Agenda

- Valid Business Reason for Termination
- Termination Date and Documentation
- Participant Notification Requirements
- Plan Amendments
- Determination Letter – Apply or Not?
- 5500 Reporting
- Final Year Compliance Testing
- Final Contributions/Allocations
Agenda

- Vesting
- Distribution of Assets
- Successor-Plan Rules
- Abandoned-Plan Rules
- Partial Termination
- Deemed Termination
- MEP Terminations
- Recap of Termination Requirements
Termination Date and Documentation
Defined Contribution Termination Date and Documentation

- DC determination of when the plan terminates based on all the facts and circumstances as ERISA §4041 not applicable
  - Cite: Treas. Reg. §1.411(d)-2(c)(3) & §1.401-6(b)
- Usually, a resolution adopted by the employer is sufficient to establish the termination date
  - (e.g., board resolution adopted by the board of directors of a corporate plan sponsor)
Defined Contribution Termination Date and Documentation

• For DC pension plans, such as money purchase plan or target benefit plans, the termination date is not effective before the ERISA §204(h) notice requirements are satisfied
  – Unless plan is not subject to Title I of ERISA
  – For pension plans frozen prior to their termination, provided the ERISA §204(h) notice was given at that time, then a resolution terminating the plan is sufficient to establish the termination date
Termination Documentation

Notice to Employees

• Formal notice is NOT required for profit-sharing plans nor 401(k) plans
• However, Safe Harbor 401(k) plans would require a supplemental notice
• Money purchase/target benefit must distribute an ERISA 204(h) notice
Termination Documentation
ERISA 204(h) Notice

• ERISA 204(h) notice
  – Large plan – 45 days
  – Small plan (<100 participants) – 15 days
  – Failure to provide may subject the sponsor to penalties and void the termination
    • More on the 204(h) notice later
Plans Are Intended to Be Permanent

• Reason for termination?
• Usually not questioned, however, plan is intended to be permanent and if plan not in existence for very long, it could be of interest to an IRS agent
• Watch out for “one-hit wonders”
  – Big contributions in one year and plan goes away thereafter
Valid Business Reasons for Terminating a Qualified Retirement Plan
Valid Business Reasons

• IRS does not always question reason, unless…
  – The term QUALIFIED PLAN implies a permanent program
  – Termination within a few years after adopted needs to be for a valid business reason
  – Business necessity for termination:
    • Must have been unforeseen when the plan was adopted, and
    • Not within the control of the employer
Valid Business Reasons

• Valid business reasons would be:
  • Bankruptcy
  • Insolvency
  • Discontinuance of the business by the employer
Valid Business Reasons

- Other acceptable reasons depending on the circumstances:
  - Substantial change in stock ownership
  - Merger
  - Substitution of another type of plan
  - Financial inability to continue the plan, though business will continue
  - Employee dissatisfaction with the plan
  - Substantial change in the law affecting retirement plans
Valid Business Reasons

- If the employer wants to ensure that the reason is valid they should apply for an IRS favorable determination letter upon plan termination (more on this later)
Participant Notification Requirements
Required Notices

- Notice of reduction in accruals/benefits
  - ERISA 204(h) notice for money purchase or target benefit plans
- Supplemental notice for Safe Harbor 401(k)
- If DL submitted, a notice to interested parties is required
204(h) Notice

- Money purchase or target benefit plans or DC plan that has these sourced funds:
  - Written notice of any plan amendment or action that results in a reduction or cessation of future benefit accruals
  - Distributed after adoption, not later than 45 days before the effective date,
    - 15 days for small plans
204(h) Notice

• Provide to any participant that it is foreseeable to experience a reduction
  • Current participants = yes
  • Terminated participants = no
  • Alternate payees under QDRO = yes
  • Beneficiary(ies) = no
204(h) Notice Content

• Plain language – IRC 4980F requirement, must be written in a manner to be understood by the average plan participant

• Must describe the benefit/allocation formula
  – Prior to the amendment,
  – After amended, and
  – The effective date of the amendment

• Information provided must enable each participant to determine the approximate magnitude of the expected reduction for that participant
Submitting for a DL, Then an Interested Party Notice Required

