



## DEJA-VU! DIDN'T WE JUST FINISH RESTATEMENTS?

8 tips for the upcoming 'tricycle' restatements. By Alison J. Cohen

**The IRS issued Announcement 2020-07 in June** to inform the retirement community that it anticipates completing its review and issuing opinion letters for defined contribution preapproved plans on June 30, 2020. This means that all DC plans must be restated no later than July 31, 2022. For many of

us, this third cycle of restatements (charmingly nicknamed the "tricycle") somehow snuck up on us in the midst of the SECURE Act, the CARES Act, and the pandemic.

While the vast majority of service providers won't be ready to kick off the tricycle until the end of the fourth quarter of 2020, or even the first quarter of 2021, the intervening time

should be used wisely to prepare both its own staff and its clients. Following are some considerations you may want to implement.

### LOOK AT THE NUMBERS

Take a quick inventory of all clients for which you provide document services. Add in the estimated new clients between now and when your restatement process is expected to begin. Subtract the usual attrition numbers. That's your base. Now go back to your records from the Pension Protection Act (PPA) restatement and see if you have a substantial difference.

If your business has grown in the past six years, the amount of time and staff you're going to need to accomplish this task will be greater

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than before. It seems intuitive, but folks often forget about the impact of the growth rate. If you're going to have to find and bring on temporary staff, the sooner you get started the better.

### COMMUNICATIONS

When you put together your 2020 annual plan data request package, it's a good idea to plant the seed and let your clients know that you will be reaching out to them in the coming 12 to 18 months to initiate their restatement. There should also be a communication plan for when you're ready to actually start the restatements. Are you going to notify clients before drafting? Should this be done in batches? Are you going to elicit input from your clients about changes they might want to make to their plans at the same time? Will you preemptively restate a plan if the sponsor happens to request an amendment for another reason in the interim?

### TRAINING

Don't underestimate the amount of training that you will need to give your staff on the new document and its nuances. Focus on new options that are available and possible language changes that may mean you have a different approach for certain document issues. (For example, what used to be a default to exclude some type of compensation may instead now be an election to include.) You somehow have to squeeze this in amongst your usual workload (as modified for the pandemic and quarantine issues you are already facing). As attorneys who often help clients repair problem documentation, we also encourage you to ensure that someone in the restatement processing group actually understands plan

documentation and can review plans critically for accuracy.

### PRIORITIZATION

What is your strategy going to be for which client goes first? Who goes second? Thought should be given to what makes the most sense given your client base. Do you want to start with the largest clients or wait until you feel more comfortable with the restated document? What about taking plan year into consideration? Many clients coincide amendments with their plan year, implementing changes as of the plan anniversary. So, it might make sense to track the off-calendar year folks and draft the restatement just prior to their plan anniversary. It will seem less overwhelming if you have a project plan.

### HOW MUCH TO CHARGE?

Smaller service providers often feel uncomfortable discussing fees. Check your current service agreement (or multiple agreements, if you've changed them up over the years) to see what is said about restatements. Ideally, your firm left room for flexibility on restatement fees. *Before* you start restatements, it is important to disclose the fees to clients. This is something that should be included in your communication right before you're ready to start the specific restatement.

There is no reason why you have to charge the same amount as you did for the PPA restatement. Try actually doing a restatement (the whole thing from start to finish) and see how long it takes you. I think many of you will be surprised at how long it takes. Consider this in your fee proposal. Fees for restatements are considered administrative fees and can be paid for by plan assets. That's something to

mention if your client uses forfeitures or ERISA accounts to pay for expenses.

### SAFE HARBOR PLAN CONUNDRUM

Can you do a restatement of a safe harbor plan without violating the mid-year amendment restriction? Based on the guidance provided in Notice 2016-16, it appears that as long as no provisions that impact the safe harbor contribution are changed, a restatement won't cause a plan to lose safe harbor status. However, changes that modify information in the notice may require the mid-year provision of an updated notice to participants. Conservative practitioners may prefer to coordinate the safe harbor plans restatements with the plan anniversary.

### PARTICIPANT COMMUNICATIONS

With a restatement usually comes a Summary Plan Description (SPD). Providing plan sponsors with clear instructions on how and when they are required to distribute the new SPD is important. Many plan sponsors may want to take advantage of the electronic disclosure rules to lessen the cost of the distribution. Including a summary of the requirements to do so with the client communication will add value and it's easy to do.

### GET STARTED

For those of us who have lived through several restatements, we know that it can become overwhelming very quickly. Add into the mix several mandatory interim amendments due during this period of time, and you realize that this could start looking like a blur of paperwork. The key to a successful restatement period is planning, and it's never too early to start! **PC**