

Employee Benefit Plans Alert

Defined Contribution Plan Restatements Must Be Completed by July 31, 2022

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The Internal Revenue Service (IRS) announced that employers who sponsor defined contribution retirement plans through the adoption of an IRS pre-approved plan document will have until July 31, 2022 to adopt a new pre-approved plan document. Defined contribution plans include 401(k), profit-sharing and money purchase plans. Sponsors of 403(b) plans were required to adopt restatements for those type of plans by June 30, 2020.

The restated plan documents will incorporate regulatory changes enacted prior to February 1, 2017. The list of changes and other relevant information regarding the restatement process for pre-approved plans is contained in IRS Notice 2017-37. These changes are known collectively as the 2017 Cumulative List.

Background

Every six years, the IRS requires vendors of pre-approved plan documents to update their documents through a process known as a restatement. The restatements are done to bring retirement plans up-to-date with federal laws and regulations governing the plans. The IRS issues opinion letters on behalf of vendors who submit their prototype plan documents to the IRS for approval. The opinion letters provide reliance and comfort to employers who adopt these pre-approved documents that their retirement plan documents are in compliance with current laws and regulations.

What's New

Notice 2017-37 contains all the changes in the qualification requirement. Below is a partial listing of the updates:

- certain mid-year changes to safe harbor 401(k) plans and safe harbor notices, such as mid-year reductions or suspensions of safe harbor matching contributions;
- changes to the definition of a participant's "spouse" to include same-sex spouses and certain discretionary plan amendments providing new rights or benefits with respect to participants with same-sex spouses in order to make up for benefits or benefits options that had not previously been available to those participants (United States vs. Windsor decision 2013);
- extended participant eligibility for in-plan Roth rollovers and rollovers to Savings Incentive Match Plan for Employees Individual Retirement Accounts (SIMPLE IRAs);
- [requirement that amounts used to fund](#) qualified matching contributions (QMACs) and qualified non-elective contributions (QNECs) be non-forfeitable and meet "distribution requirements at the time they are allocated to [plan] participants' accounts," rather than when they are first contributed to the plan;
- relief is provided from the anti-cutback rules for an amendment to an employee stock ownership plan (ESOP) that becomes subject to the diversification requirements of Section 401(a)(35); this eliminates all in-service distribution options previously used to satisfy the ESOP plan diversification requirements;

- a special nondiscrimination rule for a qualified defined contribution plan that “provide lifetime income by offering, as investment options, a series of target date funds ... that include deferred annuities among their assets;” and
- required minimum distribution rules were modified for defined contribution plans with [qualifying longevity annuity contracts](#) (QLAC).

The following additional amendments will need to be incorporated into the restated documents for legislative and regulatory changes made after February 1, 2017:

- CARES Act Amendment (by the last day of the 2022 plan year);
- SECURE Act Amendment (by the last day of the 2022 plan year);
- Hardship Distribution Amendment (by December 31, 2021); and
- Disability Claims Procedure Amendment (by December 31, 2018).

Steps to Consider

Vendors of plan document restatements have begun to send out and notify plan sponsors about document restatements and signature requirements for adopting the restated documents. Plan sponsors should carefully review their current plan document and consider the changes made to the restated document as well as take this time to make any changes they are considering (e.g., adding an auto-enrollment feature, reducing the number of loans available from the plan, etc.).

For any changes and features added by the restatement, ensure a corresponding administrative process (or internal control) is considered.

If any changes are needed, communicate those changes as soon as possible to the document preparer, and be respectful of processing deadlines.

Ensure the “new” summary plan description (SPD) reflects the restated plan document provisions.

Contact Us

The Employee Benefit Services Group at PKF O’Connor Davies assist many clients with a review of their restated 403(b) plan documents, and have experience with the restatement process for qualified defined contribution plans. We are available to provide review services for sponsors of defined contribution plans as they navigate the restatement process. For more information, please email Timothy J. Desmond at tjdesmond@pkfod.com or Louis F. LiBrandi at lbrandi@pkfod.com.

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