

Employee Plans News

Issue 2014-11, August 4, 2014

[Defined benefit plan terminations webinar](#) – (August 14 at 2 p.m. EDT) – we'll discuss how the IRS defines the date of termination, final funding requirements, PBGC issues, reversions, and what is needed in a notice of intent to terminate the plan.

Updated plan termination resources

- [Terminating a retirement plan](#)
- [Plan amendments required before termination](#)
- [FAQs regarding plan terminations](#)
- [FAQs regarding partial plan termination](#)

User fee forms for determination, opinion or advisory letter requests

[Comment request for Forms 8717 and 8717-A](#) – submit your comments by September 26, 2014.

Phone Forums and Webinars - Retirement Plans

Free phone forums and webinars featuring IRS employees discussing retirement plan topics.

Upcoming Webinar

Defined Benefit Plan Terminations - August 14, 2014

Learn about issues related to terminating a defined benefit retirement plan. We'll discuss how the IRS defines the date of termination, final funding requirements, PBGC issues, reversions, and what is needed in a notice of intent to terminate the plan. Please [email](#) us your questions by August 8, 2014.

[Registration link](#) - after registering, you'll receive an email with detailed access instructions.

Date: August 14, 2014

Time: 2:00 p.m. Eastern

Duration: 60 minutes

Evaluation: After attending the forum, please complete and send [Form 14364](#), Continuing Education Evaluation, to ep.phoneforum@irs.gov.

Terminating a Retirement Plan

Retirement plans must be established with the intention of continuing indefinitely. However, you may terminate your plan when it no longer suits your business needs. For example, you may want to establish another [type of retirement plan](#).

Steps to terminate a plan

Generally, the steps to terminate a retirement plan include:

1. [Amend the plan](#) to:
 - establish a plan termination date,
 - update the plan for all changes in the law or plan qualification requirements effective on the plan's termination date,
 - cease plan contributions,
 - provide full [vesting](#) of benefits to all affected employees on the termination date (your plan should already have this provision), and
 - authorize the plan to distribute all benefits in accordance with plan terms as soon as administratively feasible after the termination date;
2. Notify all plan participants and beneficiaries about the plan termination;
3. Provide a [rollover notice](#) to participants and beneficiaries;
4. Plan to pay any outstanding required employer contributions to the plan;
5. Vest all "affected participants" 100% (applies to any employees or former employees with an account balance as of the termination date);
6. Distribute all plan assets as soon as administratively feasible (generally within 12 months) after the plan termination date to participants and beneficiaries;
7. File any applicable final [Form 5500](#) series return; and
8. If desired, ask the IRS to make a determination about the plan's qualification status at termination by filing a determination letter request:
 - [Form 5310](#), *Application for Determination for Terminating Plan (instructions)*, for a pension, profit-sharing or other deferred compensation plan, or
 - [Form 5300](#), *Application for Determination for Employee Benefit Plan (instructions)*, for a multi-employer plan covered by PBGC insurance, a plan that's only partially terminating, or for determining if the plan is part of an affiliated service group.

You must notify [interested parties](#) about your determination application.

Check with your plan's financial institution or a retirement plan professional to see what further action is necessary to terminate your plan. You should document all actions taken to terminate the plan.

Plans with undistributed assets

A qualified retirement plan that has not distributed its assets is considered an ongoing plan and must continue to meet the qualification requirements, including amending the plan document for law changes. See more on [missing participants](#).

Form 5310

Submit the following with your determination letter application on Form 5310:

- The appropriate user fee and Form 8717,
- A complete copy of the plan document(s) and all amendments adopted since the last favorable determination letter,
- A copy of the last favorable determination letter, if applicable,
- A copy of the latest opinion or advisory letter, if applicable,
- A copy of all records of all actions taken to terminate the plan, and
- Copies of all required attachments and statements.

See [Apply for a Determination Letter – Individually Designed Plans](#) for additional submission instructions.

Defined benefit plan terminations

The following items must be submitted for defined benefit plan terminations:

- [Form 6088](#), *Distributable Benefits from Employee Pension Benefit Plans*,
- A signed and dated actuary's certification of the adjusted funding target percentage (AFTAP) for the last 2 years which includes the year of termination, and
- A Schedule SB to the Form 5500 for the last 2 years which includes the year of termination and for any other year in which the AFTAP was below 80 percent (the 80 percent is replaced with 100 percent in any year in which the plan sponsor is a debtor in bankruptcy).

See [Notice 2012-61](#). The [PGBC website](#) is also an important resource for defined benefit plan terminations.

Terminating specific types of plans

- Terminating a [401\(k\) plan](#)
- Terminating a [403\(b\) plan](#)
- Terminating a [SIMPLE IRA plan](#)
- Terminating a [SEP](#)
- Terminating a [SARSEP](#)

- Terminating a [Payroll Deduction IRA](#)

Additional resources

- [Plan Amendments Required Before Termination](#)
 - [Retirement Plan Termination FAQs](#)
 - [Determination, Opinion or Advisory Letters](#)
 - [Types of Retirement Plans](#)
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Plan Amendments Required Before Termination

One of the steps to take before [terminating your retirement plan](#) is to make sure your plan document includes all law changes your plan was required to follow as of the plan's termination date.

