Note - Any federal tax advice contained in this transcript is intended to apply to the specific situation described and should not be considered official guidance independent of the presentation. The tax advice and statements contained herein should not be relied upon for retirement planning purposes without first consulting a tax or retirement planning professional. This transcript has been edited for technical accuracy and may differ slightly from the audio recording of the “Plan Terminations - What You Need To Know Before You Terminate That Plan” phone forum. This information is current as of May 6, 2014. Since changes may have occurred, no guarantees are made concerning the technical accuracy after that date.

John: Thank you very much and hello, everyone. As mentioned, I'm John Schmidt, the acting director of IRS Employee Plans Customer Education and Outreach. I'd like to thank you for joining us today and welcome you to our phone forum entitled, "Plan Terminations - What You Need To Know Before You Terminate That Plan".

Today we will be hearing from Tom Pettit, the acting director of Employee Plans Examination and Laurie Rider, Employee Plans Revenue Agent, currently detailed as the staff assistant to the Mid-Atlantic area.

Before we start, I'd like to point out a couple of things. We will e-mail a certification of completion to everyone registered for today's forum if you attend the entire presentation. Enroll agents, retirement plan agents and actuaries can receive continuing education credit for thiss session. Other tax professionals should consult their licensing organization to see if today's session qualifies for continuing education credit. As is the case with all our presentations, the comments expressed by our speakers should not be construed as IRS formal guidance.

Here at the Internal Revenue Service, we have many retirement plan resources available for you. If you'll take a look at the handout, specifically Slide 2, you'll see a link to our retirement plans web page. You can also get there by going to the main IRS.gov landing page where you can click on the Information For" dropdown box in the upper right-hand corner of the screen and select "Retirement Plans".

If you'll take a look at Slide 3, you'll notice a picture of how you can subscribe be to our free electronic newsletters. To subscribe, select "Newsletters" in the left navigation bar, choose "Subscribe" and then select "Retirement News for Employers", our newsletter for "Employers Sponsoring Retirement Plans" or the "Employee Plans News," our newsletter for retirement plan professionals.

So having said all that, I'd like to turn the microphone over to Tom Pettit.

Tom: Thank you, John, and thank you all for attending this phone forum on plan termination issues. We're going to focus on issues to consider when terminating a plan. While we will touch on terminating defined benefit plans, the main focus will be on Defined Contribution Plan Termination. **W**e plan to hold another phone forum later in the summer which will focus on terminating defined benefit plans, so watch for that announcement soon.

Also, we received several questions on planned termination matters. We will try to cover as many as we can today and think we will hit on many of the questions submitted. However, if we run out of time and we aren't able to answer all of them, I'd like you to know that participants who submitted questions will be contacted individually by someone from my staff with responses.

Let's start with Slide 5. There are several things that happen in order to terminate a qualified plan. The first is the date of termination must be set. Based upon that date, the benefits of the plan participants must be determined as well as other plan liabilities. The date of termination plays another important role because all plan assets must be distributed after that date as soon as administratively feasible. We'll talk about that later.

In Slide 6, here's a list of items which we are concerned about when a plan terminates. We are concerned whether the accelerated vesting has occurred, whether the accrual requirements have been met, whether all funding obligations have been met, and if there's a reversion of plan assets to the plan sponsor and the related excise taxes that may be due.

Finally, there's the continued compliance with 401(a) rules, per Rev Rul 89-87 , which talks about if assets are not distributed as soon as administratively feasible, then you have what is in effect a wasting trust.

On Slide 7, we're looking at the Statutory Authority or Published Authority, Section 1.461-T-4 of the regulations defines a terminating plan as one which has been formally terminated, under which crediting service has ceased for vesting and benefit accruals, and under which plan assets have been or are being distributed as soon as is administratively feasible.

Question T5 also provides that a plan that has not distributed assets as soon as administratively feasible is subject to the minimum contribution or benefit requirements for IRC 416.

I'm going to turn this over to Lori now. Lori?

Lori: Thanks, Tom. Good afternoon everyone. As Tom mentioned, and John actually mentioned too, we're going to be primarily focusing on defined contribution plans, but we do want to provide a little information to you on defined benefit termination.

IRS does review the termination process of the defined benefit plan, but also PBGC has the responsibility of ensuring defined benefit plan that are covered by Title IV ERISA, are properly terminated. This is important because this determines when a defined benefit plan is actually terminated. A defined benefit plan is covered by ERISA Title IV, if it has a favorable determination letter from IRS or if in practice the plan has satisfied the qualification requirement of IRC 401(a) for the preceding five years.

If it is determined that this defined benefit plan is covered by Title IV, then the plan must comply with the procedures covered under ERISA under Section 4041. You can see that on Slide 9. If it's determined that the plan is not covered by Title IV of ERISA, the termination date is different. The effects of termination date will actually be the date stated in the ERISA 204(h) notice, and if the ERISA 204(h) notice does not apply, the date of termination will be the termination set in the employer's Adoption to Terminate the plan. As you can see, this date of termination is very important to us. As Tom mentioned, it does set a precedent for a lot of things that would apply under a terminated plan.

