



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

7.12.1

NOVEMBER 8, 2023

EFFECTIVE DATE

(11-08-2023)

PURPOSE

- (1) This transmits revised IRM 7.12.1, Employee Plans Guidelines, Plan Terminations.

MATERIAL CHANGES

- (1) Updated IRM 7.12.1.1.1 (1) to reflect that Form 5300 (Application for Determination for Employee Benefit Plan) and Form 5310 (Application for Determination on Termination) must be submitted through Pay.gov. The current Form 5300 and Form 5310, and instructions, are available on the Pay.gov site. They are no longer available on the Forms/Pubs/Products Repository. This section was also updated to reflect the current title of Form 5307.
- (2) Updated throughout for changes in line references on Form 5310.
- (3) Various edits have been made throughout the IRM for clarity, removal of outdated items and for plain language.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 7.12.1 dated November 10, 2022.

AUDIENCE

Tax Exempt and Government Entities
Employee Plans

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7.12.1
Plan Terminations

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7.12.1.1
(07-16-2013)
Program Scope and Objectives

- (1) Purpose: To provide procedures and technical guidance on issues EP employees may have when reviewing Determination Letter (DL) applications for terminating and terminated retirement plans.
- (2) Audience: Employee Plans (EP) Determinations and Quality Assurance (QA) staff
- (3) Policy Owner: Director, EP
- (4) Program Owner: EP
- (5) Program Goals: The goal of EP Determinations is to:
 - a. Ensure that plans comply with the tax laws by reviewing applications for DLs and opinion letters.
 - b. Protect the public interest by applying the tax law with integrity and fairness to all.

7.12.1.1.1
(11-08-2023)
Background

- (1) Plan sponsors who terminate their plans or have potential partial terminations may submit requests for a DL using the following forms:
 - a. Form 5310, *Pay.gov - Application for Determination upon Termination*, Application for Determination for Terminating Plan.
 - b. Form 5300, *Pay.gov - Application for Determination for Employee Benefit Plan*, Application for Determination for Employee Benefit Plan, when requesting a ruling on a partial plan termination.
 - c. Form 5300, *Pay.gov - Application for Determination for Employee Benefit Plan*, Application for Determination for Employee Benefit Plan, when requesting a ruling on termination of collectively bargained multiemployer or multiple employer plan covered by Pension Benefit Guaranty Corporation (PBGC) insurance.
- (2) When reviewing an application for a full or partial termination, complete:
 - a. Form 5621, Technical Analysis Control Sheet.
 - b. Form 6677, Plan Termination Standards Worksheet.
 - c. Any other appropriate forms or worksheets.
- (3) Use this IRM with IRM 7.11.1, Employee Plans Determination Letter Program, which gives general DL application processing procedures.

7.12.1.1.2
(09-26-2018)
Acronyms

- (1) These acronyms are used in this IRM:

Acronym	Term
AFTAP	Adjusted Funding Target Attainment Percentage
CARES Act	Coronavirus Aid, Relief, and Economic Security Act
CL	Cumulative List
CSV	Cash Surrender Value
DB	Defined Benefit

Acronym	Term
DC	Defined Contribution
DL	Determination Letter
DOT	Date of Termination
EDS	Employee Plans/Exempt Organizations Determination System
EP	Employee Plans
ERISA	The Employee Retirement Income Security Act of 1974
FDL	Favorable Determination Letter
IDPs	Individually-Designed Plans
IDRS	Integrated Data Retrieval System
M&P	Master and Prototype
PBGC	Pension Benefit Guaranty Corporation
POA	Power of Attorney
PPA '06	Pension Protection Act of 2006
PT	Prohibited Transaction
PVAB	Present Value of Accrued Benefits
QA	Quality Assurance
QJSA	Qualified Joint & Survivor Annuity
RAC	Remedial Amendment Cycle
RA List	Required Amendment List
ROBS	Rollover Business Start-ups
ERISA 4044	Section 4044(a) of Title IV of the Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. 93-406, 1974-3 C.B. 1
TEDS	Tax Exempt Determination System
UBI	Unrelated Business Income
VS	Volume Submitter

7.12.1.2
(11-10-2022)
**Determining the
Scope/Verifying Prior
Law**

- (1) For individually-designed plans (IDPs), with an FDL, verify that the form of the plan was properly amended for prior legislation. Begin your review with the last FDL.
 - a. It gives reliance for a CL so you only need to secure subsequent interim amendments up to the final 2015 CL and verify they were timely adopted.
 - b. After satisfying a), continue verifying compliance with the applicable items on all the Required Amendment Lists (RA List).
 - c. After satisfying b), verify compliance with any required provision or a provision that the employer has elected to put in place operationally, including items on the operational compliance list, effective on or after January 1, 2016, up through the date of termination.

Example: A plan sponsor submits a Form 5310 application on March 15, 2021, and has an FDL that covers the 2013 CL. Start your review by verifying that the plan timely complied with the interim amendments for 2014 and 2015. Verify compliance with all provisions effective up to the date of termination. This would include any items on the RA List and any required or employer-elected provisions that were effective on or after January 1, 2016, that the employer elected to put in place operationally.

Example: A plan sponsor submits a Form 5310 application on June 15, 2021, and has an FDL that covers the 2008 CL. Start your review by verifying the plan timely complied with the interim amendments for 2009 through 2015. Verify compliance with all provisions effective up to the date of termination. This would include any items on the RA List and any required or employer-elected provisions that were effective on or after January 1, 2016, that the employer put in place in the plan's operation.

- (2) For individually-designed plans (IDPs) with no FDL, verify that the form of the plan was properly amended for prior legislation.
 - a. Secure and verify the form of the plan was timely amended to comply with all interim amendments listed on the CL applicable for the 2nd cycle, based on the last digit of the employer's EIN, and the subsequent interim amendments up to the final 2015 CL.
 - b. After satisfying a), continue the review by verifying compliance with:
The applicable items on all RA Lists, and
Any required provision or a provision that the employer has elected to put in place operationally, including items on the operational compliance list, effective on or after January 1, 2016, up to the date of termination.

Example: A plan sponsor submits a Form 5310 application for a PS plan on March 31, 2022, which has been in existence since 2007. Secure and verify the interim amendments included on the CL for the 2nd cycle (2007-2011) and the subsequent interim amendments through 2015 are timely adopted. The restatement submitted is effective January 1, 2016, and signed August 20, 2016. There is no FDL and the last digit of the employer's EIN is a 2.

INDIVIDUALLY-DESIGNED PLANS FOLLOWED A 5-YEAR CYCLE, illustrated in the following chart:

Last Digit of EIN	CL covers current and prior 4 years of interims.	2nd Cycle Submission Period Begins	2nd Cycle Submission Period Ends
1/6	2010	2/1/2007	1/31/2012
2/7	2011	2/1/2008	1/31/2013
3/8	2012	2/1/2009	1/31/2014
4/9	2013	2/1/2010	1/31/2015
5/0	2014	2/1/2011	1/31/2016

Note: After verifying CL requirements, verify compliance with all provisions effective up to the date of termination. This would include any items on the RA List and any required or employer-elected provisions that the employer made effective and put into operation or after January 1, 2016.

- (3) For pre-approved plans, verify the form of the plan complied with:
- The applicable interim amendments on the CL for which the latest advisory or opinion letter was issued. If the pre-approved sponsor did not have the authority to adopt amendments on behalf of the employer (Power to Amend), secure the subsequent interim amendments up to the date of termination.
 - The CL for the prior cycle for which the employer satisfied by submitting the adoption of prior pre-approved document or an FDL.
 - The applicable items on all RA Lists.
 - Any required provision or a provision that the employer has elected to put in place operationally, including items on the operational compliance list, effective on or after January 1, 2016, up through the date of termination.

Note: The case should be documented to include how they were entitled to the six-year cycle by either being a prior or new adopter of a pre-approved plan as the initial plan.

DEFINED BENEFIT (DB) PRE-APPROVED PLANS FOLLOW A 6-YEAR CYCLE, Illustrated in the following chart

Cycle	CL (Indicates the CL for which the opinion or advisory letter was issued. The CL is issued the year prior to the opening of the program.)	Date of Opinion or Advisory Letter	Cycle Submission Period Begins	Cycle Submission Period Ends
1st	2006	3/31/10	5/1/10	4/30/12
2nd	2012	3/30/18	5/1/18	4/30/20 Extended to 7/31/20
3rd	2020	2/28/23	4/1/23	3/31/25

Example: A termination application was submitted for a pre-approved DB plan with a proposed DOT of 10-1-21. The application included a restated plan which includes the Power to Amend, effective January 1, 2020 and signed June 30, 2020, which complied with the 2012 CL and based on the latest advisory letter. The latest pre-approved sponsor also has the Power to Amend, so no subsequent interim amendments would be required to be secured. There is an FDL for the prior pre-approved M&P plan which covered the 2006 CL; this would satisfy how the plan was entitled to the six-year cycle as they were a prior adopter.

Example: Same facts above, but the latest plan did not have the Power to Amend, so the items on the 2013 CL and later must be secured and verified. Again, the prior plan was a pre-approved M&P plan, which automatically has the authority to adopt all interim amendments (the Power to Amend) and would have been a prior adopter entitled to the six-year cycle.

DEFINED CONTRIBUTION (DC) PRE-APPROVED PLANS FOLLOW A 6-YEAR CYCLE, Illustrated in the following chart:

Cycle	C/L (Indicates the CL for which the opinion or advisory letter was issued. The CL is issued the year prior to the opening of the program.)	Date of Opinion or Advisory Letter	Cycle Submission Period Begins	Cycle Submission Period Ends
1st	2004	3/31/08	5/1/08	4/30/10
2nd	2010	3/31/14	5/1/14	4/30/16
3rd	2017	6/30/20	8/1/20	7/31/22

Example: A Form 5310 is received on 10-1-21. The application is for a 401(k) plan with a proposed DOT of 9-30-21. The established date of the plan is 1-1-02 and there is no FDL. The submitted restated plan was signed on 5-28-15 and the advisory letter is dated 3-31-14 which satisfies the 2010 CL. The VS document provided for the Power to Amend and copies of the interim amendments for 2011 were submitted up through the DOT. The amendments reflect the required provision or a provision that the employer has elected to put in place operationally, including items on the operational compliance list, effective on or after January 1, 2016, up through the date of termination. These amendments are needed to verify compliance up through the DOT. The prior plan document will still need to be secured to verify if it was a pre-approved plan which would have given them entitlement to the six-year cycle.

