



# What Do I Need To Know About **Restating My Qualified Retirement Plan?**

Commonly Asked Questions About **The  
Upcoming Restatement**



Financial Services

# A GUIDE FOR EMPLOYERS

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## Introduction

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The law requires that qualified retirement plans be written and communicated to employees. The written plan sets forth the eligibility requirements for participation, the benefits, and when those benefits may be distributed. The plan must also contain provisions required by the Internal Revenue Service (IRS) and the Department of Labor (DOL). These include provisions needed to satisfy applicable laws such as the Internal Revenue Code.

**One consequence of the written plan requirement is that you must amend your plan if you wish to change any of its provisions.** You must also amend your plan to reflect changes in the laws affecting your plan. In some cases, these changes may be handled with written amendments to the plan. In other cases, however, the plan must be rewritten in its entirety (this is referred to as a restatement).

**We are providing you with this pamphlet because your retirement plan will need to be restated and it's important that you understand why.** We have prepared this explanation in question and answer format and have attempted to avoid technical jargon. Please contact us if you have any questions.

## **Why do the laws affecting retirement plans continually change?**

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Americans are becoming more concerned about their retirement. Polls have indicated that retirement income security is second only to healthcare as the leading concern among Americans, particularly those who are at or near retirement age. Congress recognizes that, for many individuals, the most effective means of achieving adequate retirement savings is through a retirement plan where they work. Tax incentives for employers to sponsor retirement plans are the primary way that Congress has promoted retirement savings. But the tax laws require that plan provisions be fair and not favor the higher paid employees over the rank-and-file employees. In addition, federal labor laws ensure that retirement plan assets are protected from fraud and abuse.

We therefore have extensive laws with multiple regulatory agencies responsible for interpreting and administering these laws. In addition, there are differing views in Congress regarding the use of tax incentives to encourage the establishment of retirement plans. At one extreme is the philosophy that employees should be responsible for saving on their own and there should be no tax incentives. The other end of the political spectrum is the belief that employers should be forced to provide retirement plans for their employees. The laws never reach either of these extreme positions, but there are fluctuations based on the political environment. Other factors result in Congressional action, such as changes in the age of our population, corporate scandals, the

federal deficit, and even technology. Frequent changes to the laws are inevitable.

## **Why do I need to keep amending my plan?**

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As stated earlier, the law *requires* that a qualified retirement plan be in writing. This means that the terms of the plan must reflect the way the plan is being operated. As the laws change, your plan must be amended to reflect these changes. An immediate amendment, however, is not required. Congress or the IRS usually provides a period of time after the enactment of new law for plan sponsors to amend their plans to reflect the changes. There is a temporary period of time when the written terms of your plan might not reflect the way your plan is being operated.

In the past, the IRS permitted long delays between the time of a change in the law and the time a plan needed to be updated. The IRS decided that shortening these delays will help facilitate compliance with the law. In most cases, amendments must be adopted on a “good-faith” interim basis. The IRS has a schedule where after a set number of years, all of these “good-faith” amendments are folded into the plan (*i.e.*, the plan is entirely re-written). The IRS will then provide a review of the plan to ensure that it meets all of the legal requirements for the laws that have affected the plan since the last time it was re-written.

## When do I need to amend my plan?

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There is no single answer to this question. The IRS has provided general deadlines for when amendments must be signed. There are numerous exceptions to these rules and this pamphlet will not focus on all these exceptions.

The general rules are dependent upon the reason the plan is being amended. There are two reasons for amending plans. The first is for the reasons stated earlier – amendments due to changes in the law. The second reason for amending your plan is to change the plan design. These are referred to as discretionary amendments because they are being made at your discretion, not because of a change in the law.

You must adopt discretionary amendments no later than the end of the plan year in which the provision is effective. For example, if you have a calendar year plan and want to add a provision permitting hardship distributions effective as of June 1, 2015, then the plan can begin making hardship distributions on that date and a plan amendment would need to be signed by December 31, 2015 (the last day of the plan year). Participants would still need to be notified, on or before June 1, 2015, of the change in order to ensure the new hardship distribution option is effectively available to them.

The exceptions to the general rule typically require that amendments be adopted sooner than when they must be adopted under the general rule. For example, many employers have what are referred to as "safe harbor" 401(k) plans.

Most amendments to these plans must be adopted before the operation of the plan can be changed, and the effective date of the amendments can only be effective as of the first day of a plan year. For instance, in the prior example, the addition of hardship distributions could not be made on June 1, 2015 because that is not the first day of the plan year. Instead, the amendment could only be made effective as of January 1st of a year, and the amendment must be signed and communicated to participants *before* that date.

The deadline to adopt an amendment reflecting a change in the law is generally later than the deadline to adopt a discretionary amendment. For most plans, the deadline to adopt a required amendment is the due date of the employer's tax return, including extensions, for the year of the effective date of the change. For example, assume you have a calendar year plan year and fiscal year. If there is change in the law effective as of January 1, 2015, then the plan would be required to operate in accordance with the law as of January 1, 2015, and an amendment would need to be adopted by the tax return due date for the 2015 tax year (*e.g.*, March 15, 2016 or later if the tax return is extended).

As with discretionary amendments, there are exceptions. Congress and the IRS can, and often do, extend the deadlines to adopt amendments due to changes in the law.