- Interested party notice – to be provided to participants only when a DL request is filed on plan termination
- Notice given to:
  - All present participants with accrued benefits
  - All vested terminated participants
  - Beneficiaries of deceased participants in pay status
  - Alternate payees under a QDRO
Interested Party Notice
Timeframe for Providing

• Not less than ten days, no more than 24 days in advance of termination date
• Do not need to include copy of notice in determination submission
  • Form 5310 asks if completed
Interested Party Notice Content

• Description of the class(es) of employees eligible to participate in the plan
• A statement on any previous IRS determination letters
• A statement that any person receiving the notice may submit, or request the DOL to submit, to EP determinations a comment on the question of whether the plan meets qualification requirements
Interested Party Notice Content

• The specific **dates** by which **comments** must be received
• The **number** of interested parties **needed for the DOL to comment**
• A description of a reasonable **procedure** for interested parties **to obtain additional information**
• Brief description identifying class(es) of interested parties notice addresses
• Plan name, plan ID number, plan administrator name
• Name and TIN of the applicant
• **Statement** that an **application for a determination on the qualified status** of the plan is being made to the IRS for a plan termination
Interested Party Notice: Additional Information for Less Than 26 Participants

- A description of:
  - Plan’s requirements regarding eligibility for participation and benefits
  - Plan’s benefit formula
  - Plan’s provisions providing for nonforfeitable benefits
  - Circumstances that may result in ineligibility, denial, or loss of benefits
Interested Party Notice: Additional Information for Less Than 26 Participants

• A description of:
  – The source of the plan’s financing
  – The identity of any organization through which benefits are provided
  – Code Section 411(d)(6) optional forms of benefit reduced/eliminated by the plan amendment
Plan Amendments

Amendment of Plan to Conform to Current Law(s) and Regulations

Termination Amendment
Plan Amendments

• Amendment to formally terminate plan, zero-out contribution formula, etc.
• Timeliness important
  • Due to potential last day of year employment requirement
Plan Amendments

• Accelerated remedial amendment period
  – Six-year cycle: not applicable
  – The termination of a plan ends the plan’s remedial amendment period, and will generally shorten the remedial amendment cycle for the plan
Plan Amendments

Plans must be brought up to date!!

- Required provisions
  - Required amendments are necessary for all guidance in effect as of the date of termination
  - Not necessarily the cumulative list in effect for the applicable cycle
- Optional provisions
  - Optional provisions of laws/regulations being used by plan must be amended into the plan
Plan Amendments
List of Amendments

• PPA document amendments
  – Clean restatement without any interim amendments
  – Optional in-plan Roth amendment for adding conversion of amounts without a distributable event
Plan Amendments
List of Amendments

• Example of EGTRRA era document amendment
  – 415 amendment, with adoption
  – PPA by end of 2009
    – Accelerated vesting
    – Rollovers to Roth IRA
    – Hardships for beneficiaries
    – Money purchase – in–service at age 62
    – Automatic enrollment
  – Pre-62 NRA amendment to age 62 for
    • Money purchase, target benefit, and DC plans containing MP/TB/DB Assets
    • Due by June 30, 2009 for calendar-year plans
Plan Amendments
List of Amendments

• Example of EGTRRA era document amendments
  • HEART, 2010
  • EESA, Mid-West Storms, 2010
  • 401(a)(35) Amendment, 2010
    • Employer securities diversification
  • WRERA, 2011
    • 2009 RMD suspension
    • Non-spouse beneficiary rollover
• In-plan Roth conversion for funds with a distributable event, optional, later of end of plan year utilized or December 31, 2011
Determination Letter Submission Decision

To Submit or Not to Submit: That Is the Question!
Determination Letter

- Optional – last chance to get it right
- Audit chances – decrease or increase???
- Reliance in case of future audit
- Who will gather information for future audit
Determination Letter Submission: For Your Consideration

