

NATIONAL BENEFIT SERVICES, INC.
BENEFIT BRIEFING

WHY A LAW PASSED IN 2001 IS SO IMPORTANT TO PLAN SPONSORS IN 2010

Introduction

In order to comply with federal rules governing qualified retirement plans, plan sponsors must ensure the plan is in writing which includes such requirements as eligibility, entry dates, participation, contributions and allocations, vesting and distributions.

Plan sponsors must also ensure that the plan is amended to reflect changes in its provisions as well as changes in the laws governing the plan.

In some cases, these changes may be handled with "snap-on" amendments. In other cases, however, the plan must be rewritten because of the number and complexity of the changes - referred to as a "restatement," or more simply, "re-do."

Why Now

In June 2001, a major piece of tax legislation was passed. The new law, The Economic Growth and Tax Reconciliation and Relief Act or EGTRRA, made significant changes to the Internal Revenue Code as it affected retirement plans.

Because it was 8 years ago, many people may have forgotten its impact on retirement plans.

These enhancements permit employees to save more in employer plans and IRAs, ease portability among various plans and provide significant administrative and fiduciary relief to employers who sponsor retirement plans.

EGTRRA also included measures like the Saver's Credit, which benefits low-income savers, and catch-up contributions that permit older workers to save more under the plans.

From 2001 when EGTRRA was passed, all retirement plans were required to comply with EGTRRA and adopt interim EGTRRA amendments. And now is the time that employers must amend and restate their written plan documents to conform to the way the plans have been operated by incorporating the changes made by EGTRRA.

What the IRS Requires

The IRS issued a Revenue Procedure that implemented a formal (and complicated) system under which all plan documents are required to be restated by specific dates, depending upon the type of plan document and the employer EIN.

Because pre-approved plans account for approximately 94% of all qualified retirement plans, this article will discuss the "redo" or restatement relating to such plans with particular emphasis on 401(k) and profit-sharing plans. These pre-approved defined contribution plans generally need to be redone by April 30, 2010. But from a practical standpoint, it could be sooner.

Why sooner? It's because another tax law, the Pension Protection Act or PPA passed in 2006 was not yet enacted when pre-approved EGTRRA documents were submitted to the IRS for review. The IRS did not include the changes made by the PPA in the EGTRRA restatement process.

Thus, each employer will be required to adopt a separate PPA amendment by the end of the plan year beginning in 2009. So for cost and efficiency purposes, it might be best to handle EGTRRA and the PPA at the same time.

What the Restatement Consists of

It usually consists of the following documents:

1. A restated Plan Document.
2. A Resolution adopting the restated Document.
3. A separate Trust Document (in some cases).
4. An Adoption Agreement (for prototype documents).
5. A restated Summary Plan Description that must be distributed to all participants and beneficiaries.

What Should You Keep in Mind

Here are some things to keep in mind as part of the restatement process:

- *Take special care to not eliminate or reduce "protected benefits."*

Protected benefits include lump-sums distributions and annuities, and the timing of distributions, such as an early retirement provision.

- *Consider submitting the plan to the IRS for a favorable "determination letter" that applies specifically to the employer's plan.*

Employers using pre-approved plans automatically have assurance that the plan language satisfies the IRS requirements assuming no changes are made to what was approved. However, based on an employer's individual circumstances, it may be desirable to apply for a determination letter covering periods prior to the effective date of the restatement.

- *The cost of restating a plan will vary, depending on the type of plan.*

This cost to restate the plan for IRS compliance may be paid from the plan's assets if the plan document permits.

- *Thoroughly review the plan to make sure that it still meets the needs of the employer and the employees.*

This could be an opportunity to make plan design changes as part of the restatement process.

What Happens If You Miss the Deadline

It can be a serious matter since the IRS can disqualify the plan if the April 30, 2010 deadline is missed. Disqualification can subsequently be avoided by using a special IRS correction program to submit a properly updated plan. However, this program will be more costly since a special filing must be made and a penalty fee must be paid.

Conclusion

It is the plan fiduciary's responsibility to ensure the plan is updated and signed by the April 30, 2010.

About National Benefit Services, Inc.

Founded in 1978, National Benefit Services, Inc. provides retirement plan consulting and administrative services for a wide range of privately held and publicly traded employers. For further information contact:

Jerry Kalish, President
National Benefit Services, Inc.
300 West Adams, Suite 326
Chicago, IL 60606
Phone: 312-419-9080
Email: jerry@nationalbenefit.com
Subscribe to our blog:
www.retirementplanblog.com

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