Why is this so important? As you can see from Slide 10, we really do need to know why it is important. This is the date that the benefits will stop. It's the date when contribution obligations stop. That's a new benefit accrued as they have stopped. There still may be some funding obligations due to the employer to complete the plan to get it fully funded prior to the termination.

This is the date that PBGC also will measure their liability to the plan and this would definitely be important if there were funding deficiencies and PBGC needs to step in. One of the most important things is that this date is which the plan must be amended for all current law changes. I know we have some questions on this and we're going to be touching upon that. Even if the cycle date is not due on a plan for amending law changes, this does not have the bearing on the terminated plan. These amendments will be due for the purposes of termination.

We continue to talk about this Title IV and the date of termination. There's actually three different types of terminations that can happen for a defined benefit plan. As you can see on Slide 11, here's the three different types of terminations. The first one is a standard termination. Basically, this is one that is set by the plan administrator and for the plan that doesn't have any funding issues. The employer can go ahead and terminate the plan.

If we have something called the Distress Termination. The plan administrator actually has to come in to PBGC and PBGC has to agree that they will be able to terminate the plan. This is for a plan that does have some types of funding issues with it.

Finally, the third way that a defined benefit plan can terminate under Title IV is an involuntary termination. Basically what happens here is PBGC sets forth an agreement by the plan administrator or by the court. This is for when the plan would have substantial funding issues. This is just a really quick overview of Defined Benefit Plans. We are going to later in the summer have a full session on this, but we do want you to get a little idea about terminations and defined benefit plans just for an overview.

If you move onto Slide 12, we're going to talk about Defined Contribution Plans and that termination date which we know is very important. It's very different under Defined Contribution Plans versus a Defined Benefit Plans. Facts and circumstances play a big part in the termination date. What is going on with the employer and the plan? Is the termination due to a bankruptcy? Maybe a death of an owner or it's just the cost of keeping up with that plan. It's too much for the employer. Again, it's just going to have some facts and circumstances as to why the plan is terminating and therefore, a date of termination has to be set.

Whatever the reason, once the employer makes the decision to terminate their Defined Contribution Plan, they must prepare a Termination Resolution form. That will establish the date that they are going to set. This will indicate the date on which the plan will actually terminate. This Resolution is sufficient to establish a date of termination for a Defined Contribution Plan.

Most often we see employers set that date of termination as being the last day of a plan year. It just makes it easier for them when administering the final amounts that are in the plan, what the assets are worth, and then of course how much is in each person's account. That's usually what we see within those Resolutions and the date of termination.

Onto to Slide 13 ... Probably one of the easiest plans to terminate is the profit-sharing plan. The employer needs to notify the plan participants that the plan is terminating. This includes the date on which the plan will actually end. The employer will let the plan participants know the amount that they will receive as a distribution from the profit-sharing plan, and really the value that will be distributed from their account balance the participant has under the profit-sharing plan as of the date of termination of the plan. We know there could be a few dollars here or there, depending on the earnings and losses, but pretty much, that's the amount that they're going to get.

I haven't discussed this before, but for IRS and DOL purposes, there are filing requirements. As you can see on our slide here, I'm talking about the Form 5500 return. This must be filed on all qualified plans. We know there are certain limitations for one-person plans that have a very small amount under the trust. These 5500 returns are filed on an annual basis.

When a plan is terminated and all the assets have been paid out, a final 5500 return must be filed. This is the way the IRS and Department of Labor will know that the employer, or the plan sponsor, has gotten rid of the plan. What they will do is they will mark the box on the top of Page 1 of the 5500 as a final return or report. This lets us know that there will be no further filing requirements on the plan and we will not be sending out letters, or the Department of Labor won't be sending out letters asking where 5500 returns. If you do have somebody you're terminating a plan for, you're going to want to ensure that that box has been checked to let us know that this is a terminated plan.

One thing I do want to talk about that applies to both a Defined Benefit and a Defined Contribution Plan is a Notice to Interested Parties. I just told you that when a profit-sharing plan terminates, the employer needs to let the plan participants know about that termination. The same thing happens for a Defined Benefit Plan. The plan administrator needs to let the plan participants, and any alternate payees, know of the termination process and that the employer is making changes.

If the employer does make an amendment to a Defined Benefit Plan that significantly reduces the rate of future benefit accruals under the plan, they must make notice to those individuals. This is an addition to the Notice of Termination, if there is that change to accrual s.

As you can see on Slide 15, when we talk about that notice, there are certain requirements for when the notice needs to go out. If this is a notice to reduce the rate of future benefit accrual, it must be given to all those interested parties 15 days before the affected date of that amendment. It must be given to all interested parties, and with that, I mean the plan participants and any alternate payees. It must be given 10 to 14 days prior to the date the plan sponsor submits and application to us, IRS, first Termination Letter Ruling.

It is not a mandatory requirement for a plan to come in to IRS for a Termination Letter Ruling. In my personal opinion, I always say that if a plan has a favorable determination letter or "determ letter" in the past, it has a little bit of insurance and it will help with the termination process as it's going through.

Onto Slide 16. The Treasury Regs. describe how notices must be delivered to those interested parties. When I first started with the IRS, the most common way for a notice to be given was either to be delivered to a person, the interested party, with their paychecks, in person, or through the mail, or posting it on the company bulletin board in the break room. With the changes to the electronic medium and more people working telework, one of the methods that has been added to the Regulations is to send that notice via electronic medium.