- Benefit of receiving DL upon termination
  - Reliance that plan qualified at termination
    - IRS examination later will not find fault
  - Rollovers are from a qualified plan
    - Rollovers made from a plan that is not qualified are not eligible rollover distributions
    - Rollovers from plan with DL at termination may be made without concern that they are not eligible for rollover
- These applications processed currently
  - Do NOT have to wait for six-year cycle to end
Determination Letter Submission: For Your Consideration

- Concerns about submitting for a DL
  - Cost of Form 5310 submission
    - Form 5310 fee for submissions made after February 1, 2017 ➔ $2,300
Determination Letter Submission: For Your Consideration

- Missing documents
  - IRS discovery of missing prior documents, results in a substantial IRS fee
  - In the 2016 version of EPCRS (Rev. Proc. 2016-51), the IRS special fee table
    - Less than audit CAP but more than VCP
## Fee for Non-Amenders Discovered During DL Application Process

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<th>Number of Participants</th>
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<th>Employer’s 1st of 5 or 6 year Remedial Amendment Cycle (EGTRRA)</th>
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EPCRS; Rev. Proc. 2016-51, Section 14.04
Determination Letter Submission
For Your Consideration

• Missing documents
  • Before deciding to submit for a DL at termination, the consideration has to be:
    • Are all earlier plan documents (restatements and amendments) able to be retrieved?
  • If documents are missing, this is a non-compliant scenario, and a VCP submission is required
EPCRS: VCP Fees as of February 1, 2017, Rev. Proc. 2017-4, Appendix A

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<th>Number of Participants</th>
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</tr>
<tr>
<td>Over 10,000</td>
<td>$15,000</td>
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</table>

Special situations: RMD (<151 participants): $500; 151 to 300 $1,500, Interim amendments (before expiration of extended RAP): $375; Loans (25% participants or less), based on number of failures; non-amenders (less than one year) 50% off; egregious, higher than schedule
Determination Letter Submission: Timing of Submission

- An application will be deemed to be filed in connection with plan termination if it is filed no later than the later of:
  - (i) One year from the effective date of the termination, or
  - (ii) One year from the date on which the action terminating the plan is adopted

- Information needed for submission to the IRS:
  - Form 8717, user fee for employee plan determination
  - Form 5310, application for determination for terminating plan
Determination Letter Submission: Information for Submission

• Information needed for DL submission to the IRS:
  • A copy of the plan document
  • A copy of the latest approval letter determination letter from the IRS or opinion/advisory letter for pre-approved plans
  • A copy of all amendments since the last determination letter
  • Copies of all records of all action taken to terminate the plan
  • A statement explaining how the amendments affect or change the plan
  • Form 2848, Power of Attorney
Form 5500
Form 5500 Filing

• Continue to file Form 5500 each year until all assets are paid out

• When last assets distributed:
  • File final Form 5500 to terminate plan by the last day of seventh month following final distribution, plus extensions
Form 5500 Filing

• Last return must be marked as “final return,” showing zero assets
• Final form also required for plans exempt from filing requirements
  – For example, ongoing plans with less than $250,000 in assets
Compliance Testing
Final Year Testing

• All compliance testing applies in the year of termination
  – IRC 401(a)(4) – Nondiscrimination/Cross-Test
  – IRC 401(k) - ADP
  – IRC 401(m) - ACP
  – IRC 402(g) – Deferral Limits
  – IRC 404 – Deduction Limits
  – IRC 410(b) – Coverage Requirements
  – IRC 415 – Annual Additions Limits
  – IRC 416 – Top-Heavy
Final Year Testing
Short Plan Year

- Compensation limit – pro-rate
- Deferral limit – not pro-rated
- Employer allocations – pro-rate compensation and pro-rate social security integration level
- Annual additions – pro-rate limit
- ADP/ACP – test on short-year data
Final Year Testing

• Gather all “typical” year-end census data through termination date and perform tests
  – If ADP is failed, corrections must be made
  – If ACP is failed, correction must be made
  – If the plan WAS a Safe Harbor plan, then it must revert to current year testing for ADP and ACP, if applicable
  – If 402(g) deferral limits are exceeded, corrections must be made
  – If 415 limits are exceeded, corrections must be made
  – If any newly eligible employees were not given the right to defer, then corrections for those individuals would be required

