



Cycle 3 Defined Contribution Plan Restatements and Other Plan Document Updates

When is the Cycle 3 defined contribution pre-approved plan restatement deadline?

We are less than six months away from the Cycle 3 defined contribution pre-approved plan restatement deadline, which is July 31, 2022! The two-year employer restatement window is now quickly closing. If you are a pre-approved plan Provider and have not already gotten all or most of your restatements completed, now is the time to focus on getting your clients' PPA 401(k), profit sharing, money purchase and ESOP plans onto the updated Cycle 3 versions!

The clock is ticking for timely amenders. Employers who miss the deadline will need to correct their "non-amender" failures under the IRS' Employee Plans Compliance Resolution System ("EPCRS").

What about SECURE, Miners, CARES, and CA Acts?

The IRS did not allow any laws enacted in 2017 or later to be incorporated into pre-approved Cycle 3 defined contribution plan documents. Therefore, in addition to the final regulations relating to hardship distributions, changes under the SECURE, Miners, CARES, and CA Acts are also not included in the Cycle 3 plan documents. We are still waiting for much-needed guidance on several new legislative provisions. The good news is that the deadline to adopt these interim amendments is generally the last day of the 2022 plan year (or the last day of the 2024 plan year for governmental plans).

If a plan utilizes provisions related to these Acts before the interim amendments are released, plan sponsors should use an Operational Checklist or have other means for memorializing such elections.

Do terminating plans need to be restated?

As a legal requirement, a plan sponsor must amend a terminating plan for all plan qualification laws in effect as of the termination date. The most efficient (and safest) manner of doing this is for the plan sponsor to restate its terminating plan onto the most recent pre-approved document. For defined contribution plans, ASC recommends that a plan sponsor terminating its plan on or before July 31, 2022, restate the plan onto a Cycle 3 document, especially if assets will not be distributed by July 31, 2022.

Although a plan sponsor may decide not to restate its terminating plan, the plan must still be amended for all applicable laws in effect as of the date of termination. We generally do not recommend this "snap-on"

amendment approach because any interim amendments associated with the plan are only "good faith" amendments. Because the IRS does not review or approve interim amendments, best practice is to minimize the use of non-approved interim amendment provisions. To the extent that interim amendment language is included in the most recent pre-approved document, it is IRS approved.

Although not required, we also recommend that plan sponsors submit terminating plans for an IRS determination letter using Form 5310. This is especially important if a plan sponsor uses the "snap-on" amendment approach.

Where are we with respect to the defined benefit plan Cycle 3 restatements?

Pre-approved Cycle 3 defined benefit documents are currently at the IRS for review. We expect the IRS to approve these documents by January 31, 2023. If this is the case, the Cycle 3 defined benefit plan restatement deadline is expected to end around February 28, 2025. While ASC's initial submissions for IRS opinion letters were sent last summer, Providers can still enroll online by [clicking here](#).

What about the next 403(b) plan restatements?

The IRS announced in Revenue Procedure 2021-37 that Mass Submitters (such as ASC) must submit their Cycle 2 pre-approved 403(b) plan documents and Provider opinion letter applications to the IRS no later than May 1, 2023.

On January 28, 2022, the IRS released Notice 2022-8, which establishes the 2022 Cumulative List of Changes for Section 403(b) Pre-approved Plans. The Notice also confirms the Cycle 2 on-cycle submission period for 403(b) plans. The two-year restatement window will likely begin in 2025. We will keep you posted as more information becomes available.

How can I stay on top of these cycles?

[Click here](#) to access ASC's at-a-glance timelines for the various plan document restatement cycles.

If you have any questions about creating plan restatements in ASC's Document Generation and Management System or about ASC in general, please contact us at (800) 950-2082 x 1 or via email sales@asc-net.com.

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