If this is a method that you choose, please remember to keep a copy of that e-mail along with all the contacts that you sent that e-mail to. This is to cover yourself in case you do get an IRS audit for the termination of the plan. We want to see how that notice was given to the interested party. You can still continue to deliver it in person or post it to the bulletin board, deliver it by mail, but now you'll be able to send it via electronic medium.

I want to discuss Orphan Plans now. This is a little bit different than a regular terminated plan. An Orphan Plan is a Defined Contribution Plan that has actually been abandoned by its sponsoring employer. You may all be wondering how could something like happen.

Years ago, I had a local third-party administrator that I had worked with and he gave me a call and he wanted some guidance on how to handle a plan like this. The owner of a local trucking company had died very tragically and suddenly. His wife had inherited the business. You can imagine she had no clue on how to run a trucking company and didn't even want to remain in the area. She picked herself to move across the country. She basically just gave up.

One of her husband's friends, and an owner of another area trucking company, purchased the trucks from the wife, hired some of the employees and was trying to do what he could to help out the wife. One of the things he found out is that his friend had had a profit-sharing plan. He gave his TPA a call, who was the gentleman that I know, and he said, "How can I help get rid of this profit-sharing plan of this deceased owner?"

We had determined that indeed it was an Orphan Plan as the TPA had found that the wife had decided not to go ahead and do anything with it and let it fall through. We did use the Regulations that actually permit doing this. The Regulations allow a qualified termination administrator, which in this case was this third-party administrator, and with the help of the friend, to help get this process done and terminate and liquidate this Orphan Plan.

The Department of Labor Regulations facilitated the termination and finally the distribution of the benefits from that Orphan Plan. It's not very common, but you should be aware that this is something that could happen out there.

For most plans, when they actually terminate, the amount that's in the account will equal what has to be paid out, but there are times when the distribution to interested parties is more than what has to be paid out to everybody. Where there are circumstances that may actually cause an employer reversion made from the plan. This is the amount in the case of fair market value of another property received by the employer from a qualified plan.

In other words, if there's a $1 million, $100,000 in the trust of a plan, and everybody has accrued that benefit under the plan of $1 million, we have that extra $100,000 sitting there. We're going to discuss how this potentially could be sent back to the employer.

If you can see from Slide 19, you may be wondering how can this every happen? For any of you who have been doing this for a long period of time like I have, you may remember back into the 1990s when plans were earning unbelievable rates of return. A lot of defined benefit plans were actually overfunded. Not so much the case anymore, but you need to be aware that this is something that, we probably all hope, could potentially happen again.

Looking at the code, there are very limited circumstances in which an employer can get contributions back from a retirement plan. As you can see on Slide 19, they are for, a disallowance of the deduction; if the plan fails to initially qualify under Code Section 401(a), or the one that we're most interested in today, is the reversion of assets upon a plan termination.

A big thing to remember on a reversion is that before it can actually happen, the plan terms must allow for it. For a reversion to happen with a defined benefit plan, the terms of the plan must have allowed for it by five (5) calendar years before the date of termination. In other words, they can't make an amendment to allow for a reversion a few days before they decide to make that plan termination.

The reversion from a defined benefit plan must also be due to an erroneous actuarial computation under the Treasurer Regs 1.401-2. This is something we saw pretty prominent back in the '90s, but I'll be honest with you, I haven't seen it happen much anymore.

You may be thinking that there can never be a reversion under a DC plan, but there was a way. A reversion can only happen in a defined contribution plan when there is an amount in a suspense account. They can't be allocated due to limitations set forth under Internal Revenue Code Section 415(c). I can't say that I ever saw this happen, but it is allowed.

As you can see on Slide 22, what happens, now we've gotten this reversion and what's going to happen to everybody? You can't imagine that it's just going to get back to the employer without some tax having to be paid. There will be income tax is due on the amount that comes back to the employer, they'll have to include it as income, but also, the employer will have to pay an excise tax. A Form 5330, which is what you file for excise tax, must be prepared and filed. The excise tax must be paid on the last day of the month following the month that the reversion came back to the employer.

The amount of the excise tax is 20% of the amount that is reverted back to the employer from a qualified plan. This is actually detailed in Code Section 4980. This is just a quick overview so that you're aware of it. There could be some other circumstances to this, but when we do our phone forum on Defined Benefit Plans, we will be talking about this further.

You may be thinking the opposite. This is more of what you're all seeing on plans, not so much the overfunding, but in underfunding. I've been talking about that overfunding and we wish we could see that more often, but we see this common now more so with the underfunded plan.

You can see on Slide 22, an underfunded plan to terminate via that standard termination, with just the employer involved, they actually have two options. First the employer can make a supplemental employer contribution to make the plan whole. Sometimes this is easier said than done. Sometimes that amount is way greater than what the employer can afford.

The second option is that there could be a foregoing of benefits by the majority owner. For a supplemental employer contribution to be made, the amount must be sufficient to ensure that the assets equal the amount of the liabilities prior to the distributions made to the plan participants. Again, this may be easier said than done because it could be extremely costly to the employer.

