**RETIREMENT PLAN AMENDMENTS AND RESTATEMENTS**

**Introduction**

A qualified retirement plan must be in writing. The written plan document sets forth the requirements to participates, the benefits provided, and when those benefits may be distributed. The plan must include numerous other provisions the Internal Revenue Service (IRS) or the Department of Labor (DOL) require. These provisions reflect mandates in the law and protect the rights of participants.

One consequence of the written plan requirement is that you must amend your plan if you wish to change any of its provisions. In addition, you must amend your plan to reflect changes in the laws governing retirement plans. In some cases, these changes may be handled with “short” tack-on amendments to the plan. In other cases, however, the plan must be re-written in its entirety (this is referred to as a restatement).

**We are providing you with this explanation document because most 401(k), Profit Sharing and Money Purchase Pension plans will need to be restated over the next several years.** It’s important that you understand why your document must be restated and the deadline to do so. We have prepared this explanation in question and answer format and have tried to avoid technical jargon wherever possible. However, please contact us if you do not understand any of the following or if you are uncertain about the impact of recent law changes on your plan.

**Under what circumstances do I need to amend or restate my plan?**

There are three main instances when you must amend your plan document:

1. You, as plan sponsor, may decide to change a provision in the plan (a voluntary plan amendment).

2. As the laws change, you typically need to amend your plan document to reflect the changes.

3. The IRS requires that all pre-approved plans be restated in their entirety every 6 years.

Each of these scenarios may occur within the plan at various points so it is important to know what they are and the differences in timing related to each.

**What is the 6-year restatement cycle?**

The 6-year restatement cycle applies to pre-approved plans such as yours. The IRS requires that employers restate pre-approved plans every 6 years. There is a different 6-year restatement cycle for defined contribution plans (401(k), profit sharing, money purchase, target benefit) and for defined benefit plans. This document will focus on the current cycle for defined contribution plans.

In the current cycle, document providers sent underlying plan documents to the IRS for approval in 2018. The IRS reviewed these plans over the next 18 months. This process involved negotiations between document providers and the IRS to address changes in laws and IRS restrictions. At the end of that process, the IRS set a period in which individual plan sponsors must restate their plans onto the new approved documents. **For the current cycle, that period ends July 31, 2022.** If you do not restate your plan by this deadline, it will no longer comply with the law, and you will need to take action to correct that failure.

**Are other amendments required in addition to the restatement?**

Frequently, the answer is yes. The IRS told document providers to base their pre-approved plans on the legal standards in effect in 2017. Since then, there have been three major changes which impact many plans, and which may require plan amendments:

* *Changes in hardship distributions.*  Plans have until December 31, 2021 to amend for these rules.
* *The SECURE Act, which Congress passed in 2019.* The deadline to amend for these changes is generally December 31, 2022, or later.
* *The CARES Act, which Congress passed in 2020.* For most plans, the deadline to amend for these changes is also December 31, 2022, or later.

Typically, amendments to deal with changes such as these are reflected in smaller amendments, sometimes called “tack-on” amendments. Sometimes plans do not need to adopt a particular amendment because the new rules do not impact the plan operations. Other amendments must be adopted by all plans.

In some cases, a document provider may adopt an amendment on behalf of all the provider’s plans. As a result, individual employers do not need to adopt that amendment. The provider should send a copy of the amendment to the employer.

The employer should keep all amendments in plan records. It is vital to be able to show the IRS that all required amendments were timely adopted if the IRS audits the plan.

**When do I need to amend or restate my plan?**

Unfortunately, there is no easy answer to this and it likely will depend on the type of amendment you have chosen to complete. While the IRS has provided general deadlines for adopting (*i.e.*, signing) amendments, there are numerous exceptions to these rules that you need to be aware of. **The current deadline to restate pre-approved defined contribution plans is July 31, 2022.**

The general IRS rule for voluntary amendments (*i.e.*, a change to a plan that is not required to be changed under the law), is that the amendment must be signed by the end of the plan year in which the provision is effective. For example, if you have a calendar year 401(k) plan and want to change the matching contribution formula as of January 1, 2020, then the plan can operate with the new formula as of January 1, 2020 as long you amend the plan to reflect the change by December 31, 2020.

The deadline to adopt an amendment reflecting a change in the law is generally later than the deadline to adopt a voluntary amendment. The prior section outlines some of the deadlines. Plans can operate under the new rules even before adopting the amendment.

**What is a main reason for the 6-year plan document restatement cycle?**

The number of plan amendments (*i.e.*, separate tack-on amendments) can become unwieldy due to the frequency of changes to the laws. As the number of amendments increases, it becomes more difficult to read and understand the terms of the plan. In addition, some changes in the laws may require a review of the overall design of your plan to ensure it meets your needs. These, as well as other factors, may require that your plan be restated in its entirety.

**Should my restated plan be filed with the IRS for a determination letter?**

You are permitted (*i.e.*, you are not required) to submit your plan document to the IRS for review if you have made certain modifications to the pre-approved plan language. The IRS restricts some of the provisions which can be in a pre-approved document. If you need to change the document to reflect the plan’s operations and design, you can ask the IRS to review the changes. The IRS will send you a "determination letter" once it has finished with a favorable review of your plan.

The “determination letter” can be viewed as a type of insurance policy. If you follow the approved terms of the plan that you submitted for review, then the IRS will not disqualify your plan. This is true even if the IRS made a mistake in approving a particular plan provision or process. In other words, you are permitted to rely on the "determination letter" with respect to the operation of your plan.

The IRS has already reviewed the terms of "pre-approved" plans. Thus, employers using "pre-approved" plans automatically have assurance that the terms of their plans satisfy the IRS requirements (assuming no changes are made to the approved terms of the plan). Most pre-approved plans fall in this category. If you have not modified the approved language, you need not, and cannot, submit your plans to the IRS for review because the IRS has already approved it.

The IRS generally charges a fee to review a "determination letter" application. This fee is between $800 and $3,000. However, this fee is waived for certain employers that establish new plans.

**What happens if I fail to amend or restate my plan on time?**

If you fail to meet the deadline for amending or restating your qualified retirement plan, the IRS can disqualify the plan and take away all its tax benefits. This means contributions might not be deductible or employees might have an inclusion in income. Therefore, restating your plan on time must be a high priority.

If you miss the deadline for amending or restating your plan, then you can avoid plan disqualification by using an IRS correction program. There can be sanctions when utilizing this approach depending on the circumstances. However, sanctions can be significantly higher if the IRS discovers the missed deadline rather than if you self-correct if possible immediately when you discover the missed deadline.

**Should I consider any change in my plan design when I amend or restate my plan?**

You should regularly consider whether your qualified plan meets your goals, as well of the goals of your employees. The restatement process is a logical time to review plan operations and goals and decide on needed changes.

**Do I have to give all participants a new Summary Plan Description (SPD)?**

Yes. The Department of Labor (DOL) requires that employees be informed about any material changes that are made to your plan. In many cases, this means that you provide employees with updates to the SPD as changes are made to the plan. In addition, the DOL also requires that you re-write (*i.e.*, restate) the SPD periodically. It is generally more efficient to satisfy this requirement by rewriting your SPD at the same time you restate your plan.

**Conclusion**

A qualified retirement plan is one of the best ways to provide adequate retirement income security for you and your employees. We realize, however, that amending and restating your plan can be burdensome and confusing. We hope this explanation helps you understand when and why plans must be amended or restated. Please contact us if you have any questions about your plan or the information contained in this document.