



Agenda

- Introduction
- Recent IRS Guidance
- The Decision to Terminate a Plan
- · Consequences of Plan Termination
- Participant Rights
- Process of Terminating a Defined Contribution Plan
- Process of Terminating a Defined Benefit Plan
- Partial Plan Terminations



Recent IRS Guidance

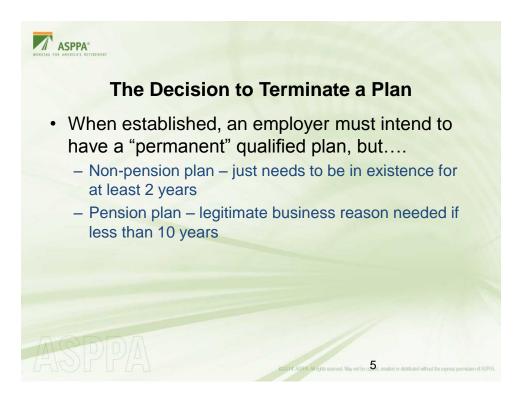
- Retirement Topics Termination of Plan
 - www.irs.gov/Retirement-Plans/Plan-Participant,-Employee/Retirement-Topics-Termination-of-Plan
- Terminating a Retirement Plan
 - www.irs.gov/Retirement-Plans/Terminating-a-Retirement-Plan
- FAQs regarding Plan Terminations
 - www.irs.gov/Retirement-Plans/Retirement-Plans-FAQs-regarding-Plan-Terminations
- FAQs regarding Partial Plan Terminations
 - www.irs.gov/Retirement-Plans/Retirement-Plan-FAQs-regarding-Partial-Plan-Termination
- Plan Terminations EP Guidelines
 - www.irs.gov/irm/part7/irm 07-012-001.html

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Recent IRS Guidance

- "Plan Terminations What You Need to Know Before You Terminate That Plan" – IRS Phone Forum – May 6, 2014
- "Defined Benefit Terminations" IRS Phone Forum July 28, 2014
- DOL and PBGC
 - Fiduciary obligations to conduct reasonable search for missing participants and how terminated defined contribution plan can complete distributions with respect to missing participants (*Field Assistance Bulletin 2014-01*, August 14, 2014)
 - PBGC issues request for information regarding implementation of missing participant program for DC plans (Missing Participants in Individual Account Plans Request for Information, 78 F.R. 37598, June 21, 2013)







The Decision to Terminate a Plan

- The decision to terminate a qualified plan is a "settlor" function
- However, the process of actually terminating the plan is driven by regulatory requirements, including the plan qualification, Title I and PBGC rules
- Discontinuance of contributions treated as termination for certain purposes

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IRS Findings - Plan Termination Project

- Over 75% of sampled employers made errors terminating their plans
 - Did not file Final Form 5500
 - Did not actually terminate the plan
 - Indicated that plan terminated when in fact it was "frozen"
 - Used the wrong plan number
 - Did not mark Form 5500 as final after all plan assets distributed
 - Did not distribute all plan assets as soon as administratively feasible

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Discontinuing Profit Sharing Contributions

- If complete discontinuance of employer contributions to a profit sharing plan, the plan is treated as terminated
- Contributions must be "recurring and substantial"
- Suspension of contributions may raise discontinuance issue
 - IRS presumption discontinuance when an employer has failed to make substantial contributions for at least 3 years in a 5-year period
- Discontinuance of employer contributions and matching contributions in a 401(k) plan



Consequences of Plan Termination

- Participant rights triggered
 - 100% vesting of "affected" employee accounts/benefits
 - Notices
 - Distribution option selection
- Termination resolutions and amendments for the plan
- Plan sponsor must distribute assets within a reasonable period of time after the termination date
- Plan sponsor must follow other government procedural requirements

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- Decide to terminate plan
 - This is a "settlor" function
 - Explore permanency issue
- Establish date of termination
 - Facts and circumstances determination
 - Board of directors resolution
 - Other formal resolution by non-corporate entities
 - As of termination date:
 - · contribution obligations stop
 - date on which the plan must be amended for all current laws and regulations
 - Often last day of plan year

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DC Plan Termination Procedures

- Provide notice of termination to employees
 - Pension plans must provide an ERISA §204(h)
 - Notice of any amendment that significantly reduces (or ceases) the rate of future benefit accruals
 - Timing Generally, 45 days before effective date (15 days for small plans)
 - Non-pension plans Some type of notice that employer intends to terminate plan