Our second option is for the majority owner to forego the benefit. As you can see on Slide 25, it is one of the plan participants as the majority owner. It's somebody in excess of 50% of the employer owning that and the spousal consent. They must go, and I'm going to use my air quotations here, "forego receipt" of all or part of the benefit into all the participant liabilities are met in the plan assets to be allocated upon plan termination on a pro rata basis.

The biggest thing I can tell you is that when we use that term "forego receipt of benefit", it's really here. A participant cannot waive, we're not waiving the benefit. This would actually be a violation of Code Section 411(d)(6), 411(a) and 401(a)(31). The plan cannot create a plan amendment that actually sets forth a waiver of the accrued benefit by the majority owner. This violates the code and it prohibits against the reduction of accrued benefits by a plan amendment.

This is something that we really do watch out for, especially when a plan comes in requesting a termination letter. The agent to assign these cases will actually look for these types of amendment and they actually will return them. We cannot approve of an amendment that will waive a benefit. They can only forego the receipt of that, so it's very key that you don't try to put one of these amendments in there as a way to take care of an underfunded plan. We will return those to you and they will not be allowed to be made to the plan.

I know we had some questions on this too, and if you can see here on Slide 27, there's comments and we're going to talk about accelerated vesting. Accelerated vesting is triggered upon a plan termination, a partial plan termination or a complete discontinuance of contributions to a profit-sharing plan. When one of these three things occur, full vesting of the plan participants accrued or account balance, will be put into place.

When there is a complete plan termination, the accrued benefits of all affected employees must become 100% vested. For Defined Contribution, an affected employee is an employee or a former employee who has not received his non-vested interest as the date of the plan termination.

If you can see on Slide 29, the term "complete discontinuance of contribution" only applies to profit-sharing plans. When it is determined that this has taken place, the profit-sharing plan will be treated as if it had been terminated. For vesting purposes, all affected employees become 100% vested in their account balances. For a profit-sharing plan or stock bonus plan to be qualified, the plan must require full vesting in the event of a complete discontinuance of contributions to the plan. I know we did have some questions on this topic that came forward.

Profit-sharing plans are plans that are not required to make a contribution every year. IRS will take a look at the contributions made to the plan. The contributions need to be made somewhat reoccurring in nature and substantial. As you see on Slide 30, we're talking about those types of things.

An employer can't make a $100 contribution to the plan every five years and call it good enough. What we want to see is contributions made in significant amounts and with intent to keep the plan going. If it is determined that it is not, IRS will treat the contributions as being discontinued.

The other thing that impacts the complete discontinuance of contributions is that as a plan, they still receive contributions without any regard of the employer's current or accumulated profit.

On Slide 31, you can see we take a look at the complete discontinuance and there's a number of factors. If the employer uses the term "suspension of employer contribution under plan", this can actually be viewed as a way to avoid fully vesting the plan participant. When the employer does make an employer contribution to the plans that are reoccurring and not sporadic as I said, one every ten years or something, they are substantial ... Not like our $100 example.

Another factor is that there is a reasonable probability that discontinuance could continue indefinitely. It's just a way they can get around making that full vesting of those affected participants. The issue of discontinuance comes up when we see employers who have not made a substantial contribution for at least three years in a five-year period ... This is on Slide 32.

You may be wondering if this complete discontinuance applies to a 401(k) plan when it comes to employer contribution. IRS has not made any formal regulations when an employer stops making non-elective contributions to a 401(k) plan, but continues the 401(k) arrangement for the plan participant. For our purposes, elective deferrals are treated as an employer contribution and the 401(k) arrangement is part of a profit-sharing or a stock bonus plan. As you all know, a 401(k) is not a standalone plan. It is a feature that is applied to a profit-sharing or a stock bonus plan.

What I'm sure a lot of you are calling in to hear about is when it comes to terminations of a plan and a partial termination, and this is where I'm going to begin on Slide 34. I'm going to touch on the important factors as they apply to a partial termination. I know we got a couple questions on this. Our view is that a partial termination can happen due to a significant corporate event ... For instance, like the closing of a plant or a division. Also partial termination can occur when an employee turnover due to adverse economic conditions or another employer initiated action.

When a plan amendment is made that excludes employees, or adversely affects the vesting, this can actually trigger a partial termination of the plan. For example, if a plan amendment that includes employees of Division Y from the participating employers, Employer ABC company profit-sharing plan, this can actually trigger a partial termination.

On Slide 36, I want to make a quick note here. For Defined Benefit Plans, a decrease in future accruals resulting in a potential reversion, can also possible prompt a partial termination.

How about when we have a plan merger? Can this actually cause a partial termination? The most common merger, or most conventional, is a money-purchase plan into a profit-sharing plan. This occurred when there was a change in the amount that could be deducted by a profit-sharing plan for IRC 404 purposes quite a few years back. I have to say in my time of going out there and doing audits, I don't see very many money-purchase plans anymore. They're becoming dinosaurs. What a lot of employers did is they actually took those money-purchase plans and merged them into the profit-sharing plans.

