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Plan Termination

Best practices for Defined Contribution Plan Fiduciaries and Advisors

Introduction

As human resources management practices continue to evolve, specifically with respect to employer-sponsored retirement programs, we've seen a marked increase in terminated Defined Contribution plans. That is, employers dissolving their 401(k), 403(b), profit sharing, or other "defined contribution" benefit to their employees.

Plans terminate for various reasons: bankruptcy, merger or acquisition, relocating the company out of the country; there is even a partial plan termination in cases of significantly reduced workforce. For whatever the reason any given plan terminates, there is one overriding commonality bridging all terminated plans: the need to understand the process and plan the path ahead carefully.

To help plan fiduciaries and advisors terminate their Defined Contribution plans efficiently, stay in compliance, and, most importantly, keep participants invested in retirement, this paper provides the following guidance:

- A mechanism for defining success when terminating a DC plan
- A look ahead at the phases every terminated plan goes through
- Criteria for selecting a rollover service provider
- Criteria for selecting a Safe Harbor IRA
- Examples of common mistakes and how to avoid them

Defining Success

As stated by the Internal Revenue Code, fiduciaries have fully terminated a defined contribution plan when they have satisfied each of the following three requirements:

1. Fiduciaries have established a date of termination
2. They have determined benefits and liabilities under the plan as of the date of plan termination
3. They have distributed all assets as soon as administratively feasible

However, this strict, legal definition may not consider other goals the plan fiduciaries and advisors should strive to achieve, both the business' goals and the plan participants'. Participants want an easy path to the right retirement decision and fiduciaries want to provide it to them while minimizing their exposure to risk. With those goals in mind, you can ultimately determine success after terminating your plan by how well you met each of the measures that follow.

Success Criteria

1.	Satisfy all regulations
2.	Provide participants help in making benefit decisions
3.	Document missing participant search
4.	Roll participants into a safe harbor with no fiduciary concerns
5.	Provide independent and unbiased distribution choices

Success Measurement 1: How completely did you satisfy all IRS and DOL regulations?
These are the legal requirements you must achieve and how completely you satisfied applicable regulations is your first criterion. These regulations govern the entire process and apply differently to each plan.

Success Measurement 2: How much did you help your participants in making an informed decision about their retirement?
Employers create retirement plans for the benefit of their employees. It is important to carry that intention through to the plan's completion. While you are terminating your employees' retirement plan, you need to ensure that you are not negatively impacting down your employees' retirement readiness.

Success Measurement 3: How thoroughly did you document the entire missing participant process?
The DOL spells out four communication procedures for locating plan participants before you can roll over their assets into a Safe Harbor IRA. If questions arise after you roll over a missing participant's assets, providing documentation of your progress through this exhaustive and time-consuming process will demonstrate that you met the DOL requirements and provided your participants an opportunity to direct their own distributions.

Success Measurement 4: When you roll over non-responsive participants into a Safe Harbor IRA, was it a responsible investment with limited fiduciary concerns?
Unless you are able to reach every plan participant and every plan participant chooses a distribution option, you will need a safe harbor to liquidate final plan assets. Selecting this investment vehicle should be as important as selecting the original investment while the plan was active. Go back to the fact that employers create retirement plans for their employees' benefit and choose a safe harbor from their perspective. Choose an IRA that focuses on capital preservation with a safe investment vehicle and low fees that won't deplete low balances after the first year. Choose an IRA provider that will stay proactive in helping your participants throughout their retirement planning.

Success Measurement 5: Did you provide your participants with independent and unbiased choices for directing their distribution?
Plan termination can be stressful for participants. When choosing a service provider to manage the rollover process, make sure the emphasis is on participant choice. The last thing you want to do is force already stressed participants into only one or two rollover options. Remember that this process needs to reflect your participants' best interests. Don't let your participants come away with a feeling that you, as the fiduciary, are guiding them into a retirement product that may not be suitable.

It is important that we define this success up-front. We will discuss these criteria in greater detail below as, while describing the process, we insert key action items for achieving this success. But it is vitally important to have these metrics in mind while reading the remaining content of this paper, filtering every concept through these success criteria and mapping every action item to one or more success points.

The Path Ahead

Plan terminations are complicated processes and it helps to provide clarity, from a management perspective, if we break things down into phases. No two plan terminations are identical, varying greatly based on plan type, the reason for plan termination, number of employees, or other plan options. However, there are still common phases each plan will traverse as it terminates.

Phase 1: Planning

Because the plan termination process needs to be tailored to each individual plan setup, this step is vital. Here is where you will review all DOL and IRS regulations, recheck plan documents to determine how those regulations apply specifically, map out your fiduciary requirements, arrive at a reasonable termination date, select your service provider, and select your safe harbor IRA.

Phase 2: Announcement

As soon as you know such details as plan termination date, final contribution date, and general distribution options, communicate your intent to plan participants. It is important that you make this announcement only after completing the planning phase. From your participants' perspectives, in addition to the stress surrounding whatever led to your decision to terminate the plan, you are adding the stress of needing to make a retirement decision. Providing details and timelines that will be fixed throughout the process can greatly relieve your participants' anxiety.

