Act,[49] section 202 of the Unfunded Mandates Reform Act of 1995,[50] and Executive Order 13132.[51]

2. Executive Orders 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 identified the amendments to the 2006 regulations as part of a retrospective regulatory review project consistent with the principles of Executive Order 13563. The changes will improve the overall efficiency of the program established under the 2006 regulations, increase its usage, and substantially reduce burdens and costs on bankruptcy trustees (or their designees) 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). As amended by Executive Order 14094[52] entitled ''Modernizing Regulatory Review,'' 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 $200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities; (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 legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case. OMB has determined that these amendments are a significant regulatory action under section 3(f)(4) of E.O. 12866.

3. Affected Entities

The group of entities affected by the amendments consists of affected abandoned plans as defined under the 2006 regulations, Chapter 7 ERISA Plans newly eligible to utilize the abandoned plan rules, and the financial firms and bankruptcy trustees who serve as QTAs.

Based upon Department records it is estimated that approximately 1,340 plans identify as abandoned plans to the Department each year; these plans average approximately 6.4 participants per plan, for a total of roughly 8,549 participants (1,340 plans × 6.38 participants per plan). The Department assumes this level of utilization will continue and uses it as an estimate for the group of plans wound up annually under the 2006 regulations.

The Department used the following information and approach to estimate the additional plan load created by the amendments. There are three key data points required to estimate the impact of the regulations: (1) bankruptcy rates, (2) defined contribution plan prevalence (offer rates), and (3) utilization rates.

requesting comments on the application of the annuity and survivor provisions of section 205 of ERISA, in connection with in-kind distribution of an ICA from a terminating § 403(b) plan.

[44] The PBGC Program will accept a transfer from a terminating or abandoned Code section 403(b) plan with 403(b)(7) custodial accounts, but not from a 403(b) annuity contract plan. *See* 29 CFR 4050.201(a)(2) and fn. 8 of the preamble of PBGC's final missing participant rule at 82 FR 60800, 60802 (2017).

[45] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

[46] Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011).

[47] 5 U.S.C. 804(2) (1996).

[48] 44 U.S.C. 3506(c)(2)(A) (1995).

[49] 5 U.S.C. 601 *et seq.* (1980).

[50] 2 U.S.C. 1501 *et seq.* (1995).

[51] Federalism, 64 FR 43255 (Aug. 10, 1999).

[52] 88 FR 21879 (April 6, 2023).

The Department assumes that the plan sizes will be similar to that experienced under the 2006 regulations; therefore, data regarding the offer rates are restricted to smaller establishments (defined as under 50 employees). Finally, the source for bankruptcy rates, *uscourts.gov*, reports in the aggregate; therefore, the Department's estimates use this aggregate rate, which may differ from that of certain subgroups, such as smaller firms.

Data from *uscourts.gov* for chapter 7 bankruptcies filed between 2018 and 2022 support an estimate of 12,900 chapter 7 cases being filed annually.[53] Census Bureau data on county business patterns [54] indicate that approximately 75 percent of establishments are small, and BLS data [55] show the Defined Contribution plan offer rate for small firms is around 48%. Due to the lack of available data regarding the rate of utilization by defined contribution plans during chapter 7 proceedings, the Department has constructed estimates at 10, 25, and 100 percent utilization rates. The estimated costs are shown in Table 1 below.

TABLE 1—SUMMARY OF ESTIMATED COST OF AMENDMENTS AT SELECTED PLAN UTILIZATION RATES

Component of Interim Final Rule	Estimated cost change at a 10% utilization rate	Estimated cost change at a 25% utilization rate	Estimated cost change at a 100% utilization rate
Additional Plans	466	1,166	4,662
Additional Participants	2,973	7,439	29,744
Notice to Plan Sponsor (to locate by QTAs)	.....	.....	.....
Notice to DOL (on plan abandonment/program utilization)	$51,088	$127,831	$511,103
Bankrupt Plans (Court Order) (Trustee appt)	11,540	28,875	115,451
Notice to Participants	38,781	97,037	387,980
Final Notice	14,004	35,040	140,101
Chapter 7 ERISA Plans (Fiduciary Breach) (to DOL as part of abandonment notice)	5,938	14,859	59,410
Special Terminal Report (to DOL)	187,383	461,591	1,801,906
Safe Harbor	.....	.....	.....
Class Exemption Familiarization	.....	.....	.....
	308,735	765,232	3,015,950

Note: Costs include costs for labor and materials & postage where relevant.

A 10 percent utilization rate yields an estimate of approximately 1,800 plans and 11,500 participants in total, after the amendment.[56] Using a 100 percent utilization rate results in an estimate of roughly 6,000 plans with 38,300 participants using the program each year.[57] Using a utilization rate of 25 percent in the calculations, which the Department will use as the estimate here, results in approximately 1,200 additional plans (with roughly 7,500 participants [58] utilizing the Abandoned Plan Program due to the amendments, bringing the estimated annual utilization numbers to 2,500 plans with 16,000 participants).[59]

The Department estimates that approximately 1,031 QTAs (including bankruptcy trustees) will act to establish user accounts to use the online filing system with the Department, which is described in section C.7 of this preamble.

4. Benefits

a. Benefits of Expanding Regulations to Chapter 7 ERISA Plans

The amendments to the 2006 regulations provide critical guidance that will encourage the orderly and efficient termination of Chapter 7 ERISA 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 amendments, some bankruptcy trustees may lack the necessary guidance to properly terminate Chapter 7 ERISA Plans and distribute benefits to participants and beneficiaries. Specifically, the amendments clarify the bankruptcy trustee's (or, as applicable, the eligible designee's) obligations as QTA 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 QTAs will lead to administrative cost savings for bankruptcy trustees who choose to use these interim final rules. The Department has not quantified these benefits because it does not have sufficient information regarding the characteristics of Chapter 7 ERISA Plans. The Department expects that bankruptcy trustees will decide to use the termination and winding up procedures in the interim final rules based on their individual assessment of whether it would be more cost effective to terminate a plan under or outside of the regulatory safe harbors.

One of the potential administrative cost savings that would result from the amendments is that Chapter 7 ERISA Plans would file one streamlined

[53] A weighted average of the past 5 years data is calculated for years 2018–2022 as: (13,906 × 30%) + (13,678 × 25%) + (14,324 × 20%) + (10,803 × 15%) + (8,131 × 10%) ≈ 12,890. The weights were chosen to account for the distortion during the Covid–19 pandemic. *https://www.uscourts.gov/statistics-reports/analysis-reports/bankruptcy-filings-statistics/bankruptcy-statistics-data.*

[54] *https://data.census.gov/cedsci/table?q=private%20sector%20establishments%20by%20size&tid=CBP2019.CB1900CBP.*

[55] BLS data accessed 08/22/2022 *https://data.bls.gov/cgi-bin/srgate,* lesser of series (NBU22000000000227372 & NBU220000000000001 27372) for 2021 data.

[56] 1,800 ≈ 1,806 = [(12,900 CHPT 7) × (48% small plans offering DC plans) × (75.3% proportion of small plans) × (10% abandonment rate of plans with firms in CHPT 7)] + (1,340 plans currently using the program); 11,500 participants ≈ 11,522 = 1,806 plans × 6.38 participants.

[57] 6,000 ≈ 6,002 = [(12,900 CHPT 7) × (48% small plans offering DC plans) × (75.3% proportion of small plans)] + (1,340 plans currently using the program); 38,300 participants ≈ 38,293 = 6,002 plans × 6.38 participants per plan.