- (4) If you can't verify prior law, ask the plan sponsor to provide:
- The current and prior plan document or adoption agreement (including any applicable opinion or advisory letters).
 - All interim amendments applicable for the 2nd cycle up through the 2015 CL, and,
 - Any required provision or a provision that the employer has elected to put in place operationally, including items on the operational compliance list, effective on or after January 1, 2016, up through the date of termination.

Note: If you aren't requesting any other information or if the POA/plan sponsor can't find the FDL, review EDS, TEDS, IDRS (EMFOLL) to determine if the IRS issued a DL to the plan to satisfy the above compliance.

- (5) If a plan sponsor isn't able to prove that the plan was timely amended for prior law, the plan is considered to have a plan document failure as described under Rev. Proc. 2021-30, and may need to enter into a closing agreement to correct the failure. Consult your manager and see IRM 7.11.8, EP Determinations Closing Agreement Program.

7.12.1.3
(11-08-2023)

**Permanency
Requirements/Reasons
for Termination**

- (6) Use the Employee Plans - Terminations Focus Reports to determine whether new laws are relevant to a particular terminating plan. Find these reports on *IRS.gov*.
- (1) A plan must be established with the intent to be a “permanent” not “temporary” program. (26 CFR 1.401-1(b)(2)).
 - (2) Review Form 5310, lines 3(d) and 5(a), to determine how long the plan has been in existence.
 - (3) The prior qualification of a long-established plan and trust is not adversely affected by termination of the plan and trust without business necessity when all benefits are fully vested, are guaranteed, and the termination does not result in a prohibited transaction.
 - (4) If a plan terminates within a few years after its initial adoption, the plan sponsor must give a valid business reason for the termination or there’s a presumption that the plan was not intended to be a permanent program from its inception. However, the qualification of a long-established plan that terminates without a valid business reason is not adversely affected. See Rev. Rul. 72-239.
 - (5) Form 5310, line 53 lists the following reasons for plan termination:
 - a. Change in ownership by merger.
 - b. Liquidation or dissolution of employer.
 - c. Change in ownership.
 - d. Adverse business conditions (sponsor must attach an explanation).
 - e. Adoption of new plan (sponsor must describe the plan type).
 - (6) Form 5310, line 53 also has a section for “Other” reasons for the plan termination. Other acceptable business reasons for plan termination could be:
 - a. Substantial change in stock ownership.
 - b. Employee dissatisfaction with the plan.
 - c. Bankruptcy of employer.

Note: When a plan sponsor lists any reason in “Other,” review all the surrounding facts and circumstances and determine whether the plan was intended to be permanent. Consider the extent of any tax advantages the employer derived when the plan existed.
 - (7) Form 5310, line 57, is also used to determine permanency. Repeatedly failing to make contributions in a discretionary profit-sharing plan may indicate the employer lacked intent for the plan to be permanent.
 - (8) Consult with your manager if you determine that there is a possible permanency issue.
 - (9) If bankruptcy is the reason for termination for a pension plan:
 - a. Review Form 5310, line 27(a) to determine if there’s a funding deficiency or if the plan sponsor owes excise taxes.
 - b. To verify the plan sponsor filed Form 5330 for excise taxes, get EMFOLT on the Integrated Data Retrieval System (IDRS) for Form 5500, Annual Return/Report of Employee Benefit Plan, for the year of the deficiency and look for TC 154, which lists the excise taxes filed for that year.

- c. To verify the plan sponsor paid the excise tax, go to BMFOLI and look for MFT code 76 to see the excise taxes filed for the current taxable year and other taxable years. Get a BMFOLT screen print for a specific plan year's transcript.
- d. If the plan has a funding deficiency on Schedule SB and IDRS confirms they didn't file Form 5330 and pay the excise taxes due, contact the *bankruptcy coordinator* for the state that the plan sponsor does business in.
- e. The bankruptcy coordinator will tell you the insolvency bankruptcy specialist assigned to the plan sponsor's bankruptcy case.
- f. Refer the case to EP Examinations using the procedures in IRM 7.11.10, EP Examination and Fraud Referral Procedures, to calculate the excise tax and report that amount to the bankruptcy specialist BEFORE the bar date.

Note: EP Examinations must calculate the excise tax because it is an operational issue.

Note: Don't make a referral if the bar date has passed because we can no longer collect excise taxes after that date. Document the Form 5621 with your explanation.

- g. See IRM 5.9, Bankruptcy and Other Insolvencies.

7.12.1.4
(02-16-2017)
**Discontinuance of
Contributions**

- (1) This section only applies to plans not subject to IRC 412, such as profit sharing and stock bonus plans. For plans subject to IRC 412, see IRM 7.12.1.18, Minimum Funding Standards.
- (2) Pursue a possible discontinuance of contributions only if there are participants who had forfeitures during the years under consideration. See Form 5310, line 19(b).
- (3) If the plan sponsor stops making contributions or makes contributions that aren't substantial, the plan may have incurred a complete discontinuance. A profit sharing plan must make recurring and substantial contributions for employees. (26 CFR 1.401-1(b)(2)).
- (4) A plan may have had a complete discontinuance of contributions even if the plan sponsor made contributions, but the amounts aren't substantial enough to reflect the plan sponsor's intent to continue to maintain the plan. (26 CFR 1.411(d)-2(d)(1)).
- (5) Review Form 5310, line 57a, which indicates the employer contributions made for the current and the five prior plan years, to determine if the plan has had a complete discontinuance.
- (6) Consider all of a case's relevant facts and circumstances; but generally, in a profit-sharing or stock bonus plan, consider the issue of discontinuance of contributions if the plan sponsor has failed to make substantial contributions in three out of five years.
- (7) A complete discontinuance (under 26 CFR 1.411(d)-2(d)(2)) becomes effective:
 - a. For a single employer plan, the last day of the employer's tax year after the tax year for which the employer last made a substantial contribution to the profit-sharing plan.

- b. For a plan maintained by more than one employer, the last day of the plan year after the plan year within which any employer last made a substantial contribution.

- (8) If the plan has incurred a complete discontinuance, all affected employees' rights to benefits accrued to the date of discontinuance, to the extent funded as of that date, or the amounts credited to the employees' accounts at that time, must be nonforfeitable (100% vested). See IRC 411(d)(3) and CFR 1.411(d)-2(a)(1)(ii).

7.12.1.5
(11-10-2022)
Partial Terminations

- (1) Upon partial termination, all "affected employees" rights to all amounts credited to their account, and benefits accrued up to the date of the termination, become nonforfeitable. (IRC 411(d)(3)).
- (2) Only pursue a possible partial termination if there were participants who had forfeitures during the years under consideration.
- (3) If a partial termination occurs on account of turnover during an applicable period, all participating employees who had a severance from employment during the period must be fully vested in their accrued benefits, to the extent funded on that date, or in the amounts credited to their accounts. (Rev. Rul. 2007-43).
- (4) To determine if a plan has had a partial termination, first calculate the turnover rate (See IRM 7.12.1.5.1, Calculating the Turnover Rate) but also consider all of a case's relevant facts and circumstances.
- (5) There's a presumption that a qualified plan has partially terminated when the turnover rate for participating employees is at least 20%. If the turnover rate is less than 20%, it depends on the case's facts and circumstances. (Rev. Rul. 2007-43).
- (6) Partial Termination Relief: Section 209 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 and Division EE of the Consolidated Appropriations Act of 2021 states that a plan isn't considered to have a partial termination during any plan year which includes the period beginning on March 13, 2020, and ending on March 31, 2021, if the number of active participants the plan covered on March 31, 2021, is at least 80% of the number of active participants the plan covered on March 13, 2020.
- (7) Partial Termination Relief applies during any plan year if any part of the plan year falls within the period beginning on March 13, 2020, and ending on March 31, 2021. Relief applies to the entire year even if part of the plan year falls outside the date range. For example, for a calendar year plan, the 80% test applies to both the December 2020 plan year and the December 2021 plan year, because both plan years include a part of the statutory 3/13/2020 - 3/31/2021 relief period. Also, determine the 80% by looking strictly at the number of active participants on each date, without regard to whether they were the same individuals. This allows for consideration of new hires.
- (8) Some facts and circumstances to consider when you decide if a plan has had a partial termination:
 - a. A plan may have a high turnover rate as part of its normal routine. Consider these facts to determine if the turnover is routine for a particular plan sponsor:

The turnover rate in other periods.

The extent to which terminated employees were actually replaced.

Whether the new employees performed the same functions, had the same job classification or title, and received comparable compensation.

- b. If there's a significant increase in the turnover rate for a period, the plan may have incurred a partial termination.
 - c. Consider if the plan has increased its possibility for prohibited discrimination.
- (9) If a DB plan's cessation or reduction of future benefit accruals creates or increases a potential for reversion, the plan is deemed to have a partial termination.

7.12.1.5.1
(02-16-2017)

Calculating the Turnover Rate

- (1) Review Form 5310, line 55a to determine the turnover rate.
- (2) The turnover rate = a)/b.
 - a. The number of participating employees who had an "employer-initiated severance from employment" during the applicable period.
 - b. The sum of all of the participating employees at the start of the applicable period plus the employees who became participants during the applicable period.
- (3) The applicable period can be the:
 - a. Plan year.
 - b. For a plan year with less than 12 months – the plan year plus the immediately preceding plan year.
 - c. A longer period if the employer has had a series of related severances from employment.
- (4) See *Tipton and Kalmback, Inc. v. Commissioner*, 83 TC 154 (1984); and *Weil v. Retirement Plan Admin. Comm. of Terson Co.*, 933 F.2d 106, (1991).
- (5) Turnover rate factors:
 - a. Consider all participating employees to calculate the turnover rate, including vested and nonvested participating employees.
 - b. "Employer-initiated severance from employment" generally includes any employee who severed from employment for a reason other than death, disability, or retirement on or after normal retirement age.
 - c. A severance from employment is employer-initiated even if it was caused by an event outside the employer's control such as terminations due to depressed economic conditions.
 - d. The employer may be able to prove that an employee's severance was voluntary (not employer-initiated) by providing information from personnel files, employee statements, or other corporate records.

