



## **KB Pension Services, Inc.**

Retirement Plan Consulting and  
Administration for Businesses

# **Why does my Qualified Retirement Plan need to be amended or restated?**

Commonly asked questions  
about amending and  
restating retirement plans.

As principals of KB Pension Services, Inc. (KBPS), John Cotterman and Chris Chiaro provide retirement plan design, consulting and administrative services to small and medium size businesses. In addition to managing KBPS, Mr. Cotterman and Mr. Chiaro are responsible for marketing the company's services.

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## **Introduction**

Qualified retirement plans must be in writing and communicated to employees. The written plan sets forth the eligibility requirements for participation, the benefits and when those benefits may be distributed. The plan must also include other provisions required by the Internal Revenue Service (IRS) and the Department of Labor (DOL).

If you wish to change any of the plan provisions, the written plan must be amended. Changes in laws governing retirement plans will also require your written plan to be amended. Periodically, the plan must be rewritten, or restated, in its entirety.

We are providing you with this pamphlet because all defined contribution plan documents (including 401(k), Profit Sharing and Money Purchase Plans) must be restated by no later than April 30, 2016 to incorporate the language and provisions from the Pension Protection Act (PPA), and various other required amendments that took effect between 2007 and 2011.

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### **Why does our plan need to be restated?**

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Periodically, the IRS requires that plan documents be updated and resubmitted for review and approval. KB Pension Services has received IRS approval on its updated master document, and is preparing to assist our clients in meeting the restatement requirement to insure that your plan continues to maintain its tax-exempt status.

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### **What is the 6-year restatement cycle?**

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The 6-year restatement cycle applies to pre-approved plans and is likely the cycle that

will apply to your plan. Under the 6-year restatement cycle, plans will generally need to be restated once every 6 years.

The 6-year restatement cycle for defined contributions plans began in 2011. The IRS provided pre-approval of the KB Pension Services defined contribution plan documents in May 2014 and employers are required to restate their defined contributions plans between May 2014 and April 2016.

Employers using pre-approved plans are required to restate their plan documents at least once every six years.

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**What is the 5-year restatement cycle?**

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The 5-year restatement cycle applies to 'individually designed' plans.

These are plans that may not fit on a 'pre-approved' plan document. You will receive separate notification if your plan is in this category.

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**Should my restated plan be filed with the IRS for a determination letter?**

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The IRS has reviewed and approved the language of 'pre-approved' plans prior to

the adoption by any employer. Employers using 'pre-approved' plans automatically have assurance that the language used in their plan satisfies the law. The IRS no longer will issue a determination letter on a 'pre-approved' plan.

Since individually designed plans are not 'pre-approved' by the IRS, they can be submitted for review of the optional and required provisions that are included in the plan.

## What is PPA?

This 'PPA Restatement' is named after the 2006 legislation passed by congress. Some highlights of the Pension Protection Act of 2006 as it relates to retirement plans include:

- **Automatic Enrollment Provisions** - Provides statutory authority for employers to enroll workers in 401(k) and 403(b) plans automatically
- **Automatic Enrollment Opt Out** - Allows automatic contributions to be returned to employees without tax penalties if employee opts out of participation within 90 days
- **Funding Notifications** - Expands disclosure that workers must receive about the performance of their pension plans
- **Investment Advice Rules** - Removes the conflict of interest for giving certain types of investment advice to participants in retirement accounts
- **Contribution Limits** - Extends the 2001 tax act's contribution limits
- **Qualified Default Investment Arrangements** - Establishes safe harbor investments, also known as Qualified Default Investment Alternatives or QDIAs, to protect employers from liability of losses suffered by automatically enrolled employees

In addition, the PPA documents will incorporate permanently the amendments that had been adopted for your previous (EGTRRA) document including:

- Final 415 regulations
- Pension Protection Act (PPA)
- Heroes Earnings Assistance and Relief Tax Act (HEART)
- Worker, Retiree, and Employer Recovery Act (WRERA)

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**What is the timing for PPA restatements?**

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All defined contribution plans must adopt PPA provisions no later than April 30, 2016. All

defined contribution plans will have required changes to incorporate. KB Pension Services has established the following guidelines for document restatements:

- **Restatement in 2014 to be effective in 2014**
  - Non-safe harbor plans
  - Cannot apply to safe harbor plans which cannot have significant amendments adopted during the year
- **Restatement in 2014 to be effective in 2015**
  - Non-safe harbor plans
  - Safe harbor plans
- **Restatement in 2015 to be effective in 2015**
  - Non-safe harbor plans
  - Cannot apply to safe harbor plans which cannot have significant amendments adopted during the year
- **Restatement in 2015 to be effective in 2016**
  - Non-safe harbor plans
  - Safe harbor plans
- **Restatement in 2016**
  - Non-safe harbor plans

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**What if I miss the PPA restatement deadline?**

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The IRS can disqualify your plan if you fail to meet the deadline for amending or restat-

ing your plan. All of the tax benefits are lost - contributions might not be deductible and employees cannot defer taxes on contributions and earnings. Amending or restating your plan on a timely basis is critical.

The IRS established a correction program that reduces the consequences of plan disqualification. If you miss the deadline, the error can be corrected by using this voluntary correction program whose sanctions are significantly less than plan disqualification.

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**Are there other changes to my plan design that I should consider making?**

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Your plan should be reviewed periodically to ensure it continues to meet the objectives originally set forth. If there have been changes in the goals of the business or in the demographics of the employees, a review of the plan provisions is important to ensure that the plan meets your ongoing needs.

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**Do participants need to receive a new Summary Plan Description (SPD)?**

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Yes, the Department of Labor (DOL) requires that employees be informed about any material changes that are made to the plan. The SPD can be distributed electronically or posted on your intranet website if you meet the requirements for electronic disclosure.

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**What will the PPA restatement process cost?**

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The cost to restate your plan's document will be determined by several factors specific to your plan. You will soon be notified of the cost to restate your plan document and any discounts which may apply. Pre-payment in full will be required and KB Pension Services will be offering discounts for early pre-payment.



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**How will the PPA restatement process work?**

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- You will be notified of the cost to restate your plan and any discount which may apply
- Following receipt of payment, you will be provided with information on required changes, changes you have requested and any recommendations for changes that we may make
- You will be contacted by our Plan Document Administrator or your KB Pension Services Administrator who will review the decisions you must make and send you a checklist of all changes for your final approval
- Following written approval of all changes, the Plan Document Administrator will prepare your restated plan document and submit it to you for final review and signature
- Plan documents will be signed by an authorized representative of the Employer, all trustees and adopting Employers, if applicable, using electronic signatures
- The executed documents will be emailed to you for your permanent file

## Conclusion

A qualified retirement plan is one of the best ways to provide adequate retirement income security for you and your employees. We realize, however, that amending and restating your plan can be burdensome and confusing. We hope this pamphlet helps you understand when and why plans must be amended or restated.

Please contact your *KB Pension Services Administrator* if you have any questions about your plan or the information in this pamphlet.



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