[58] 1,200 ≈ 1,166 = (12,900 CHPT 7) × (48% small plans offering DC plans) × (75.3% proportion of small plans) × (25% abandonment rate of plans with firms in CHPT 7).

[59] 2,506 = (1,340 plans currently using the program) + (1,166 new plans); 16,000 participants ≈ 15,988 = 2,506 plans × 6.38 participants.

termination report at the end of the winding up process in lieu of filing Form 5500 Annual Return/Reports. Additionally, Chapter 7 ERISA Plans that are not eligible for the small plan audit waiver of 29 CFR 2520.104–46 (generally, plans with fewer than 100 participants) would avoid incurring costly audit fees that otherwise would diminish plan assets.

Other benefits of the amendments include enhancements to retirement security of individuals in Chapter 7 ERISA Plans because of the requirements that QTAs, with certain exceptions: (1) take reasonable steps to collect 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 delinquent contributions (employer and employee) owed to the plan, and any activity believed to be evidence of other fiduciary breaches by a prior plan fiduciary that involve plan assets.

Removing barriers to winding down the plans may result in preserving the value of, and hastening access to, the participants' assets. A potential benefit is the reduction of the likelihood of becoming a missing participant. As time passes, record accuracy can degrade as former employees move. In these instances, funds may be transferred into a low yielding account meant to preserve the assets. By preventing the employee from becoming a missing participant and giving them access to their funds, plan participants can invest the assets according to their risk tolerances. Each of these benefits affect the value of the participants' assets in a positive manner.

b. Benefits of Other Amendments to the 2006 Regulations

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 QTAs) of terminated individual account plans can directly transfer a missing or non-responsive participant's account balance directly to appropriate 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 in cases where certain conditions are satisfied. As stated above in this preamble, § 2550.404a–3 is being amended to conditionally permit QTAs to transfer the account balances of certain decedents to an appropriate bank account or a state's unclaimed property fund, regardless of the size of the account balance. The amendments would remove an obstacle to greater usage of the Abandoned Plan Program by eliminating the need to establish individual retirement plans for the account balances of known deceased participants with no known, living named beneficiary that are over $1,000 when it is unlikely that anyone will claim the funds in such plans.

c. 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 statement of past or present investigations in the notice of plan abandonment from the QTA to the Department (see § 2578.1(c)(3)(i)(B)). The Department believes that, at present, this statement is unnecessary and may even discourage firms to serve as QTAs, undermining the use of the Abandoned Plan Program. The Department holds this belief because EBSA's Office of Enforcement is easily able to run searches to determine whether potential QTAs are under investigation by the Department. By encouraging more potential QTAs to wind up abandoned plans in accordance with the Abandoned Plan Program 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.

5. Costs

The Department estimates that the cost associated with these interim final rules, at a 25 percent utilization rate by firms in bankruptcy would total approximately $765,232, as shown in Table 1 above. These costs would result from the estimated 1,166 Chapter 7 ERISA Plans that decide to use the termination and winding up procedures in the interim final rules and the estimated 1,031 QTAs (including bankruptcy trustees) that choose to create accounts with the Department's online filing system in order to file their STRAPs electronically. These costs are quantified and discussed in more detail in the Paperwork Reduction Act section, below.

6. Cost Savings

As discussed above, the costs associated with these interim final rules total approximately $870,059. Participation in the Abandoned Plan Program is burden reducing in that it relieves participating plans from their obligation to comply with Form 5500 Annual Reporting requirements and Summary Annual Report requirements for the period of bankruptcy and/or program utilization.

The Department estimates that the average period of bankruptcy proceedings for Chapter 7 ERISA Plans is 2.5 years. Therefore, absent the Abandoned Plan Program, the 1,166 Chapter 7 ERISA Plans estimated to participate in the Abandoned Plan Program each year would be obligated to file an average of 3.5 Form 5500–SFs and 3.5 accompanying Summary Annual Reports—one Form 5500–SF filing and accompany Summary Annual Report for each year the Chapter 7 ERISA Plan was in bankruptcy proceedings and/or abandoned, and one terminal Form 5500–SF filing and accompanying Summary Annual Report.[60] These Chapter 7 ERISA Plans would each also need to apply for an EFAST2 credential in order to electronically file Form 5500–SFs.[61]

The Department estimates that the approximate cost per plan to file a Form 5500–SF is $302, the cost for similarly sized plans to create and distribute a Summary Annual Report is approximately $87, and the cost to apply for an EFAST2 credential is approximately $39.[62] Therefore, the total cost savings in Form 5500 filing relief is $1,234,391 (1,166 Chapter 7 ERISA Plans × 3.5 Form 5500–SF filings × $302), the total cost savings in Summary Annual Report requirements relief is $355,326 (1,166 Chapter 7 ERISA Plans × 3.5 Summary Annual Reports × $87), and the total cost savings from not having to apply for EFAST2 credentials is $45,575 (1,166 plans × $39).[63]

[60] The Department notes that this figure is an average for burden calculation purposes. A relatively equal number of plans would file three and four Form 5500–SFs and accompanying Summary Annual Reports.

[61] EFAST2 credentials are issued on an individual basis and are valid indefinitely unless a period of three calendar years passes without use. The Department assigns the cost of credentialling to each case to provide a conservative estimate. It constitutes roughly 7 percent of the total cost of filing per plan.

[62] Estimates are based on time estimates in supporting statements which are available at *reginfo.gov* associated with control numbers 1210–0040 and 1210–0110 and wage rate estimates maintained by EBSA. For a description of the Department's methodology for calculating wage rates, see *https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-july-2017.pdf.*

[63] Totals differ due to rounding.

The total cost savings is $1,635,292 ($1,234,391 + $355,326 + $45,575). When compared against the $765,232 in new costs for Chapter 7 ERISA Plans, the net cost savings resulting from this expansion of the Abandoned Plan Program is $870,059 annually.

H. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), the Department solicited comments concerning the information collection requirements (ICRs) included in the December 12, 2012 proposed amendments to the 2006 regulations at 77 FR 74063 and the proposed amendments to the class exemption PTE 2006–06 at 77 FR 74055. At the same time, the Department also submitted the ICR to OMB in accordance with 44 U.S.C. 3507(d). The Department received seven comments on the proposal. One commenter raised several questions about the model notices associated with 29 CFR 2578.1. The Department responded to the commenter, including by making some changes to the model notices, as discussed above in section C.7. of the preamble. Another commenter suggested that in the context of the potential expansion of the program to include FDIC receivers, the FDIC receiver should not be required to review ERISA section 408(b)(2) notices and prepare and distribute ERISA section 404(a)(5) notices detailing fees and costs for a plan that is being terminated. As the Department did not expand the program to include FDIC receivers as part of these interim final rules, this comment was not addressed.

