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## Document Restatement Strategies

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Document generation and management must be accurate, timely and profitable. Balancing these three objectives can be difficult; however, with some forethought it is possible to create a document protocol to manage your firm's documentation and leverage the document restatement process into an exercise that incorporates plan redesign and an internal audit of the plan's overall operation. The EGTRRA restatement window is a great opportunity to take stock of your documents with respect to their content, their creation and their maintenance. This article is intended to provide you with some suggestions for managing your document processing through the restatement and beyond.

**P**lan documents and their associated ancillary paperwork require preparation time and follow-up. They also need to be properly archived for future reference. Documents are not stagnant—they require frequent amendments resulting from new laws such as the Pension Protection Act, notices required for safe harbor plans, automatic contribution arrangements and qualified default investment alternatives (QDIA) as well as the task of keeping SPDs current.

As your firm takes on new business or conversion business, it becomes necessary to draft or restate documents outside of the restatement process. Also, terminating plans need to be amended for all laws in effect as of the date of termination. In short, document production and management can become a full-time job that must be incorporated into an already hectic workday. Because of the ongoing and comprehensive nature of document management, it is essential that a system be created not only to create plan documents, amendments and other required plan documentation, but to effectively manage this paperwork so that subsequent amendments and/or restatements can evolve with a minimal investment of time and resources.



It is essential to develop a game plan for your firm's document work. Your strategy should consider information gathering, firm-wide defaults, document delivery and archiving the documents. As practitioners prepare for the EGTRRA restatement window, they should review and refine their document strategy.

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## The Role of the Plan Document

A written plan document is one of the basic qualification requirements set forth in the Internal Revenue Code. The document is a roadmap for the overall operation and administration of a retirement plan—it is a resource of information. It includes all of a plan's features as well as specific instructions for the operation and administration of the plan. It is essential that the importance of the plan document be communicated to your staff and to your clients.

A retirement plan's operation is defined by a combination of what the plan sponsor intended the plan design to be and how the administrative software used to operate the plan addresses certain administrative tasks. When there is a disconnect between a plan's operation and its written terms, the plan becomes disqualified. Disqualifying events can become costly. In addition to the cost of correction, there may be fines or compliance fees and, in the most egregious of cases, a loss of all favorable tax treatment.

The EGTRRA restatement window is a great opportunity to make sure that a plan's operation is in sync with its written terms. It is also a good time to reevaluate the current plan designs and redesign plans to take advantage of new rules, to reevaluate the objectives of your clients and/or to create efficiencies that will save time and money. Before your firm begins restating documents, it is important to take the time to develop a game plan. You must determine pricing, staffing, document delivery as well as what type of document format to use. It is also a great time to re-evaluate your current use of technology (e.g., client management or document management software, electronic delivery of documents, etc.).

## Document Sponsor or Conduit

It is essential that you determine who the "document sponsor" of your pre-approved document is. This sponsor may be your firm or it may be your document provider. The document sponsor is the party to whom the opinion or advisory letter was issued by the IRS. This detail becomes important because there are certain responsibilities the IRS places on the document sponsor. Also, the document sponsor has the right to amend the plan on behalf of all the sponsor's clients. This choice can lead to efficiencies related to the management of periodic amendments that are required when there has been a change in the law.

## Pricing

Document pricing depends on many different factors. Considerations include:

- what type of document format you are using;
- the terms and conditions of your service contracts; and
- the price your competition is charging.

The complexity of the document and the required supplemental documents has been increasing. In short, more paper, less revenue. You will want to price your documents to reflect their true value. Consider educating your clients as to the importance of the document both in its legal significance and the tax savings that it creates. The document is truly the cornerstone of the retirement plans. Some firms are raising their document prices as part of the EGTRRA restatement project. Others are restructuring document pricing and charging an annual document fee that covers the periodic document restatement that is required every five to six years as well as interim amendments, summary plan descriptions and periodic disclosures required by the IRS or the DOL. In some cases firms may offer discounts to new and/or recently restated clients or as an incentive to convert from another document.

