



Restatement Cycle for 401(k) and Other Defined Contribution Plans

What you need to know



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What is a plan restatement?

- A complete re-writing of a plan document, incorporating changes from any mandatory or discretionary amendments adopted since the last restatement period.
- The plan restatement is mandatory.
- Failure to adopt a restated plan document by July 31, 2022 may subject a plan to IRS-imposed penalties, including potential disqualification of the plan.



What type of plans must be restated?

- All qualified retirement plans that use an IRS-pre-approved plan document.
- Restatement requirement applies approximately every six years.
- Defined contribution plans (such as 401(k) plans), defined benefit plans, and 403(b) plans each have a different six-year restatement cycle.
- This upcoming mandatory restatement period for defined contribution plans is referred to as “Cycle 3” because it is the third required restatement that follows this 6-year cycle.



What is an IRS pre-approved plan?

- IRS reviews all options available within the plan.
- Upon approval, IRS issues the document provider an opinion letter as evidence of the pre-approved status.
- All employers who adopt a pre-approved plan document covered by such a letter are entitled to rely on that approval.
- IRS issued new approval letters for all pre-approved plan documents on June 30, 2020.
- Document providers released documents thereafter to be used for the restatement period; which opened August 1, 2020.



Why do we have to restate our plan?

- Plan documents are drafted based on laws and regulations set forth by Congress, the Treasury Department (IRS), and the Department of Labor.
- As those entities change laws and regulations relating to retirement plans, documents must be updated to reflect those changes.
- The previous document restatement deadline was April 30, 2016, using a document approved by the IRS in 2014 and only considering legislative/regulatory updates through 2010.



Why do we have to restate our plan?

- Since the last restatement, there have been a number of regulatory and legislative changes impacting retirement plans, including the following:
 - Expansion of the definition of “spouse” to include those of the same gender;
 - Availability of plan forfeitures to offset safe harbor contributions;
 - Ability to amend safe harbor 401(k) plans mid-year; and
 - Ability to make in-plan Roth transfers.



Don't we already have amendments addressing these changes?

- Yes. The IRS recognizes that if plans had to be restated every time a regulation changed, we would be continuously re-writing plan documents.
- For mid-cycle changes, plan sponsors may adopt “good-faith” or “snap-on” amendments addressing new laws instead of going through a full restatement.
- Such amendments are not reviewed or approved by the IRS.
- At the end of a given cycle, the plan document is re-written to incorporate the full text of the good-faith amendments for IRS approval.



We recently restated our plan. Do we need a new plan document already?

- Regardless of how recently you may have restated your plan, if you used a pre-approved document, it could not have satisfied the new requirements prior to the IRS issuing a new approval letter.
- As a result, plan sponsors must restate.
- There is a 2-year window for completing the restatement, and plan sponsors have flexibility within that window as to when a plan is restated.



Our plan is brand new, we just set it up. Do we need a new plan document already?

- Newly adopted plans could not have satisfied the Cycle 3 restatement requirement prior to the IRS issuing a new approval letter.
- As a result, even plans that were only recently established must restate.
- Again, the 2-year window offers timing flexibility.



Does this restatement mean we won't have any more good-faith amendments?

- Unfortunately, no. IRS approval letters for Cycle 3 plan documents only consider legislative and regulatory changes enacted prior to February 1, 2017.
- Any subsequent changes, such as the following, must be addressed in separate, good-faith amendments rather than in the plan documents:
 - Hardship distributions regulations (effective January 2019),
 - SECURE Act (passed in December 2019), and
 - CARES Act (passed in March 2020)
- Many plans have already been amended for the hardship distribution regulations, but most document providers have not released amendments for SECURE or CARES Act.



What is the restatement deadline?

- Each restatement cycle lasts 24 months.
- The IRS announced that the Cycle 3 restatement window begins on August 1, 2020 and has a final deadline of July 31, 2022.