7.12.1.5.2
(02-16-2017)

Examples of Partial Termination

- (1) Employer discharging 95 of 165 participants under the plan in connection with dissolving one division of the employer's business. (Rev. Rul. 81-27).
- (2) Employer discharging 12 of 15 participating employees who refused to transfer to the employer's new business location when the old location was closed. (Rev. Rul. 73-284).

- (3) Reduction in participation of 34% and 51% in consecutive years where adverse business conditions beyond the employer's control resulted in participation reductions. See *Tipton and Kalmbach, Inc. v. Commissioner*, 83 TC 154, 5 EBC 1976 (1984).
- (4) Relocation of two of an employer's 16 divisions resulting in the termination of over 75% of the employees in the affected divisions, and termination of 27% of the total plan participants. See *Weil v. Terson Co. Retirement Plan Committee*, 750 F.2d 10, 5 EBC 2537 (2nd Cir. 1984).

7.12.1.5.2.1
(02-16-2017)
Percentage of Affected Employees

- (1) In the partial termination examples (above), a significant percentage of employees were excluded from participating in the plan.
- (2) *Matz v. Household International Tax Reduction Investment Plan*, 388 F.3d 570 (7th Cir. 2004) held that there is a rebuttable presumption that a 20% or greater reduction in plan participants is a partial termination for purposes of IRC 411(d)(3). Consider each case's facts and circumstances, including the extent to which terminated employees are replaced, and the business's normal turnover rate in a base period.
- (3) The base period ordinarily should:
 - a. Be a set of consecutive plan years (at least two) from which you can determine the normal turnover rate.
 - b. Reflect a period of normal business operations rather than one of unusual growth or reduction.
 - c. Include plan years that immediately precede the period in question.

7.12.1.6
(09-27-2021)
Proposed Date of Plan Termination

- (1) The proposed termination date of a plan NOT subject to Title IV of ERISA (DC plans) is the date the plan sponsor who maintains the plan voluntarily terminates it. (26 CFR 1.411(d)-2(c)(3)). Generally, the plan sponsor establishes the proposed termination date by board resolution or plan amendment.
- (2) The proposed termination date of a plan subject to Title IV of ERISA (DB plans) is the date determined under ERISA (26 CFR 1.411(d)-2(c)(2)). There are three types of DB terminations under ERISA:

Termination Type	ERISA Section	Description
Standard termination	4041(b)	The plan has sufficient assets to meet all of its liabilities at the date of termination.

Termination Type	ERISA Section	Description
Distress termination	4041(c)	The plan assets aren't sufficient to pay plan liabilities but the plan sponsor meets certain hardship criteria (such as bankruptcy or proves to the PBGC that the plan termination is necessary to pay debts or to avoid burdensome pension costs). See IRM 7.12.1.17.2, Underfunded DB Plan at Termination.
Involuntary termination	4042	PBGC terminates the plan involuntarily and generally decides the date of termination if it determines that the plan is unable to either: <ul style="list-style-type: none"> • Meet the minimum funding requirements. • Pay benefits when due. See IRM 7.12.1.17.2, Underfunded DB Plan at Termination.

- (3) The type of termination can impact the date of the proposed termination.
- (4) The DL application must include a copy of the resolution or amendment terminating the plan. If not submitted, request it.
- (5) Compare the proposed termination date listed on the resolution or amendment to the date on Form 5310, line 5a. If the two dates don't match, reconcile the discrepancy.
- (6) The proposed termination date is important because:
 - a. All affected participants must be 100% vested as of the proposed termination date.
 - b. The plan should be amended for all laws **effective** as of the proposed termination date.
 - c. The plan should be fully funded up to the proposed termination date.

- (7) When reviewing the documentation that terminates that plan, verify that the plan hasn't incurred any IRC 411(d)(6) violations. Generally, this would not be an issue if the plan termination date is after the date the plan sponsor adopts the document to terminate the plan.

Example: The plan sponsor of ABC Company decides to terminate their retirement plan on July 1, 2020, and adopts a resolution on June 25, 2020.

- (8) The proposed termination date may not be retroactive except when it won't reduce any participant's accrued benefit.
- (9) For money purchase and target benefit plans, if the plan sponsor adopts an amendment (or resolution) to terminate the plan after the plan termination date and an allocation date falls within this time period, then the employer contribution would still be required.
- (10) If a plan sponsor takes actions to terminate a plan but doesn't distribute the assets as soon as administratively feasible, the plan isn't considered terminated under IRC 401(a). The plan must remain qualified until it's terminated.
- (11) The minimum funding requirements apply to a plan until its termination date, but 26 CFR 1.430(a)-1(f)(5) clarifies that we defer to the PBGC for the termination date for PBGC-covered plans. For noncovered plans, 26 CFR 1.430(a)-1(f)(5)(ii)(B) states that they're not considered terminated if the assets aren't distributed timely, so they'd continue to be subject to minimum funding requirements. See Rev. Rul. 89-87, Treas. Reg. 1.430(a)-1(f)(5), and IRM 7.12.1.8, Wasting Trust Procedures.
- (12) A plan isn't terminated simply because the plan sponsor amends it to cease future accruals or "freezes" it. However this type of amendment may trigger a complete discontinuance of contributions and require increased vesting under 26 CFR 1.411(d)-2(d)(i). See IRM 7.12.1.4, Discontinuance of Contributions.
- (13) If the plan wasn't terminated after the proposed date of termination, then determine if the plan was qualified as of the actual date of the plan termination. This could occur under the following circumstances:
- The assets haven't been distributed as soon as administratively feasible.
 - The participants weren't timely notified of the plan termination.
 - For plans subject to Title IV of ERISA, the plan sponsor didn't timely notify PBGC of the plan termination.

7.12.1.7
(02-16-2017)
Frozen Plans

- (1) A frozen plan is one in which all future contributions or benefit accruals have ceased by plan amendment, but the plan sponsor hasn't formally terminated the plan. The plan may also freeze participation so that no new employees are eligible to enter the plan. A plan stays frozen until it's amended to either:
- Continue further contributions/accruals.
 - Terminate.
- (2) A frozen plan must continue to meet the requirements of IRC 401(a) (including changes in the law) except for:
- Top heavy minimum required contributions for frozen DC plans. This is because key employees receive no benefit so no contribution is required for non-key employees.

b. Coverage testing is automatically satisfied per 26 CFR 1.410(b)-3.

- (3) The Form 5310 doesn't directly ask about frozen plans, however, review line 17(b) to see if an amendment has been adopted which decreases plan benefits to any or all participants. If so, then verify that the amendment doesn't violate IRC 401(b) or 411(d)(6).

7.12.1.8
(11-08-2023)
**Wasting Trust
Procedures**

- (1) A qualified plan under which benefit accruals have ceased isn't terminated if assets of the plan remain in the plan's related trust rather than being distributed as soon as administratively feasible (generally within one year) per Rev. Rul. 89-87.
- (2) Rev. Proc. 2016-37, Section 4.03(2) states that an application is filed in connection with plan termination only if it is filed no later than the later of one year from the:

- a. Effective date of the termination, or
b. The date on which the plan sponsor takes action to terminate the plan.

Note: In no event may the application be filed later than 12 months from the date of distribution of substantially all plan assets in connection with the termination of the plan. See IRM 7.12.1.12.1, Terminating Plans with Zero Assets.

- (3) If the Form 5310 application is submitted to the IRS within one year of the effective date of the termination, the plan administrator may generally delay distributing the assets until after the IRS issues the DL. However, a plan administrator may not delay distributing assets because EP Examinations or another IRS unit is examining the employer.
- (4) Compare the proposed plan termination date to the DL application's control date. If the control date is within one year of the proposed termination date, there is not a wasting trust issue. If the time between the control date and the proposed termination date exceeds one year (and assets have not been distributed), then there is a wasting trust issue and:
- a. The plan sponsor must select a new proposed termination date.
b. The plan must continue to meet the requirements of IRC 401(a) until the new proposed date of termination.

7.12.1.9
(02-16-2017)
Forfeitures

- (1) The date a plan forfeits the non-vested portion of the account balance or accrued benefit depends on the plan terms.
- (2) Review Form 5310, lines 55a(6) and 57b. If line 55a(6) indicates any participant has terminated employment without full vesting then the information identified on line 55b must be submitted.
- (3) Form 5310, line 55a shows six years of history of all participants who left without full vesting. Reconcile this information to the:
- a. Plan's forfeiture and vesting terms.
b. Form 5310, lines 55a(6) and 57b.
- (4) If there are any discrepancies or questions, secure additional information from the plan sponsor or their representative, if applicable. If the information on the Form 5310, line 55a(6) is incorrect, secure a corrected page to the application.

- (5) If you determine that a participant's accrued benefit or account balance has been forfeited incorrectly, obtain a written statement from the plan sponsor indicating they've restored the participant's accrued benefit or account balance. Include paragraph 26 on the DL.
- (6) Forfeitures from profit sharing, stock bonus or, effective for years after December 31, 1985, money purchase plans, can't revert back to the plan sponsor. (Rev. Rul. 71-149). Forfeitures must be allocated to the remaining participants or used to reduce the employer contributions that are otherwise required under the plan. See Rev. Rul. 71-313 and Rev. Rul. 81-10.
- (7) A DB pension plan can't use forfeitures to increase benefits before plan termination. See IRC 401(a)(8) and 26 CFR 1.401-7.
- (8) A fully insured DB plan may allow for forfeitures after five consecutive breaks in service. However, a forfeiture in a non-fully insured DB plan can only be triggered through a cash-out per IRC 411(a)(7).