## The Players

The document restatement cannot happen in a vacuum—it requires client contact, firm-wide decisions on default provisions and interaction with the TPA. It also requires a gatekeeper to manage the gathering and processing of information as well as document status and follow-up once the document is delivered and throughout the submission process, if applicable. Before you begin the process of actually restating documents, you will want to determine the staff who will be involved in the document restatements and the allocation of responsibilities.

Which staff members you select to generate the restatements depends on many factors including the capabilities of your document generation system. Some document systems allow for collaboration. If that is the case, you can have a lower-level staff member enter the general information and then turn the plan over to the administrator or consultant to address the more complex areas. This approach is especially helpful if there will be plan redesign incorporated into the document restatement or if the plan is currently drafted on a document that is different than the one that will be used for the restatement. If a GUST plan is drafted using a different document, a more senior level staff member may have to "map" the plan from the GUST document provisions to the EGTRRA interview.

Don't forget about the submission process. For staffing purposes, you will need to consider the

level of knowledge required to create a document submission. If your firm will be submitting the plan with Form 2848, giving your firm power of attorney to discuss this matter with the IRS, there will need to be an attorney, CPA, actuary, Enrolled Agent or someone with the new ERPA (Enrolled Retirement Plan Agent) designation. Since none of these decisions happen in a vacuum, the billing rate of those involved in the document process may affect your document pricing.

You will also need to address staffing with respect to who is going to actually create the “deliverable” (*i.e.*, what is going to the client). These staffing needs will be largely dictated by what you will be delivering and the manner in which the document package will be delivered.

You may also want to look into available outside resources. Your document provider or an outside pension professional may offer resources to take on some or all of the document generation processes.

## Document Format

There are several different document formats. Decisions about which one to use depends on several factors including pricing, client expectation and plan design. There are three different general formats of plan documents:

- Prototype;
- Volume Submitter (which may or may not be in adoption agreement format); and
- Individually Designed Plans.

The IRS created the pre-approved document program, which applies to prototype and volume submitter plans, in order to offer plan sponsors reasonable assurance that their documents are qualified with respect to the form of the document without the time and expense of applying for a determination letter. Interestingly, the IRS is discouraging the practice of submitting for determination letters on pre-approved plan documents, although there are still many good reasons for doing so.

In many cases, unless special circumstances arise, it is best to draft plan documents using a prototype or volume submitter document. Remember, a volume submitter plan can be modified without becoming an individually designed plan. (At this time, it is unclear exactly how much modification can take place before a volume submitter plan becomes individually designed, but regardless of how the IRS eventually classifies a document, it is always best to start with plan language that has already been sanctioned by the IRS.)

Individually designed plans are, in some instances, a necessity—especially if the plan is a type that is not permitted to be drafted on a

pre-approved document. According to Rev. Proc. 2005-16, examples of these types of plans include ESOPs and cash balance plans. Individually designed plans have no reliance on an opinion letter or advisory letter issued to a lead plan; to obtain approval, the plan sponsor must submit the plan to the IRS under the five-year cycle based on the sponsoring employer’s last digit of their EIN number on IRS Form 5300 if they want to obtain a determination letter on the plan.

## Information Gathering

The information required to create or restate a plan document will come from many sources. When restating a document, many document generation firms have set up procedures to transfer the GUST interview information into the EGTRRA interview electronically. It is important to remember to fold in all amendments that have taken place that are not reflected in the GUST “answer file.” Also, remember that firm names, addresses, trustees and phone numbers change. You will want to implement some sort of peer review process to check the information off a central database of information that you are confident is accurate. Often when firms sit down to coordinate this stage of the restatement process, they realize that they may not have all applicable client information in a single reliable source. The restatement process may provide a good reason to re-evaluate your firm’s information management procedures and either reinforce the existing policies or implement new procedures that will assure that any time a client calls a member of your staff with a name, address or similar change, that this change will be forwarded to an information “gatekeeper” who will update the database(s).