The changes made by these interim final rules affect the existing OMB Control Number 1210–0127. A copy of the ICR for OMB Control Number 1210–0127 may be obtained by contacting the PRA addressee listed in the following sentence or at *www.RegInfo.gov.* For additional information, contact: James Butikofer, Office of Research and Analysis, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210; or *ebsa.opr@dol.gov.* The OMB will consider all comments that they receive on or before June 17, 2024. Comments and recommendations for the information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

The Department assumes that most of the tasks that will be undertaken by QTAs to terminate and wind up plans 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 interim final rules require QTAs to furnish a series of notices and a report in the process of terminating and winding up plans. For instance, before winding up a plan, the QTA (other than the QTA of a Chapter 7 ERISA 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 QTA's finding of abandonment, or when there is an entry of an order for relief for a Chapter 7 ERISA Plan, the QTA must file with the Department a notice of plan abandonment that contains core information about the plan and the person electing to be the QTA. The QTA then must furnish to each participant or beneficiary a notice with information about the termination, the person's account balance, and requesting that such person elect a form of distribution. Upon terminating and distributing the assets of the plan, the QTA must file a final notice to the Department stating that the plan has been terminated and all the plan's assets have been distributed. In conjunction with the final notice, the QTA must file the Special Terminal Report for Abandoned Plans (STRAP) in accordance with instructions published by the Department. The STRAP may be filed electronically using the Department's online filing system when it becomes available. If a QTA chooses to use the online filing system, the QTA will be required to create an account with the Department. The Department estimates the burden of these notices and reports as a cost burden to the plan because the QTA uses plan assets to pay for the notices and STRAP. The only burden reported as hour burden is the burden incurred by plan administrators themselves for compliance with the safe harbor for non-abandoned plans, which are information collection requests (ICRs) subject to the PRA. The hour and cost burden associated with these ICRs are summarized in Table 2 below.

TABLE 2—PRA HOUR AND COST BURDEN

Component of interim final rule	Incremental cost burden associated with amendments (a)	Incremental hours burden associated with amendments (b)	Cost burden associated with existing regulations (c)	Hours burden associated with existing regulations (d)	Total cost burden (a + c)	Total hours burden (b + d)
Notice to Plan Sponsor (to locate by QTAs)	$0	0	$8,442	335	$8,442	335
Notice to DOL (on plan abandonment/plan utilization)	0	1,360	0	1,563	0	2,924
Chapter 7 ERISA Plans (Court Order) (Trustee appt)	0	292	0	0	0	292
Notice to Participants	47,238	539	54,287	620	101,526	1,159
Final Notice	0	389	0	447	0	835
Chapter 7 ERISA Plans (Fiduciary Breach) (to DOL as part of abandonment notice)	0	136	0	0	0	136
Special Terminal Report (to DOL)	0	3,949	0	4,539	0	8,488
Safe Harbor	0	0	44,816	42,026	44,816	42,026
Class Exemption Familiarization	0	583	0	670	0	1,253
Total	47,238	7,248	107,545	50,200	154,783	57,449

Note: Cost burdens include costs for materials and postage where relevant.

1. Notice to Plan Sponsor

This provision only applies to plans that are not Chapter 7 ERISA Plans therefore the changes to this component are caused by updating inputs and not by any changes to the rule. The Department estimates that for each of these estimated 1,340 plans, a QTA would require 10 minutes of clerical staff time at an hourly labor rate of $63.45 to complete the information on the plan sponsor notice, and five minutes of an accountant's time at an hourly labor rate of $116.86 to review and sign the notice.[64] This results in approximately 223 hours of clerical staff time with an associated cost burden of $14,171 (223 hours × $63.45 per hour) and 112 hours of an accountant's time with an associated cost burden of $13,049 (112 hours × $116.86 per hour).[65]

These notices are sent by a method requiring acknowledgement of receipt. Therefore, mailing costs include $6.25 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 $8,442 for the 1,340 notices (1,340 notices × ($6.25/notice + $0.05/notice)). These components result in a total estimated cost associated with the 2006 regulations notices to plan sponsors of $35,662.

2. Notice of Plan Abandonment to the Department

The Department estimates that for each of the estimated 2,506 plans participating in the Abandoned Plan Program (1,340 non-Chapter 7 ERISA Plans and 1,166 Chapter 7 ERISA Plans), a QTA may utilize 30 minutes of a clerical worker's time at an hourly rate of $63.45 to fill in the needed information on the notice. The Department also assumes that 40 minutes of an accountant's time with an hourly rate of $116.86 will be required to prepare required plan information, and to review and sign the forms. This results in about 1,253 hours (2,506 plans × 30 minutes) of clerical staff time with an equivalent cost burden of $79,503 (1,253 hours × $63.45 per hour), and 1,671 hours (2,506 plans × 40 minutes) of an accountant's time with an equivalent cost burden of $195,234 (1,671 hours × $116.86 per hour) for a total estimated equivalent cost burden of $274,737. Based upon recent filing trends between QTAs and the Department, 100 percent of plans are expected to furnish the information electronically at de minimis cost.

3. Bankruptcy Trustee's Appointment—Chapter 7 ERISA Plans

For an estimated 1,166 Chapter 7 ERISA Plans, an additional cost would be incurred for the QTA to attach to the notice of plan abandonment a copy of the order entered in the case reflecting the bankruptcy trustee's appointment to administer the case. The Department estimates that it will take 10 minutes of an accountant's time to prepare the required statement and collect required documents and five minutes of clerical time to make required copies. This is expected to impose an additional burden of approximately 194 hours (1,166 plans × 10 minutes) for accountants with an equivalent cost of $22,710 (194 hours × $116.86 per hour). For the clerical professionals, the burden is estimated at 97 hours (1,166 plans × 5 minutes) with an equivalent cost of $6,165 (97 hours × $63.45 per hour). This results in a labor cost of approximately $28,875 to produce the notice of bankruptcy trustee's appointment.

The rule requires the order entered in the case reflecting the bankruptcy trustee's appointment to be included with the notice of plan abandonment. Based upon recent filing trends between QTAs and the Department, 100 percent of plans are expected to furnish the information electronically at de minimis cost.

4. Notice to Participants and Beneficiaries

Data provided by EBSA's Office of Enforcement show that the average abandoned plan contains 6.38 participants. As stated previously, the Department estimates that approximately 1,340 abandoned plans will apply each year. This covers approximately 8,549 participants (1,340 plans × 6.38 participants per plan). In light of the expansion of the 2006 regulations to cover plans of sponsors in chapter 7 liquidation, the Department estimates that there will be a roughly 90 percent increase in applications, bringing the total number of filings up to 2,506.[66] Assuming that Chapter 7 ERISA Plans have roughly the same number of participants as abandoned plans, the total number of participants affected would be approximately 15,988 (2,506 plans × 6.38 participants per plan).

The Department estimates that for each of the estimated 2,506 terminating plans, a QTA will utilize 15 minutes of an accountant or similar professional's time to prepare and review the plan's notices to participants and beneficiaries. Clerical staff will spend two minutes per participant preparing and mailing the notices. This results in approximately 533 hours (2,506 plans × 6.38 participants per plan × 2 minutes per participant) of clerical staff time with an equivalent cost of $33,815 (533 hours × $63.45 per hour) and 627 hours (2,506 plans × 15 minutes per plan) of an accountant or similar professional's time with an associated cost burden of approximately $73,213 (627 hours × $116.86 per hour). This results in an estimated cost of approximately $107,028 for labor to produce the notices to participants and beneficiaries.

The Department estimates that this notice, on average, is two pages and must be furnished to the last known address of each participant or beneficiary. The Department received comments in response to the 2012 proposal suggesting that postage cost estimates for this component should reflect certified mail. The Department has increased its estimates of the postage costs accordingly but is also seeking comments above on the use of certified mail. The mailing and material costs for paper notices are estimated to be $6.35 per mailing (2 pages × $.05 per page + $6.25 postage). The Department estimates that 15,988 participants (2,506 plans × 6.38 participants per plan) will receive the notice by mail, creating a mailing cost burden of $101,526. Combining this cost with the labor to produce the notices, the total cost is estimated at approximately $208,554.