- Amend the plan to:
 - Establish termination date
 - Update plan for all laws and regulations in effect on the date of termination
 - Cease plan contributions
 - Provide full vesting to all "affected" employees on the date of termination; and
 - Authorize plan to make distributions in accordance with plan terms as soon as administratively feasible after the termination date



- File for a determination letter (if desired) as to the qualification status as of termination
 - IRS Form 5310
 - Interested party notice
 - Restatement not necessary (Rev. Proc. 2014-6)
 - Individually-designed plans
 - Pre-approved plans
 - Timing of filing generally, within one year from the effective date of termination (but not later than 12 months after all assets distributed)

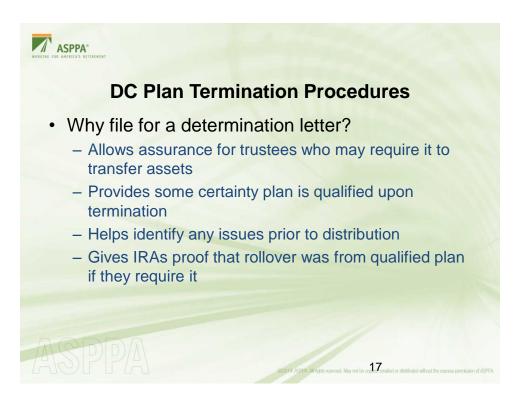
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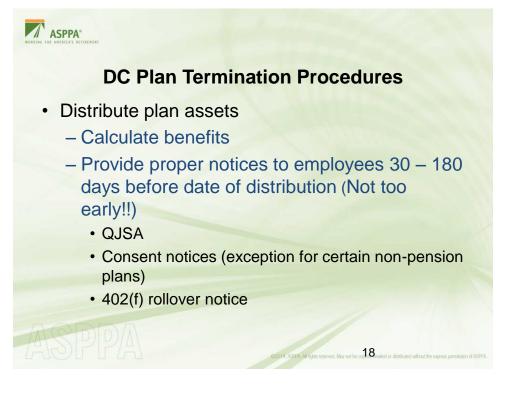


DC Plan Termination Procedures

- Form 5310 determination letter submission.
 - user fee and Form 8717 (\$2,000)
 - complete copy of the plan document(s) and all amendments made since the last favorable determination letter
 - copy of last favorable determination letter, if applicable
 - copy of latest opinion or advisory letter, if applicable
 - copy of all records of all actions taken to terminate the plan
 - copy of all required attachments and statements

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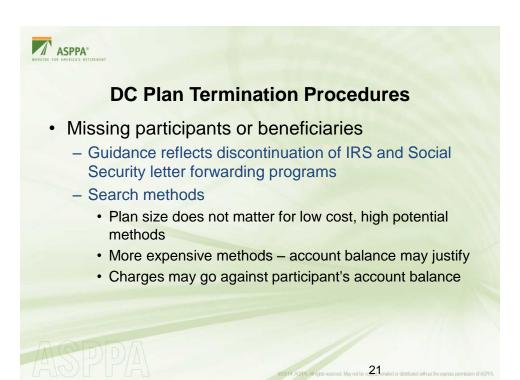


- Distribute plan assets
 - Deadline general rule, final distribution within one year of plan's termination date
 - Exception for administratively reasonable delay
 - Pending determination letter application
 - Reduce assets to cash
 - Interest-bearing account
 - · "In-kind" distributions
 - Participant-directed accounts
 - Illiquid assets
 - Missed deadline considered an on-going plan with all of the applicable requirements



DC Plan Termination Procedures

- Missing participants or beneficiaries
 - Must make reasonable efforts to find missing participants and beneficiaries
 - DOL Field Assistance Bulletin 2014-01
 - Updates guidance on fiduciary obligations to conduct reasonable search for missing participants and permissible actions for distributions when defined contribution plan terminates
 - Plan termination is a settlor function, but steps to implement termination governed by ERISA fiduciary standards





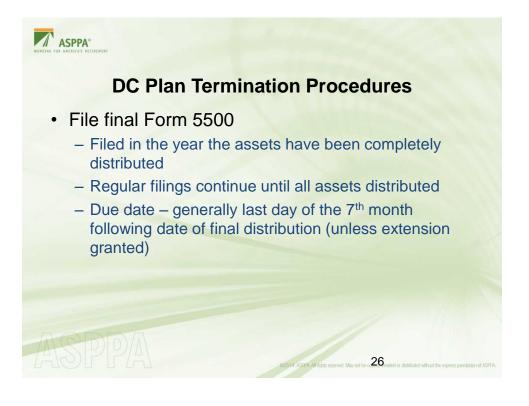
- Missing participants or beneficiaries
 - Search methods in all cases
 - · Send notice by certified mail to last known address
 - Look at other employer records
 - Attempt to contact named beneficiaries
 - Make reasonable use of Internet search tools
 - Additional search methods
 - Commercial locator services
 - Credit reporting agencies
 - Information brokers
 - Investigation databases