## Defaults

Another component of document creation is setting your document defaults. Defaults are provisions in the document that will be the same for most of your clients. This process will accomplish several things. First, it will make the document data input less error prone, and second, it will create some internal consistencies that may serve to make it easier to service your clients collectively. Amending your plans, to the extent possible, to bring continuity and standardization to your plan designs can increase firm efficiency and identify areas where perhaps you should be charging for additional services. One firm has made a safe harbor plan with loans and hardships their firm-wide standard document. Plans falling outside of this model are evaluated, suggestions for redesign are made to their clients and in some instances adjustments are made to the pricing structure.

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Even though the EGTRRA provisions were largely memorialized in the EGTRRA amendment, each of the document providers appears to have added many new interview questions drilling in deeper with respect to the EGTRRA provisions. In addition, if you are creating your PPA and/or 415 amendments at the same time as your restatement, you will need responses to these answers as well.

Establishing document defaults will likely be a collaboration of senior staff, administrators and the document people. To the extent that any of these established defaults will result in changes to the existing operation of the plan, you will want to make sure these changes are communicated to the client and to your internal administrators so that they can adjust the administration system parameters or otherwise adjust their plan processing.

### Effective Date

It is important to consider the effective date carefully. Generally the effective date of the restatement is the first day of the plan year in which the amendment is being made. That said, there may be special effective dates for new provisions and provisions that are being eliminated. The effective date of any type of plan redesign that will result in a cutback will need to be timed in order to avoid a Code Section 411(d)(6) violation.

### Plan Redesign

By engaging in some plan redesign as part of the restatement, you may be able to make the administration and operation of the plan more straightforward for you and your clients. Often plan design or redesign takes place at the time a plan is established or taken over from another service provider. The EGTRRA restatement is a wonderful time to revisit plan design. Plan design is not static. Over time laws change and your client's objectives and demographics change. The best person to suggest certain plan redesigns is the TPA who has been servicing the plan. He or she will have input based on his or her communications with the client as well as factors such as ADP/ACP test results, the age of the target HCE/owners and the general demographics of their clients. Any plan redesign that is going to cost your client more money, either in the form of contributions or administrative expense, should be discussed with your client before it is implemented.

### Client Communication

Depending on the terms of your service contract and your pricing structure, before you actually create a document, you may want to send some sort of communication to your client that explains the document restatement and the related pricing. Some firms invoice for documents prior to commencing the actual document work and require full payment or a deposit prior to the commencement of the work. Even if you are not pre-billing your clients for the documents, you will want to make your clients aware of the impending restatement and educate them as to why the restatement is required. This communication is also a good opportunity to remind your clients of the value of the services that you are performing and highlight some of the features of the new plan.

Once you have reviewed the available GUST data, folded in interim amendments, evaluated plan redesign, set your defaults and discussed the project with your client, you are ready to commence actual document production.

### Document Delivery

The peer review process prior to document delivery depends on your firm-wide review protocols and your levels of confidence in staff and document

software. It is standard practice, however, to have some form of review before document delivery—with special attention to documents that will be provided to the plan participants such as summary plan descriptions.

Historically, binders have been a popular delivery tool; however, they tend to be expensive and are of questionable value to plan participants. A binder does provide your client a place to archive all plan records; however, they are fairly time consuming to create and can be somewhat expensive, especially if you are restating all of your clients' files.

More and more firms appear to be “going green” for EGTRRA restatements rather than creating binders with paper containing the restated plans. If electronic “e-delivery” is used, you will need to consider the requisite level of security and bandwidth needed to deliver the document effectively. Going green might actually be the best way to help ERISA plan administrators deal with record retention responsibilities, and it seems timely to rethink traditions that have been going on for some 30+ years in the pension industry. Electronic media include:

- E-mail file attachment;
- CD-ROM;
- Scan drive (thumb key); or
- Web portal.

