



Maintaining Plan Documents to Avoid Costly Penalties

Plan Sponsors who fail to timely amend their plan documents risk significant financial consequences. First, non-amender failures may cause the plan to lose its qualified status, meaning the plan will no longer be eligible for favorable tax treatment. In addition, plans with non-compliant documents risk significant penalties and fines if this failure is later discovered during an audit or examination. These potentially can be five-figure fines. For these reasons, it is important that plan sponsors make plan document maintenance a priority.

Required Plan Amendments

A formal written plan document is a basic requirement of all tax-qualified Pension, Profit Sharing and 401(k) plans and must be amended when changes in the tax laws impact the plan. These changes occur often, due to new laws enacted by Congress or new regulations issued by the IRS or DOL. The IRS generally establishes a firm deadline by which plan amendments that reflect tax law changes must be adopted. In addition, the IRS requires these plans to be amended and restated every five to six years.

Plan Document Maintenance Strategies

The following strategies can help plan sponsors maintain their qualified status and avoid costly fines and penalties:

- 1. Review the Plan Annually.** At least once per year, plan sponsors should review their plan documents as part of their ongoing fiduciary oversight of the plan. Clients of URPC can rest assured that URPC maintains IRS-approved documents, and tracks the deadlines for required plan updates.
- 2. Set Up a Reminder System.** Using a calendar “tickler” system can help remind plan sponsors to conduct an annual review and ensure that important amendment deadlines are not overlooked.
- 3. Maintain All Documents in a Central Location.** Plan sponsors must be able to show that they have timely adopted a written plan document and all necessary amendments. All efforts to comply with the amendment requirements will be for naught if plan sponsors are unable to demonstrate their compliance. Missing plan

documents may indicate that the plan has not been properly updated. For this reason, it is important that plan sponsors maintain all plan-related documents and records in a central location.

4. **Keep Regular Contact with Service Providers.**

Generally, service providers will send amendments for formal adoption. When they provide these amendments, it is important to respond in a timely manner and in accordance with their instructions.

Correcting Amendment Failures

Plan sponsors who take prompt action to correct amendment failures can significantly reduce the costs associated with this mistake. Taking immediate action is important because costs may increase significantly if the plan becomes under audit or examination.

First, the plan sponsor must take steps to make all necessary amendments. Generally, these amendments will be made retroactively. While the IRS occasionally publishes sample language, realistically most plan sponsors need to rely on their plan service provider to provide these amendments.

Once the necessary amendments have been made, plan sponsors should file a Voluntary Corrective Program (VCP) submission with the IRS. Depending on the nature of the correction, the fee will range from a few hundred to a few thousand dollars. Although this fee may seem high, it is substantially less than the costs associated with losing the plan’s qualified plan status or the penalties and fines a plan sponsor risks if the mistake is later discovered during an audit or examination.