

UPDATING PLAN DOCUMENTS

Items for Consideration



MAINTAINING PLAN DOCUMENT RECORDS

You are required to maintain copies of plan documents and amendments. You should keep plan documents for at least 7 years, but we'd recommend maintaining them forever as electronic storage space is inexpensive.

- Do you maintain copies of all of the records of the plan in one location such as a filing cabinet or an on-line directory or a secure document storage website? We'll call this a document library.
- Do you have a copy of the most recent plan document in your document library?
- Do you have copies of any amendments to the plan in your document library?
- Are all of the documents and amendments in your document library signed?

RESPONSIBLE PARTY FOR REQUIRED AMENDMENTS AND RESTATEMENTS

Plan documents are generally written by lawyers. They reflect the law and regulations in effect at the time they are written. As laws and regulations change, the plan documents must generally be updated either by an amendment or by a complete rewrite commonly known as a restatement. Due to the complexities involved, most plan sponsors outsource the creation of amendments and restatements to an outside service provider.

- Which service provider to the plan is responsible for providing updates to plan documents such as restatements or amendments?
- Does the service provider's service agreement acknowledge they are responsible for notifying you when a required amendment is due?
- Does that service provider's service agreement acknowledge they are the responsible party for preparing such amendments?
- Does the service provider's service agreement acknowledge they are responsible for providing amendments to you timely?
- Who is liable if a required amendment is missed, you or the service provider?
- If there are choices to be completed in the amendment, does the service provider offer assistance and advice on making selections?

VOLUNTARY AMENDMENTS

The plan document is effectively a contract between the plan sponsor and the participants in the plan stating how the plan works. To modify how the plan works, a plan amendment is usually required. An amendment can be required based on government rule changes, or it can be because of a change you want to make. If you are the one making the decision to amend the plan, then the amendment is called a voluntary amendment.

- What is your company's internal process to for decide deciding to amend the plan?
- Is that process written down, so that in the event you were no longer working at the company, your successor could follow the same process?
- Do you have a process for reviewing voluntary amendments with your service provider team? any voluntary amendments you might want to make to the plan?
- Who is responsible for ensuring the voluntary amendment is timely adopted;, you or the service provider?

APPROVING PLAN DOCUMENTS, AMENDMENTS AND RESTATEMENTS

Plan documents are generally long, boring and full of a lot of legal language required by the IRS. They can be difficult for a retirement plan expert to read and understand. Required amendments often contain minor wording changes to minor points of the plan wording that may not even impact your plan. Voluntary amendments should contain the changes what you indicated requested;should be changed, but did they? You need to make a reasonable effort to ensure what you are signing is correct and accurate.

- Did the service provider who drafted the document or amendment go over the needed requested changes with you?
- Does the service provider's service agreement give you any relief from liability if they got it wrong?
- Once you have decided that the amendment or document is acceptable, what is required to adopt the amendment?
- Some plan documents required action by the plan sponsor to adopt any amendments. Does your document contain this language?
- If your plan document does contain language requiring action by the plan sponsor, what does that mean for your organization? The answer is probably in your corporate by-laws.
- Who can actually sign the document?

NOTE: The answers to the questions in this questionnaire could, and very well might be, used against you in a DOL audit or a lawsuit. We do NOT recommend that you complete and retain this questionnaire without first reviewing the answers with ERISA legal counsel. The intention is to provide you with questions to discuss internally rather than to create a paper trail that can be used against you.

Depending on your particular situation, there may be other items you should consider. Larger entities will have plan document issues with regard to mergers and acquisitions which are not covered by this questionnaire. There may be administrative policies that exist outside of the plan documents that help govern how the plan works that are not addressed here. This questionnaire is not intended to be exhaustive.

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