7.12.1.10
(11-10-2022)
Rollovers

- (1) Plans under IRC 401(a), IRC 403(b), and IRC 457(b) may receive rollovers from other plans under IRC 401(a)(31) and IRC 402(c). For a plan to accept rollovers, the language must be stated in the plan document.

Note: Section 306 of the Protecting America from Tax Hikes Act (which is Division Q of the Consolidated Appropriations Act, 2016; PL 114-113) amended IRC 408(p)(1)(B) to expand the types of plans from which SIMPLE IRAs can accept rollovers. Previously, a SIMPLE IRA could only accept rollover contributions from another SIMPLE IRA. The new law expands portability of retirement assets by permitting taxpayers to roll over assets from traditional and SEP IRAs, as well as from employer-sponsored retirement plans such as a 401(k), 403(b), or 457(b) plan, into a SIMPLE IRA. Some restrictions do apply.

- (2) Review Form 5310, line 57c to see if the plan received any rollovers in the last six years. If any amount appears to be questionable or excessive, pursue the issue and follow-up with your manager, if necessary.
- (3) Verify if the rollovers were from other qualified plans or traditional IRAs. A rollover can't be made from Roth IRAs or Designated Roth Accounts to a qualified plan.
- (4) Review safe harbor rollover procedures in Rev. Rul. 2014-9 for simplified procedures to reasonably conclude that the rollover is valid. They include:
 - a. Employee certifying the source of the funds.
 - b. Verifying the payment source (on the incoming rollover check or wire transfer) as the participant's IRA or former plan.
 - c. If the funds are from a plan, looking up that plan's Form 5500 filing, if any, in the *DOL EFAST2* database to make sure the plan is intended to be a qualified plan.
- (5) If you discover that the rollover came from a Rollover Business Start-ups (ROBS) arrangement, discuss the case with your manager as additional procedures may apply. See EP Director Memorandum dated October 1, 2008, "Guidelines regarding rollovers as business start-ups" *EP Director Memorandum dated October 1, 2008*.

Reminder: A ROBS is typically a one-participant plan that allows the trust to invest in “Qualified Employer Securities.”

7.12.1.11
(02-16-2017)

Mode of Distribution

- (1) Qualified plans must state the forms of distribution in which they will pay participants and beneficiaries. Forms of distribution provided by a plan are either stated as a default, or provide for participant or beneficiary election. Neither the employer nor any other fiduciary or third party can exercise discretion to select a participant’s or beneficiary’s form of distribution. See 26 CFR 1.411(d)-4, Q&A 4.
- (2) Upon plan termination, all plan assets must be distributed as soon as administratively feasible (generally within one year after the date of plan termination). See IRM 7.12.1.8. Generally, a pending DL application may extend this date; however, an IRS examination of the employer does not. See IRM 7.12.1.8 (3). Form 5310, line 20 indicates how distributions will be made upon termination. Verify that the payment forms listed on the Form 5310 agree with the plan terms.
- (3) If Form 5310, line 58 doesn’t match the plan document, request a corrected Form 5310 or an amendment to the plan.

Example: The plan only allows lump sum distributions but Form 5310 indicates that assets will be distributed in the form of an annuity upon plan termination. Since that likely raises a qualification failure, request that the plan sponsor correct the application or amend the plan document.

- (4) If a plan offers a Qualified Joint & Survivor Annuity (QJSA):
 - a. The plan must distribute the assets in that form unless the participant (and spouse, if applicable) consent to a different form of benefit (such as a single-sum distribution) per IRC 417(a)(2).
 - b. Review line 56b to verify that all of the benefit rights were correctly protected as required under IRC 401(a)(11) and IRC 417.
- (5) A terminating DC non-money purchase plan that doesn’t offer an annuity distribution option may distribute a participant’s account balance without the participant’s consent, even if the account balance exceeds the involuntary cash-out limit in the plan (26 CFR 1.411(a)-11(e)).

Exception: This rule doesn’t apply if the plan sponsor, or a member of its controlled group, maintains another DC plan. In this case, if the participant doesn’t consent to an immediate distribution, the plan sponsor may transfer his/her account balance, without the participant’s consent, to the other plan.

- (6) If the plan fails to follow any of the above rules, refer the plan to EP Examinations per IRM 7.11.10, EP Examinations and Fraud Referral Procedures. If a distribution to an HCE failed to conform to plan terms, in your referral, cite a potential violation of IRC 401(a)(4) - availability of benefits, rights and features.

7.12.1.11.1
(02-16-2017)

In-Kind Distributions

- (1) An “in-kind” distribution is a distribution in a form other than cash.
- (2) Examples of in-kind distributions include but aren’t limited to:

- Real estate.
- Art.
- Stock.
- Valuable metals.

- (3) If Form 5310, line 56c(1) states that the plan will distribute property other than cash and/or readily tradable marketable securities, verify:
- a. That the plan allows in-kind distributions.
 - b. That all participants have been given the option of having a distribution in-kind.
 - c. How assets will be distributed.
 - d. How the assets are valued.
- (4) If a plan allows in-kind distributions, has invested all or some the assets of the trust in property or stock, and hasn't liquidated these assets into cash before terminating the plan, the employer must give all participants the option of taking an in-kind distribution of their respective portion of the asset.

7.12.1.12
(09-27-2021)
**Trust Assets/Balance
Sheet**

- (1) Form 5310, line 59 requires plan sponsors to provide a statement of trust assets as of the proposed termination date or the last valuation date.
- (2) Add all assets and reconcile them to line 59f.
- (3) If the plan sponsor submits a Form 6088, Distributable Benefits From Employee Pension Benefit Plans, verify that the net assets available on the Form 5310 equal the benefit amounts listed on the Form 6088. If the amounts aren't equal, reconcile any differences, keeping in mind that assets may be computed using different dates and the Form 6088 may include amounts already distributed.

Note: Form 6088 is only required for DB plans and underfunded DC plans. If a plan is over or underfunded, see IRM 7.12.1.17.1 or IRM 7.12.1.17.2.

- (4) When reviewing the assets on line 59, consider:
- a. The type of assets.
 - b. How they are valued.
 - c. When they were contributed.
 - d. How they are distributed.
- (5) When reviewing the assets on Form 5310, line 59 , follow these actions:

Lines 59:	Action
a	<p>Review the required explanation to determine why assets are being held in “noninterest-bearing cash.” In most circumstances, trust assets are held in investments that earn interest. Verify that the plan doesn’t have a prohibited transaction (PT) with these assets by securing and reviewing the following:</p> <ul style="list-style-type: none"> • A description of the asset. • Purchase documentation. • Appraisal within the last three years. • Verification that the plan allows for in-kind distributions. • Verification that all participants are given the option for in-kind distributions. • An explanation of allocation to participants. • An explanation of where the item is located.
b	<p>Verify that the receivables were paid to the trust:</p> <ul style="list-style-type: none"> • On time - If Form 5310, line 59(b) indicates receivables, review line 54 which lists the amount and date of the last employer contribution. If the amount on line 54 equals the amounts listed on line 59(b) and the contribution was made timely, you don’t have to investigate further. • By the employer’s federal tax return due date (plus extensions) to be deductible under IRC 404(a)(6) for profit sharing, money purchase, stock bonus and employee stock ownership plans (ESOP). • By 8 1/2 months after the close of the plan year for minimum funding. See IRM 7.12.1.18, Minimum Funding Standards. • As soon as practicable, but no later than the 15th day of the month following the month in which the employer withheld the elective deferral contributions or after-tax contributions from a 401(k) plan. DOL permits a safe-harbor for plans with fewer than 100 participants to deposit employee contributions within seven business days. (DOL Regulations 2510.3-102(a)(2) and (b)(1)).
c(6)	<p>Verify whether a partnership identified as a general partner had UBI. A partnership/joint venture is when two or more entities partner to share the risk of investment and expertise. Any income derived by the partnership/joint venture is disclosed on a Form 1065, Schedule K-1. Also, if the investment relates to a disqualified person, it’s a PT.</p> <p>For asset amounts listed on this line, secure an explanation stating the type of business and who the parties are who are involved to determine if the plan has UBI or PTs. Request the most recent Form 1065.</p>

Lines 59:	Action
c(7)(A) & (B)	<p>Verify whether real estate investments:</p> <ol style="list-style-type: none"> 1. Generated rental income on real property and/or personal property. 2. Were involved in a PT between the trust and a disqualified person. See IRM 7.12.1.13, Prohibited Transactions. 3. Secure the following items: <ul style="list-style-type: none"> • Explanation of the purpose of real estate. • Purpose or lease documentation. • Appraisal of real estate within the last three years. • Inquire whether debt-financed. • Verify that the plan allows for in-kind distributions. • Verify that participants are given the option of in-kind distributions. • Verify no UBI or PTs. See IRM 7.12.1.14, Unrelated Business Income. <p>Inspect:</p> <ul style="list-style-type: none"> • The purchase or lease documents. • The real estate appraisal within the last three years.
c(8)	<p>Loans (other than to participants) secured by mortgages. Secure:</p> <ul style="list-style-type: none"> • Explanation of the purpose of the loan. • Loan documentation. • Verification of the terms of the loan and maturity date.

Lines 59:	Action
c(9)	<p>For participant loans:</p> <ul style="list-style-type: none"> • Verify the plan allows loans, and if so, allows more than one outstanding loan at one time (for multiple loans to one person). • Get a copy of the loan document for each participant loan and review the amount, date and repayment schedule. • Determine if any participant is a disqualified person and if so, whether the loan has met the requirements to be exempt under the PT rule. • Ensure that the dollar amount of each loan didn't exceed 50% of the participant's vested outstanding account balance, with a cap of \$50,000. If loan provisions do not conform to standard procedures, verify whether the loan was granted due to a qualified relief effort authorized by law. <p>Note: For an illustration of the two ways in which the highest outstanding loan balance may be calculated, see IRM 4.71.1.4(13).</p> <ul style="list-style-type: none"> • The CARES Act increased the limitation under IRC 72(p)(2)(A)(i) to \$100,000, and the percentage limitation to 100% of the participant's vested accrued benefit under IRC 72(p)(2)(A)(ii), effective for loans made during the 180-day period beginning on the date of enactment of the CARES Act. See Section 5, Notice 2020-50. • Confirm that the loan repayment period doesn't exceed five years and if it does, that it meets the home loan exception. • Reconcile the loan document to each loan's amortization or repayment schedule to verify the loans were timely paid. • Check to see if any missed loan payments were made within the correct time frame, if the plan administrator has established a cure period or if the loans are in default. • Verify if either: the participant will repay the outstanding balance before any distribution, or the plan will offset the participant's distribution by the outstanding loan amount for outstanding loans at the plan's proposed date of termination. • Report the amount as income to the participant, if the plan has violated IRC 72(p) by referring the case to EP Examinations per IRM 7.11.10, EP Examinations and Fraud Referral Procedures. Prepare a Form 5666, TE/GE Referral and Information Report.