- IRA rollover
 - Primary means of distribution
 - DOL Fiduciary rules apply to selection
- Transfer to bank account
- · State unclaimed property funds
- Nonrollover could result in adverse tax consequences
- 100% withholding violates ERISA
- Guidance does not apply to plans with annuity options or if employer maintains another defined contribution plan



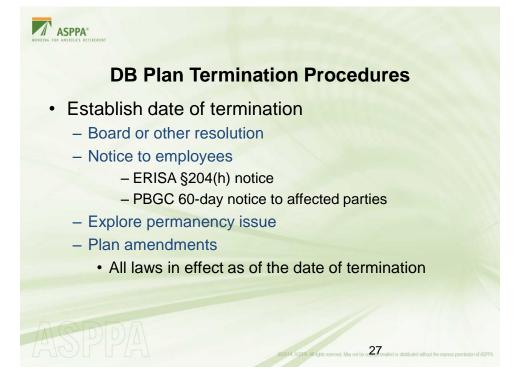


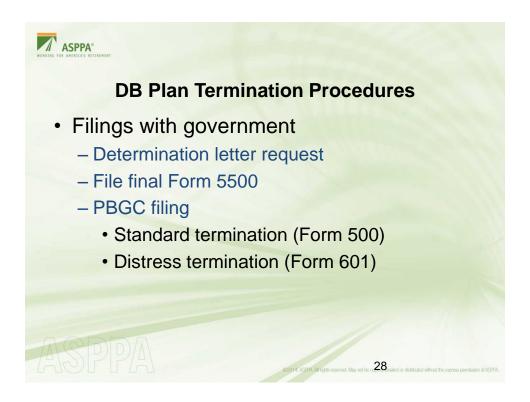




Orphan Plans

- Orphan plan definition a plan whose sponsoring employer is no longer in existence or has simply abandoned the plan and fails to take any steps to formally terminate and liquidate the plan
 - Former owners "disappear"
 - Death of owner or fiduciary
 - No successor fiduciaries
 - Corporate merger or bankruptcy
- · IRS qualified plan no longer exists
- · DOL special program to terminate and liquidate plan











Partial Plan Termination

- Upon a partial plan termination, all "affected" employees must be 100% vested
 - Whether a partial termination occurs is a factual question
 - Rev. Rul. 2007-43 provide guidance
- Partial termination A significant reduction in plan participation caused by an EMPLOYER-INITIATED action
 - Common causes are layoffs, reduction in force, plant closing, sale of business
 - Amendment that affects vesting also may result in partial plan termination



Partial Plan Termination

- Revenue Ruling 2007-43
 - Employer ceases operations at one of four business locations, resulting in a 23% reduction in plan participation (excluding any severance from employment resulting from death, disability or retirement). The plan uses a 3-year "cliff" vesting schedule
 - The ruling concludes a partial termination has occurred under these facts

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Partial Plan Termination

- Presumption of partial plan termination if at least 20% reduction in participation
 - Number of participants experiencing employerinitiated severance divided by sum of participants at beginning of year plus new participants during the year
 - The determination takes into account both vested and nonvested participants.
 - Partial termination may extend beyond one year if series of "related" severances



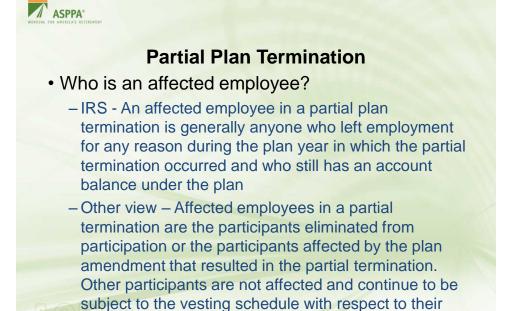
Partial Plan Termination

- Employer-initiated severance occurs even if event is outside ER's control, such as depressed economic conditions
- Employer may show severance was purely voluntary
 - Difficult standard presumption that severance is related to employer action
 - Constructive discharge theory
 - Routine turnover not considered
- Partial termination may occur due to sale of business

Partial Plan Termination
 Issue for small employers

 Suppose a small closely-held business with 6 employees involuntarily terminates 2 of them during the plan year. The involuntary reduction is 33-1/2%, triggering a rebuttable presumption that a partial termination has occurred.
 Informal IRS discussion – maybe not a partial plan termination





benefits.