One important distinction is to think about sending the signature pages, the resolution, plan policies and other documentation that must be signed and dated in paper form. Specialists suggest that clients are more likely to properly complete the signing process with the marked papers as a guide.

Some firms will continue to hand-deliver document restatements. While this practice can be time consuming and costly, it is a wonderful opportunity to “touch” your client, both to explain the new document and its importance and to define or redefine your relationship with your client. Think of it as reselling. One of the benefits of this approach is that you can discuss the document and you can have your clients sign the document on the spot.

### Electronic Signatures

Electronic delivery of documents can be taken one step further, with electronic signatures (e-signatures). Specifically, Rev. Proc. 2005-16 ([www.irs.gov/pub/irs-drop/rp-05-16.pdf](http://www.irs.gov/pub/irs-drop/rp-05-16.pdf)) states that as long as an electronic signature reliably authenticates and verifies the timely adoption of the plan, the IRS will deem the

document executed even though there is no actual signature. The IRS pointed out in a recent newsletter that if a determination letter application is filed, information that will allow the Service to determine that the plan or amendment was timely adopted via electronic means should be provided to the IRS.

For example, if the employer electronically signed the plan through a system maintained by the document sponsor, the employer should include with the Form 5307 package a statement from the document sponsor which states:

- The employer electronically signed the plan through a system that reliably authenticates and verifies the employer's adoption of the plan;
- The date on which the employer electronically signed the adoption agreement; and
- A statement from the document provider attesting to the employer's electronic signature signed by the document sponsor. Remember, you may or may not be the actual document sponsor; your document provider may be the party to whom the approval letter was issued.

As an alternative, the employer could submit dated correspondence from the document sponsor acknowledging receipt of the employer's electronically signed plan. Other types of information may also be acceptable.

### To Submit or Not to Submit

Practitioners are split on the topic of submitting documents for a determination letter. Many firms suggest that clients obtain a determination letter and not just rely on the pre-approval opinion or advisory letter as an added level of protection. Others do not feel that the determination letter is worth the time and expense of submission. The IRS has been clear that they do not have the resources to review pre-approved plans and encourage plan sponsors not to submit pre-approved plans; however, there is no prohibition to doing so.

### Archiving and Record Retention

ERISA and the Internal Revenue Code charge the ERISA administrator with the task of keeping complete plan records, including the document and all related paperwork. Service providers need to keep copies of the document to refer to when operating and administering the plan as well as interacting with clients. While historically, these documents were archived in paper files, you may want to consider archiving them electronically either as a back-up or as your sole method of archiving the document files. If you choose to

go the "e-file cabinet" route, you will want to make sure that you scan the signature pages into your network so that your records are complete. Online files are easier to access if a client calls with a question that requires you to reference the plan document.

### Plan Amendments

In recent years, there has been some sort of amendment required annually and this trend is expected to continue. For this reason you will want to keep clear and complete records of your plan documents and the key provisions so you can quickly identify which plans will require which amendments. Historically, the IRS has provided model amendments to the industry; however, a few years ago they ceased this practice citing a lack of resources. Since then, practitioners have relied on their document providers to create all required amendments. Both the EGTRRA volume submitter and the EGTRRA prototype plans include provisions for the document sponsor to amend on behalf of adopting employers. These provisions make the amendment process easier since it is not necessary to obtain the adopting employer's signature on the document. Adopting amendments at the document sponsor level does not make sense for discretionary amendments or mandatory amendments where there are optional provisions that would be discussed with the client before implementing. Also, if your firm is relying on an approval letter issued to your document provider instead of your firm, you do not have the right to amend the plan.

### Closing Thoughts

Plan documentation is a fact of life. Notices and amendments should be expected annually; however, with some forethought and policies and procedures that are written down and periodically refined, document generation and management can be cost-effective and can be leveraged firm wide. ↗

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