• Corrections under short-term missed deferrals under Rev. Proc. 2015-28 may apply
401(k) Safe Harbor Plan Termination Short-Plan Year Exceptions

- Year of plan termination, and short-plan year SH contribution made, there will be NO testing, IF:
  - Plan termination is in connection to:
  1. Merger or acquisition, or
  2. Business hardship as defined in §412(d):
     - Operating at a business loss
     - Substantial unemployment or under-employment in trade or business and in the industry concerned
     - Sales and profits of industry depressed/declining
     - Reasonable to expect plan to continue if waiver granted
401(k) Safe Harbor Plan Termination
Short-Plan Year Exceptions

If SH 401(k) plan terminated with a short-plan year for a reason other than on prior slide, then:

– Short plan year SH contribution is to be made
– Employees are to be provided with a supplemental notice
– Plan must pass current year testing or make corrections
– The plan may follow the regulation for reducing or suspending a safe harbor contribution and perform ADP/ACP test
Final Contributions/Allocations
Final Contributions
Money Purchase and Target Benefit

• Money purchase/target benefit are subject to minimum funding so must make a contribution, if benefits have been accrued

• If the plan is subject to the last day of the year requirement or 1,000 hours then a termination before this date will not obligate sponsor to make a contribution
Final Contributions
Profit Sharing and 401(k) Plans

• Profit sharing (including 401(k) plans)
  – If the contribution is fixed – use same rules as the money purchase plan
  – If the contribution is discretionary – then it is, of course, optional
Final Contributions
Profit Sharing and 401(k) Plans

• Profit sharing (including 401(k) plans)
  – Elective deferrals are allowed only with compensation up to the termination date
  – Matching contributions – unless discretionary, must be made
    • If plan provides for last day/1,000-hour rule, then not required, unless satisfied
Final Contributions
Safe Harbor 401(k) Plans

• Safe Harbor 401(k) plans
  • Watch out because this is a required contribution
  • No allocation requirements
  • Failure to make the required contribution may cause the plan to be disqualified
Final Contributions
Top-Heavy Plans

• Top-heavy plans
  • Even if termination date is not the last day of the plan year, the top-heavy contribution is due based on the termination date being the last day of the plan
  • **Termination date is considered last day of plan year for top-heavy allocation purposes**
  • Some practitioners had viewed this differently in the past, but the IRS at the ASPPA National Conference stated that the termination date is the last day and that a top-heavy allocation is due as of that time
Final Contribution Issues

Forfeitures

• Disposition of the forfeitures is determined based on the plan language, but in no way may they revert back to the employer
• Forfeitures may be used to:
  • Offset required contributions
  • QNEC/QMAC for correcting failed ADP/ACP
  • Pay ordinary plan fees and/or
  • Be reallocated to participants
• Fees related to the plan termination would be settlor costs and cannot be paid by the forfeitures
Vesting
Vesting Rules

• Plan termination = 100 percent vesting
  – Internal Revenue Code §411(d)(3) requires 100 percent vesting of all “affected employees” when a plan is terminated

• Applies to:
  – Active participants
  – Terminated participants who have not forfeited their non-vested balance as of the termination date

• Those who have been paid out or had five one-year breaks-in-service are out of luck
Vesting Examples

• Current employee JT is 20-percent vested when plan termination occurs
  • JT becomes 100-percent vested
Vesting Rules

• For a DC plan, an "affected employee" is:
  – An employee or former employee who has not forfeited his non-vested interest as of the termination date
  – Citation: GCM 39310 and FSA 1992-1023-1
  – Where the non-vested interest has not been forfeited at the time of the plan’s termination, IRC § 411(d)(3) operates to vest that amount
Vesting Examples

- Former employee, Jim, severed service January 2, 2015 and was 40 percent vested at severance
- Jim has not taken a distribution
- Plan termination date is March 15, 2017
- Since Jim had not taken a distribution, nor had five one-year breaks-in-service, Jim becomes 100 percent vested
Vesting Rules
Zero-Percent Vested Terminated Participants

