

Use The Necessary Evil of Restatement as an Opportunity!

All qualified retirement plans are required to restate their plan documents. If the plan is a 401(k) using a prototype or volume submitter document, the Internal Revenue Service (“IRS”) requires the plan document be restated every six years to bring it up to date for law and regulatory changes. It may seem like yesterday that you were contacted by your service provider to restate your document for the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”) Restatement. The deadline for that version was April 30, 2010. It’s time again for another restatement.

Since the IRS approved the EGTRRA restatements in 2007, several pieces of legislation and regulations issued by the IRS have required amendments to pre-approved plan documents. These amendments, referred to as “interim amendments,” were previously required to be adopted at various deadlines and addressed the following legislation and regulations:

- Final 415 Treasury regulations, the Katrina Emergency Tax Relief Act of 2005;
- The Gulf Opportunity Zone Act of 2005;
- The Pension Protection Act of 2006 (“PPA”);
- The Heroes Earnings, Assistance and Tax Relief Act of 2008 (“HEART”); and
- The Workers, Retiree, and Employer Recovery Act of 2008 (“WRERA”).

When these interim amendments were adopted, the text was typically included as pages at the end of the basic plan document or as an amendment to the end of a plan document, with references to either the adoption agreement or the body of the full plan document. Neither format is easy to decipher. A restatement pulls the information from the amendments into the body of the plan document and Summary Plan Description so they are easier to understand.

Six years have passed since the EGTRRA restatement window opened, and now the IRS, in Internal Revenue



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Service Announcement 2014-16, has stated the opening of the “PPA” Restatement window for defined contribution, including 401(k), prototype and volume submitter plan documents. PPA refers to the Pension Protection Act of 2006. The PPA restated document must be adopted by April 30, 2016. Failure to complete the restatement by the April 30, 2016 deadline will jeopardize a plan’s tax qualified status. Hence, the necessary evil: If the document is not restated, everyone involved could face harsh consequences.

Plan Sponsors can use this necessary restatement as an opportunity to review the existing plan document and compare it to the plan’s operation. There are many opportunities for operational improvement to make the plan run more efficiently for the employer. In addition, the restatement can be used to update a retirement plan for today’s industry best practices to benefit participants. Following are a number of best practices to consider.

- Immediate eligibility for employee deferral contributions with a one year wait to receive employer matching contributions.
- Eligible Automatic Contribution Arrangements (EACA) with automatic enrollment at an employee deferral contribution rate of 6% and an automatic employee deferral escalation of 1% each year up to the maximum 10% deferral rate.

- Use a Qualified Automatic Contribution Arrangement (QACA) Match to get participants to the maximum match. This designed “do-it-for-them” program can include automatic deferrals with rates that maximize the employer match available. The program should provide a combined contribution rate closest to the recommended 15% or 20% annual savings rate that a participant should contribute to a primary retirement plan in order to get them to a comfortable retirement.
- Review of Qualified Default Investment Arrangements (QDIA) to determine adequacy in terms of meeting the requirements. The ACA and QDIA together, allow employers to harness the power of participants’ inertia to work for them instead of against them and help protect the employer from future lawsuits.
- If not using the QACA Match, utilize a stretched matching contribution to encourage higher employee deferrals (e.g., 25% of 12% rather than 100% of 3%; they both have an effective rate of 3%). Testing will be required, however. When encouraged not to leave “free money” on the table, participants will be enticed to defer a greater percentage of their salary into the 401(k) plan.
- A Roth 401(k) deferral option.
- No plan loan option or restriction on plan loans to hardship criteria to stop retirement savings “leakage.”
- A reasonable number of investment options (e.g. 12 to 15 excluding target date).
- A professionally managed investment option.
- Elect a QDIA (usually target date funds) and re-enroll all employees periodically. This practice will increase participation while ensuring that participants are invested appropriately for their age.
- Consider a cross-tested plan design If the goal is to provide an employer profit sharing contribution targeted to maximize the contribution to key individuals or managers while minimizing the contributions to the rank and file.

Don't let this opportunity to create a more meaningful and competitive benefit for the employees slip by. For assistance in reviewing your PPA restatement or discussing plan design features, please feel free to contact us at Beltz Ianni & Associates, LLC.