

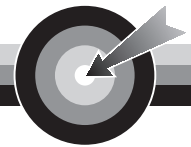
# Retirement Plan Document Restatements

*A guide for  
sponsoring employers*

- 
- G**eneral Agreement on Tariffs and Trade
  - U**niformed Services Employment and Re-employment Rights Act of 1994
  - S**mall Business Job Protection Act of 1996
  - T**axpayer Relief Act of 1997

**The Pension Specialists, Ltd.**

Retirement Plan Third Party Administrator



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## The Genesis Of Qualified Retirement Plans

Employer Sponsored Qualified Retirement Plans are an elective income tax benefit brought into being by an act of the Congress of The United States of America. Chapter 26 of the U.S. Code entitled Internal Revenue Code contains the definitions and rules governing Qualified Retirement Plans. The Internal Revenue Code breaks down into Parts, Chapters, Sub-Chapters, Sections and Paragraphs, etc. The title of Sub-chapter D in Subtitle A, Chapter 1, is Deferred Compensation Plans. Sub-Chapter D consists of sections 401 through 457.

For example, all for-profit private-employer sponsored Qualified Retirement Plans are 401(a) Plans. The most popular type of 401(a) Plan is the 401(k) Plan. Qualified Retirement Plans were created to fill a need of the U.S. social system. These tax-favored plans motivate workers and employers to accumulate the savings needed to support the worker during retirement. They also provide significant tax benefits for both employers and employees, such as:

- Reduction of employer employment taxes and worker's compensation premiums
- Employer deductibility of contributions
- Reduction of employee employment taxes
- Tax deferred savings for employees
- Tax deferred investment growth, and
- Tax favored distributions (lower tax rates)

In many instances the Qualified Retirement Plan results not only in tax deferral but also in tax elimination. If at any time a Qualified Retirement Plan fails to comply with the laws of the Internal Revenue Code, then the plan loses its tax-qualified status. If this occurs, then all tax advantages are lost. The disqualification may be retroactive causing previously avoided taxes and possible penalties to become immediately due and payable.

An employer enters into several agreements when establishing a Qualified Retirement Plan. These agreements are with:

- The Internal Revenue Service, which administers and monitors compliance of your plan document
- Your employees, who are granted rights, and who may turn to the Department of Labor or the courts if they feel those rights have been violated
- The Plan's Trustee who is bound to act solely in the benefit of the Plan Participants and their Beneficiaries
- The ERISA Plan Administrator who is obligated to administer the plan in compliance with the plan document, and the IRS and DOL rules. Usually, the employer acts as its own ERISA administrator and contracts a third party such as The Pension Specialists, Ltd., to advise and assist in these compliance duties.

There are two basic requirements for a qualified retirement plan to remain “qualified”:

- **Form:** There must be a **written plan document**, which must be established under qualified plan tax laws. **This document must be revised when laws change.**
- **Substance:** The plan must also be **operated** in accordance with both the plan document and qualified plan laws. In qualified plan law, there is not a “substance over form” standard. An IRS audit of a qualified plan will include a document review. If the IRS finds the document deficient, then the plan is not qualified.

## *Introduction*

Since 1993, Congress has passed several tax acts affecting qualified retirement plans. These laws require that all retirement plans must be rewritten entirely or “restated”. Many of these legal changes are advantageous to employers maintaining a retirement plan. However, with the benefit of law changes comes the burden of having to incorporate the law changes into your retirement plan document. Your plan may also need to be redesigned to make certain it continues to meet your needs.

For your car to run smooth, change the oil the earlier of 3,000 miles or three months. To keep your qualified plan document in compliance, restate your plan the earlier of:

- Having adopted a major amendment
- Having adopted five minor amendments
- At least every five years or when the IRS requires plan document revisions.

The act of re-writing a plan document is referred to as a "document restatement." A plan document that has been re-written is described as having been “restated.” The legal deadline that the IRS has provided for the plans to be amended will be coming up soon.

This booklet explains the plan restatement process. Your qualified retirement plan is still the best way to save money on taxes and provide retirement income for your employees. It is also an excellent way to attract and retain good employees.