5. Final Notice

The Department estimates that for each of the estimated 2,506 terminating plans, a QTA will utilize 10 minutes of an accountant's time to review the forms in the Final Notice to the Department. Clerical staff will spend, on average, 10 minutes per plan preparing and mailing the notices. This results in about 418 hours (2,506 plans × 10 minutes) of clerical staff time with an equivalent cost of $26,501 (418 hours × $63.45 per hour) and 418 hours of an accountant's time (2,506 plans × 10 minutes) with an equivalent cost of $48,809 (418 hours × $116.86 per hour). This results in an estimated labor cost of approximately $75,309 to produce the Final Notices.

[64] For a description of the Department's methodology for calculating wage rates, see *https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-july-2017.pdf.*

[65] Burden estimates presented in the text are rounded to the nearest hour; however, in calculating equivalent costs, unrounded burden estimates are used.

[66] The estimation of additional plans is explained in detail in Section 3 Affected Plans of this document.

Based upon recent filing trends between QTAs and the Department, 100 percent of plans are expected to furnish the information electronically at de minimis cost.

6. Reporting Requirement for Prior Plan Fiduciary Breaches

As discussed earlier in this preamble, the amendments would require QTAs of Chapter 7 ERISA Plans (whether they are bankruptcy trustees or eligible designees) to report to the Department delinquent contributions (employer and employee) owed to the plan, and any activity that the QTA believes may be evidence of other fiduciary breaches by a prior plan fiduciary that involve plan assets. When applicable, this information must be reported in conjunction with the filing of the Final Notice or Notice of Plan Abandonment. If, after the completion of 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 must report such activity to the Department in a time and manner specified in instructions developed by the Department.

While the Department has no basis for estimating the percentage of arrangements that will be subject to each of these reporting provisions, the Department assumes for purposes of this analysis that a report will be required for 20 percent of Chapter 7 ERISA Plans. Thus, given an estimated 1,166 Chapter 7 ERISA Plans, the Department estimates that 233 plans will need to report such information. The Department anticipates that 30 minutes of a financial professional's time and five minutes of clerical time will be required to prepare and process the information. The Department therefore estimates that the burden for plans will be approximately 117 hours of an accountant's time (233 plans × 30 minutes) at an equivalent cost of $13,626 (233 hours × $116.86 per hour) and 19 hours of clerical time (233 plans × 5 minutes) at an equivalent cost of $1,233 (19 hours × $63.45 per hour). This results in an estimated labor cost of approximately $14,859 to produce and distribute notices of fiduciary breaches to the Department.

The Department assumes that the reporting of this information will be made with the Notice of Plan Abandonment or Final Notice; based upon recent filing trends between QTAs and the Department, 100 percent of plans are expected to furnish the information electronically at de minimis cost.

7. Special Terminal Report for Abandoned Plans (29 CFR 2520.103–13)

The Department estimates that it will take plans 3.25 hours to file the STRAP in accordance with the instructions on the Department's website. It is assumed that an accounting professional working at a cost of $116.86 per hour will perform this task resulting in a burden of 8,145 hours (2,506 plans × 3.25 hours) and an equivalent cost of $951,766 (8,145 hours × $116.86 per hour).

The Department assumes all STRAPs will be submitted electronically once the Department's online filing system becomes available. To achieve this, QTAs (including bankruptcy trustees) will need to set up user accounts the first time they serve as a QTA and use the Department's new online submission system. The Department estimates that 1,031 QTAs (including bankruptcy trustees) will set up user accounts each year. It is assumed that a compensation and benefits professional will take 20 minutes to complete this task resulting in a burden of 344 hours (1,031 QTAs × 20 minutes) and an equivalent cost of $40,298 (344 hours × $117.26 per hour). Combining these figures results an estimated labor cost of $992,065 to prepare and submit the STRAPs.

8. 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 1,136,306 participants and beneficiaries will receive notices from 24,897 plan sponsors. The Department estimates that a benefits manager will spend approximately 10 minutes per plan preparing the notices. This results in 4,150 hours of benefits manager burden (24,897 plans × 10 minutes) at an equivalent cost of $559,892 (4,150 hours × $134.93 per hour). Clerical professionals will spend, on average, two minutes per notice preparing and distributing the 1,136,306 notices. This results in 37,877 hours of clerical burden (1,136,306 notices × 2 minutes) at an equivalent cost of $2,403,287 (37,877 hours × $63.45 per hour). It is assumed that 5.8 percent of participants will receive the notice by first class mail and 94.2 percent will receive the notice electronically at de minimis cost. The Department estimates that mailing the notices will produce a cost burden of $44,816 (1,136,306 participants × 5.8 percent receiving mailed notices) × ($0.63 for postage + ($0.05 per page × 1 page)).[67] Thus, the notice required under the Safe Harbor for Distributions from Terminated Individual Account Plans produces a total hour burden of 42,026 hours at an equivalent cost of $2,963,179 and a total cost burden of $44,816 for materials and postage. These costs are borne by non-Abandoned Plans and are not attributable to the amendments expanding the 2006 regulations to Chapter 7 ERISA Plans.

9. Abandoned Plan Class Exemption, PTE 2006–06

PTE 2006–06 permits a QTA 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

[67] The Department estimates approximately 94.2% of participants receive disclosures electronically under the combined effects of the 2002 electronic disclosures safe harbor and the 2020 electronic safe harbor. The Department estimates that 58.2% of participants will receive electronic disclosures under the 2002 safe harbor. According to the National Telecommunications and Information Agency (NTIA), 40.0% of individuals age 25 and over have access to the internet at work. According to a Greenwald & Associates survey, 84.0% of plan participants find it acceptable to make electronic delivery the default option, which is used as the proxy for the number of participants who will not opt-out of electronic disclosure that are automatically enrolled (for a total of 33.6% receiving electronic disclosure at work). Additionally, the NTIA reports that 40.4% of individuals age 25 and over have access to the internet outside of work. According to a Pew Research Center survey, 61.0% of internet users use online banking, which is used as the proxy for the number of internet users who will affirmatively consent to receiving electronic disclosures (for a total of 24.7% receiving electronic disclosure outside of work). Combining the 33.6% who receive electronic disclosure at work with the 24.7% who receive electronic disclosure outside of work produces a total of 58.2%. The remaining 41.8% of participants are subject to the 2020 safe harbor. According to the 2019 American Community Survey, 86.6% of the population has an internet subscription. The Department estimates that 0.5% of electronic disclosures will bounce back and will need to be sent a paper disclosure. Accordingly, for the 41.8% of participants not affected by the 2002 safe harbor, 86.1%, or an additional 36.0% (41.8% × 86.1%), are estimated to receive electronic disclosures under the 2020 safe harbor. In total, the Department estimates that 94.2% (58.2% + 36.0%) would receive electronic disclosures.

a QTA to: (1) designate itself or an affiliate as a provider of an individual retirement plan or other account; (2) 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 (3) pay itself or its affiliate in connection with the rollover.

