

# PENSION PROTECTION ACT RESTATEMENT: FAQ FOR EMPLOYER SPONSORED RETIREMENT PLANS

Under an IRS scheme set forth in Revenue Procedure 2005-66 (as modified by Rev. Proc. 2007-44) every qualified plan must be amended and restated to include the changes made by The Pension Protection Act of 2006, or “PPA”. The PPA Restatement must also include items in the current Cumulative List of Changes in Plan Qualification Requirements (“Cumulative List”) which sets forth other legislative and regulatory changes. We have prepared this FAQ on the PPA Restatements to help you prepare for and better understand the upcoming compliance obligations under the Pension Protection Act.

## 1. What is the Pension Protection Act of 2006?

The Pension Protection Act was signed into law on August 17, 2006. Highlights of the provisions under the Act directly affecting retirement plans include: new automatic enrollment provisions; accelerated vesting schedules for profit sharing plans; expanded rollover options for Roth accounts; simplified IRS filings for 5500-EZ filers; and enhanced benefit statement requirements for participants.

## 2. What other law changes have affected Retirement Plans since the PPA?

The IRS issued its Final Code Section 415 (plan compensation limit) regulations in 2007. The Heroes Earnings Assistance and Relief Tax Act of 2008 or “HEART Act” made important provisions for members of the military who participate in qualified retirement plans. Lastly, the Worker, Retiree, and Employer Recovery Act of 2008, or “WRERA” waived required minimum distributions for 2009 and clarified the rules allowing non-spouse beneficiaries to rollover inherited plan assets to inherited IRAs. You can see a detailed list of changes on the IRS’s “2010 Cumulative List” (Notice 2010-90), on the IRS website at: <http://www.irs.gov/pub/irs-drop/n-10-90.pdf>.

## 3. Why does my plan document have to be completely restated?

The IRS has decided that the best way to incorporate all of the various changes in the laws surrounding retirement plans is by allowing the plan sponsors to make periodic “interim” amendments to their plans to comply with the required changes and then requiring plan sponsors to follow a set time frame every six years to fully rewrite or “restate” the document to incorporate the amendments. This way, the plan stays updated for current language without the need for dozens of amendments.

## 4. What is the deadline for restatements?

To be in compliance with the general deadline, qualified retirement plans will need to be restated by April 30, 2016.

## 5. If the deadline is not until April 2016, why am I getting this notice now?

Due to the large number of plans affected by these requirements, it is important that we begin restating our clients’ plans as soon as possible. By starting early, we can ensure that each URPC client is in compliance before the April 2016 deadline. Starting early also allows us to stagger our provision of this service so that we are providing it to a smaller number of clients at a time, thereby ensuring that each client receives the high-quality level of service and attention during this process that URPC strives to provide. When we begin the restatement process for your plan(s), we will contact you with more information regarding the steps you will need to take. Until then, we are providing this FAQ to give you notice of this upcoming requirement and to help you prepare for and better understand your compliance obligations under the Pension Protection Act.

### **6. For which plans do the restatement rules apply?**

The current PPA Restatement deadlines apply to “Defined Contribution” retirement plans. Defined Contribution plans include profit sharing, 401(k) plans, and money purchase pension plans. Other types of retirement plans will have their own deadlines in the future, but not before 2018.

### **7. What are the consequences for not restating my retirement plan?**

If the plan is not timely amended and restated for these changes, plan contributions will no longer be tax deductible, plan earnings will be taxable, and plan benefits distributed will not be permitted to rollover to other tax-deferred retirement accounts. In addition, if the IRS discovers the plan has not been restated before the deadline it can impose significant sanctions upon the plan sponsor, running into the thousands or even tens of thousands of dollars.

### **8. Can the fee for the restatement be paid with Plan assets?**

Yes, the fee can be paid from plan assets because the amendment is required in order to maintain the plan’s tax status.

### **9. What is included in the plan document restatement package?**

In order to restate your retirement plan document, the new plan documents will be comprised of:

- An Adoption Agreement, which spells out the specific provisions of your plan;
- A basic Plan Document, which contains the necessary language that applies to all plans;
- An IRS Advisory Letter, pre-approving the plan as tax-qualified;
- A Summary Plan Description, which explains the plan to your employees in plain language
- A sample board resolution to adopt the Plan; and
- A loan policy (if applicable), any required employee notices, and the QDRO procedures.

### **10. What if I would like to make changes to my plan design as part of the restatement?**

Because the plan document must be amended and restated anyway, now is a good time to consider any plan design changes you wish to make. For example, you may be interested in adding Roth deferrals, in-service distribution options, or plan loans. Contact us as soon as possible if you have questions or would like a consultation on your plan design.

### **11. What if our company intends to terminate the plan in the next couple of years?**

Terminated retirement plans are required to adopt all of the legal changes which have taken place in the past few years, and the restatement gives the plan an opportunity to incorporate all of the latest plan language in one plan document.

### **12. In what format will I receive my restated plan document?**

You will receive the document via email, in an easy to access, indexed “electronic binder” in .pdf format which can be opened by virtually any computer, tablet or mobile device and easily saved electronically for your permanent files.

### **We Help By Being ‘More Than A TPA’**

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