The Pension Specialists, Ltd. recognizes that you are not an expert in retirement plans. This explanation is designed to answer your questions on this “restatement” process. However, if you have further questions, please contact us.

## *What new laws affect my qualified retirement plan?*

Several new laws affecting qualified retirement plans have been passed by Congress, since 1993.

*These include:*

- General Agreement on Tariffs and Trade
- Uniformed Services Employment and Re-employment Rights Act of 1994
- Small Business Job Protection Act of 1996
- Taxpayer Relief Act of 1997.

These laws are collectively referred to using the acronym “GUST” law changes.

Although some of these laws were applied to your plan as early as 1994, the IRS has set a deadline for retirement plans to be amended to comply with all the “GUST” changes. Your new plan document will be referred to as your “GUST” restatement.

## *Are all retirement plans impacted by these new laws?*

**Yes!** All retirement plans will need to be restated.

*Types of plans include:*

- Profit-sharing Plans
- Safe Harbor 401(k) Plans

- Non-Safe Harbor 401(k) Plans
- Employee Stock Ownership Plans
- ERISA 403(b) Plans
- Money Purchase Pension Plans
- Target Benefit Pension Plans
- Defined Benefit Pension Plans.

## *Must my plan be restated?*

**Yes!** Sponsors must maintain the plan document as a single document. Sponsors must re-write (overhaul) their plan document after either a single major amendment or five minor amendments. The plan document must also be re-written if numerous tax laws have been changed and the IRS mandates a re-writing. Each restatement must indicate

that it is a restatement and must include both the original effective date of the plan and the effective date of the restatement. The restated document must include all operational provisions that were used to administer the Plan during the period covered by the restated document, and include all the “GUST” changes from 1994 to 2000.

***What is the deadline for my retirement plan to be restated?***

The “GUST remedial amendment period” for the IRS mandated restatement was scheduled for 1999 but was moved to 2001 by the IRS. Year 2001 restatements will contain tax law changes enacted from 1994 through 2000. Year 2001 restatements must be signed before the last day of the plan year beginning in 2001.

***Example 1:*** A calendar year plan must be restated and signed before December 31, 2001.

The IRS has yet not issued “Determination Letters” on new 2001 prototype plan documents. We expect IRS prototype determination letters by April of 2001. The Pension Specialists, Ltd. will then begin preparing 2001 Restatements for clients.

***Example 2:*** A June 30 fiscal year end plan must be restated and signed by June 30, 2002.

***If I am using an IRS approved prototype, am I assured my plan is qualified?***

**No!** If the plan sponsor improperly completes the prototype adoption agreement, then the plan will be deficient and would be disqualified upon an IRS audit. We will submit your completed 2001 restatement to the IRS for a determination letter specific for your plan. The IRS issues individual determination letters based upon your plan's operational provisions. 2001 Restatements must be submitted to the IRS for a determination letter before two and one half months after the end of the restatement deadline.

***Example:*** A June 30 fiscal year end plan, restated by June 30, 2002, must be submitted to the IRS by September 15, 2002.

***Must a plan that is terminated or “frozen” or in the process of terminating be restated?***

**Yes!** The IRS requires that the plan document of a plan that is terminating operation must be restated for the “GUST” changes. If not, then the plan will be considered disqualified at the time it is terminated and liquidated. In this event, the distributions to participants would not be qualified distributions. They would not be eligible for rollover to individual retirement accounts but instead would be fully taxable when received by the participants. A 10% penalty would apply to those under age 59 ½.

***Example:*** One of our long-term clients died on January 9, 1999. He was the sole participant. His estate must restate the plan document before the plan is terminated and liquidated.

***What happens if my plan is not restated by the deadline date?***

If you fail to meet the IRS deadline for restating your plan, the IRS can disqualify your plan. This means that the plan might lose its tax advantages, such as the company's tax deduction, and tax deferral for your employees.

The lack of compliance need not be egregious or intentional. The restatement must be drafted and signed by the restatement deadline. Signing a properly drafted document restatement even one day late will disqualify the document and the plan.