Lines 59:	Action
c(10)	<p>Other Loans</p> <p>Secure an explanation of the purpose of the loan(s)</p> <ul style="list-style-type: none"> Secure loan documentation. Verify terms of the loan(s) and loan(s)' maturity dates. Review the information you secure to verify there are no PTs.
c(12)	<p>Insurance Contracts</p> <p>Verify that the plan values contracts using total policy reserve value instead of stated cash surrender value.</p> <ul style="list-style-type: none"> Ensure any resulting increase is included in the distributee's taxable income upon distribution. Prepare Form 5666 to report the increase in participant's taxable income. Refer to IRM 7.12.1.15.1 for additional guidance on springing cash value contracts.
c(13)	<p>Other Assets</p> <p>Secure an explanation or description of the investment.</p> <ul style="list-style-type: none"> Determine what the investment is and if needed, ask for additional information such as purchase documentation, valuation reports, appraisals, etc. Review the information you receive to verify there are no PTs or UBI.
d(1) & (2)	<p>Employer Related Investments</p> <ol style="list-style-type: none"> Secure the following: <ul style="list-style-type: none"> Description of property or securities. How property or securities were acquired. Documentation of the purchase. Recent appraisal or valuation. Whether property or securities are debt financed. If the plan is not designed to primarily invest in qualified employer securities, determine the percentage of employer securities held in relationship to all plan assets. Generally, the plan should invest in 10% or less in employer securities. Verify no PTs or UBI.
e	<p>Building equipment and other property used in plan operation</p> <p>Secure an explanation of description of the investment.</p> <ul style="list-style-type: none"> Determine what the investment is and if needed, ask for additional information such as purchase documentation, valuation reports, appraisals, etc. Review the information you receive to verify there are no PTs or UBI.

- (6) Lines 59g, h, i, or j, plan liabilities. If there are amounts listed on these lines, request:

Lines 59:	Request
g	Benefit claims payable <ul style="list-style-type: none"> • Name of person being paid. • Nature of the payable. • Estimated date and amount of the payment.
h	Operating payables <ul style="list-style-type: none"> • Detailed explanation of the nature of the payable. • Documentation of the amount and date of the payment. • Verification that the operating payables are allowable.
i	Acquisition indebtedness <ul style="list-style-type: none"> • A detailed explanation of the transaction. • When you determine what the debt is, ask for additional information, if needed, such as purchase documentation, valuation reports, appraisals, etc.
j	Other liabilities <ul style="list-style-type: none"> • A detailed explanation of the liability. • When you determine what the debt is, ask for additional information, if needed, such as purchase documentation, valuation reports, appraisals, etc.

- (7) If the Form 5310 or any documentation submitted with the application indicates that there are issues relating to the plan or trust currently pending before the IRS or another government agency:
- Determine whether these issues impact plan qualification.
 - Discuss the case with your group manager before taking further action.
 - Document the file to show the actions you considered and your conclusion.

7.12.1.12.1 (02-16-2017)

Terminating Plans with Zero Assets

- In some cases, a plan sponsor submits a Form 5310 application after they've distributed all assets to plan participants and line 59 will show zero plan assets.
- In this case, secure written documentation showing the:
 - Date of distribution of all assets.
 - Investment allocation of all assets before distribution.
 - Allocation of assets to participants.
- The plan sponsor may not file the Form 5310 application after 12 months from the date they distribute substantially all plan assets in connection with the plan termination per Rev. Proc. 2016-37, Section 4.03(2). (IRM 7.12.1.8 (2)).
- Therefore, if the plan distributed assets more than one year before they filed Form 5310 (use the 5310 control date), return the case using a Letter 1924. Use selectable paragraph "1" with a variable of "Rev. Proc. 2016-37."

- (5) If the plan sponsor filed the application within 12 months from the date the assets were distributed, follow the normal case processing procedures.
- 7.12.1.13
(02-16-2017)
Prohibited Transactions
- (1) If you determine there is a PT, refer the case to EP Examinations using the procedures in IRM 7.11.10, EP Examinations and Fraud Referral Procedures, to ensure that the disqualified person pays the proper taxes and the PT is corrected. See IRM 4.72.11, Prohibited Transactions.
- 7.12.1.14
(02-16-2017)
Unrelated Business Income (UBI)
- (1) A qualified trust under IRC 501(a) generally is exempt from tax on any income derived from the “intended activity,” which is investing and saving for retirement.
- (2) However, if the plan or trust is involved in generating any income outside it’s “intended activity,” that amount is considered UBI and is subject to tax.
- (3) A common source of UBI is when a trust invests in either a partnership or joint venture. IRC 512(c) notes that the trust’s share of the partnership income should be treated as if it were carrying on the trade or business of the partnership. Therefore, unless the income meets one of the exclusions in IRC 512(b), it’s considered UBI for the trust.
- (4) If you determine that the trust has possible UBI, refer the case to EP Examinations per IRM 7.11.10, EP Examination and Fraud Referral Procedures.
- 7.12.1.15
(02-16-2017)
Life Insurance Contracts
- (1) Plans can use life insurance to fund the retirement plan as either an “incidental” benefit or the sole benefit. See IRM 7.12.1.15.2, Fully Insured Contract Plans, if 100% of the trust’s assets are invested in insurance or annuity contracts.
- (2) If a plan isn’t a fully insured contract plan, then the life insurance must meet the requirements to be considered an “incidental” benefit to the main purpose of retirement benefits in the plan. For life insurance coverage to be incidental:
- For a DC plan, the amount of total premiums for ordinary whole life insurance must be less than 50% of the annual contribution. The figure is 25% for term or universal life insurance.
 - For a DB plan, the insurance face value generally can’t exceed 100 times the participant’s projected monthly retirement benefit (Other methods are possible. See Rev. Rul. 68-453 and Rev. Rul. 74-307).
- (3) If Form 5310 line 59c(12) shows that plan assets are invested in life insurance contracts, check if the plan is a fully insured contract plan. If the plan isn’t a fully insured contract plan, reconcile the assets and ensure that the benefits are incidental to the plan’s main purpose of providing a retirement benefit (and not solely a death benefit).
- (4) Ask if the life insurance contracts are springing cash value contracts. See IRM 7.12.1.15.1, Springing Cash Value.
- 7.12.1.15.1
(02-16-2017)
Springing Cash Value
- (1) Some firms have promoted an arrangement where an employer sets up a fully insured contract plan, makes and deducts contributions to the plan, and then uses the contributions to purchase specially designed “springing cash value” life insurance contracts. Generally, these special policies are available only to highly compensated employees.

Note: Fully insured contract plans are described in IRC 412(e)(3).

- (2) A “springing cash value” insurance contract may be designed so that the policy’s stated Cash Surrender Value (CSV) for a specified number of years (for example, the first 5 years) is very low compared to the plan assets used to purchase the contract. When the CSV is low, the plan distributes the policy to the employee; however, the contract is structured so that the CSV increases significantly after it’s transferred to the employee.
- (3) A springing cash value life insurance policy gives employers tax deductions for amounts far in excess of what the employee recognizes in income, and aren’t permitted.
- (4) The IRS cautioned taxpayers to use a more accurate valuation method to determine the taxable amounts under IRC 72 rather than the CSV (Announcement 88-51). Therefore, if a plan is distributing a “springing cash value” contract, it must value the contract using the total policy reserve value and not the stated CSV.
- (5) An employee can’t use the CSV to determine the amount to include in gross income under IRC 402(a) when the total policy reserves including life insurance reserves (if any) computed under IRC 807(d), plus any reserves for advance premiums, dividend accumulations, etc., more accurately approximate the fair market value of the policy (Notice 89-25, Question 10). If a plan inappropriately uses the CSV to value the amount distributed, thereby allowing a greater distribution than would otherwise be allowed, the distribution could be treated, in part, as an employer reversion. Also, in certain circumstances, these types of distributions could disqualify the plan (such as, distributions in excess of the IRC 415 limits).
- (6) If a plan is incorrectly valuing the contracts, obtain a corrected value using total policy reserve value instead. Refer any resulting adjustment to the participant’s taxable income to EP Examinations per IRM 7.11.10, EP Examination and Fraud Referral Procedures.

7.12.1.15.2
(02-16-2017)

Fully Insured Contract Plans

- (1) If Form 5310, line 13 is marked “Yes” or line 59c(12) shows 100 percent of assets invested in life insurance contracts, the plan is:
 - a. A fully insured contract plan.
 - b. Funded exclusively by purchasing individual insurance contracts.
- (2) Under these contracts, each participant receives level annual premium payments until normal retirement age. The plan benefits equal the benefits under each contract at the plan’s normal retirement age.
- (3) For all fully insured contract plans:
 - a. Review lines 56b and 56c(1) to determine if the plan is distributing insurance contracts.
 - b. Ensure that all premium payments have been made timely.
 - c. Verify that no rights under the contract have a security interest at any time during the plan year.
 - d. Verify that no policy loans are outstanding at any time during the plan year.

- (4) Review the benefit formula to ensure that it is nondiscriminatory. All of the contracts must have a cash value based on the same terms (including interest and mortality assumptions) and the same conversion rights. See 26 CFR 1.401(a)(4)-(3)(b)(5) for rules for safe-harbor insurance contract plans.