Phases

1.	Planning
2.	Announcement
3.	Communicate logistics and options
4.	Missing participant search
5a.	Voluntary election and rollover
5b.	Automatic rollover

Phase 3: Communicate logistics and options to plan participants

This is your official communication, in writing, that communicates to every participant that the plan will terminate, when it will terminate, what their distribution options are and what action you'd like them to take. This is also where you communicate any resources you've set up to aide participants in their distribution decision and how they can take advantage of those resources.

Phase 4: Locate missing participants

Beginning with Field Assistance Bulletin 2004-02, "Fiduciary Duties and Missing Participants in Terminated Defined Contribution Plans", the DOL spells out four search methods for locating plan participants before you can roll their assets into a safe harbor IRA.

- Certified mail
- Mail to addresses in related plan documents such as a group health plan
- Identify and contact designated beneficiaries
- IRS or Social Security letter forwarding service

According to the same Field Assistance Bulletin, "[a] plan fiduciary cannot distribute a missing participant's benefits…unless each of these methods proves ineffective in locating the missing participant." You can, however, skip any remaining search methods if one or more succeeds.

Phase 5a: Voluntary election and rollover

Hopefully, you have succeeded with your earlier communications and participant resources. In this phase, as many of your participants as possible have made an informed decision and taken control of their retirement by electing retirement distributions that are suited to their individual needs.

Phase 5b: Automatic rollover

After all four missing participant search cycles are exhausted and all voluntary distributions are taken, the final task is to distribute the remaining assets into your safe harbor. These will be the final, never-located missing participants, the non-responsive participants, and those who have decided they want their funds to roll into the safe harbor you've set up.

Selecting a Service Provider

The path ahead can take a lot of work, a lot of planning, and a lot of time. Not surprisingly, most fiduciaries and advisors choose to outsource the work with service providers. When you do this, go back to the previous "defined success" criteria and choose a provider based on how many of those success points each candidate can check off of your list. For this selection, certain characteristics stand out.

Familiarity with IRS and DOL regulations (success criteria 1, 3, and 4)

The regulations are lengthy, subject to updates, and applicable to each plan differently. Choose a provider who specializes in terminated plans that has the resources to stay abreast of these very important rules.

Familiarity with various plan set-ups (success criteria 1 and 4)

How certain plans distribute funds can be different than others. Some custodial agreements are individually-based, rather than group-based, changing auto rollover rules drastically. Again, a provider who specializes in terminated plans is likelier to understand how your plan needs to go through this process.

Flexibility to accommodate your unique plan (all success criteria)

Small plans make up the majority of plan terminations. For RolloverSystems, 93% of the terminated plans we've serviced have fewer than 100 participants. For small plans, a custom solution for a one-time event might be difficult for you to negotiate, so you should find a provider whose base processes are flexible enough to work with various plan types, plan sizes, other plan service providers, and circumstances.

Service Provider Key Factors

1. Familiarity with regulations
2. Familiarity with plan set-ups
3. Flexibility to accommodate unique plans
4. Participant-centric
5. Communication infrastructure for missing participant requirements

Participant-centric approach (success criteria 2, 4, and 5)

Understanding that retirement plans are set up for the benefit of the employees makes it easy to see that a service provider's ability to assist all of your employees with their retirement decisions is vital. Participant-centric providers will give your participants:

- The same level of assistance, regardless of account balance
- A proactive and continued outreach program
- A call center staffed with licensed investment professionals
- Unbiased help toward making benefit decisions
- Independent choices

Communication infrastructure for missing participant requirements (success criteria 2 and 3)

The DOL's missing participant search process requires four communication layers. This will be an easier and more efficient process for you if your service provider can take all of them off of your plate. Specifically, you need a provider that can provide these services:

- Mail your letter. Remember, your participants will know this is a legitimate process if the letter has your logo and you are the signatory.
- Track when letters went out, to where they might have been forwarded, and when and which came back as undeliverable.
- Document everything, including tracking numbers, mail dates, receipt dates, and return dates.

When selecting your service provider, it is often helpful to set up a grid with a column for each provider candidate and a row for each of the above criteria. Check off where each meets your needs and decide from there.

Selecting a Safe Harbor IRA

The safe harbor IRA is the IRA into which you will roll your missing participants, non-responsive participants, or those who elect that this is the correct option for their retirement plan rollover. Generally speaking, you have two major categories when deciding on your safe harbor IRA: fiduciary concerns and participant advantages.

