



Retirement Plan Update

The Six Things Every 401(k) or Defined Contribution Plan Sponsor Should Know About EGTRRA Restatements

Periodically the Internal Revenue Service requires that all retirement plans be restated to incorporate the most recent regulatory and legislative changes. Those employers who have sponsored a retirement plan for several years may recall that the last required restatement was for “GUST”.

Existing 401(k) or Defined Contribution (DC) plan documents now need to be restated to comply with the “Economic Growth and Tax Relief Reconciliation Act of 2001” (EGTRRA). In addition to incorporating the multitude of plan changes implemented with EGTRRA – including “catch-up” contributions and increased limits on retirement plan contributions to plan participants – the restatement will include other regulatory changes during this period and any discretionary (voluntary) amendments you may have made (or wish to make) to your plan.

Please note that Defined Benefit (DB) and Cash Balance (CB) plans are not required to be amended for EGTRRA at this time.

Means & Associates will be providing all our clients with the schedule to restate their plan(s), if we are responsible for providing this service to their plan(s). (A number of our clients use plan documents provided by their investment houses or ERISA attorneys. For these clients, we will be confirming with their providers that you will be contacted directly by them.) For those clients using our restatement services, this Alert is the first step toward familiarizing you with the restatement process by answering the top six EGTRRA restatement questions:

1. Must all qualified plans be restated to comply with EGTRRA?

Yes. In order to maintain the qualified status of your plan it must be restated to comply with EGTRRA. This includes both defined contribution plans and defined benefit plans, prototype and volume submitter plans (“pre-approved plans”), governmental and private industry plans, and individually designed plans. The timing for these restatements, however, vary by plan type and document type.

2. When do I need to restate my plan?

For non-governmental 401(k) and other defined contribution plans, April 30, 2010 is the restatement deadline for employers who have adopted plans prepared by Means & Associates. However, since there is also a PPA amendment due by December 31, 2009, we are encouraging our clients to complete the EGTRRA restatements at the time of the PPA amendment. Completing both of these requirements by December 31, 2009 will provide cost saving benefits for the employer.

For Defined Benefit (DB) and Cash Balance (CB) plans, the IRS has not provided the schedule or document wording. As a result the EGTRRA restatement deadline is unknown at present. The PPA amendment, however, is due by December 31, 2009 for DB and CB plans. We will be following up individually with plan sponsors regarding these DB or CB PPA amendments.

3. What happens if I do not restate my 401(k) and DC plan for EGTRRA or amend for PPA?

This is not an option under ERISA. The consequence of failing to restate your 401(k) or DC plan timely is potential IRS plan disqualification, which removes the tax benefits to the employer and plan participants and makes the plan accounts currently taxable. The same is true for the IRS-mandated PPA amendments.

4. Should my restated 401(k) or DC plan be filed with the IRS for a determination letter?

Yes, in our opinion. Means & Associates, as part of our plan restatement services, submits all plans to the IRS for a determination letter. Receiving a determination letter allows you the assurance that you can rely on the plan document with respect to the operation of the plan unless (or until) there is a change to the law or regulations.

5. When will I next need to restate my 401(k) or DC plan?

The next complete restatement will be for the Pension Protection Act of 2006 (PPA). The IRS has not set a time period yet, but based on IRS predefined restatement cycles, 401(k) and DC plan restatements should begin after 2011. There is still the PPA amendment due by December 31, 2009. We will prepare this amendment for clients using our document services.

6. Do I need to do anything now to prepare for the restatement?

Yes. Means & Associates will be providing our document service clients with a comprehensive list of the plans' current provisions and details for discussion with administration specialists. This is the ideal time to confirm existing provisions and add or change optional provisions. We will also be providing these clients with a pamphlet outlining the reason for and process of restating a plan for EGTRRA compliance.

Next Steps

As noted above, Means & Associates will be providing our clients with additional information regarding the EGTRRA restatement of their plans. The process will require your attention and assistance to accomplish; we look forward to working with you in order to ensure the continued qualified status of your retirement plans.

Should you have any questions regarding this Retirement Plan Update, contact our consulting team at 619-696-7284.

This Compliance Alert is not intended as legal advice or as an opinion of specific facts

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