7.12.1.16
(02-16-2017)

Segregated Account IRC 414(k)

- (1) IRC 414(k) accounts combine funding features, for example, a DB feature and a DC feature.
- (2) Contributions going into the IRC 414(k) separate account are subject to the IRC 415(c)(1) allocation limits. Unlike a DB plan, there's no limit on the amount the plan distributes.
- (3) The distributions coming from the DB plan are subject to the IRC 415(b)(1) distribution limit. Except for IRC 404 and IRC 412, there's no limit on the amount an employer may contribute to the plan.
- (4) When a 414(k) plan establishes a separate account at normal retirement age, it's considered an amendment that eliminates the DB feature of a participant's benefit under a DB plan and violates IRC 411(d)(6) unless the plan meets the exception in 26 CFR 1.411(d)-4, Q&A 3. Therefore, review the plan's separate account feature and determine if the transfer meets the following rules:
 - a. The transfer must be voluntary.
 - b. If the transferor plan is subject to the requirements of IRC 401(a)(11) and IRC 417, the plan must notify the participant and obtain spousal consent.
 - c. The participant whose benefits are transferred must be eligible, under the terms of the transferor plan, to receive an immediate distribution from that plan. If the employer is terminating the transferor plan, then they meet this requirement.
 - d. The amount of the benefit transferred must equal the participant's entire nonforfeitable accrued benefit under the transferor plan subject to IRC 415 limits.
 - e. The participant must be fully vested in the transferred benefit in the transferee plan.
 - f. The participant must have the option of preserving their entire nonforfeitable accrued benefit, for example, as an immediate annuity contract which provides for all the benefits under the transferor plan if the plan is terminating, or by leaving the accrued benefit in the plan if it is ongoing.
- (5) The option to transfer benefits under the above rules constitutes an optional form of benefit under the plan per IRC 401(a). Accordingly, the transfer is subject to the:
 - a. Nondiscrimination provisions of IRC 401(a)(4).
 - b. Cash-out rules of IRC 411(a)(11).
 - c. Early termination provisions of IRC 411(d)(2).
 - d. QJSA requirements of IRC 401(a)(11) and IRC 417.

Note: Transferring benefits from the DB to the IRC 414(k) account isn't a distribution for purposes of the minimum distribution requirements of IRC 401(a)(9).

- (6) The IRS doesn't rule on a plan with a IRC 414(k) separate account provision if it doesn't meet the exception rules in paragraph IRM 7.12.1.16 (4) above. Request the plan sponsor to submit a written request to withdraw the application and return the case on Letter 1924 using procedures in IRM 7.11.1.3.1,

Procedures When Not Authorized to Issue a DL.

- (7) If you determine that the IRC 414(k) account violates IRC 411(d)(6), refer the case to EP Examinations per IRM 7.11.10, EP Examination and Fraud Referral Procedures.

7.12.1.17
(11-10-2022)

**Overfunded/Underfunded
Plan at Termination**

- (1) In the event of plan termination, assets in the trust after the satisfaction of the funding standards are allocated to participants under section 4044 of ERISA. This applies whether the plan is overfunded or underfunded. A review of the ERISA 4044 allocations determines whether an overfunded plan satisfies the nondiscrimination and reversion requirement. A review of the ERISA 4044 allocations or reallocations under an underfunded plan determines whether the available assets are allocated under the terms of the plan and the plan satisfies the nondiscrimination to the extent required by law. Review the Form 6088, Distributable Benefits From Employee Pension Benefit Plans, and Form 5310, line 59, to determine if the plan is overfunded or underfunded.
- (2) Section 4044(a) of Title IV of the Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. 93-406, 1974-3 C.B. 1, sets forth the rules applicable to the allocation of assets to participants and beneficiaries by priority categories in the event of the termination of a defined benefit plan.
- (3) A Form 6088 is required for:
- All DB plans.
 - Underfunded DC plans.
 - Each employer who has adopted a multiple employer plan.
 - Collectively bargained plans, only if:
 - the plan benefits employees who aren't collectively bargained employees or
 - more than 2% of the employees covered by the plan are professional.
 - Each employer employing employees in a multiemployer plan.
- (4) In the case where the assets equal liabilities, the specialist must determine why that is the case. In such case, a plan may have in its possession an agreement by one or more majority owners to forego their benefit, may have made promises to make the plan whole or may have completed the Form 6088 incorrectly. The instructions for the Form 6088 state "do not adjust for an election of a majority owner to forego receipt of a distribution under PBGC Regulations section 4041.21(b)(2)." The specialist should check for contributions receivable for any possible entry for promises to make the plan whole. The result of this determination must be documented on the Form 5621.

Note: Differentiate between an election to forego a receipt and a waiver of benefit, the latter of which presents an impermissible assignment or alienation of benefit and is a qualification failure.

7.12.1.17.1
(11-10-2022)

**Overfunded Plan at
Termination**

- (1) If the sum of the value of benefit liabilities for all participants (Form 6088, column h) is less than the total assets (Form 5310, line 59), the plan is overfunded. If the assets equal the liabilities, work the case as an underfunded plan until facts are known.
- (2) The plan sponsor can correct overfunding in one or more of these ways:

- a. Amend the plan to provide for increased benefits. See IRM 7.12.1.17.1.1, Excess Assets Applied to Participants.
 - b. Recovery of surplus by the employer. See IRM 7.12.1.17.1.2, Reversion of Excess Assets.
 - c. Establish a qualified replacement plan per IRC 4980(d). Follow the processing procedures in IRM 7.12.1.17.1.2 (5), Reversion of Excess Assets.
- (3) Plan sponsors may also attempt to recover surplus assets in a termination/reestablishment or spin-off/termination. They must follow the conditions in: “Implementation Guidelines for Termination of Defined Benefit Plans,” issued May 24, 1984. *Implementation Guidelines for Termination of Defined Benefit Plans* and also in “Processing Employee Plan Cases that Terminate with Reversion of Surplus Assets,” issued June 1, 1984. *Processing Employee Plan Cases that Terminate with Reversion of Surplus Assets*.
- (4) In the case of a so-called “spin-off/termination,” generally no termination will be recognized and any attempt to recover surplus assets will be treated as a diversion of assets for a purpose other than the exclusive benefit of employees and beneficiaries unless the following conditions are satisfied:
- a. The benefits of all employees (including those covered by the ongoing plan) must be fully vested and nonforfeitable as of the date of termination.
 - b. All benefits accrued as of the date of termination in the ongoing plan must be provided for by the purchase of annuity contracts which represent irrevocable commitments for the benefit of each individual participant.
 - c. All employees who were covered by the original plan must be given advance notice of the transaction in similar time and manner as if the entire original plan were being terminated.
- (5) If the plan is overfunded, determine which methods the plan sponsor used to correct the overfunding, and ensure they applied it in a nondiscriminatory manner. Plans must use the methodology set out in Rev. Rul. 80-229 to avoid discrimination.

7.12.1.17.1.1
(11-10-2022)
**Excess Assets Applied
to Participants**

- (1) A plan that has assets in excess of plan liabilities (whether or not vested) may apply the excess assets to participants. Excess assets means that plan assets are more than sufficient to pay all benefits under the plan without either a majority owner using an agreement to forego receipt of benefits or other future promises. A majority owner may not forego their benefit to create a larger reversion because it violates the anti-alienation requirements of ERISA, Section 206(d)(1), and IRC 401(a)(13). Do not use this section for plans that have this type of agreement or condition.
- (2) The plan may apply the excess to increase the participants’ accrued benefit in a nondiscriminatory manner. Generally, plans without any permitted disparity or super-integrated plan formulas in their benefit formula are permitted to allocate excess plan assets based on the ratio of each participant’s PVAB to the PVAB of all plan participants without testing for nondiscrimination. If the current or past benefit formula either partially or fully used permitted disparity including super integrated formulas, the plan may need to run an IRC 401(l) test or general test. Rev. Rul. 80-229 contains rules and examples on nondiscriminatory allocation of excess assets.

7.12.1.17.1.2
(11-10-2022)**Reversion of Excess Assets**

- (3) The plan sponsor may only apply excess assets to participants if the plan already has a provision allowing it or they adopt an amendment or resolution for it. Review Form 5310, line 35a and the applicable plan provision or amendment to make sure that the plan reallocated excess assets in a nondiscriminatory manner. Verify no participant exceeded the IRC 415 limits when the plan reallocated excess assets.
- (1) If Form 5310, line 5b(1) indicates that the plan will have or has ever had a reversion, make sure that the reversion was permissible.
- (2) In general, no part of a qualified plan's trust may revert to the employer, but a reversion may occur under certain circumstances. See IRC 401(a)(2), 26 CFR 1.401-2, and ERISA 403.
- For a multiemployer plan, reversions may occur by reason of mistakes in law or fact or return of any withdrawal liability payment.
 - For a plan other than a multiemployer plan, reversions may occur by reason of mistake of fact.
 - For overfunded DB plans, reversions are only permitted on plan termination if the plan has met all liabilities for the participants and their beneficiaries.
- (3) Don't close the case until you have proof that the reversion was due to erroneous actuarial computation and you reviewed the plan to ensure its terms allowed reversions for at least five calendar years preceding the plan's proposed termination date. A surplus accumulated as a result of a change in the benefit provisions or in the eligibility requirements of a plan is not the result of an erroneous actuarial computation. 26 CFR 1.401-2(b)(1).
- If the plan has not allowed reversions for at least five calendar years preceding the plan's proposed termination date, excess plan assets must be applied to plan participants under existing plan provisions.
 - A plan may reduce the excess by making a direct transfer of assets to a qualified replacement plan, as described in IRC 4980(d), that was established or maintained by the Employer. See QA manager's email titled Reversion of excess assets in the "Terminations" folder in the "Worksheets" folder on the shared server. The qualified replacement plan must provide for the receipt and immediate allocation of excess assets in the form of a direct transfer from the terminating plan. The qualified replacement plan must provide for the allocation of the excess assets that will satisfy the requirements of IRC 401(a)(4) and IRC 415. Generally, the plan will provide for a suspense account for amounts in excess of IRC 415 at the time of transfer. See Rev. Rul. 2003-85.
 - Generally, plan participants aren't entitled to excess assets unless the plan specifically allows it. Therefore, a plan could provide a direct transfer to a qualified plan or choose to allocate the excess assets to participants (as IRC 415 allows) in the event the reversion language is absent or not in existence long enough to allow a reversion. If the plan chooses to allocate excess assets, a plan termination amendment may be used to amend the plan for such pro-rata increase in benefits. Remember, excess assets are not part of the accrued benefits nor part of liabilities of the plan. Liabilities of the plan (including contingent liabilities) must be satisfied before excess assets can be used to increase benefits to reduce a surplus.

