

Pension Protection Act (PPA) Restatement: FAQs

We have prepared this list of frequently asked questions to help you better understand the restatement requirement and how the process will work. If you have any questions that are not addressed here, please e-mail us at info@PASIUSA.com.

What is a plan restatement?

A restatement is a re-writing of the plan document. It incorporates all changes from any plan amendments that may have been adopted since the last time the document was re-written.

Is the current plan restatement mandatory or voluntary?

While some plan sponsors choose to restate their plans for various reasons, the current plan restatement is **mandatory**. The deadline to complete the restatement is April 30, 2016. Failure to meet the deadline will jeopardize a plan's tax-qualified status.

Which types of plans must be restated?

All qualified retirement plans must be restated from time to time; however, depending on plan type and document type determines the particular cycle. For example, there are different restatement cycles for defined contribution plans and defined benefit plans. There are also different cycles for individually designed (attorney-drafted) plan documents and pre-approved (volume submitter and prototype plans) plan documents.

What is a pre-approved plan?

A pre-approved plan is one the Internal Revenue Service (IRS) has reviewed and approved all of the options that are offered. They will issue an advisory or opinion letter as evidence of the pre-approved status. All employers who adopt a pre-approved plan covered by such a letter are entitled to rely on the approval letter issued at the "global" level and need not apply for their own, individual determination letter. The IRS sends out the new approval letters for all pre-approved plan documents at the same time. The PPA approval letters were all issued on March 31, 2014.

Why do we have to restate our plan?

Plan documents are drafted based on laws and regulations set forth by Congress, the IRS and the Department of Labor. As those laws and regulations change, documents must be updated to reflect those changes. The deadline for the last mandatory restatement was April 30, 2010, but it was based on documents approved by the IRS in early 2006. Since then, there have been a number of regulatory and legislative changes impacting retirement plans, including the following:

- Regulations dealing with post-severance compensation (Section 415 regulations)
- Pension Protection Act of 2006 ("PPA")
- Heroes' Earnings Assistance and Relief Tax Act of 2008 ("HEART")
- Worker, Retiree and Employer Recovery Act of 2008 ("WRERA")

Don't we already have amendments addressing these changes?

Yes, you do. The IRS has acknowledged that if plans had to be restated every time a regulation changes, plan documents would be continuously being re-written. Thus, they created cycles during which plans simply adopt so-called “good-faith” or “snap-on” amendments which address the new laws instead of going through a full restatement. Those amendments, however, are simply summaries of the language that is otherwise required. Thus, at the end of a given cycle, the plan document must be re-written to incorporate the full text of the language that the good-faith amendments summarized.

We just restated our plan. Do we really have to do it again?

Yes. Since the IRS has not issued any new approval letters, if you used a pre-approved document, it could not satisfy the new requirements regardless of how recently you restated your plan. Consequently, you must restate again.

The good news is that there is a 2-year window for completing the PPA restatement, and you have flexibility within that window as to when your plan is restated. Be aware that two years can pass quickly and, even more important, certain plan provisions may impose other timing restrictions necessitating earlier restatement.

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

Again-Yes. As noted above with respect to plans that recently restated, since the IRS had not yet issued the approval letters, newly created plans could not have satisfied the PPA restatement requirement. As a result, even plans that were very recently established must restate. Again, the 2-year window offers timing flexibility.

We are considering terminating our plan. If we terminate before April 2016, do we still have to restate?

Good question-the answer is a definite maybe. If you are intending to seek the IRS' blessing for your plan termination, a full restatement will be required as part of that process. If you forego the determination letter, and you have timely adopted all previously required interim amendments (described above), then the PPA restatement is not strictly mandatory as long as termination occurs prior to April 30, 2016. However, in that event, the IRS pre-approval letter for the plan document will not cover those interim amendments. That means, theoretically, there is nothing to prevent the IRS from challenging the validity of those amendments on audit (yes, the IRS can audit terminated plans). As a result, we suggest that you strongly consider restating your plan as part of the termination process.

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

For the time being, that is generally correct. However, plans that choose to include the recently enacted in-plan Roth conversion option will need a separate amendment since that law was passed after the IRS started reviewing the new documents. In addition, currently Congress is considering several pieces of new legislation that include retirement plan provisions. If enacted, good-faith amendments will most likely be required at that time.

What is the restatement deadline?

All pre-approved defined contribution plans must be restated within 2 years of the date the IRS issues the approval letters. The PPA restatement window began on May 1, 2014. If all goes according to plan, the final deadline to complete the restatements will be April 30, 2016.

We have a safe harbor 401(k) plan, and we've been told we can only amend it at the beginning of a year. Does that impact when we restate our plan?

Yes. Although the IRS has said they are reviewing the limitation on amending safe harbor plans, they have not yet given any indication that the timing restriction will be relaxed for PPA restatements. For now, it would be most prudent to act on the assumption that safe harbor plans will need to make their restatements effective as of the January 1, 2015 or January 1, 2016 (assuming calendar year plans) to complete the process within the 2-year window. Of course, if you want to get the restatement out of the way, we can prepare it anytime and simply include a delayed effective date of the first of the next year.

Can the plan pay for the restatement?

Yes. The Department of Labor allows the fee to be paid out of plan assets since the current plan document restatement is required to maintain the plan's tax-qualified status,.