- Some plans stipulate that zero-percent vested terminated participants are deemed to have taken a distribution.
- The deemed cash-out permits the non-vested 100 percent amount to be forfeited.
- If forfeited before the plan termination, then those participants are not 100 percent vested at plan termination.
Vesting Rules
Zero-Percent Vested Terminated Participants

- Plan has three-year cliff vesting
- Lucille terminates service after two years of vesting service and is zero percent vested
- The plan document states: an employee who is zero percent vested at severance is deemed to have taken a distribution of the vested portion
- The plan forfeits Lucille’s balance
- The following year, the plan terminates
  - Lucille is not entitled to become 100 percent vested as the money had been forfeited away before the plan termination
Vesting Rules
Five Consecutive One-Year BIS

• If a participant terminates employment and then incurs five consecutive one-year breaks-in-service, the non-vested portion is forfeited away
• If the plan termination occurs after that time, the participant does not become 100 percent vested in the amount that was forfeited away
• If the plan termination occurs before the five one-year BIS have occurred, then the participant is 100 percent vested in the money in his/her account
Vesting Examples

• Jenny severed service April 18, 2010 and was 60 percent vested at severance
• Jenny leaves her money in the plan and after five consecutive one-year BIS; the plan forfeits Jenny’s non-vested 40 percent away in 2016
• Upon plan termination in May 22, 2017, Jenny does not become 100 percent vested
Vesting Rules: Former Employee Cashes Out Vested Amount

• If a participant terminates employment and withdraws the vested portion; the non-vested portion is forfeited away
• If the plan termination occurs after that time, the participant does not become 100 percent vested in the amount that was forfeited away
• If the plan termination occurs before the forfeiture, then the participant is 100 percent vested
Vesting Examples

- Hank severed service January 2, 2013 and was 25 percent vested at severance
- Hank takes a full distribution of his vested amount on April 12, 2013
- The plan forfeits Hank’s 75 percent non-vested portion and reallocates forfeiture later in 2013
- Upon plan termination on March 15, 2017, Hank does not become 100 percent vested
  - To recap, Hank had taken a distribution, and the non-vested amount was forfeited and reallocated, so the five one-year breaks-in-service didn’t come into play
Distribution of Assets
Distribution Rules Apply

• Subject to normal distribution paperwork and timing
  – If J&S – review period of 30 to 180 days
    • May be waived down to seven days
  – 402(f) notice – Special Tax Notice for Distributions, 30 to 180 days in advance of distribution
Distribution Rules Apply
Amounts Under $5,000

- If J&S rules apply, they are not applicable for amounts less than $5,000
  - Amounts between $1,000 and $5,000 may be automatically rolled to IRA if no response from participant
  - Amounts under $1,000 may be paid directly to participant
  - Assumes document provisions provide this
Distribution Rules

• Most distributions are made in cash

• Check document provisions to see if “in-kind” distributions are allowed
Insurance contracts

- **Cannot rollover** an insurance contract
- Participant can pay cash surrender value to plan and receive a distribution of the policy
- Then can rollover all the cash
- If don’t do this, then surrender policy or
- Distribute policy and report cash-value as taxable
Distribution Rules Apply
Participant Loans

• Participant loans
  • Due and payable
  • Roll to another plan is possible if that plan has loans and accepts rollovers
  • Participant can roll equivalent amount of cash as was in the outstanding loan within 60 days.
Distribution Rules Apply
Non-Spouse Beneficiary Rollovers

• Non-spouse beneficiary rollovers
  – Automatically apply for a terminated plan
  – Must be moved by a direct rollover
  – Remember – must treat as an inherited IRA and continue payouts!!!
Distribution Rules Apply
Required Minimum Distributions

- RMDs may not be rolled-over
- Any participant subject to RMD rules must be paid the RMD for the year, if not already paid earlier in the year
Termination Distributions
12-Month Requirement

• Distributions must be completed as soon as practicable but within 12 months of the plan termination date
  • Citation: Rev. Rul. 89-87
• If a determination letter is requested, then they must be distributed within six months after receipt (assuming this goes beyond 12-month deadline)
Distribution Rules Apply
No Forced Merger

