

Benefits in Focus

PLAN SPONSOR NEWSLETTER

IRS Pre-Approved Plan Document Restatement Requirement

The Internal Revenue Service ("IRS") has established a system under which plan sponsors must restate their defined contribution plans on a regular basis. Under this system, plans using an IRS Pre-Approved Plan Document are generally required to be restated in their entirety every six years to bring them up to date with applicable changes in the law. The next Pre-Approved Plan Document restatement cycle was recently announced by the IRS. The new cycle is being referred to as the Cycle 3 Restatement ("Cycle 3") as it is the third in a series of required restatements cycles.

These Frequently Asked Questions ("FAQs") are being provided to help answer some of the commonly asked questions regarding the restatement process.

What is the IRS plan document restatement period for Cycle 3?

The IRS opened a two-year window from August 1, 2020 to July 31, 2022 for the completion of the defined contribution Pre-Approved Plan Document restatements. This requirement applies to 401(k), Profit Sharing, Money Purchase Plans, and ESOPs. Plan sponsors must adopt the restated Pre-Approved Plan Document within this time period, and no later July 31, 2022.

Are there any other plan document compliance deadlines that must be met other than the plan document restatement?

Yes. You are required to amend your plan for the Bipartisan Budget Act of 2018 which changed the hardship provisions, and an interim amendment for these provisions is due by December 31, 2021. Additionally, interim amendments for the SECURE Act and the CARES Act will be due by December 31, 2022. In most cases these interim amendments can be included with your restated plan documents; therefore, you may want to keep these other compliance deadlines in mind as you determine what is the best timing for completing and adopting your plan restatement.

As a plan sponsor, am I required to restate my Plan?

Yes, this is an important compliance requirement and defined contribution plans established on a Pre-Approved Plan Document are generally required to go through the restatement process. Failure to adopt an updated written plan document that complies with all applicable regulations could cause substantial consequences, including negative tax implications and substantial penalties.

Do I need to file an IRS Form 5300 or 5307 to request a Determination Letter from the IRS?

No. The IRS has indicated that Plan Sponsors who adopt a Pre-Approved Plan Document with no modifications should rely on the IRS issued Opinion Letter, and therefore they are not accepting requests for Determination Letters submitted on behalf of adopters of a Pre-Approved Plan Document. However, if it becomes necessary to make significant modifications to the Pre-Approved Plan Document in order to conform with the terms of your specific Plan, a separate application for determination letter may be recommended.

Can I use Plan assets to pay for the restatement?

Generally, fees related solely to Cycle 3 compliance restatements can be paid from plan assets. Depending upon the terms of your Plan and the Plan's administrative procedures, you may be able to use Plan forfeiture assets or Expense Budget Account, to pay the restatement fee. Plan Sponsors should consult with their legal counsel and tax advisors prior to making any determination as to whether a particular expense can be appropriately charged to the Plan.

When does the Summary Plan Description need to be provided to the participants?

As part of the restatement process, a new Summary Plan Description will be made available for your review and distribution to your participants. The Summary Plan Description (SPD) Document should be distributed to your participants no later than 210 days after close of the Plan Year in which the restatement is adopted.

What are the next steps in meeting this plan document compliance requirement?

In the near future, you should expect to hear from your plan document preparer regarding the specific process and timing for restating your Pre-Approved Plan Document during the Cycle 3 window period. In the meantime, your USI Consulting Group representative is available to assist you with this process and answer any questions you may have.

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