Currently, PTE 2006–06 and the accompanying Abandoned Plan Program regulations do not cover plans of sponsors involved in chapter 7 bankruptcy proceedings. In this regard, bankruptcy trustees do not meet the definition of QTA as set forth in the existing Abandoned Plan Program regulations and the class exemption. The amendments expand the definition of QTA to include bankruptcy trustees and certain persons designated by them to act as QTAs in terminating and winding up the affairs of abandoned plans. The Department believes that the amendments to the Abandoned Plan Program regulations and PTE 2006–06 will incentivize many bankruptcy trustees to carry out 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 amendments to the Abandoned Plan Program regulations is a condition of the amendment to the class exemption; therefore, the costs and benefits that would be associated with complying with the amendment to the class exemption have been described and quantified in connection with the economic impact of the regulatory amendments. In its current form, PTE 2006–06 requires, among other things, that fees and expenses paid to the QTA 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 QTA (or affiliate) for the same or similar services provided to customers that are not plans terminated pursuant to the Abandoned Plan Program regulations, if the QTA (or affiliate) provides the same or similar services to such other customers. The amended class exemption provides an exception for services provided in connection with the duty to collect delinquent contributions on behalf of the plan. The exception judges what is reasonable in light of industry rates ordinarily charged by firms or individuals representing or assisting a bankruptcy trustee in performing similar collection services on behalf of an estate in a chapter 7 proceeding. The class exemption, in its current form, also requires that QTAs 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 form. Accordingly, the recordkeeping burden attributable to the amendment will be handled by the QTA 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 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 all QTAs will take advantage of the exemption, the hour burden attributable to supervisory duties for QTAs of abandoned plans (including familiarization costs for new QTAs) is expected to be one half hour for each QTA, or 1,253 hours (2,506 plans × 30 minutes). Assuming a financial manager's wage rate of $190.63 per hour, this supervisory cost is expected to total $238,859 ($190.63 per hour × 1,253 hours).

Also, in certain limited circumstances, the current exemption PTE 2006–06 requires QTAs to provide the Department with a statement under penalty of perjury that services were performed and a copy of the executed contract between the QTA 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.

Below is a summary of the burden:

Type of Review: 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: 28,434.

Responses: 1,162,551.

Frequency of Response: One time.

Estimated Total Burden Hours: 42,026.

Cost Burden: $2,963,179.

I. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) applies to most 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.*). Unless an agency certifies that such a rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present a final regulatory flexibility analysis at the time of the publication of the rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations, and governmental jurisdictions. For purposes of analysis under the RFA, the Department considers a small entity to be an employee benefit plan with fewer than 100 participants.[68] The basis of this definition is found in section 104(a)(3) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for welfare benefit plans that cover fewer than 100 participants. While some large employers may have small plans, in general, small employers maintain most small plans. Thus, the Department believes that assessing the impact of these final regulations 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 that 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.*). The Department requested comments on the appropriateness of this size standard at the proposed rule stage and received no adverse responses.

The Abandoned Plan Program is a voluntary program intended to provide a cost effective, streamlined option for winding up abandoned plans. The Department believes that these amendments will expand usage of the Abandoned Plan Program and help to preserve the assets of Chapter 7 ERISA

[68] The Departments consulted with the Small Business Administration Office of Advocacy in making this determination, as required by 5 U.S.C. 603(c) and 13 CFR 121.903(c) in a memo dated June 4, 2020.

Plans, thereby maximizing benefits ultimately payable to participants and beneficiaries and improving economic efficiency.

Essentially all abandoned plans are assumed to be small plans. Therefore, the more detailed discussion earlier in the preamble on the costs of the amendments is applicable to this analysis of costs under the RFA. As discussed previously in the RIA section, the costs associated with the amendments to the Abandoned Plan Program total approximately $765,232 and affect approximately 1,166 plans in a given year. This is an average of $656.29 per plan. This cost is net of the savings described in section 6 above, which are expected to be roughly $1,400 per plan attributable to the STRAP replacing multiple years of reporting requirements.

The most recent Private Pension Plan Bulletin estimates that there were 257,699 plans with less than 10 participants in 2020, which is the size group most consistent with historical utilization trends. Comparing this group with the estimated 1,166 plans that may use the program annually indicates that they represent less than 0.5 percent of very small defined contribution plans which is not a substantial number of the small plans affected.[69]

The Department also examined the costs relative to the participant asset balances in the group of plans assumed to be most likely to utilize the program. For a participant in the smallest plans measured by the number of participants and average per participant account balance, the roughly $103 per participant cost represents, on average, a 2.4 percent reduction in their account balance, which is not a significant impact. The distributions of participant account balance reductions are presented in Table 3 below, by plan size, for all small plans.

TABLE 3—COST AS A PERCENTAGE OF BALANCE

[Per participant]

Plan size	10th percentile	25th percentile	Median	Mean	75th percentile	90th percentile
0–9	2.37	0.51	0.14	0.06	0.05	0.02
10–19	2.18	0.59	0.20	0.11	0.08	0.04
20—29	2.18	0.63	0.23	0.13	0.10	0.06
30—39	2.26	0.66	0.25	0.14	0.11	0.06
40—49	2.16	0.66	0.26	0.15	0.12	0.07
50—59	2.13	0.66	0.27	0.16	0.13	0.07
60—69	2.09	0.67	0.27	0.17	0.13	0.07
70—79	2.13	0.69	0.28	0.17	0.14	0.07
80—89	2.06	0.68	0.28	0.17	0.14	0.08
90—99	1.91	0.66	0.28	0.17	0.14	0.07

Source: 2020 Private Pension Plan Bulletin Research File, EBSA.
Notes: Excludes plans reporting no assets and no participants.

Due to the small number of small plans involved and relatively low cost per plan and participant, the Assistant Secretary of the Employee Benefit Security Administration hereby certifies under 5 U.S.C. 605 that this rule will not have a significant economic impact on a substantial number of small entities

J. Congressional Review Act

This 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 will be transmitted to the Congress and the Comptroller General for review. The interim final rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

K. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the 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.

L. 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 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 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.

[69] Employee Benefits Security Administration, *Private Pension Plan Bulletin: Abstract of 2020,* Table B1, (2022).

29 CFR Part 2578

Employee benefit plans, Pensions, Retirement.

For the reasons set forth in the preamble, the Department of Labor amends 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. 2520.101–5 also issued under 29 U.S.C. 1021(f). Sec. 2520.101–6 also issued under 29 U.S.C. 1021(k). Sec. 2520.103–13 also issued under 29 U.S.C. 1023. Secs. 2520.102–3, 2520.104b–1, 2520.104b–3, and 2520.104b–31 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 be in the form published by the Department in the Abandoned Plans section of the Employee Benefits Security Administration's website and shall contain the information 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 the following information in accordance with the instructions to the terminal report published by the Department in the Abandoned Plans section of the Employee Benefits Security Administration's website:

(1) Identification information concerning the plan, the qualified termination administrator, and, if applicable, the bankruptcy trustee.

(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 an identification of 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.

(6) The total number of distributions.

(7) The number of distributions to missing participants included in the total number of distributions reported in paragraph (b)(6) of this section.

(8) A statement that the information being provided in the report 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.

(c) *Method of filing.* The terminal report described in paragraph (a) of this section shall be filed in accordance with instructions pertaining to terminal reports of qualified termination administrators published by the Department in the Abandoned Plans section of the Employee Benefits Security Administration's website.

(d) *When to file.* The qualified termination administrator shall file the terminal report described in paragraph (a) of this section 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), and § 2578.1(j)(7) as applicable, 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 or by a bankruptcy trustee described in § 2578.1(j)(3) of this chapter or an eligible designee described in § 2578.1(j)(4) of this chapter.