We do not view this as a partial termination because all the employees will remain covered by that profit-sharing plan. The money-purchase plan assets and their liabilities, retain their actual attributes. For example, they have to continue with their J&S annuities as long as they stay under the profit-sharing plan and the same goes for the vesting that they have it actually stays the same.

Partial termination comes up when doing the percentage test. There is an actual court ruling on this. Rev Ruling 2007-30 looks at the turnover rate of participating employees to be at least 20% for partial termination to happen. Under Halliburton versus the Commissioner, the court found that less than a 20% turnover rate can still be a partial termination. I will quote here, "If it is accompanied by an egregious abuse on the part of the employer."

We want to see when we're looking at these types of partial terminations, and we look at these turnover rates, we really want to take a look at what caused it. We're going back to the root of what is causing this turnover rate. I know a lot of you may be saying that certain industries really do have these high turnover rates and it's just a normal thing. A lot of times we will take things into consideration, certain facts and circumstances.

Take a look at Slide 39. Here is a list of the factors considered under Rev Ruling 2007-43 when calculating that turnover rate. If the reasons for severance from employment is by the participant or is employer-initiated; the number of participants of the employees; what is the time period that the turnover rate covers? What is the routine turnover rate of the employer? Is it normally low or is this just an odd thing that caused the turnover rate to be what it is? Is there a number of transferred employees that factor into the turnover rates?

I had this on an examination where a company did a lot of switching around and they would transfer people from one plant to another. They would go from being in the union at the one plant, and if they went to the other plant, they became non-union. This can actually cause some changes with the turnover rate, too. These are all the factors that we look at when we're actually calculating those turnover rates.

If you take a moment, I'd like you all to turn to Slide 40. This is actually how we calculate that turnover rate. It's actually a very simple mathematic computation. The rate is a number of participating employees who had an employer-initiated severance from employment during the applicable period over the sum of all the participating employees at the start of the applicable period, and the employees who became participants during that applicable period. This is actually how we will determine the turnover rate and how it then will apply to the partial termination of a plan.

We talk about employer-initiated severance from employment. This generally will mean any severance from employment other than reasons caused by the death of the participant, the disability of the participant, or the retirement on or after normal retirement age of the participant. Those things will not be considered employer-initiated severance from service.

If you take a look at Slide 42, some of the other factors we consider, we talk about a partial termination and an employee severance is considered an employer-initiated event, even if it is caused by an event outside of the employer's control. For example, a fire that burns down one of the employer's large plants and the employer does not want to rebuild. Also, we talk about participating employees that include vesting as well as non-vested participating employees.

One of the terms I discussed, as a factor, was that applicable period. You may wonder, "What does this mean?" It actually depends on facts and circumstances of the situation, when their factors relevant to determine if the turnover rate is a rate in nature.

For IRS, the applicable period is generally a plan year. If there is a short plan year for some reason, that's less than 12 months, we will look at that short plan year and we'll actually add the immediate preceding plan year and we'll determine that to be the applicable period.

You may ask if transfers or voluntary terminations can cause a partial termination. The short answer is it does not. If there was a transfer employee to a different control group, it is not considered to be a severance from employment. Voluntary terminations don't count towards the termination of a partial termination. There is a constructive discharge theory ... In brief, this description is the employee quits employment due to a discrimination or retaliation. The employee quits rather than stays around and deals with that discrimination or retaliation. This will not cause the partial termination to happen to the plan.

On Slide 45, what if there is a partial termination? There are consequences on the employer. First and foremost, the employer must vest all affected employees due to that partial termination. There is the improper forfeitures determination that they must make and return to any of the participants. This also means making any affected participants whole, even if the employer distributed the forfeitures to other plan participants. They're going to basically come up with that amount out of their pocket. In the end, it is a big impact on the employer if it is determined that the plan has indeed had a partial termination in effect.

I'm going to now step back to our regular types of terminations and what applies to that. I'm going to discuss the actual distribution from the plan. I'm on Slide 46 here. The plan need to determine the asset that will be distributed to the plan participants and they need to be distributed as soon as administratively feasible after that date of termination has been set. I wish I could give you a code cite that actually defines that term "administratively feasible", but there really isn't any. The term is based on facts and circumstances. For IRS's purposes, we generally define that as being one year following the date of the plan termination.

When the distributions are made from a defined contribution non-pension plan, like a profit-sharing or a stock bonus, the payment method must be a mandatory distribution method such as a lump sum. If this type of plan does not have an annuity option, the employee may distribute the account balance without the consent of the participant or the participant's spouse. These rules do not apply if the employer has another defined contribution plan and transfers the assets from one plan to another; like I told you before, the money-purchase to the profit-sharing plan.

As you can see on Slide 48, there are restrictions applied on making distributions of the 401(k) elective deferral. This depends on the existence of what we call a "successor plan". If you look here on Slide 48, we've defined those terms of elective deferral and this actually includes a pre-tax elective deferral, Roth elective deferral ... If there has to be catch-up referral, catch-up elective deferral made for failure of an ADP test, qualifying non-elective contributions which are QNECs, qualifying matching contributions or QMACS, and finally Safe Harbor 401(k) contributions made by the employer under the plan.

We talked about a successor plan. We're talking about an alternate DC plan. The same employer maintains any time after the plan termination date to 12 months after the assets have been distributed from the terminated plan. That's the period that we talked about there for a successor plan to be put into place.

