Independent Actuaries, Inc.

TERMINATION OF DEFINED BENEFIT PENSION PLAN

The process of terminating a defined benefit pension plan can be a lengthy one. If your plan is subject to Pension Benefit Guaranty Corporation (PBGC) coverage, for example, there are additional requirements to terminate a plan. The following is a general list of possible steps in terminating a defined benefit plan. The actual process may differ depending on individual circumstances.

1. **Sign an Adopting Resolution terminating the plan, and provide written notices to participants.** The IRS requires that a notice informing participants of the freezing and/or terminating of plan benefits be given to participants no less than 15 days prior to the termination date. If the plan is subject to PBGC coverage, you must notify participants at least 60 days (but no more than 90 days) prior to the date you wish to terminate. The PBGC has very specific rules as to what information must be provided in these notices.

2. **Determine if the plan's assets are sufficient to pay all benefits due**. Employee data and trust value information as of the plan termination date is used to calculate the amount, if any, the plan sponsor may have to contribute to the plan to completely fund all benefits.

3. **Examine the plan document and adopt any amendments that may be required** to bring the plan up to date with all current laws and regulations.

4. **Decide whether to file a Form 5310 with the IRS** as part of the termination process. A separate attachment discusses at some length the advantages and disadvantages of this particular step. While not necessarily relevant to the decision about **whether** to terminate, it is a key issue in the actual termination process.

5. **Provide participants written notification of their benefits** and the supporting information used to calculate those benefits. *(PBGC covered plans only)*

6. **Prepare and submit all necessary forms to the IRS (if filing a Form 5310) and the PBGC.** The filing with the PBGC is required for PBGC covered plans. There is a specific timeline which must be followed to meet PBGC's requirements for the termination. Within 180 days after the plan termination date (240 days after the employees are notified of the termination), Form 500, Schedule EA-S, and Schedule REP-S, with attachments, must be filed with the PBGC. The PBGC has 60 days from the receipt of the information to disallow, or void, the termination.

   If the termination is not voided within the 60-day period, the plan sponsor/trustee may begin distributing benefits from the trust at the end of the 60-day period, unless the plan sponsor is waiting for a determination letter from the IRS. All assets must be distributed within 180 days after the expiration of the 60-day review period. An extension of time may be received for distributing only if a Form 5310 was filed with the IRS on or before the date the PBGC filing was submitted to the PBGC, and a response from the IRS has not yet been received. Distribution of benefits must be completed within 120 days from receipt of the favorable determination letter from the IRS.

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7. **Prepare and have participants sign the distribution forms.** After final approval has been received, Independent Actuaries, Inc. (IAI) will calculate the benefits payable and prepare distribution forms. Both participants and their spouses (if any) sign the forms. At that time the plan sponsor/trustee should distribute the benefits payable. If the plan is covered by the PBGC, then IAI will prepare Form 501, the Post-Distribution Certification, for the plan sponsor to sign and send to the PBGC after the last distribution is completed. The Post-Distribution Certification is due to the PBGC no later than 30 days after the final distributions have been made.

Throughout the process, the plan sponsor must also continue to file the annual IRS Forms 5500 with all required Schedules and attachments, and pay PBGC annual premiums through the electronic filing system until the end of the plan year in which all assets have been distributed. The plan sponsor will also need to complete a Form 1099-R for each participant receiving a distribution. This form should be completed at the end of the calendar year in which the distribution occurs. A copy is provided to each participant for filing with his or her tax return. Form 945 is also required if taxes are withheld from any benefit payments.

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The filing of Form 5310 is not a required procedure, but may be desirable. The Form 5310 is an application to the IRS for a favorable determination letter that the plan is qualified through the termination of the plan. The plan may already have received a favorable determination letter or have reliance on the opinion letter with regard to the "form" of the plan. The determination letter requested under a Form 5310 applies to the operation of the plan and would certify that the termination of the plan does not adversely affect its qualification.

The principal benefit of filing a Form 5310 is the receipt of the favorable determination letter. If the examination of the plan by the IRS turns up any problems, IAI may have an opportunity to correct them. Correction of any problems or deficiencies is much easier and less costly than correction pursuant to an IRS audit of the plan. With the determination letter, the plan sponsor would have more assurance that amounts distributed from the plan qualify for rollover to an IRA or another qualified plan.

There may be as many as several "good faith" amendments to a defined benefit plan to comply with recent changes in pertinent pension law and regulations. Although these amendments are required, they have not been pre-approved by the IRS. Unless Form 5310 is filed, the IRS does not have an opportunity to review these amendments.

There are negative aspects of the filing of Form 5310. There is an IRS filing fee of $3,500 in addition to the cost of IAI's services to prepare the forms and calculations necessary to submit the Form 5310. Certain plans may be exempt from the IRS filing fee. IAI often recommends that distribution of benefits be delayed until the favorable determination letter is received, which could take several months.

If a Form 5310 is not filed, the plan sponsor will not have the absolute assurance from the IRS that the plan is "qualified" through the time of termination. In the event that the plan is not "qualified" for some reason, and should the IRS audit the plan after termination, the negative consequences could be significant. Prior corporate deductions may be questioned and lump sum distributions may not be eligible for rollover treatment. Note that the IRS has indicated that plans which terminate and do not file Form 5310 may be more likely to be audited.

The plan sponsor's decision should be reviewed with legal counsel before any direct action is taken.

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