(2) Filing of a report under this section by the qualified termination administrator shall not relieve any 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. at 727 (2012) and Secretary of Labor's Order No. 1–2011, 77 FR 1088 (Jan. 9, 2012). Section 2550.401c–1 also issued under 29 U.S.C. 1101. Sections 2550.404a–2 and 2550.404a–3 also issued under sec. 657, Pub. L. 107–16, 115 Stat. 38. Sections 2550.404a–5, 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)(3) 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 retirement plan in accordance with the requirements of section 401(a) or 403(a), or as a tax deferred annuity plan in accordance with section 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 their 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 (v) 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;

(iii) In the case of a distribution by a qualified termination administrator (other than a bankruptcy trustee described in § 2578.1(j)(3) of this chapter or an eligible designee described in § 2578.1(j)(4)(ii) of this chapter) 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; or

(iv) In the case of a distribution by a bankruptcy trustee as described in § 2578.1(j)(3) of this chapter or an eligible designee as described in § 2578.1(j)(4)(ii) of this chapter with respect to which the amount to be distributed is $1,000 or less and such bankruptcy trustee or eligible designee, 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—

(A) The qualified termination administrator may disregard the $1,000 threshold therein if the qualified termination administrator reasonably and in good faith finds that—

(*1*) The participant is deceased;

(*2*) The designated beneficiary or beneficiaries are deceased or unable to be identified based on records located and updated pursuant to § 2578.1(d)(2)(i) of this chapter;

(*3*) The estate of the participant is not the designated beneficiary; and

(*4*) The qualified termination administrator has no actual knowledge of any claims by any person to all or part of the deceased participant's account.

(B) If the estate of the participant is the designated beneficiary, the qualified termination administrator may disregard the $1,000 threshold therein if the qualified termination administrator reasonably and in good faith finds that—

(*1*) An estate does not exist or cannot be found;

(*2*) The qualified termination administrator has no actual knowledge of any claims by any person to all or part of the deceased participant's account; and

(*3*) The qualified termination administrator is unable to establish an individual retirement plan for the benefit of the estate of the participant.

(C) A summary of the pertinent findings made in paragraph (d)(1)(v)(A) or (B) of this section must be included in the notice described in § 2578.1(d)(2)(ix)(G) (the Final Notice) of this chapter, including the basis for the findings (including the name and last known address of the beneficiary, if known) and an attestation that the qualified termination administrator has the full name and last known address of the deceased participant.

(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 their 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 the Act, 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 part contains a model notice that may be used to discharge the notification requirements under this section for plans other than abandoned plans. 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. For a model notice for abandoned plans, see Appendix D to part 2578.

■ 5. Add Appendix A to part 2550 to read as follows:

Appendix A to Part 2550—Model Notice for Section 404a–3

NOTICE OF PLAN TERMINATION

[DO NOT USE FOR ABANDONED PLANS]

[*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.

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 to the individual retirement plan described, above, [*name of the financial institution*] will charge your account 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*]

[*Name of plan*]

PART 2578—RULES AND REGULATIONS FOR ABANDONED PLANS

■ 6. The authority citation for part 2578 continues to read as follows:

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

■ 7. 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 the situations described in (a)(1) or (2) of this section.

(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.

(2) An order for relief under chapter 7 of title 11 of the United States Code (the United States Bankruptcy 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 the United States Bankruptcy Code (pursuant to paragraph (j)(2) of this section), the plan shall be deemed to be terminated on the ninetieth (90th) day following the date of the letter from the Employee Benefits Security Administration acknowledging receipt of the notice described in paragraph (c)(3) or (j)(6) 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) of this section, that an individual account plan has been abandoned, the qualified termination administrator shall furnish to the U.S. Department of Labor in accordance with instructions published by the Department in the Abandoned Plans section of the Employee Benefits Security Administration's website a notice of plan abandonment and intent to serve as qualified termination administrator 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 of the plan sponsor (if known), and plan number used on the Form 5500 Annual Return/Report filed for 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 delinquent contributions described in 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)(7) of this section (relating to Chapter 7 ERISA 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 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 paragraph (d)(2)(ii)(B) of this section;

(B) Allocates expenses and unallocated assets in accordance with the plan document, 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 paragraphs (c)(3) or (d)(2)(ix) of this section.

(B) Except as provided in paragraph (j)(7)(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 the same or similar services provided to customers that are not plans terminated pursuant to this section, if the qualified termination administrator (or affiliate) provides the 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, or in the case of a Chapter 7 ERISA Plan (described in paragraph (j)(2) of this section) a statement that the plan sponsor is in liquidation under chapter 7 of the United States Bankruptcy Code, 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 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) of this chapter, 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's 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 the Act, 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 (vii) of this section, furnish to the U.S. Department of Labor in accordance with instructions published by the Department in the Abandoned Plans section of the Employee Benefits Security Administration's website, 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, email address, and telephone number of the person signing the notice (or other contact person, if different from the person signing the notice), and if applicable with respect to a Chapter 7 ERISA Plan (as described in paragraph (j)(2) of this section), the name, address (including email address), and telephone number of the bankruptcy trustee if the bankruptcy trustee is not the qualified termination administrator;

(B) The name, account number, EIN, and plan number used on the Form 5500 Annual Return/Report filed for 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)(7)(iv) 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)(6)(vi)(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 delinquent contributions described in paragraph (d)(2)(iii) of this section, or if applicable with respect to a Chapter 7 ERISA Plan (as described in paragraph (j)(2) of this section), an identification of delinquent contributions and evidence of other fiduciary breaches described in paragraph (j)(7)(ii) of this section (if not already reported under paragraphs (c)(3) or (j)(6) of this section);

(G) For each distribution in accordance with § 2550.404a–3(d)(1)(v) of this chapter (relating to distributions on behalf of deceased participants and beneficiaries), a summary of the pertinent findings as required by § 2550.404a–3(d)(1)(v)(*C*) of this chapter; 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)(7) 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)(7) 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.

(4) If the qualified termination administrator is an eligible designee described in § 2578.1(j)(4) of this chapter, designated by a bankruptcy trustee described in § 2578.1(j)(3) of this chapter, both the bankruptcy trustee and the eligible designee shall be treated as the qualified termination administrator for purposes of paragraphs (e)(1)(i), (e)(2) and (f) of this section. Nothing in this paragraph (e)(4) shall serve to relieve the bankruptcy trustee from its obligations under or limit its liability for a failure to comply with paragraph (j)(5).

(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 part 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)(6) of this section.

(j) *Special rules for Chapter 7 ERISA Plans.* (1) *In general.* This paragraph (j) contains special rules for individual account plans of sponsors in liquidation under chapter 7 of the United States Bankruptcy Code (Chapter 7 ERISA Plans). These special rules modify, augment, or supersede otherwise applicable provisions in paragraphs (a) through (i) of this section.

(2) *Deemed abandonment.* If the sponsor of an individual account plan is in liquidation under chapter 7 of the United States Bankruptcy Code, the requirements of paragraph (b) do not apply, and the Chapter 7 ERISA Plan shall be considered abandoned upon the entry of an order for relief, except that the plan shall cease to be considered abandoned 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 a different chapter of the United States Bankruptcy Code.

(3) *Qualified termination administrator.* For a plan deemed abandoned under paragraph (j)(2) of this section, the definition of ''qualified termination administrator'' in paragraph (g) of this section does not apply and only the bankruptcy trustee in the case, or an eligible designee (as defined in paragraph (j)(4) of this section), may be the qualified termination administrator.

(4) *Eligible designee.* The term ''eligible designee'' means—

(i) any person or entity who accepts in writing a designation by the bankruptcy trustee and who meets the requirements in paragraph (g) of this section; or

(ii) an '' independent bankruptcy trustee practitioner.'' An independent bankruptcy trustee practitioner is a person other than the bankruptcy trustee of the plan sponsor's case, who has served within the previous five years as a bankruptcy trustee in a case under chapter 7 of the Bankruptcy Code, who accepts in writing a designation by the bankruptcy trustee and who acknowledges in writing to the bankruptcy trustee that they are a fiduciary with respect to the plan.

