



## ***News and Updates for Plan Sponsors and Fiduciaries of Defined Contribution Plans***

### **Cause and Effect: Partial Plan Terminations**

As a result of the current economic climate, many employers have been forced to reduce their work forces. Employers must be aware of the potential impact that downsizing may have on a company's qualified plan. If certain elements exist as a result of a layoff (or multiple reductions) a plan may experience a partial plan termination. Simply put, a partial plan termination exists if a "significant reduction" in plan participation results from employer action. The determination of a partial termination is a facts and circumstances test, but there are a few factors which serve as good indicators.

The first factor is the population of affected participants. If it is a class of participants there is a chance of the reduction being viewed as a partial termination. More commonly the percentage of participants being affected will be scrutinized. Per internal IRS guidelines, a 20% reduction is generally considered "significant." Some ERISA attorneys state that a more conservative threshold is a 15% reduction in force. The percentage is determined by looking at all terminated participants compared to all vested and non-vested participants. Voluntary terminations, terminations occurring in the normal course of business and terminations due to death, disability, or retirement are not to be included in determining the percentage reduction.

Another factor to be considered is the period over which the terminations occur. The IRS generally includes all employer terminations within a rolling window unless the terminations can be proven to be unrelated to one another. In other words, the IRS will consider all terminations to be in accordance with a single downsizing plan unless proven otherwise. In addition, separate reductions in force may be combined in the determination of 20% reduction.

In the event a partial termination has occurred, all "affected participants" (those that can no longer participate in the plan) must become 100% fully vested in their accounts on the effective date of the partial termination. All other "non-affected" participants continue to participate in the plan in accordance with the plan's vesting provisions. If an definitive determination of a partial termination is desired a plan sponsor may file a Form 5300 with the IRS; although, this action is not required. It is important to understand these rules in advance of any layoffs. If your company is considering reductions please contact us at [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com).

### **Is Market Turmoil Triggering Reductions in 401(k) Matches?**

Although the media seems a buzz with big name companies suspending or reducing their employer match, a new survey indicates 73% of plan sponsors intend no match changes. The poll, conducted by Callan Associates earlier this year, examined if employers are in fact changing their employer match due to the recent market turmoil. The results incorporated responses from over 100 companies with defined contribution plans, most plans containing over \$100 million of assets. The survey indicated that only 1% of plan sponsors polled planned a match decrease, while 20%

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were unsure what steps they might take by the end of 2009 regarding their match. This survey did go beyond this basic question and produced the following observations:

- 95% of employers plan to increase investment communications to participants
- 71% of employers plan to increase communication to stimulate participation
- 64% of employers plan to increase communication concerning retirement adequacy

Some anecdotal evidence exists reflecting a somewhat higher percentage of small size plans may be reducing match, however the vast majority of plans do appear to be maintaining prior match levels at this time. If your investment committee is considering changing your match, we recommend you receive the proper guidance. Please contact us at [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com).

### **Compliance Reminder: Excess Contribution Deadline**

401(k) regulations impose a 10% excise tax on any excess contributions not returned to the Highly Compensated Employees (HCEs) by March 13<sup>th</sup>. Highly Compensated Employees may receive a refund of their deferrals to correct the failure of their plan's ADP/ACP tests. In order to avoid the 10% excise tax, excess contributions must be returned by the March 13<sup>th</sup> deadline. Many of us are accustomed to a March 15<sup>th</sup> deadline, but since this date falls on Sunday, the IRS has stipulated March 13<sup>th</sup> as this year's deadline.

### **ICI Study Indicates Significant Growth in the Mutual Fund Industry**

A recent study by the Investment Company Institute (ICI) indicated that mutual fund ownership continues to be fueled by tax-deferred accounts, such as defined contribution plans, individual retirement accounts (IRA) and variable annuities. According to the ICI study, the number of households who now own mutual funds through tax-deferred accounts has grown some 12 million since 1998, to an estimated 48 million that hold mutual funds inside tax-deferred accounts. The total households that hold mutual funds in all types of investments is estimated at 52.5 million. Retirement planning continues to be the primary reason for investing in mutual funds.

According to the study, more than 7 out of 10 investors who own mutual funds in defined contribution plans view fund companies favorably. Factors that contributed to their views about mutual funds included the opinion of professional advisors, personal experience with a mutual fund company, market fluctuations and of course performance, which was the most important factor when considering views on mutual funds. "Shareholders with mutual funds in DC accounts are also confident that mutual funds can help them meet their financial goals." Some 97% of those surveyed indicated that they invest to finance retirement and 83% indicated that retirement is their primary goal for mutual fund investing.

In summary, the mutual fund industry has certainly been impacted by the market volatility of the past year. Despite that, mutual funds are still an important vehicle for retirement plan investing by individual participants and those who use mutual funds for investing see them as their primary tool for building their nest egg. So the next question is, are participants using the right funds in their investment allocation? Now is a great time for your participants to review how they are investing. To discuss ways to assist participants with asset allocation, contact us at [401khelp@hubinternational.com](mailto:401khelp@hubinternational.com).

### **Communication Corner: Asset Allocation and Diversification**

This month's sample participant communication memo explains why diversification is the single most important thing you can do to manage investment risk. Please continue to distribute these participant memos to your plan participants every month.