

Self-Employed 401(k)

Fidelity provides the following general guidelines for employers to terminate self-employed 401(k) plans. This information is not intended as legal or tax advice. Please consult a tax advisor or legal counsel when deciding the proper course of action for your plan.

Step 1 of 6: Review your plan records and prepare for termination.

Inspect all your plan records, including payroll and plan contribution records.

- Review your original Adoption Agreement and any plan amendments that have been made since inception. If you need to complete an Adoption Agreement, it can be found at https://www.fidelity.com/bin-public/060_www_fidelity_com/documents/SE-401k-adoption-agrmnt.pdf.
- Update the plan for all changes in the law or plan qualification requirements effective on the plan's termination date.
- Evaluate payroll records to ensure that all eligible participants have received timely deposits of plan contributions.
- Confirm that all required IRS Form 5500 filings have been completed in a timely fashion.
- Corporations should conduct appropriate meetings to draft a resolution approving the plan's change in status (e.g., terminated or frozen).
- Speak with your tax advisor or attorney regarding any necessary steps to update the plan document or correct any operational problems associated with the administration of your plan.

CORRECT ANY OPERATIONAL DISCREPANCIES.

Your attorney and/or tax advisor can help you determine how to resolve any problems with your plan(s). You may wish to review the Employee Plans Compliance Resolution System (EPCRS) at <http://www.irs.gov/Retirement-Plans/Correcting-Plan-Errors>, which provides programs for employers to correct defects in plan operation. As stated by the correction programs, if, upon review of your plan records, you discover any operational discrepancies, efforts should be made to correct any deficiencies before termination to ensure that your plan assets maintain their tax-deferred status. Please contact your attorney and/or tax advisor for more guidance regarding your specific circumstances.

Step 2 of 6: Establish an effective date of termination.

Generally, the last day of your plan year, or the date you cease operating your business, will be your effective date of termination. The termination effective date should be recorded and maintained with your plan records.

Important: For self-employed 401(k) plans, the employer should fund the plan up to the effective date of termination.

FILE IRS FORM 5310 (OPTIONAL).

Your tax advisor can help you determine if it is advantageous for your plan to file IRS Form 5310. The Form 5310, Application for Determination for Terminating Plan, asks the IRS to make a determination of your plan's qualification status at the time of termination. This form and related instructions may be obtained online at www.irs.gov. Keep in mind that the filing is not mandatory. However, if the form is filed, it may also necessitate filing Form 6088, Distributable Benefits from Employee Pension Benefit Plans, and Form 8717, User Fee for Employee Plan Determination Letter Request. Refer to Treasury Regulation 301.6057-2 for more information. Form 5310 should be filed at least 30 days before the effective date of plan termination.

If you file IRS Form 5310 in order to have the IRS make a determination about the plan's qualification status at termination, you must distribute the [Notice to Interested Parties](#) to participants in order to notify them of the determination application.

☐ **Step 3 of 6: Notify participants (applies only to plans with common law employees).**

- Notify all plan participants and beneficiaries about the plan termination.
- Employers must provide all participants with the appropriate distribution notice and payment options.
 - Special Tax Notice Regarding Plan Payments, also known as the [402\(f\) notice \(PDF\)](#).
 - If the plan is subject to the Joint & Survivor Annuity Rules, such as a money purchase plan or a “merged” profit sharing plan that holds assets transferred from a money purchase plan, employers must provide an [Explanation of a Joint & Survivor Annuity \(PDF\)](#).

Finally, as a reminder, document all steps taken to ensure the timely receipt of notices and any associated communications sent to plan participants for your records.

☐ **Step 4 of 6: Make any final contributions to the plan.**

The final contributions should be calculated through the termination date and deposits made to participant accounts by the employer’s tax filing deadline, including any extensions. If your termination creates a “short plan year” (less than 12 full months), you should discuss this situation with your tax advisor to determine the impact on your overall contribution limits.

☐ **Step 5 of 6: Distribute assets.**

Distribute assets as soon as administratively feasible. Generally, this must be completed within one year from the termination effective date.

TIP: Avoid making distributions late in the year to avoid additional tax filings associated with dividends that may post to your account. For example, a request for a distribution in December may be followed by a dividend payment to the account in January of the following year. Any dividends will be distributed and need to be reported using IRS Form 1099-R of the year of the distribution.

Missing Participants

In an effort to assist plan sponsors and employers who cannot locate plan participants, the Department of Labor issued Field Assistance Bulletin No. 2014-01 (“FAB 2014-01”), which addresses the necessary steps for a plan fiduciary to distribute an account balance when efforts to communicate with a missing participant have failed.

The Department of Labor, in FAB 2014-01, lists the following search methods as the minimum steps the fiduciary of a terminated defined contribution plan must take to locate a participant:

- Send a notice using certified mail.
- Check the records of the employer or any related plans of the employer.
- Send an inquiry to the designated beneficiary of the missing participant.
- Use free electronic search tools.

FAB 2014-01 also describes additional appropriate search methods and the distribution options for a terminating plan if a participant cannot be located.

The DOL also released several pieces of guidance in early 2021 to help plan sponsors and fiduciaries meet their obligations to locate missing and non-responsive participants. In addition to a Compliance Assistance Release relating to terminated defined benefit plans, the guidance includes:

- *Missing Participants – Best Practices for Pension Plans*, which outlines best practices that retirement plan fiduciaries should consider to help reduce missing participant issues and ensure that plan participants receive benefits they are entitled to.

- *Field Assistance Bulletin 2021-01*, which permits plan fiduciaries of terminating defined contribution plans to use the PBGC's Missing Participants Program for missing or nonresponsive participants' account balances.

For further information and to view the guidance, visit the U.S. Department of Labor's Employee Benefits Security Administration website: <https://www.dol.gov/agencies/ebsa>

You should review these pieces of guidance to determine if you have taken the necessary steps to locate missing participants in your plan. Please consult a tax advisor or legal counsel when deciding the proper course of action for your plan.

□ Step 6 of 6: File final IRS Form 5500/5500-EZ (required).

- Regular 5500/5500-EZ filings, as applicable, are still required throughout the termination process.
- A final IRS Form 5500/5500-EZ is generally due by the end of the seventh month after the plan assets are distributed. The instructions on the 5500/5500-EZ form include how you should file the form to indicate that your plan is filing its final return.

For a copy of IRS Form 5500/5500-EZ, go to the IRS website at www.irs.gov. You can also find more information at <https://www.fidelity.com/taxes/tax-statement-guides/form-5500>.