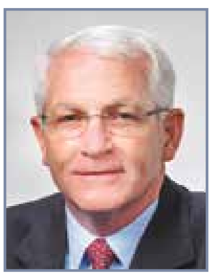
Supercharge Your Employee Retirement Plan

... and avoid IRS corrective actions.



By Joseph Topp, CPA

Qualified Retirement Plan Sponsors utilizing a pre-approved plan document have until July 31, 2022, to adopt their provider's restated Internal Revenue Service (IRS) pre-approved plan document. The Employee Retirement Income Security Act of 1974 (ERISA) mandates that fiduciaries follow the plan's documents or risk fines and harsh penalties, up to and including disqualification of the plan's tax-favored status. This restatement represents a golden opportunity to enhance current plan design and audit the daily administrative procedures to ensure they align with the document's requirements. Extra attention now can result in meaningful improvements to the plan as well as timely identification of potentially costly errors.

How to customize retirement plan design

Most plans use a pre-approved plan document, also referred to as a volume submitter document, which is provided by the company assisting in the recordkeeping or administration of the plan. This plan document has received a favorable opinion letter from the IRS.

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A pre-approved plan document implies all plans are basically the same. However, this is not true. Within the plan document is the adoption agreement. The adoption agreement provides the plan sponsor wide latitude in creating a customized plan to meet their goals and the uniqueness of their employees. Each plan sponsor chooses specific provisions and design elements to incorporate into the plan. Examples include matching formulas, definitions of compensation, vesting schedules and distribution rules. Through the plan design selections, sponsors

have considerable influence on participant behavior and success.

Sponsors have the ability to change these choices at any time, provided they execute new documents and provide adequate notice to plan participants. Recordkeepers typically charge for this, so it is common for plan sponsors to batch design changes in order to mitigate costs.

The IRS requires pre-approved plan documents be restated on a uniform six-year cycle, with the next cycle deadline set for July 31, 2022. This requirement to restate provides plan sponsors with a golden opportunity to review their plans now and incorporate the desired design elections into their restated documents.

Adopt progressive design features

Keeping your plan's design current with industry best practices can seem like a nonstop effort that adds cost with each plan amendment. Plan design, however, significantly influences participants' behaviors, their

savings outcomes and their feelings toward the quality of the benefit offerings. The most successful plans take a progressive approach. They adopt design features that enable prudent saving practices and provide maximum flexibility to participants when it is time to begin withdrawing assets from the plan.

As you review your plan design options, think beyond what you have always done. Carefully discern features that may be new or represent a change in the historical philosophy embraced by your organization. The evaluation will serve as a test of the consultative moxie of your plan advisor and recordkeeper.

Below is a list of progressive design enhancements that will soon become industry best practices:

- Auto-enrollment into Roth
- Auto-escalation cap of 15%
- Roth in-plan conversions
- Traditional after-tax contributions
- Money-source and fund-specific withdrawal flexibility
- In-service withdrawals
- Ad hoc or partial distributions

Once you settle on specific design provisions, it's critical to make sure you have the internal capabilities to administer your plan correctly.

Audit plan administration procedures

The flexibility and freedom to design a customized plan for your participants comes with the complex and dynamic task of proper plan administration. ERISA clearly states it is a top priority of plan fiduciaries to follow the plan documents. The U.S. Department of Labor and the IRS randomly audit retirement plans every year to verify compliance. Unfortunately, errors in plan administration happen with more frequency than you might think, resulting in a significant amount of time and dollars spent making corrections. In 2020, the Employee Benefits Security Administration recovered just over $3.1 billion due to plan errors and violations.

So how do you know if your plan administrative practices comply with the provisions of your plan document? You guessed it: Audit your procedures — perform an operational review.

Your plan documents contain specific rules that must be followed, but they do not provide actual direction or procedures you can follow to ensure compliance. Your internal procedures have been shaped over time and likely involved multiple people. Not surprisingly, variances in how these processes are executed develop, which could create an unintended violation of the provisions laid out in your documents. Examples include misinterpreting the definitions of eligible compensation, overlooking auto-escalation, tracking eligibility and misunderstanding distribution rules — to name a few.

Any of the errors cited could lead to unexpected costs and require a formal corrective action. Acting now mitigates the potential for this disruption and cost to your business.

While an audit sounds daunting, the steps are straightforward. They can be completed internally with support from your recordkeeping partner and plan

advisor. An operational review should incorporate the following steps:

- Review your plan document and identify each provision to evaluate.
- Document the form and detail of data required to fulfill each provision.
- Determine for each provision if the internal staff, recordkeeper or plan advisor has ownership of the task.
- Evaluate whether the procedures currently in place provide accurate data to meet the provisions outlined in your plan document (data sampling should occur).
- Succinctly document the operational procedures and owner for each provision.
- Identify errors made, materiality and remedies required.
- Implement necessary changes in procedures.
- Document this review process as evidence of prudence in your oversight activities.

Once a plan operational review is completed, it is not set aside. This outline provides a standing policy you and your partners will rely on to effectively and correctly administer your plan going forward. As new plan design features, changes in law and movement in personnel occur, your ongoing review of the outline will keep your organization well prepared.

Conclusion

The fast-approaching plan restatement requirement provides plan sponsors a golden opportunity to critically review their plans' current design provisions and implement progressive enhancements. This is also an ideal time to assess plan administrative procedures through an operational review. Addressing these opportunities proactively will mitigate costly errors as well as set a path for ongoing plan success.

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