

## DEFINED CONTRIBUTION PLAN TERMINATION AND ADMINISTRATION

### Overview

1. Terminate the plan by Adopting Resolution.
2. Distribute Notice to Affected Parties of Intent to Terminate.
3. File the plan for a final determination letter (optional, but recommended).
4. Perform final allocation and distribute plan assets. Prepare Form 1099-R.
5. After all assets have been liquidated, file final Form 5500 with the IRS.

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### Instructions

The procedures involved in terminating a defined contribution plan are as follows:

1. The plan must be formally terminated through an Adopting Resolution. The effective date of termination should be included in the Resolution.

Generally, the effective date of plan termination cannot precede the date the Resolution is executed; that is, plans cannot be terminated retroactively.

Some plan documents, if not amended for current changes in the law, will require conforming amendments.

Of particular importance are the plan documents. The plan document should be reviewed and amended, if necessary, to ensure compliance with the following laws:

- GATT (General Agreement on Tariffs and Trade of 1994) [PL 103-465]
- USERRA (Uniformed Services Employment and Reemployment Rights Act of 1994) [PL 103-353]
- SBJPA (the Small Business Job Protection Act of 1996) [PL 104-188]
- TRA '97 (the Taxpayer Relief Act of 1997) [PL 105-34]
- RRA (Internal Revenue Service Restructuring and Reform Act of 1998) [PL 105-206]
- EGTRRA Amendment (the Economic Growth and Tax Relief Reconciliation Act of 2001)
- Post-EGTRRA Amendment to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, the Job Creation and Worker Assistance Act of 2002 and other IRS guidance.
- Mandatory Distribution Amendment under IRC 401(a)(31)(B).
- Final 401(k)/401(m) Regulations Amendment.
- Pension Protection Act of 2006 Amendment (PPA). The PPA regulations affect all terminating plans. The IRS requires that terminating plans include all required provisions that are effective as of the termination date. Consequently, your plan must be amended to comply with such regulations
- Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) provisions. The HEART Act (enacted in June 2008) includes some provisions that were effective retroactive to 2007 and currently are effective.

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- Worker, Retiree and Employer Recovery Act of 2008 (WRERA). WRERA includes the waiver of 2009 required distribution language.
  - EGTRRA (the Economic Growth and Tax Relief Reconciliation Act of 2001) Restatement.
  - PPA (the Pension Protection Act of 2006) Restatement.
2. Elect whether or not to file the terminating plan with the IRS for a final letter of determination verifying that the plan's termination will not affect its qualified status. Filing the plan with the IRS for a final letter of determination is not a requirement for terminating the plan, but most employers file their terminating plans so there is no question as to the qualified status of distributions from the plan to participants and beneficiaries. In many cases, however, it takes the IRS six months or longer to issue a letter of determination upon plan termination. You should consult with your attorney for assistance in deciding whether or not to file the plan for a final determination letter.

Should you decide to file your plan for a final determination letter, IRS Forms 5310 and 6088 (if an underfunded defined contribution plan) along with other related documents must accompany your plan document when it is filed with the Internal Revenue Service. The forms require (i) plan information for the last five plan years, and (ii) participant information for the last ten plan years. It may be necessary for you to provide us with some information needed to complete the required IRS forms. The IRS also requires a "user fee" payment to be included with the termination submission. Typically, the IRS user fee is \$2,300 for plan terminations.

3. Perform a final interest allocation and distribute plan assets. The final allocation cannot be performed until the time the assets are ready to be distributed. The plan administrator may elect to distribute the assets immediately, or wait until the IRS responds with a letter of determination.

If the plan is being filed for a final determination letter, plan assets should not be distributed prior to receipt of a favorable determination letter. If plan assets are distributed prior to IRS review, favorable tax treatment of the distributions may be lost.

4. Whether or not you file your plan for a final determination letter, a final 5500 form (annual report) is required to be filed with the IRS within seven months after the end of the plan year in which the assets were distributed.

**ADOPTING RESOLUTION AND PLAN AMENDMENT**

**PLAN NAME**

The undersigned authorized representative of \_\_\_\_\_ (hereinafter referred to as the "Employer") does hereby unanimously adopt the following resolutions:

RESOLVED, that \_\_\_\_\_ (hereinafter referred to as the "Plan") shall be terminated as of \_\_\_\_\_.

FURTHER RESOLVED, that all participants as of \_\_\_\_\_ shall become fully vested in their account balances as of that date.

FURTHER RESOLVED, that the Employer is hereby authorized and directed to take all steps necessary to complete the termination of the plan.

FURTHER RESOLVED, that the assets of the Plan shall be distributed to the participants and the Trust shall cease to exist.

FURTHER RESOLVED, that these resolutions shall be considered an amendment to the Plan accomplishing the foregoing and adopted this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_  
[print name/title]

## NOTICE TO AFFECTED PARTIES OF INTENT TO TERMINATE

TO: All active participants, participants retired and currently in pay status, participants terminated and entitled to future benefits, beneficiaries of deceased participants, beneficiaries who are alternate payees under a domestic relations order, persons designated to receive notices on behalf of such persons, and any employee organization representing participants in the Plan ("Affected Parties"):

This Notice is to advise you that we have decided to terminate the \_\_\_\_\_ (the "Plan") as of \_\_\_\_\_.

Because the Plan is terminating, you will be entitled to 100% of your account balance as of \_\_\_\_\_.

This Notice is not irrevocable, and if the Plan termination does not occur at the proposed termination date specified above, you will be so notified in writing.

We will advise you of your rights under the termination procedure as provided by the Plan in the near future. If you have any questions concerning the Plan's termination, you should contact your Plan Administrator.

This Notice shall be dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_ (Employer)