• Upon a plan termination, cannot merge assets to another plan without the participant’s request

• Must offer participants the right to receive funds
  – There are some brokers…..
Distribution Rules Apply Non-Responsive Participants

• If participant has an account balance of more than $5,000 and is in a plan subject to J&S:
  • Go buy a deferred annuity
  • Usually the threat of this will cause the non-responsive participant to take action
Distribution Rules Apply
Non-Responsive Participants

• Participant’s account balance is more than $5,000 and plan NOT subject to J&S, consent is NOT needed to auto roll to an IRA if:

  • Plan is a profit sharing or stock bonus (not a money purchase nor a target benefit)
  • There are no annuity options offered
  • Another DC plan is not maintained by employer, including other members of a controlled group
    • Excluding an ESOP
  • Citation: Treas. Reg. 1.411(a)-11(e)
Steps in Locating Missing Participants in Terminated DC Plans: FAB 2014-01

• Required steps in reasonable attempt to locate:
  1. Certified mail
  2. Check related plan and employer records
  3. Contact designated beneficiaries on beneficiary form
  4. Electronic search tools

• Additionally, as appropriately cost effective, use locator service
Steps in Locating Missing Participants in Terminated DC Plans: FAB 2014-01

• Options:
  1. Preferred option: rollover to IRA
  2. QJSA over $5,000: purchase annuity
  3. If #1 is not possible, and #2 does not apply, an interest-bearing savings account in a federally insured financial, or state unclaimed-property fund, may be considered. However, taxability to participant must be considered.
    – PBGC – once final regulations on DC missing participant program
    – Does your document allow you to forfeit amounts under $1,000?
401(k) Successor-Plan Rules
Successor-Plan Rules

• Plan termination will not be a distributable event for elective deferrals if the employer maintains or establishes another Defined Contribution plan within 12 months
Successor-Plan Rules

Plans that may **not** be opened:

- Another DC plan such as:
  - 401(k) Plan
  - Profit Sharing Plan
  - Money Purchase Plan
  - Target Benefit Plan
Successor-Plan Rules

Plans that may be opened:

• Okay to have:
  • 403(b) Plan
  • 457(b) plan
  • ESOP
  • Defined Benefit Plan
    • Including Cash Balance
  • SEP-IRA
  • SIMPLE IRA
Successor-Plan Rule
Two-Percent Exception

• If fewer than two percent of the employees eligible under the 401(k) plan as of the date of plan termination are eligible under alternative 401(k) plan, the successor-plan rule does not apply
  • Measuring period begins 12 months before the plan termination and ends 12 months after distribution of all assets
Abandoned-Plan Rules
Abandoned-Plan Rules

• Department of Labor issued guidance

• Abandoned Plan is:
  • Sponsor no longer exists
  • Cannot be located, reasonable efforts to locate sponsor must be made
  • No contributions or distributions made for 12 months
Abandoned-Plan Rules

• Qualified Termination Administrator (QTA) may shut down plan
  • Must be an entity that is allowed to hold plan assets under ERISA
    • Bank, trust company, insurance company, mutual fund company, etc.
  • Must be asset custodian/administrator
  • Must be approved by DOL
Abandoned-Plan Rules

- QTA must:
  - Notify DOL and participants within 90 days
  - Locate and update records
  - Calculate benefits payable
  - Notify participants and beneficiaries of their rights
  - Distribute benefits
  - File final 5500 report with DOL, with Special Terminal Report, and Final Notice to DOL within two months
Abandoned-Plan Rules

• QTA does NOT have to:
  • Amend document
  • Prepare Final Form 5500
• QTA may charge reasonable fees
Partial-Plan Terminations
Partial-Plan Terminations

• Revenue Ruling 2007-43

• Presumed if more than 20 percent of employees are involuntarily severed from employment that a partial termination has occurred

• Those affected become 100 percent vested
  – Those still employed – do not!!
Partial-Plan Terminations

• Revenue Ruling 2007-43

• Severance is for other than:
  • Routine turnover
  • Retirement
  • Death
  • Disability
Partial-Plan Terminations
Applicable Period