(5) *Rules and conditions with respect to designating an eligible designee.*

(i) The term ''de minimis'' in paragraph (j)(7)(i) of this section means:

(A) Any amount that is equal to or less than $2,000; or

(B) Any amount greater than $2,000 if the property from which to collect delinquent contributions is a realizable value that is equal to or less than $2,000

net of all enforceable liens and applicable exemptions.

(ii) Prior to designating an eligible designee, a bankruptcy trustee must make reasonable and diligent efforts to determine whether the plan is owed any contributions (employer and employee) and the amount thereof. If the amount of contributions owed to the plan is more than a de minimis amount (as defined under paragraph (j)(5) of this section), the bankruptcy trustee shall designate an eligible designee (as defined in paragraph (j)(4) of this section) to be the qualified termination administrator for all purposes under this section.

(iii) The bankruptcy trustee shall at the time of the designation notify the eligible designee of its findings on the amount of delinquent contributions (employer and employee).

(iv) The bankruptcy trustee shall provide an eligible designee with reasonable access to any records under the control of the bankruptcy trustee that the eligible designee reasonably determines are necessary to enable the eligible designee to carry out its responsibilities under paragraph (j)(7) of this section.

(v) The bankruptcy trustee shall be responsible for the selection and monitoring of the eligible designee in accordance with section 404(a)(1)(A) and (B) of the Act.

(6) *Notice of intent to serve as qualified termination administrator.* In lieu of the content requirements in paragraph (c)(3) of this section, the qualified termination administrator shall furnish to the U.S. Department of Labor a notice of intent to serve as qualified termination administrator 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;

(ii) *Plan information.* (A) The name, address, telephone number, account number, EIN of the plan sponsor (if known), and plan number used on the Form 5500 Annual Return/Report filed for 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)(2) 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 order or document entered in the case reflecting the bankruptcy trustee's appointment or authority to administer the plan sponsor's case;

(iv) *Fiduciary breaches.* Any information the qualified termination administrator believes may be evidence of other fiduciary breaches described in paragraph (j)(7)(ii) of this section.

(v) *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 delinquent contributions described in paragraph (j)(7)(i) of this section;

(vi) *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

(vii) *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.

(7) *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.* Except for qualified termination administrators of plans that are owed no more than a de minimis amount of contributions (employer and employee), the qualified termination administrator of a plan described in paragraph (j)(2) of this section shall, consistent with the duties of a fiduciary under section 404(a)(1) of the Act, take reasonable steps to collect 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.

(ii) *Report fiduciary breaches.* The qualified termination administrator must report 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)(6) (notice of intent to serve as qualified termination administrator) or (d)(2)(ix) (final notice) 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)(6) 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) *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 bankruptcy trustee or an eligible designee defined under paragraph (j)(4)(ii) of this section.

(iv) *Pay reasonable expenses.* (A) If the qualified termination administrator is the bankruptcy trustee in the case, or an eligible designee as defined in paragraph (j)(4)(ii) of this section, then in lieu of the requirements in paragraph (d)(2)(v)(B)(*2*) of this section, such expenses are consistent with industry rates for such or similar services ordinarily charged by qualified termination administrators defined in paragraph (g) of this section.

(B) Notwithstanding paragraph (j)(7)(iv)(A) of this section, in lieu of the

requirements in paragraph (d)(2)(v)(B)(*2*) of this section, expenses incurred to comply with paragraph (j)(7)(i) of this section (pertaining to collecting delinquent contributions) are consistent with industry rates for such or similar services ordinarily approved by bankruptcy courts for persons representing or assisting a bankruptcy trustee in performing collection duties in chapter 7 matters.

(8) *Rule of accountability.* The bankruptcy trustee or eligible designee shall not, for themselves or the other, 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.

■ 8. Add Appendices A through E to part 2578 to read as follows:

Appendix A to Part 2578—Model Notice of Intent To Terminate Abandoned Plan

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*]:

This letter is a notice of intent to terminate the above referenced plan and distribute benefits in accordance with the U.S. Department of Labor's Abandoned Plan Program. We will initiate the termination process under the Abandoned Plan Program unless you 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. 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) or *https://www.dol.gov/agencies/ebsa/about-ebsa/ask-a-question/ask-ebsa.*

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 Part 2578—Model Notice of Plan Abandonment and Intent To Serve as Qualified Termination Administrator (for Plans Found Abandoned Pursuant to 29 CFR 2578.1(b))

BILLING CODE 4510–29–P

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, EIN and plan number from Plan's Form 5500	[N*ame*]
	[Plan account number]	[*Address*]
	[Address]	[*E-mail 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 as of {*insert date*}: [*number*]
2. Plan assets held by Qualified Termination Administrator:
   - A. Estimated value of assets as of {*insert date*}: [*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. Dollar amount of delinquent employer and employee contributions: {*Separately state employee and employer delinquent contributions.*}

_____

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 Part 2578—Model Notice of Intent To Serve as Qualified Termination Administrator (for Plans Deemed Abandoned Pursuant to 29 CFR 2578.1(j)(2))

NOTIFICATION OF 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)(6)(i) unless the same as Qualified Termination Administrator information above*}:

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

{Include below the plan sponsor's chapter 7 case number and bankruptcy court jurisdiction from the notice/order entered in the case reflecting the trustee's appointment. This information serves to link the plan with any fiduciary breach information reported by the bankruptcy trustee after the plan has been terminated and wound up.}

Case Number:_____
Bankruptcy Court Jurisdiction:_____

Abandoned Plan Coordinator:

Pursuant to 29 CFR 2578.1(j)(2), 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. { [I] *o r* [We]} have been designated by the bankruptcy trustee and *{* [a m] *o r* [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 as of [*Insert date*]: [*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. Dollar amount of delinquent employer and employee contributions:_____

_____

{*Separately state employee and employer delinquent contributions.*}

are described, below:

_____

_____

_____

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 Part 2578—Model Notice of Plan Termination

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 deemed abandoned pursuant to 29 CFR 2578.1(j)(2), replace the immediately preceding sentence with:* The Plan was terminated because [name of the plan sponsor] is in chapter 7 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 Retirement 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 4, as appropriate.*}

{*Option 1: If this notice is for a participant or beneficiary, complete and include the following paragraph in cases in which the account balance will be distributed in accordance with the conditions of § 2550.404a–3(d)(1)(i) or (ii).*}

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, money transferred to an individual retirement plan will 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 will be distributed in accordance with the conditions of § 2550.404a–3(d)(1)(iii)), 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 {*insert whichever is applicable:* ''an interest-bearing federally insured bank account;'' ''an unclaimed property fund of the State of your last known address;'' *or* ''an individual retirement plan (inherited individual retirement plan in the case of a nonspouse beneficiary).''} {*If the transfer will be to an individual retirement plan, insert the following sentence:* Pursuant to federal law, your money 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 {*insert whichever is applicable:* ''an individual retirement plan'' or ''bank 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 beneficiary whose account balance meets the conditions of § 2550.404a–3(d)(1)((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 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. However, if after exercising reasonable and good faith efforts, we cannot find an individual retirement plan provider who will accept your balance, we will transfer the balance to an interest-bearing federally insured bank account or to the unclaimed property fund of the State of your last known address. {*If the bankruptcy trustee or eligible designee knows where it will send the participant's or beneficiary's money, modify the preceding sentence accordingly and 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 {*insert whichever is applicable:* ''an individual retirement plan'' or ''a bank 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 4: If this notice is for a participant or participant's spouse who will be distributed an annuity under § 2578.1(d)(vii)(B)(2) to meet 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*]

[*Name of plan*]

Appendix E to Part 2578—Model Abandoned Plans Final Notice

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	Qualified Termination Administrator
	[Plan name, EIN and plan number from the plan's Form 5500]	[*Name*]
	[Plan account number]	[*Address and e-mail address*]
		[*Telephone number*]
		[*EIN*]

{*If applicable, complete and include the following pursuant to 29 CFR 2578.1(j)(6)(i) 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) and 29 CFR 2578.1(j)(7)(iv).

