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Is it Time to Restate Your Defined Contribution Plan?

By Sheila Ninneman

Whether your defined contribution plan is a 401(k) plan, a profit-sharing plan, a money purchase pension plan or an employee stock ownership plan, and whether your plan is a mostly “run of the mill” individually designed plan or a plan already in a pre-approved format, you should consider the advantages of restating it in an IRS pre-approved plan format now.

In IRS Announcement 2020-7, the IRS confirmed that the next restatement cycle for defined contribution plans, using a pre-approved format, is a 24-month period that began August 1, 2020. This restatement cycle is generally referred to as the “Cycle 3”. The deadline for this Cycle 3 pre-approved plan restatement is July 31, 2022.

Here are some reasons to consider restating your defined contribution plans using the IRS pre-approved Cycle 3 plan document formats:

Simplicity in Form

Because pre-approved plans are submitted for IRS approval prior to their adoption by a particular employer, they are set in form to a certain extent. Nevertheless, they still allow for provisions unique to each employer’s plan. A pre-approved plan provider will electronically input the unique provisions of your plan, and software systems generate the documents required for the plan. In this case, the format is an Adoption Agreement that is paired with a Base Plan Document (a common format for 401(k) plans). The software generally also creates a summary plan description (SPD) and resolutions for the restated plan’s approval and adoption. As a reminder, SPDs must be amended and distributed every five years if the plan has been amended since the most recently issued SPD, and every ten years even if there have been no amendments.

IRS Approval

Under the revised determination letter program, a plan sponsor of an individually designed defined contribution plan can no longer get IRS assurances on the qualified

status of the plan document between its inception and termination, except under very limited circumstances. However, a pre-approved plan provider gets an IRS opinion letter on the Cycle 3 pre-approved plan, and the adopting employer can generally rely on this letter. Moreover, the plan provider will get a new letter on the pre-approved plan every six years, the pre-approved plan restatement cycle, to reflect changes in the plan and changes in applicable statutes, regulations, and other guidance. If your plan is headed for termination, restatement on the IRS pre-approved plan format should reduce the time the IRS takes to review the document during the plan termination process.

Streamlined Services

If the plan provider you choose also administers your defined contribution plan, the pre-approved Cycle 3 plan document will be very familiar to it. The plan provider will be able to point a plan administrator to applicable plan provisions for their consideration more quickly and more cost-effectively when the plan sponsor is looking for answers to its questions about plan administration.

Restatements

Every six years or so the IRS will require restatement of the pre-approved defined contribution plan document and will issue a new opinion letter upon which an adopting employer can rely. This cycle’s amendment and restatement is referred to as the Cycle 3 restatement. The subsequent restatements on the revised pre-approved documents will be more cost-effective than drafting amendments to each individually designed plan for each required change since the provider will be inputting virtually the same information to generate the new restated documents.

Required Interim Amendments

If the IRS requires amendments to the pre-approved Cycle 3 defined contribution plan documents that don’t require employer elections, they will be adopted by your plan provider for all adopting employers, and the adopting employer will be given a copy. Otherwise, the

provider will issue a pre-approved amendment, with elections, that the adopting employer will complete and execute.

For sponsors of individually designed plans, including employee stock ownership plans, now is the time to consider restatement in a pre-approved format. Not every defined contribution plan is going to fit into an IRS pre-approved Cycle 3 plan document format. The provider of your choice will need to look at your current plan documents to determine if this kind of restatement is possible. With the number of plans that will need to be restated between now and July 31, 2022, the time to consult with your trusted advisors is now.

If you have any questions, please contact the Findley consultant you regularly work with or Sheila Ninneman at Sheila.Ninneman@findley.com, or [216.875.1927](tel:216.875.1927).