- (4) If review of the application determines that the sponsor plans to establish a qualified replacement plan in accordance with IRC 4980(d), the specialist should follow the processing procedures in paragraph IRM 7.12.1.17.1.2 (5), below. While the applicant indicates the intent to transfer the amount, we will not have documentation prior to the closing of the case that this was actually done in operation; thus, the sponsor should be advised of the excise tax ramifications if the exception under IRC 4980(d) is not met. In such case, we assume a reversion could take place so prepare the case as if there will be a reversion.
- (5) If there is a possibility of a reversion, follow these procedures:
- Use paragraphs 1, 3 and 33 on the 1132 letter. Print Form 15091, which can be found in the *repository*. Include the Form 15091 in the enclosures section of the letter.
 - Prepare a Form 5666, TE/GE Referral Information Report.
 - Refer the case to EP Examinations per IRM 7.11.10, EP Examination and Fraud Referral Procedures.
 - Discuss in your report whether the plan sponsor has both: included the reversion as income on its tax return and paid excise tax on it. See IRM 7.12.1.17.1.3.
 - Send reversion cases exceeding \$5,000,000 to QA using the TEDS mandatory review indicator process. Attach Form 3198-A, TE/GE Special Handling Notice, when you're done with the case.
- Note:** Government entities are exempt from these procedures. Tax exempt plans subject to ERISA will follow these procedures unless the plan is maintained by an employer that has, at all times, been exempt from tax under subtitle A. See IRC 4980(c)(1) (A) and (B).
- (6) In general, a plan sponsor may not attempt to receive a reversion in a termination/reestablishment or spin-off/termination earlier than 15 years following any previous similar transaction. If you've determined that a spin-off/termination or termination/reestablishment is not part of an integrated transaction in the Implementation Guidelines, request technical advice to resolve the case. See IRM 7.11.12, Preparing Technical Advice Requests.

7.12.1.17.1.3
(02-16-2017)
Tax on Reversion

- (1) Reversions are:
- Taxable income to the plan sponsor in the year they receive it.
 - Taxed under the applicable federal tax rates.
 - Subject to an excise tax of 50% of the reversion amount under IRC 4980(d).
- (2) The 50% excise tax is reduced to 20% if the plan sponsor shows in writing that it meets one of the exceptions below:
- The plan sponsor was in Chapter 7 bankruptcy liquidation (or similar proceeding under state law) on the date of plan termination.
 - The plan sponsor amended the plan before or at plan termination to provide immediate pro-rata benefit increases (with a present value equal to at least 20% of the amount that would have otherwise reverted) to all qualifying participants. This 20% amount is determined, after all liabilities owed to participants are allocated under ERISA 4044, even if the plan already provides for allocation of excess assets upon plan termination.

- c. The plan sponsor directly transferred at least 25% of the excess assets to a qualified replacement plan (as defined in IRC 4980(d)(2)) before any amount reverted to the plan sponsor. Also, at least 95% of active participants in the terminated plan must participate in the replacement plan to be considered a qualified replacement plan.

Note: Any amount transferred to a qualified replacement plan isn't, (i) included in the plan sponsor's income, (ii) deducted by the plan sponsor, or (iii) treated as a reversion. Therefore, if the entire amount of a reversion is transferred to the qualified replacement plan, no income or excise tax would be due. (Rev. Rul. 2003-85).

- d. Keep in mind that if the replacement plan is not a "qualified replacement plan", a reduction in the excise tax is not applicable, nor is the treatment described in the preceding note.
- (3) If Form 5310, line 5b(1) shows a reversion has taken place, verify the plan sponsor filed Form 5330 and paid the tax and excise tax (if applicable) on the reversion.

7.12.1.17.2
(11-10-2022)
Underfunded DB Plan at Termination

- (1) If it is certain that the sum of the value of benefit liabilities (which includes unvested accrued benefits) of all participants (Form 6088, column h) is more than the total assets, or projected assets, (Form 5310, line 59 should reflect this amount), the plan is considered underfunded. Review the prior three years' Form 5500, Schedule SB, to determine if there's a funding deficiency. Any funding deficiency must be cured before considering whether the plan is underfunded.
- (2) For a plan that is subject to the PBGC, if the plan is underfunded, then the plan sponsor may generally terminate the plan under a standard termination. For a plan that is not subject to the PBGC, if the plan is underfunded, then the plan sponsor may choose to make the plan sufficient. In either case a plan may cure an underfunding by using one or a combination of the three following options (otherwise the plan will have to terminate under a distress (PBGC plan) or as an underfunded non-PBGC plan termination).
 - a. Make (or promise to make) a supplemental employer contribution (beyond the minimum funding requirement) to make the plan whole.
 - b. Allocate trust funds according to ERISA 4044.
 - c. A majority owner may forgo their distribution. Support this option, if chosen by a majority owner, by perfecting any noncompliant waiver document.
- (3) For a plan that is **not** subject to the PBGC, the terms standard and distress termination are not used. It's either underfunded or it is sufficient.

Note: For both PBGC and non-PBGC plans, the assets in a plan termination will be allocated under ERISA 4044 even if a majority owner foregoes all of their benefit to make the plan eligible to use a standard termination (for PBGC plans) or make a plan sufficient (for Non-PBGC plans).

Example: If a plan is able to terminate as a "standard" termination or a "sufficient" termination because one or more majority owners forgoes receipt of payment, the plan must still allocate trust funds per ERISA 4044. For

example, if the plan indicates that assets equal liabilities, the plan will still follow ERISA 4044 until it's sure all assets are allocated or reallocated.

- (4) All plans subject to ERISA must allocate trust funds according to ERISA 4044, refer to Rev. Rul. 80-229 and Form 6088 instructions to ensure that allocations don't violate IRC 401(a)(4). A plan doesn't have to (although it may) specify ERISA 4044 allocation since this is a code requirement. ERISA Section 403(d)(1) (29 USC 1103(d)(1)) provides that ERISA plans that are not subject to PBGC must also allocate assets in accordance with ERISA 4044.
- (5) If one or more plan participant(s) is a majority owner (in other words, a participant with 50% or more interest in the employer), they may, with spousal consent, provide a statement agreeing to "forgo" receipt of all or part of their benefit until the plan satisfies the benefit liabilities of all other plan participants. An agreement that is not properly worded to forego receipt until all other plan liabilities are satisfied or fails to indicate spousal consent or that there is no spouse or is part of an amendment or resolution is a defective agreement. There may be other reasons it is a defective agreement such as not definitely determinable or does not protect the majority owner's interest in the assets. Contact your actuary if you are uncertain. Keep in mind that for a plan that is not subject to the PBGC, the majority owner's agreement to forgo receipt is never required and should be considered a gift to the other participants. So, treat it as a gift by fixing it rather than rescinding a defective agreement. In the case of a plan subject to the PBGC, the agreement may be necessary to terminate as a standard termination. However, it still benefits the non-highly compensated employees. In this case, it is still necessary to perfect rather than rescind a defective agreement.
 - a. This is not a "waiver" or forfeiture under IRC 411(a).
 - b. This doesn't affect the plan's otherwise applicable minimum funding requirements in the year of termination.

Note: See PBGC Reg. 4041.2 and 4041.21(b)(2) *Code of Federal Regulations*.

- c. Forgoing receipt of benefits cannot be accomplished under an amendment or resolution; otherwise it would violate the anti-cutback provisions of IRC 411(d)(6).
 - d. If a plan accepts an agreement to allow a participant or spouse to waive accrued benefits, it violates the forfeiture rules in IRC 411(a).
 - e. If a plan allows a participant or spouse to assign benefit to others in the plan, the plan violates the anti-assignment rules in IRC 401(a)(13).
- (6) Plan assets allocated according to these priorities generally will be deemed nondiscriminatory:
 - a. Except as provided in d) below, the plan assets are allocated according to PBGC, ERISA 4044(a)(1), (2), (3), and (4)(A). PBGC has authority to approve this allocation. Allocations in these categories aren't reallocated to avoid discrimination because they're deemed nondiscriminatory.
 - b. If there are any assets left in ERISA section 4044(a)(4)(B), (5) and (6) categories, the assets may be required to be reallocated, to the extent possible, so that non-highly compensated employees receive at least the same proportion of the PVAB of highly compensated employees within that category.

- c. Despite any other paragraphs, the plan may reallocate assets restricted by 26 CFR 1.401(a)(4)-5 to the extent necessary to help satisfy b) above within each category.
 - d. For a plan establishing subclasses per ERISA 4044(b)(6), the plan may reallocate the assets described in any paragraph of ERISA 4044(a) within that paragraph to satisfy b) above.
- (7) If the plan sponsor hasn't satisfied the minimum funding standards or filed Form 5330, refer the case to EP Examinations per IRM 7.11.10, EP Examination and Fraud Referral Procedures.

7.12.1.18
(02-16-2017)
**Minimum Funding
Standards**

- (1) IRC 412 imposes minimum funding standards on certain types of plans to protect a participant's promised benefits. Plan sponsors are subject to a tax under IRC 4971 if they don't meet the funding standards.
- (2) IRC 412(a)(2) requires plan sponsors of a:
- a. DB plan, which is not a multiemployer, to make contributions to (fund) the trust for the plan year of the required minimum contribution. (IRC 430).
 - b. Money purchase plan to fund the trust for the plan year in the amount required under the plan terms unless they have a funding waiver.
 - c. Multiemployer plan to fund the trust for the plan year in an amount so that the plan doesn't have an accumulated funding deficiency. (IRC 431).