These final plan amendments:

- maintain the plan's [tax-favored status](#) at termination, and
- ensure that distributions to participants are [eligible for rollover](#) to other qualified plans or IRAs.

Consult your retirement plan advisor or pre-approved plan provider prior to terminating your plan to ensure that your plan is up-to-date.

Required amendments

1. A terminating plan must be updated for all applicable qualification requirements – such as guidance or statutes - on the [Cumulative List](#) that applies to the period in which the plan terminates.

Example: The plan termination date is April 15, 2013. The plan must be updated for all items that apply to that plan on the 2012 Cumulative List because this list applies to the period February 1, 2013 – January 31, 2014.

2. You must also amend your plan for any law changes your plan was required to implement as of your plan termination date, even if they were effective after the Cumulative List cutoff date ([Revenue Procedure 2014-6](#), Section 12.05 and Section 8 of Revenue Procedure 2007-44).

If you apply for a determination letter when your plan terminates, we'll let you know if you're missing any of these amendments.

Determination letter for a terminating plan

Although not required, you can request the IRS to make a determination on the plan's qualification status at termination by filing:

- [Form 5310](#), *Application for Determination for Terminating Plan (instructions)*, for most pension, profit-sharing or other deferred compensation plans; or
- [Form 5300](#), *Application for Determination for Employee Benefit Plan (instructions)*, for a multi-employer plan covered by PBGC insurance, a plan only partially terminating, or for sponsors not certain of their status as a member of an affiliated service group.

Your plan amendments should be adopted before submitting the plan for a determination letter.

IRS reviewer materials

We use the following materials to review terminating plans. These materials were designed for internal IRS use. You might find them helpful in reviewing your own plan, but they shouldn't be used or cited as authority for a technical position.

- [Subject Matter Packages](#) (Alert Guidelines, Explanations and Plan Deficiency Paragraphs)
- **Termination Focus Reports** – Annual highlights of recent changes in the law that may require plan amendments.
 - [2014](#)
 - [2013](#)
 - [2012](#)
 - [2011](#)
 - [2010](#)

Additional resources

- [Terminating a Retirement Plan](#)
 - [Retirement Plan Termination FAQs](#)
 - [Update a Plan](#)
 - [Types of Retirement Plans](#)
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Retirement Plans FAQs regarding Plan Terminations

An employer can terminate a plan for various reasons including bankruptcy, merger or simply voluntarily terminating it. See also

- [Terminating a Retirement Plan](#)
- [Partial Plan Termination FAQs](#)

These FAQs provide general information and shouldn't be cited as legal authority.

Employees

My company terminated our plan. Is this allowed?

Employers are not required by law to provide retirement plans for employees and may terminate a plan if certain requirements are met, such as required notifications to plan participants and interested parties.

Will I lose a portion of my retirement funds if I'm not fully vested in my retirement account when my plan is terminated?

You should not lose any of your account. When a plan terminates, the accrued benefits of all affected employees must become 100% vested (Internal Revenue Code Section 411(d)(3)).

Why is the IRS holding the money from my retirement plan now that the plan has terminated?

The IRS does not maintain or hold the assets during the plan termination process. When a plan has formally terminated and the plan sponsor has submitted a [Form 5310, Application for Determination for Terminating Plan](#), the IRS will review the application. Many times, we ask for additional information before we issue a favorable letter, and the review process may last for several months. The employer or trustee is not required to hold the assets until we issue a favorable determination letter but usually will do so to ensure that plan distributions will receive the favorable tax treatment given to distributions from qualified plans.

Employers

What steps should we take to terminate our plan?

Generally, you should take specific actions when you terminate a plan, including providing required notices to plan participants, amending the plan document, distributing assets and, if you wish, filing a Form 5310 with the IRS. See [Terminating a Retirement Plan](#) for more information.

When must plan assets be distributed after a plan terminates?

Generally, an employer must distribute assets from a terminated plan as soon as administratively feasible after the date of plan termination.

We determine whether the employer made distributions as soon as administratively feasible based on the facts and circumstances, but generally the IRS views this to mean within one year after plan termination.

What if the assets were not distributed as soon as administratively feasible?

A plan that has not distributed assets as soon as administratively feasible is considered an ongoing plan and must continue to meet the qualification requirements of IRC Section 401(a) and the minimum funding requirements of IRC Section 412 (if applicable).

Our terminating profit-sharing plan does not offer an annuity option as a distribution method. How do we distribute the assets?

A terminating plan that does not offer an annuity option as a distribution method may make distributions according to each participant's account balance, even if the amount exceeds the involuntary cash-out limit in the plan. This rule does not apply if the employer, or a controlled group of the employer, maintains another defined contribution plan.

What type of notice must be provided to participants prior to a distribution?