It's important to determine the existence of a successor plan. If there is one, then all the types of Elective Deferrals that I listed a minute ago, can be transferred to the successor plan or kept in a terminated plan until all the distributable events occur. If there is no successor plan, the terminated plan must pay out the elective deferrals in a lump sum distribution.

I'd like you all to take a look at Slide 51. When IRS looks at the termination of plan, one of the things we really take a hard look at is the plan assets that are sitting there. These are some of the things we take a look at and potentially may have issues with. Non-interest-bearing cash. What is this made of? Is it hiding in the mattress of the employer? Why is it sitting in someplace where it's not earning interest on this money? That's something that we'd be concerned about.

Sometimes employers do start converting all the money over and have it ready so they can make the distributions to the plan participants, but we would hope that they would at least keep it in some form of a savings account that earn a little bit.

We want to take a look at any receivable that's listed. What is it made up of? Is there employer and the participant contribution due to the plan? How long have they been due? Especially if it's the employer, are there minimum funding issues with the pension plan of some sort? Is it a 401(k) plan and the participant deferrals have not been timely made and there's lost earning due to the participants and then an excise tax is due on those lost earnings amounts?

We could see the receivable of income or earnings due on the accruals. It is maybe not posted by the broker by the end of the year, but if it's something ongoing, we're going to question that. If we see other receivables, IRS wants to know what it is. Is it payments on a loan that is in default, for example? When it comes to the actual investments, we at IRS want to ensure the valuations have been made ... In a minimum, monthly, but at least we want to see those annual statements that come in.

If there's employer securities within the trust, has there been an independent third-party appraisal made on an annual basis? If we determine that there is prohibited transactions under the plan, we want to make sure they have been fully corrected and if there's excise tax due, has that been paid under Form 5530?

What happens if we find that there is a situation within the trust that causes unrelated business tax income? What's caused that? Has there been filing requirements due on that? Maybe a 990 return has to be due. We want to ensure that that's been corrected. There's insurance contracts in the trust. Has there been PS-58 costs? Has that been determined to annually made? How about if it's a 412(i) plan? Has the proper valuation determination on the policies been made? Have they been in excess of the limited amount? We're going to be taking a look at that. We want to ensure that everything is correct within the trust.

How about the actual allocations and distributions of the trust? Were they properly allocated to the plan participants? Were the distributions made in accordance with the terms of the plan?

Finally, we want to determine if there are loans under the plan. If so, were they actually allowed by the plan? Did the plan say that there can be participant loans? If not, there's that possibility of a prohibited transaction with form 5530 due and an excise tax payment due also. If they are allowed, have they been paid back at the time termination? If not, they become a deemed distribution for the participant with the unpaid loan balance and must be included on the 1099R that is given.

I gave you a very quick list of some of the things that IRS could see as a possible issue when it comes to the plan assets under a terminated plan, or even for an ongoing plan for that matter.

I want to touch base on amendments that need to be made to a terminated plan. We had quite a few questions on this one. What about amendments to a terminated plan? Rev. Proc. 2013-6, which is updated annually, states, "Any terminating plan must be amended for all current law applicable to the plan as of the date of termination." Rev. Proc. 2007-44 in Section 8 states, "the remedial amendment period for any law changes in effect as of the termination of the plan, is accelerated when the plan terminates." In other words, the plan cannot wait until the end of the remedial amendment period that applies to the plan to end before the plan needs to update for the law changes. The now, the end, becomes the date of termination.

When I talk about that remedial amendment period, I'm talking about the established cycles for a remedial amendment period as set forth in Rev. Proc. 2007-44. This applies to both individually designed plans and those pre-approved plans. That would be a master and prototype plan or a volume submitter plan.

Most IRC401(a) individually designed plans have a five-year remedial amendment cycle. The cycle is based on that last digit of the EIN number of the plan. If a plan just amends for the end of the remedial amendment period and then terminates by the next plan year, they need to update the plan as of the date of termination and not wait for another four years to go by for that next remedial amendment cycle to come into place.

IRS publishes a cumulative list. This is put out on an annual basis generally around mid-November. This list is set up to identify all changes to a qualified requirement of the plan. This can be statutory, regulatory, and/or other guidance. For a terminated plan, all of the remedial and required plan amendments must be adopted.

On to Slide 55 here. One of the things that should be done is the verification the plan has been properly amended for prior legislation. I can tell you that's something any plan sponsor, plan administrator, third party or employer should do no matter what ... If the plan is ongoing or terminated, it is important to know exactly what is in that plan document. This is something the IRS lists as a preventative measure to prevent plan errors.

For IRS, we want to see some verification the plan has been timely updated for all law changes. This can be done by providing a copy of a favorable determination letter the plan received for the plan prior to the remedial amendment cycle or the timely adopted plan document, adoption agreement amendment for the plan's cumulative list for the prior remedial amendment cycle.

Many presentations that I've done in the past, one of the things we tell people is, they really need to know what's in that plan document. They should go take a look at it. Is it updated for law changes? This might be something that you want to do on an annual basis whether you have an ongoing plan or a terminated plan.