{*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)(6)(vi)(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)(6)(vi)(B). The reason or reasons for such additional costs are {*provide an explanation of the additional costs*}

{*Include and complete next section, entitled "Delinquent Contributions," unless 100% of delinquent contributions were previously reported in the notification required by 29 CFR 2578.1 (c) or 2578.1(j)(6.)*}

Delinquent Contributions

Dollar amount of employee and employer contributions:_____

_____

_____

{*Separately state employee and employer delinquent contributions.*}

{*Include and complete the next section, entitled "other fiduciary breaches," if Qualified Termination Administrator, is a bankruptcy or an eligible designee, defined in 29 CFR 2578.1(j)(4)(ii), unless previously reported in the notification required by 29 CFR 2578.1(j)(6.)*}

Other Fiduciary Breaches

Activities evidencing breaches of fiduciary duty described in 29 CFR 2578.1(j)(7)(ii) are described, below.

{*Include and complete the next section, entitled "Distributions on Behalf of Deceased Participants and Beneficiaries," if distributions were made in accordance with 29 CFR 404a-3(d)(v).*}

Distributions on Behalf of Deceased Participants and Beneficiaries

We have made distributions permitted by 29 CFR404a-3(d)(v) and have reasonably and in good faith made the findings required by {*Insert whichever is applicable*: "29 CFR 404a-3(d)(v)(A) for distributions were made to a person other than the estate of the participant" *or* "29 CFR 404a-(3)(d)(v)(B) if distributions were made to the estate of the participant."} The summary of the findings required by 29 CFR 404a-3(d)(v)(C), including the basis for the findings and an attestation that we have the full name and last known address of the deceased participant, is attached.

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 22nd day of April, 2024.

Lisa M. Gomez,

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

[FR Doc. 2024–09029 Filed 5–16–24; 8:45 am]

BILLING CODE 4510–29–C

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

[Application Number D–11657]

ZRIN 1210–ZA20

Prohibited Transaction Exemption 2006–06 for Services Provided in Connection With the Termination of Abandoned Individual Account Plans

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Exemption amendment.

SUMMARY: This document gives notice of an amendment to prohibited transaction exemption (PTE) 2006–06, a class exemption issued under the Employee Retirement Income Security Act of 1974 (ERISA). The exemption permits a ''qualified termination administrator'' (QTA) of an individual account pension plan that has been abandoned by its sponsoring employer to select itself to provide services to the plan in connection with the plan's termination and pay itself fees for the services. This amendment to PTE 2006–06 permits chapter 7 trustees who elect to be QTAs to rely on the exemption. This amendment to PTE 2006–06 also permits ''eligible designees'' of such chapter 7 trustees to rely on the exemption. The amendment is issued in connection with amendments to three related regulations under ERISA, published elsewhere in this issue of the **Federal Register**, that provide streamlined procedures for the termination of, and distribution of benefits from, abandoned individual account pension plans. The amendment would affect employee pension benefit plans (primarily small defined contribution plans), participants and beneficiaries of such plans, service providers, and individuals appointed to serve as bankruptcy trustees under chapter 7 of the U.S. Bankruptcy Code.

DATES: This amendment will be effective on July 16, 2024.

FOR FURTHER INFORMATION CONTACT: Susan Wilker, telephone (202) 693–8540, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Summary Overview

On April 21, 2006, the Department of Labor issued three regulations that established the Employee Benefits Security Administration's (EBSA) Abandoned Plan Program to facilitate the orderly and efficient termination of, and distribution of benefits from, individual account pension plans that have been abandoned by their sponsoring employers.[1] The first regulation (the QTA Regulation) establishes standards for determining when individual account plans may be considered ''abandoned'' and procedures by which financial institutions, called ''qualified termination administrators'' (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 (ERISA).[2] The second regulation (the Safe Harbor Regulation) provides a fiduciary safe harbor for QTAs 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.'' [3] The third regulation establishes a simplified method for filing a terminal report for abandoned individual account plans.[4]

The 2006 regulations were accompanied by a class prohibited transaction exemption, PTE 2006–06, that facilitates the goal of the 2006 regulations by permitting a QTA who meets the exemption's conditions to (1) select itself or an affiliate to carry out the termination and winding up activities specified in the 2006 regulations, and (2) pay fees to itself or an affiliate for those services. In addition, PTE 2006–06 permits QTAs to receive fees in connection with establishing an individual retirement plan or other account and selecting the initial investment product for missing participants. These activities are prohibited under the following provisions of Title I of ERISA (and parallel Code provisions) in the absence of a prohibited transaction exemption:

- ERISA section 406(a)(1)(C), which prohibits a plan fiduciary from causing the plan to engage in a transaction that constitutes a direct or indirect furnishing of goods, services, or facilities between the plan and a party in interest;
- ERISA section 406(a)(1)(D), which prohibits a fiduciary from entering into a transaction that constitutes a direct or indirect transfer of plan assets to a party in interest, or the use of plan assets by or for the benefit of a party in interest;
- ERISA section 406(b)(1), which prohibits a plan fiduciary from dealing with the assets of the plan in the fiduciary's own interest or for the fiduciary's own account; and
- ERISA section 406(b)(2), which prohibits a plan fiduciary from acting, in any transaction involving the plan, on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or its participants or beneficiaries.

On December 12, 2012, the Department published proposed amendments to the 2006 regulations and the associated PTE 2006–06.[5] The purpose of proposed amendments to the 2006 regulations was to advance the interests of participants and beneficiaries by:

(1) facilitating the orderly and efficient termination of individual account plans whose sponsors are in liquidation under chapter 7 of the Bankruptcy Code (''Chapter 7 ERISA Plans''); [6]

(2) reducing administrative burden and costs imposed on Chapter 7 ERISA Plan Plans that terminate in accordance with the regulations; and

(3) providing an avenue for bankruptcy trustees to discharge their duties under ERISA and the Bankruptcy Code with respect to Chapter 7 ERISA Plans.

The purpose of the proposed amendments to PTE 2006–06 was to supplement the amendments to the 2006 regulations by providing the necessary prohibited transaction relief to facilitate the termination of Chapter 7 ERISA Plans.

The Department received seven written comment letters on the 2012 proposed amendments, several of which raised issues related to the proposed amendment to PTE 2006–06 that are

[1] 71 FR 20820. *See also,* 73 FR 58459 (Oct. 7, 2008) for subsequent amendments with regard to distributions on behalf of a missing non-spouse beneficiary.

[2] 29 CFR 2578.1.

[3] 29 CFR 2550.404a–3. This safe harbor also is available to fiduciaries of terminated individual account plans that are not abandoned.

[4] 29 CFR 2520.103–13.

[5] 77 FR 74063; 77 FR 74056.

[6] The proposal referred to these plans as ''chapter 7 plans.'' The new term ''Chapter 7 ERISA Plans'' is used for avoidance of confusion regarding the term chapter 7 plan used in the bankruptcy context.