- Participants must receive notice of their election rights on the distributions to be made from the terminated plan 30-180 days before the date of distribution;
 - Notices should be delivered only when it's reasonable to expect a distribution can be made within the next 180 days; and
 - In some cases, a participant may waive the minimum 30-day notice period.
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Can we still file a determination letter application if we've distributed all the assets?

Yes, you can generally still file a determination letter application after substantially all the plan assets are distributed.

The general date for submitting your application is the later of:

1. one year from the effective date of the termination, or
2. one year from the date on which the action terminating the plan is adopted.

However, the application cannot be filed later than 12 months after the date that substantially all plan assets are distributed in connection with the plan termination.

Must we amend our terminating plan to comply with law changes?

A terminating plan must be amended for all current law that applies to the plan and takes effect as of the date of termination. This is true even if the plan would not otherwise be required to amend the plan by that date based on the plan's remedial amendment cycle.

When must we notify our employees that we intend to apply for a determination letter for the terminating plan?

The notice must be provided between 10 and 24 days before you submit your application to the IRS for a determination letter.

Is there a difference in how defined contribution plans and defined benefit plans are terminated?

Defined benefit plans covered by Title IV of ERISA must meet additional requirements under rules administered by the Pension Benefit Guaranty Corporation, including forms and notices to participants relating to plan funding and the form of benefits to be paid. See the [PBGC Plan Terminations](#) page.

We haven't made many contributions to our profit-sharing plan. How will this impact our plan termination?

Although employers are not required to contribute every year to a profit-sharing plan, contributions must be recurring and substantial. If the amount is not significant enough to show an intention to continue the plan, the IRS will treat the contributions as discontinued.

A plan is treated as terminated for vesting purposes if the employer completely discontinues contributions. The employees affected by the discontinuance must become 100% vested. Generally, you must vest all affected employees no later

than the end of the taxable year following the taxable year in which you made your last substantial contribution (IRC Section 411(d)(3)).

The IRS presumes that an employer has completely discontinued contributions when the employer fails to make substantial contributions for at least 3 years in a 5-year period. If this happens, the burden shifts to the employer to show that a complete discontinuance has not occurred (Announcement 94-101).

Retirement Plan FAQs regarding Partial Plan Termination

An employer can terminate a plan for various reasons including bankruptcy, merger or simply voluntarily terminating it.

- See [Terminating a Retirement Plan](#) for a discussion of the necessary steps to terminate a qualified plan.
- See the [Retirement Plan Termination FAQs](#) for information on full plan terminations

These FAQs provide general information and shouldn't be cited as legal authority.

We had to let go 4 of our 10 employees this year. Is this a “partial termination”?

Your plan may have a partial termination if more than 20% of your total plan participants were laid off in a particular year. Partial terminations can occur in connection with a significant corporate event such as a closing of a plant or a division, or as a result of general employee turnover due to adverse economic conditions or other reasons that are not within the employer's control.

The law requires all “affected employees” to be fully vested in their account balance as of the date of a full or partial plan termination. They must become 100% vested in all employer contributions (including matching contributions) regardless of the plan's vesting schedule. Employee salary deferrals are always 100% vested.

An affected employee in a partial termination is generally anyone who left employment for any reason during the plan year in which the partial termination occurred and who still has an account balance under the plan. Some plans wait until an employee has 5 consecutive 1-year breaks in service before he forfeits their nonvested account balance. For these plans, employees who left during the plan year of the partial termination and who have not had 5 consecutive 1-year

breaks in service are affected employees. See [IRC Section 411\(d\)\(3\)](#) and [Revenue Ruling 2007-43](#).

Can certain plan amendments trigger a partial termination?

A partial termination may occur due to a plan amendment that excludes employees or adversely affects vesting.

Example: A plan amendment that excludes certain categories of employees from further participating in the employer's plan, resulting in the exclusion of 120 out of 170 participants, is deemed a partial termination (Revenue Ruling 72-439, 1972-2 C.B. 22).

We typically experience employee turnover in excess of 20 percent per year. Is this a partial termination?

Probably not. Routine turnover during the year is generally not considered a partial termination.

Factors relevant to determining whether the turnover rate is routine include:

- information on the turnover rate in other periods and the extent to which terminated employees were actually replaced,
 - whether the new employees performed the same functions,
 - whether the new employees had the same job classification or title, and
 - whether the new employees received comparable compensation.
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Do employees who voluntarily quit count for purposes of determining a partial termination?

Generally, voluntary terminations do not count in determining whether a partial termination has occurred as they do for determining who must vest after partial termination. However, in some cases employees who appear to terminate employment voluntarily have been found to have terminated involuntarily under a constructive discharge theory. The employer's intent, working conditions and the reasonably foreseeable impact of the employer's conduct on the employees are factors in evaluating a constructive discharge.

What are the consequences of a partial termination?

An employer who partially terminates a plan must determine which participants require an acceleration of vesting due to the partial termination. Participants who improperly incurred forfeitures are owed more benefits. To the extent those forfeitures have been distributed to other participants and cannot be recovered, the employer will be responsible for making the affected participants whole. This vesting failure can be corrected using the [Voluntary Correction Program](#).