## **Why do I need to restate my plan?**

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The IRS *requires* that your plan be restated periodically. In addition, there may be times you

decide a restatement is needed due to certain changes you have elected to make to the plan design. The number of plan amendments made since the last restatement can become unwieldy or complex. This makes the plan more difficult to read and understand. 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 even in situations where the IRS does not require it.

## **When do I need to restate my plan?**

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The IRS, in order to even out its workload, established a schedule for restating plans. Plans must be restated under a “staggered” (cycle) approach. Most employers will need to restate their plans every 6 years; however some plans will need to be restated every 5 years.

Most employers use “pre-approved” plans and are therefore subject to the 6-year restatement cycle. A “pre-approved” plan is a document that is used by many employers and is reviewed by the IRS for legal sufficiency prior to the time it is adopted by any of those employers. These plans are generally referred to as prototype plans or volume submitter plans.

If an Employer’s plan is not “pre-approved” it is considered “individually designed.” In this case the IRS has not reviewed the terms of the plan prior to the adoption by an employer. Employers using "individually designed" plans must restate their plan every 5 years.



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

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As stated previously, the 6-year restatement cycle applies to pre-approved plans and is likely the cycle that will apply to your plan. Under the 6-year restatement cycle, plans will need to be restated once every 6 years. There are different 6-year restatement cycles for defined contribution plans (*e.g.*, 401(k) plans) and for defined benefit plans.

Under the 6-year cycle, the underlying master plan language is submitted to the IRS in year 1. The IRS then takes 2 years to review and pre-approve all the master plans that were submitted. Once the plans have been pre-approved, the IRS will then provide a period, generally 2 years, for employers to restate their plans using the latest version of the pre-approved plan.

The last 6-year restatement cycle for defined contribution plans ended on April 30, 2010. Plans will need to be restated again no later than the next restatement deadline, which should be around April 30, 2016. Employers would then need to restate their plans again in another six years, and so on. A similar cycle exists for defined benefit plans (the last restatement period ended on April 30, 2012). While the exact dates will vary, you can expect to restate your plan at least once every 5 or 6 years.

## **What is the 5-year restatement cycle?**

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“Individually designed” plans are subject to the 5-year restatement cycle. These are plans that may not fit on a “pre-approved” plan, such as

Employee Stock Ownership Plans (ESOPs), cash-balance defined benefit plans, and more complex plans generally sponsored by unions or large corporations.

Under the 5-year restatement cycle, a plan must be restated every 5 years. Unlike the 6-year restatement cycle, the 5-year restatement cycle is *not* based on the type of plan (*i.e.*, defined contribution vs. defined benefit). Rather, the cycle that applies to the plan is generally based on the last digit of the employer's federal taxpayer identification number (EIN). For example, employers who have an EIN ending in 1 or 6 were last required to restate their individually designed plans by January 31, 2012 (and will be required to restate them again by January 31, 2017). Employers with an EIN ending in 2 or 7 were required to restate their plans by January 31, 2013 (and will be required to restate them again by January 31, 2018). The above are general rules and there are numerous exceptions.

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

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The IRS requires that your plan terms be written and conform to both the law and the operation of the plan. The IRS applies this very strictly and therefore provides a service whereby it will review the plan terms to ensure they satisfy applicable law (an examination of whether the plan is administered according to its written terms only occurs in an audit). IRS review of a plan is not required but is preferable due to the IRS's zero tolerance on mistakes. IRS review and

approval of a plan can be viewed as a type of insurance. If, in operation, you follow the approved terms of the plan, then the IRS will not disqualify your plan if a mistake is found in the terms of the plan on an audit.

The IRS has reviewed and approved the language of “pre-approved” plans prior to adoption by any employer. With these plans the IRS reviews all of the optional and required provisions that are included in the plan. This means employers using “pre-approved” plans automatically have assurance that the language used in their plan satisfies the law.

Individually designed plans are not "pre-approved" by the IRS and can be submitted to the IRS on an employer-by-employer basis (in accordance with the 5-year cycle explained earlier). The IRS charges a fee to review the plans, but this fee is waived for certain small employers that establish new plans.

## **What happens if I fail to amend or restate my plan on a timely basis?**

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The IRS can disqualify your plan if you fail to meet the deadline for amending or restating your plan. All of the tax benefits are lost – contributions might not be deductible and employees cannot defer taxes on contributions and earnings. This is why amending or restating your plan on a timely basis is critical.

The IRS does not have the resources to audit every plan. In order to encourage voluntary compliance when errors are found, the IRS established a correction program that reduces the

drastic consequences of plan disqualification. If you miss the deadline for amending or restating your plan, then the error can be corrected by using this voluntary correction program. The sanction for using this program is significantly less than the sanction you pay if the IRS first discovers the error upon audit.

### **Should I consider any changes to my plan design when I amend or restate my plan?**

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Your plan is for the benefit of you and your employees. A periodic review of your plan to ensure it meets these needs is always warranted. Sometimes it makes sense to conduct this review when the plan is being restated. It is important to notify us if your goals or business have undergone changes so that we can work with you to ensure your plan meets your ongoing needs.

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

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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 restate the SPD periodically. It is generally more efficient to satisfy this requirement by rewriting your SPD at the same time your plan is restated.

## **Conclusion**

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A qualified retirement plan is one of the best ways to provide adequate retirement income security for you and your employees. We realize that amending and restating your plan can be burdensome and confusing. We hope this pamphlet 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 in this pamphlet.

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