

Post PPA (Cycle 3) Document Restatement

Frequently Asked Questions

Under prevailing IRS procedures all defined contribution retirement plans must be restated every six years. The last amendment cycle (PPA) ended in 2016, and it is now time to amend and restate plans for the legislative and regulatory changes enacted since The Pension Protection Act of 2006 (PPA). We have prepared this FAQ on the Cycle 3 Restatements to help you prepare for and better understand the upcoming compliance obligations for your plan.

1. Is the restatement mandatory?

Yes, all applicable plans are required to be restated to maintain the plan's tax qualified status. Pre-approved plans are required to be restated approximately every six years. The IRS determines the applicable period for submission of master plan documents by plan sponsor vendors, as well as the window for individual plan sponsors to adopt the pre-approved plans.

2. Which plans must be restated?

All pre-approved defined contribution (profit sharing, 401(k) and money purchase) plans must be restated at this time. Defined Benefit plans, 403(b) plans and individually designed plans (typically attorney drafted) are on different restatement cycles.

3. What is the Post PPA (Cycle 3) Plan Restatement?

It is a completely restated (rewritten) document for all provisions enacted prior to February 1, 2017. Some of the changes include:

- Expansion of the definition of "spouse" to include those of the same gender.
- Availability of plan forfeitures to offset certain additional types of company contributions.
- Ability to amend safe harbor 401(k) plans once the year has already started.
- Allowance of in-plan Roth rollovers.

4. Are additional amendments required?

Although restated, the following add-on amendments will still be required to be incorporated into the new documents for post-February 1, 2017 changes (not inclusive):

- CARES Act Amendment (by last day of 2022 plan year)
- SECURE Act Amendment (by last day of 2022 plan year)
- Hardship Distribution Amendment (by December 31, 2021)

5. What are pre-approved plan documents?

Document provisions are developed by plan sponsor vendors. The master documents are submitted to the IRS for approval. The IRS has issued opinion letters to plan sponsors, including Windes. Pre-approved documents are now available for adoption by individual employer plan sponsors. Individual employer plan sponsors will be able to rely on our IRS opinion letter for plan approval.

6. Can changes to the plan be incorporated into the restatement?

Generally, yes. A plan restatement is an opportunity to add, alter or remove plan provisions. However, no federally protected benefits can be eliminated from the plan. For safe harbor 401(k) plans, some changes cannot be effective until the beginning of the next plan year.

7. Why is the Post PPA (Cycle 3) restatement vital to the tax qualified status of the plan?

Maintaining an up-to-date plan document preserves the tax deduction of contributions, tax free rollovers of distributions, tax deferred retirement accounts, and avoids other penalties and taxes that are associated with plan disqualification.

8. When must the restatement be completed?

The deadline for the plan restatement is July 31, 2022.

9. What if the plan restatement is adopted after July 31, 2022?

Plan sponsors that fail to restate their plans by the deadline are required to apply for retroactive qualification through an IRS Voluntary Compliance Program (VCP) to maintain the qualified status of the plan. Windes charges a fee for preparing the VCP application in addition to an IRS user fee. If the IRS discovers plan document defects upon audit the financial consequences are typically severe.

10. May the plan pay the fees for the restatement?

Yes, fees for the plan restatement may be paid from plan assets to maintain the tax qualified status of the plan. Fees may also be paid directly by the plan sponsor.

11. How does plan termination affect the restatement requirements?

Terminating plans are not required to restate their plan documents if the plan assets are distributed prior to the July 31, 2022 restatement deadline. However, because the current amendments to the plan, whether discretionary or mandatory compliance amendment, have not been approved by the IRS, you may want to restate the document to ensure compliance. Plan sponsors seeking IRS approval of the termination may not receive a determination letter by the deadline and will need to determine if a restatement will be required.