We talk about an interim amendment, if it's required to be made for a disqualifying provision, as you can see from Slide 56, those interim amendments must be adopted by the later of the due date plus extension of the employer's income tax for the tax year that includes the date on which the remedial amendment period begins or the last day of the plan year that includes the first day of the plan's remedial amendment period.

No plan is required to come into IRS to receive a favorable determination letter, but if the employer does make that decision to get this, as I said before, it's a little insurance for the termination process to be done properly; a Form 5310 Application for Determination for Terminating Plan is actually filed with IRS upon determination.

As you can see on Slide 58, these are some of the things that need to come in with it, when the 5310 application is sent in. A user fee is paid on Form 8717. We also want to see a copy of the plan document or documents, adoption agreement and all amendments made since the last day of the determination letter. This helps us to verify the plans and update it for all law changes to the plan as of determination date. If there was a favorable determination letter given, we would want to see that. You should provide that copy to us.

If it's a Master and Prototype Plan or a Volume Submitter Plan, we ask you to send in the copy of the latest opinion or advisory letter issued on that prototype. IRS wants to see a copy of all the records of all actions taken for the terminated plan. For instance, that Resolution to Terminate the plan that sets forth the termination date. Finally, copies of all required attachments and statements applicable to Form 5310. For Defined Benefit Plans, that's a Form 6088 and I know we had a question about that which we will answer during the next phone forum we have on Defined Benefit Plans.

If the decision is made to file for a favorable termination letter, Form 5310 must be filed no later than one year from the effective date of termination or the adoption date of the resolution terminate the plan.

You may be all saying, "Why bother filing this 5310 and getting that termination letter?" As you can see, I'm on Slide 60 here ... As I said before, to me, it's a little insurance. It allows the plan trustees to have that insurance when they're making a transfer of the assets. It lets them know that, "I know what's in there. The amendments are made. I'm not going to have any issue when this is happening." It gives an extension for a distribution of required assets prior to PBGC notice for Defined Benefit Plan. You're not going to go ahead and make the extension or make notice to PBGC until you have the IRS letter in hand. It provides some certainty that the plan qualifies prior to the plan termination. It helps identify any possible problems or possible issues prior to the distribution of plan assets from the plan.

Just as I told you that whole list, and I went through them, this might be a way for you to send it in to us and we start taking a look at it and we'll say, "Look, you had loans under the plan. Are you making these as being distributions, are you going to get on the plan participants to get the money in so they don't have this issue?" This will also give IRAs proof that the rollover came from a qualified plan if it is required.

Quite a few years ago, I had an issue where a plan terminated. They rolled the money over into IRAs at the direction of the one owner's son. It turns out that there was an actual problem. They did not come in for a termination letter. When I was doing the calculations, what had happened was the contributions made to the plan in the final play year were in excess of the IRC 415(c) limits. In auditing the final plan year I had to determine if the proper amounts were actually put out.

What had happened was when they did the calculation for the last plan year, the two owners of the company actually received in excess of the 415(c) limitation, which means that they had excess 415 amount in there. The excess and all the issues than rolled over into the IRAs, this caused the IRAs to not be receiving money from a qualified plan.

We had a real nightmare. This actually went under one of our Closing Agreement Programs and the employer actually paid a substantial amount of money because there was a lot of money involved in this. Had they come in for a termination letter, they would have caught something like this. The IRAs would not have had the issue and they would have been able to not have to worry about paying that huge amount during the correction process. It does help to verify those types of things. It also prevents potential issues from the plan with excess assets. There's overfunded plans that I spoke about.

One of the things that I do want to touch base on and that I talked about in the beginning is that you want to remember the plan sponsor must continue to file that Form 5500 Annual Report of Employee Benefit Plan until all the assets of the trust have been distributed. You want to make sure that it's a zero on there. The big thing that we see is that they still have a few dollars left in there for whatever reason; they just decide they're not going to continue to file it. You want to make sure that the amount that's left in the trust has all been zeroed out. You go ahead and you file that final 5500 return and check that box off at the top that actually has the indication that this is the final return on the plan.

With that, I've gone through our slides. I want to thank you for spending your time listening to this. Hopefully we gave you some information that should be helpful when you're going through the process of terminating a defined contribution plan, and we gave you a little bit of highlights of terminating a defined benefit plan. Both do cause a lot of information has to be generated and notifications to be made, but those have their unique features when it does come to determination of that.

With that, Tom, I don't know if you'd like for us ... We can go through some of these questions at this point?

Tom: Yeah, I'd like to thank you Lori. Since we have a few minutes, let's look at a couple of the questions that we didn't cover. We did get a lot of questions about plan amendment requirements upon plan termination. I think we addressed most of them. There's a couple of specific ones that we may have to send to our R and A folks and get some addition assistance from and send those responses out.

One of the questions that I saw was ... A couple questions about partial terminations. Lori did spend some amount of time on partial termination, but let me throw this up because I think it's one of the questions ... What Lori had described about the turnover rate and who gets counted as an affected participant when you're trying to determine whether a partial termination has occurred, is accurate. What we see on the slides are our position. This idea about 20% is the limit and sometimes it's below that or certainly above it. We'll start looking closer at a partial termination potential once we see that about 20% terminated participants.