Note: Multiemployer plans that fall into endangered or critical status have additional funding rules (added by PPA '06). (IRC 432).

- (3) A plan termination doesn't relieve the plan sponsor of its obligation to fund the plan.
- a. For a DB plan, the charges and credits are ratably adjusted for the part of the plan year before the proposed plan termination date.
 - b. For a money purchase plan, the minimum funding standard charges are any contributions due for participant-accruals earned on or before the proposed termination date, but not for contributions due after that date.

Example: If a money purchase plan terminates before the last day of the plan year and has a "last day requirement" to earn an allocation, no contribution is required for that year. However, if a money purchase plan terminates in August and the plan requires a participant to work 1,000 hours of service to earn a benefit accrual and doesn't have a last day requirement, the plan has a minimum funding obligation for participants who worked 1,000 hours or more.

- (4) Because the funding standard continues to be in effect until the end of a plan year in which a plan is properly terminated, carefully review the proposed termination date. (See IRM 7.12.1.6, Proposed Date of Plan Termination.) The plan year is not automatically ended with the plan termination. See 26 CFR 1.401(a)(4)-12 and 26 CFR 1.410(b)-9.
- (5) These plans may continue to have funding obligations:
- a. Plans that don't distribute assets on the proposed date of termination or within a reasonable time.
 - b. Plans that haven't given proper notice of termination to participants.

- (6) If you change a proposed date of termination for any reason, the minimum funding requirement (and participants' accrued benefits) will likely have to be adjusted to reflect the new termination date. After you've determined the amount of the required contribution, review Form 5310, line 54 to ensure that the employer paid the correct amount.
- (7) IRC 4971(a) imposes a tax on plan sponsors who fail to make a required contribution to the plan by the funding due date. Verify that the contribution was paid within 8 1/2 months after the plan year end by reviewing Form 5310, line 54. You may need to secure proof of the contribution.

Exception: If the plan has a funding shortfall for the preceding year, the single employer must make contributions in four quarterly installments. (IRC 430(j)(3)).

- a. If a single employer plan doesn't make the required contribution within 8 1/2 months after the plan year end, the IRS imposes an excise tax of 10% of the aggregate unpaid minimum required contributions for all plan years. (IRC 430(j)(1)).
- b. If a multiemployer plan doesn't make the required contribution within 2 1/2 months after the plan year end (may be extended up to a total of 8 1/2 months), the IRS imposes an excise tax of 5% of the accumulated funding deficiency determined under IRC 431 as of the end of any plan year ending with or within the taxable year. (IRC 431(c)(8)).

Note: For both single and multiemployer plans, if the plan sponsor doesn't correct the deficiency (reduce it to zero) by the end of the tax year in which the plan is terminated, the 100% penalty tax described in IRC 4971(b) may apply.

- (8) Use the table below to determine a single employer and multiemployer plan's contribution due date for both funding and deductibility and the applicable tax for minimum funding, if paid late.

Timing of Contributions for Pension Plans			
Type of Plan	Purpose	Due Date	If contribution late...
Single employer plan	Deductibility	Plan sponsor's tax return due date including extensions.	n/a
Single employer plan	Minimum funding	Within 8 1/2 months after plan year end.	10% tax
Multiemployer plan	Deductibility	Plan sponsor's tax return due date including extensions.	n/a
Multiemployer plan	Minimum funding	Within 2 1/2 months after plan year end (may be extended up to 8 1/2 months).	5% tax

- (9) Review Form 5310, line 27a to determine if a plan has an accumulated funding deficiency or aggregate unpaid minimum required contributions. If it does and the period for making timely contributions:
- Is still open, make sure that the plan sponsor made the contributions for the final plan year.
 - Has expired, the plan sponsor must file Form 5330, Return of Excise Taxes Related to Employee Benefit Plans, for the amounts due, or you must make a referral on Form 5666, TE/GE Referral Information Report to the TE/GE Referral Group.
- (10) Some plans or a majority owner may attempt to correct an accumulated funding deficiency or aggregate unpaid minimum required contributions by waiving or by having plan participants “waive” their accrued benefits. These types of waivers violate: IRC 401(a)(13) assignment and alienation, IRC 411(a) minimum vesting standards and/or IRC 411(d)(6) accrued benefit not to be decreased by amendment.
- Exception:** A majority owner may “forgo” receipt of their benefit. However, this still does not cure a funding deficiency nor unpaid aggregate minimum required contributions. See IRM 7.12.1.17.2, Underfunded Plan at Termination.
- (11) A plan administrator may not change the plan’s funding method in the year in which the plan terminates unless the plan administrator obtains approval for a change in funding method. See Rev. Proc. 2000-40, Section 4.02.
- (12) If the plan amortizes a funding waiver (under IRC 412(c)(3)) in the year in which it terminates, the plan sponsor must meet all obligations for the waiver as stated in the waiver ruling letter in the year of termination:
- The plan sponsor is obligated to make all required amortization payments necessary for the waiver and payments for plan termination, if any, on which the approval of the waiver is contingent.
 - The plan can’t prorate a waiver amortization charge in the funding standard account in the year of termination. A plan sponsor maintaining a plan with an unamortized waiver may contribute and deduct an amount equal to the outstanding balance of the waiver in any year, including the year of termination.
- (13) The plan sponsor may not amend the plan in the year of termination to reduce or eliminate any contribution requirement for that year, unless either:
- All employees’ accrued benefits are protected as of the later of the amendment’s adoption or effective date.
 - The plan satisfies the requirements of IRC 412(d)(2) allowing certain retroactive benefit reductions.

Note: Discretionary plan amendments, adopted within the first 2 1/2 months of the current plan year, that increase accrued benefits retroactively based on service during the immediately prior plan year under IRC 412(d)(2), don’t violate the discretionary amendment deadlines under Rev. Proc. 2016-37, Section 8.02 per the *Memorandum from Robert S. Choi* issued December 16, 2015.

Note: A benefit is not considered “accrued” for this purpose unless a participant satisfies all conditions to accrue the benefit under the plan.

Example: A DC plan requires that a participant earn an hour of service on the last day of the plan year to receive a contribution. A plan sponsor’s amendment to reduce its contribution requirements doesn’t violate IRC 411(d)(6) if they adopt it before the last day of the plan year. (Rev. Rul. 76-250).

7.12.1.19
(09-26-2018)

**Adjusted Funding Target
Attainment Percentage
(AFTAP)**

- (1) IRC 436, added by PPA '06, adds protections and restrictions to the participant’s benefits in single and multiple employer DB plans. In addition, the plan may need a required amendment to comply with the Highway Transportation and Funding Act of 2014, Section 2003. P. L. 113-159.

Note: IRC 436 doesn’t apply to multiemployer or DC plans.

- (2) For a single employer DB plan, request:
- Schedule SBs for plan year that contains the termination date and the two prior plan years.
 - All AFTAP certifications for year of termination and two prior plan years. Also, request any interim AFTAPs and range certifications.
 - Any 101(j) notices the plan sponsor provided in the year of termination and two prior years.
- (3) If a single employer DB plan is underfunded for any plan years beginning after December 31, 2007, there could be possible restrictions on:
- Unpredictable contingent event benefits under IRC 436(b)(3).
 - Plan amendments increasing liability for benefits under IRC 436(c).
 - Accelerated benefit distributions under IRC 436(d).
 - Benefit accruals for plans with severe funding shortfalls under IRC 436(e).
- (4) This chart is a quick guide to the AFTAP restrictions. See IRC 436 for further explanation on the restrictions.

If the Funding Ratio is:	Then the benefit restrictions are:
100% or higher	<ul style="list-style-type: none"> None
More than 80% but less than 100%	<ul style="list-style-type: none"> Full restrictions on prohibited payments only if the plan sponsor is in bankruptcy.
More than 60% but less than 80%	<ul style="list-style-type: none"> No plan amendments that cause liabilities to increase. Prohibited payments limited to the lesser of, (1) half of the benefit, or (2) the maximum PBGC guaranteed benefit.

If the Funding Ratio is:	Then the benefit restrictions are:
Less than 60%	<ul style="list-style-type: none"> • No shutdown or other Unpredictable Contingent Event Benefits. • Elimination of future accruals. • Full restrictions of prohibited payments.

7.12.1.20
(02-16-2017)

**Interested Party Notices
Upon Plan Termination**

- (1) The plan sponsor must notify interested parties of their plans to file an application request to terminate the plan 10 - 24 days before they send it to the IRS. See Rev. Proc. 2022-4, Section 20.02 (updated annually).
- (2) Review Form 5310, line 19 and the copy of the "Notice to Interested Parties" to ensure that notice was provided 10–24 days before the application's control date.
- (3) If the application is received without the notice, request a copy.
- (4) If the plan sponsor didn't give the notice timely, return the application incomplete using a Letter 1924. Use paragraph 1 with a variable. "Rev. Proc. 2022-4, Section 10.12 (updated annually)", and request a copy of the notice.

7.12.1.21
(02-16-2017)

**PBGC Notice on Plan
Termination**

- (1) Plans not exempt from the PBGC requirements under ERISA 4021(c) must file either of these forms with the PBGC for their proposed termination:
 - a. Form 500, Standard Termination Notice Single Employer Plan Termination.
 - b. Form 601, Distress Termination Notice Single Employer Plan Termination.
- (2) Also, the plan sponsor must give advance notice to all affected participants 60 - 90 days before the proposed termination date. This notice is in addition to the Interested Party Notice in IRM 7.12.1.20.
- (3) If the plan sponsor doesn't file the required form or give notice to affected participants, PBGC may reject the proposed termination date. When this happens, PBGC notifies:
 - a. The plan sponsor that a termination has not occurred and that it must begin the termination process again.
 - b. The IRS to check for any open Form 5310 applications for the plan sponsor.
- (4) If PBGC rejects a proposed termination date on an open application, stop all work and return the case to the plan sponsor with the full user fee refund (if applicable). The plan sponsor may submit a new application with a corrected proposed termination date, if they wish.
- (5) If you don't have the Form 5310 in your inventory or if you've already issued a DL, no action is necessary.