Document maintenance is clearly a matter of form over substance. Improper document maintenance means being at the mercy of the IRS. The document must be maintained without exception!

If your plan is not restated by the IRS deadline, you can avoid plan disqualification by correcting the plan under an IRS correction program. However, in addition to restating your plan, the IRS will charge an additional correction fee.

In publications of our industry we read about businesses that are taxed and fined for failing to maintain their plan documents.

***Example:*** The IRS discovered in an audit that an employer had executed its 1994 restatement seven weeks late. The plan document and plan operation were proper, but because the signing deadline was missed, the taxes and penalties could exceed \$750,000.

***Example:*** We recently accepted two new clients. We discovered their plan documents to be out of compliance. We took them through the IRS Voluntary Compliance Resolution Program (VCR). This is an IRS program for plan sponsors with deficient documents. These plans were properly administered, but they were improperly documented. The IRS has found this very profitable. These plans each had about \$300,000 in assets, and the cost of VCR was nearly \$20,000 each. Had they not voluntarily entered VCR and the IRS discovered the deficiency in a plan audit, the taxes and penalties could have been \$120,000.

***Should I consider any plan design changes when my plan is restated?***

**Yes!** This is an opportune time to think about other changes you might like to have in your plan design.

Often times, plan sponsors don't take the time to review the plan provisions and are then surprised or disappointed at a later date when they find they either missed an opportunity or have a problem. One of the primary ways that The Pension Specialists, Ltd. differentiates itself from competitors is through its document design and review services. Unfortunately many businesses take document maintenance for granted. They assume their plan provider is handling everything. They

think it is a simple task and place little value on the service. They view their plan document as an insurance policy not as a legal commitment to their employees. They often allow insurance agents, investment brokers or bankers to complete the plan document and trust that everything is right. We find that many clients have never read or reviewed their document. We encourage you to take the time to review the plan with us provision by provision to assure that you have the provisions that best suit your needs.

***Will I need to give the plan participants a new Summary Plan Description (SPD)?***

**Yes!** A new SPD must be prepared when your plan is restated, and a copy given to all plan participants. The Pension Specialists, Ltd. will prepare your new SPD and other necessary documents when the plan restatement is done.

*What will The Pension Specialists be doing to assure that my plan document is properly restated?*

The Pension Specialists, Ltd. will do the following to assure that all client documents are properly restated on a timely basis:

- 1. Inform clients:** That is the purpose of this publication.
- 2. Provide education, consultation and evaluation:** We will explain how document provisions affect plan operation. We will address business, business owner and employee objectives. We will explain how to design the plan to simplify operation and communication. We will explain all new tax laws affecting the plan.
- 3. Prepare draft documents:** We will provide drafts of the Plan Document, the Summary Plan Description (SPD), the Participant Loan Program, the DOL 404(c) Disclosure, and the Notice to Participants. Clients will be asked to review the drafts for accuracy and content.
- 4. Prepare signature ready documents:** We will prepare signature ready documents from reviewed and approved drafts.
- 5. Prepare IRS submission forms for Client signature:** We will prepare signature ready IRS submission forms along with the final documents.
- 6. Obtain client signatures:** We will deliver or mail documents to clients to sign and return.
- 7. Submission of Document to IRS for Determination Letter:** We will mail signed documents and forms to the IRS. We will communicate with IRS reviewers until an IRS Determination Letter is issued.
- 8. Employee Communication:** You should distribute Summary Plan Descriptions and Notices.
- 9. Employee meetings:** Some employers may wish to hold employee communication meetings to explain changes to the participants.

*In Closing*

This publication is part of Steps One and Two above. For Step Two, our goal will be to spend several hours individually with each of several hundred clients. Some clients will require extensive individual consultation. We expect this will require three to ten hours per client. We will advise others by telephone or written correspondence. Steps Three through Eight should take eight to ten hours per client. Step Nine will be time needed based on client request.

The Pension Specialists, Ltd. charges will be between \$75 and \$150 per hour for document services. There is a separate fee to the IRS for submission charges, which in all but a few cases will be \$125. Further information will be discussed with individual clients.

*For further information, contact:*

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