Fiduciary concerns

Because this is an IRA product that you choose on behalf of your participants, this decision incurs fiduciary responsibility. Consider these questions when making your choice:

- Does the investment vehicle preserve capital? The concept of a safe harbor is that the funds are safe until the participant can make a decision regarding his or her own retirement direction. Placing participant funds into a risky investment defeats that purpose and violates the DOL rules. Be conservative and look for IRAs that invest in money market funds or FDIC accounts.
- Will the IRA provider's fees significantly deplete low balances? Even with a conservative investment vehicle, you can still put your participants' retirement planning in jeopardy by selecting a provider whose fees are too high. Consider a participant with a $3,000 balance placed into a conservative FDIC product with a 2% annual yield, but with a provider that charges a $100 annual fee. On $3,000, the interest is only $60 and your participant will lose $40 each year. Worse, do that same math on a $1,000 balance and you'll find your participant's nest egg gone after only a few years.

Participant advantages

Beyond fiduciary concerns, you still want to consider your participants interests when they decide to take active control of their retirement. With the safe harbor you choose, how easy will it be for participants when they want to reassess their retirement:

- Can your participant easily change investment options such as investment allocation, or setting up target retirement dates?
- Can your participant easily change which fund company their IRA is invested in?
- Will your participant receive help in making those decisions?
- Will your self-directed participants be able to easily manage their account options?

Safe Harbor Key Factors

Fiduciary concerns

- Does the investment vehicle preserve capital?
- Will the IRA provider's fees significantly deplete low balances?

Participant advantages

- Easily change investment options
- Easily change fund company
- Participant help making retirement decisions?
- Easily manage account options?

Common Mistakes When Terminating a Plan

Starting with an end date in mind
At the end of the day, when you look back to assess the success of your plan termination, the number one criterion you need to gauge is how completely you satisfied the applicable DOL and IRS regulations. Unfortunately, no matter how you distill it, navigating this maze is different for every plan. Instead of starting with an end date in mind, first check DOL and IRS regulations, then re-check your plan documents. Only after you have a firm grasp of the requirements ahead of you can you arrive at a reasonable plan termination date.

Failing to document—or even conduct—a proper missing participant search
The DOL spells out four communication procedures for locating plan participants before you can roll their assets into a safe harbor IRA. Failure to document your progress through this exhaustive and time-consuming program may result in a breach of fiduciary duty. If you don't have the communication infrastructure to conduct and document a thorough missing participant search, find a service provider who does.

Using a cookie-cutter approach to terminate a plan
403(b), 457, and Roth plans all have different considerations than traditional 401(k) plans. Additionally, plans that terminate due to acquisition might require different measures than plans that terminate from corporate dissolution. No two plans are the same. Again, go back to the regulations and analyze how each applies specifically to your plan. If you use a third-party service, choose experts whose process is flexible enough to account for each unique plan.

Failing to consider the participants' best interests
Plan termination can be stressful for participants. Communicate to both active and former employees often. Set up an outreach program for participants to get independent and unbiased help with their retirement planning. When setting up this program, or when choosing a service provider, make sure the emphasis is on participant choice. The last thing you want to do is force already stressed participants into only one or two investment options. Your sponsors set up their DC plans in the first place for the benefit of their employees. By planning this process from the participant's perspective you will be doing the right thing, keeping your participants happy, and helping yourself by avoiding many procedural questions that can come up afterward when participants feel their money was mismanaged.

Not properly defining success up front
Terminating a plan takes a lot of work, a lot of planning, and a lot of time. Not surprisingly, most advisers choose to outsource the work with service providers. When you do this, define success ahead of time. For us, a successful plan termination process:

1. Satisfies all regulations.
2. Is flexible enough to accommodate each unique plan.
3. Provides participants of all balances help in making an informed decision.
4. Documents the entire missing participant process.
5. Rolls non-responsive participants into a responsible safe harbor with no fiduciary concerns.
6. Provides responsive participants independent and unbiased options.

Common Mistakes

1. Starting with an end date in mind
2. Failing to document missing participant search
3. Using a cookie-cutter approach
4. Failing to consider the participants' best interest
5. Not defining success up front

Conclusion

Remember that this process needs to reflect your participants' best interests at all points. Think of this as your opportunity to guide your participants into a position where they are fully in control of their retirement and view all decisions through the lens of employee benefit. Be proactive, plan things out, define your success up front, and you'll navigate through this process worry-free.

RolloverSystems, LLC

RolloverSystems, LLC (RSI) is an independent provider of rollover services. Partnering with plan service providers, advisors and investment firms, RSI empowers plan sponsors to optimize plan performance by implementing rollover features that ease administrative burdens, reduce fiduciary exposure, manage and improve costs and help participants stay **invested in retirement**.

Headquartered in Charlotte, NC, RSI optimizes retirement plan efficiency by consolidating active participant assets and removing terminated accounts. We pride ourselves on the services we provide—from employee education and assistance to transaction support via our Retirement Center. We have found a critical success factor in keeping terminated participants invested in retirement is giving them access to personal objective and qualified assistance in evaluating their options.

Our value proposition

RSI can quickly implement a systematic means to improve plan efficiency, reduce cash-outs, and increase the percentage of employees that stay invested in retirement.

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