• Timeframe to measure the 20-percent turnover rate
  • Generally the plan year
  • If a short-plan year, the applicable period is the short-plan year plus the immediately preceding plan year
  • Applicable period can be a longer period if there are a series of related terminations
Partial-Plan Terminations
Turnover Determination

• Turnover determination
  • Divide
    • Number of participating employees who had an employer-initiated severance during the applicable period
  • By the sum of
    • All participating employees at the start of the applicable period and
    • Employees becoming participants in applicable period
  • All participants taken into account, both vested and non-vested participants
Partial-Plan Terminations
Employer-Initiated Terminations

• Employer-initiated termination is:
  – Any involuntary termination other than:
    • Death
    • Disability or
    • Retirement on or after normal retirement age
    • Even if it is caused by reasons outside of the employer’s control, e.g., depressed economic conditions
  – Note: no exception provided for terminations due to good cause
Partial-Plan Terminations
Voluntary Terminations Excluded

• Voluntary terminations are generally disregarded in determining the 20 percent, if employer can support a determination that the termination is in fact voluntary

• Don’t count employees who voluntarily chose to leave, even if they left because they were afraid they might be involuntarily terminated
Partial-Plan Terminations
Routine Turnover Excluded

- Routine turnover can be excluded from the partial termination determination
- Relevant factors in determining routine turnover include:
  - Information as to the turnover rate in other periods
  - The extent to which terminated employees were replaced
  - Whether the new employees perform the same job functions, had the same job classification or title, and received comparable compensation
Partial-Plan Terminations
Small Plans Not Addressed

• IRS guidance did not address small plans
  • For example, a plan with four participants in which one is involuntarily let go would have a partial termination at 25 percent
  • If the termination was voluntary, there would be no partial termination
Partial-Plan Terminations

- If it is determined that a partial termination occurred:
  - 100 percent vesting of former employees who were involuntarily terminated during the applicable period.
  - 100 percent vesting of former employees who left voluntarily during the applicable period.
  - Do not 100 percent vest the ongoing employees.
Deemed Termination
Discontinuance of Contributions

- Profit-sharing plan may be “deemed” to be terminated if contributions cease
- Rule of thumb = three years
  - Do not count years in which employer can demonstrate that a contribution would be harmful to the company
- Effect – participants become 100 percent vested
MEP: Withdrawing or Terminating
Exiting a MEP

• If participating employer who is exiting the MEP wishes to continue to maintain a plan:
  – Spin-off the participating employer’s employee’s plan assets
  – Create a mirror plan and then transfer the assets
  – No distributable event
How Does One Participating ER Terminate Its Portion of the MEP?

• If a participating employer wants to terminate its portion of the MEP plan:
  – Spin-off that participating employer’s plan
    • Participating employer creates and adopts a mirror plan and then transfer the assets to that plan
    • No distributable event
  – After new plan established and assets transferred from MEP, board resolution to terminate the new plan established by the former participating employer
    • This is a distributable event
May Lead ER Terminate the MEP?

- Most plan documents have a provision permitting the lead ER to terminate the MEP plan.

- The plan document would have a provision including notification to participating ERs (generally 30 days in advance).
  
  - Generally, participating ERs options are:
    1. Spin-off to a new plan that participating ER starts
    2. Terminate participating ER portion of plan also
    3. Spin-off to new MEP
Recap of Termination Requirements

In general order:

1. Determination of Valid Business Reason
2. Resolution and Notification of Intent to Terminate, 204(h) Notice for Pension Plans
3. Amendment of Plan to Conform to Current laws and regulations
4. Optional: submission for a Determination Letter; Notice to Interested Parties
Recap of Termination Requirements

5. Compliance Testing and Corrections
6. Contribution/Allocations: don’t Forget Mr. Forfeiture, Top-Heavy and Safe-Harbor Allocations
7. Vesting
8. Distribution of Assets: Non-responsive or Missing Participants/Loans/RMDs, etc., Election Forms and Forms 1099-R
10. Record Retention of Documents
Questions

Thanks for attending!!!