A lot of the work is spent trying to determine whether a partial termination has occurred. That's with the turnover rate and all of those factors play into it. Once we have determined that a partial termination has occurred, then another set of facts come to play and that's who is the affected participant? Lori mentioned it. I just want to emphasis it. It's anyone who was terminated without being fully vested. It could be someone that left the employer a few years ago because of the five-year break in the service rule. Their accounts have not been forfeited yet. They would be counted as an affected participant. Anyone who got terminated would be affected.

There's a whole set of people that are still working the employer because this is a partial termination, so those people who are still working, this doesn't impact them. The affected people, anyone who left ... We always get a lot of questions about that, it's only the people that were impacted because of an employer initiated severance. Now a different set of facts come to play.

All the other stuff about employer initiated is used when there is a determination made whether a partial termination has occurred. Once that's been determined, then you look to see, "Who needs to be fully vested? Who do these partial termination rules apply for-- Accelerated vesting being one. That is anyone who has incurred a forfeiture and no longer works for the employer. We did get a couple questions about that.

The other one, there's a question about I don't want to go into the whole question because it's fairly lengthy, but it was a plan permanency requirement question. The question poses, "What if a person sets up a plan at the end of the year and early in the next year, they got a terrible disease and actually died." They described it as a sole proprietor. They wondered whether that, because there would be only two 5500s filed, one for the year that they started the plan, and the next one for the last year of the plan, and since they started the plan at the very end of the year, they didn't have much in the trust.

Early in the next year when they passed away, another 5500 was filed because there definitely would be a plan in existence for those two plan years. They wondered whether the IRS, if that would trigger an audit automatically because of someone only filing two 5500s, whether they should file another one just be safe and get below the radar for an examination. I would say that it would not necessarily trigger an audit on the IRS part because only two 5500s were filed.

As a matter of fact, I think the scenario, once that sole proprietor passed way, really what Lori was talking about, an Orphan Plan situation, there is no sponsor anymore. It doesn't seem to be a corporation but rather a sole proprietor, so there would be no plan sponsor once that person passed away. There would be no plan sponsor, so it would be an Orphan Plan.

I would never advise someone to file another 5500 just to avoidd the question of was there was a permanency issue that needs to be addressed. I think in this situation, it would be very easily explained if it did reach an audit stage. I don't see that would actually even trigger one necessarily, those facts as presented.

Lori, do you have a question you spotted that you thought we didn't talk about and could?

Lori: No, mine was that permanency one, too, Tom, that you had. I do know we do look at those. We do want to see that permanency requirement of a plan and that example, and as Tom mentioned, there's really a lot of facts and circumstances that put into place.

I guess one of the biggest things you want to ensure is that the plan, when it was originally set up, was intended to remain there. There wasn't some way to sock away some money for some reason. I know one time there, they were looking at Defined Benefit Plans by a much older doctor who had boo-coo money and younger staff earning little; was a way to sock some money away tax-free and to then take these huge deductions on their returns and maybe only have it for a year or two. That's what we were looking at when we discussed permanence, that was a good question.

I know we just had some that maybe recently came in and might need somee more time to review, but I think we hit on a good chunk of them, Tom.

Tom: I do, too. We have another minute or two. Let me throw out a couple of observations that we've seen. We actually had an EPCU or Employee Compliance Unit compliance check a few years ago on plan terminations. This came up with some interesting results. One shows that although most of the plan sponsors in the sample took additional steps to terminate their plan beyond adopting a resolution terminate, they did not always complete the termination process.

In fact our EPCU compliance check found that over 75% of the sample sponsors made some errors in terminating their plan. The errors included such things as they did not file the final 5500 return. Lori mentioned the importance of that. Some sponsors did not file their final annual return marked as the final returns showing zero assets at the end of plan year. They either forgot that or they were unaware of that requirement.

As Lori said, we do look that there is that requirement and once they are terminated, we expect to see a 5500 with it marked as the final return and zero assets on the balance sheet.

Some plan sponsors missed filing their annual return for one or more years while the plan was terminating. Being in the process of terminating does not eliminate the 5500 filing requirement. Some did not actually terminate their plan. They actually marked the box on 5A of Schedule H, which was the financial information, or Schedule I, which was the small plan financial information, incorrectly. They indicated that they had adopted a resolution to terminate the plan when they had not.

Even though they did not mark the return at the top as terminated or final return, they did indicate in the form that they actually were terminating the plan and it was a mistake. The mistake indicated the plan terminated when it was in fact frozen. A frozen plan is not terminated. It is not a terminated plan. We touched on frozen plans a little bit, but in a frozen plan, participants don't accrue more benefits, except under special circumstances. A frozen plan continues to meet annual information reporting and qualification requirements, it needs to be amended for current law, but the employer, plan sponsor, has taken action to freeze benefit accruals or contributions.

There's a number of other things. In fact, I would tell you to look on our website under "EPCU Reports", there is a nice report there on terminating plans, the study that we did with a number of errors that we discovered on plan termination, many of which Lori has already talked about today. If you wanted additional information, take a look there. There's a lot of good information there.

With that, I think it's a couple minutes over 2:00 my time, so I think we're done here.