

MAINTAINING RETIREMENT PLAN DOCUMENTS

What to know before your meeting

If you offer a retirement plan to your employees, federal law requires you to maintain it under a written document that identifies one or more named plan fiduciaries. The written plan document must also describe the participant eligibility and benefit structure and set forth guidelines for administering the plan. The plan's language must be current with applicable federal laws and should be reviewed on an annual basis to ensure ongoing compliance through updates known as amendments, if required. If you amend your plan, you will need to update the summary plan description and provide current copies to participants.

Conducting regular plan document reviews is one way to help you fulfill your fiduciary responsibilities with respect to your business's retirement plan. The laws and regulations that govern the maintenance and operation of workplace retirement plans are complex and ever-changing. As a fiduciary of your plan, if you fail to keep the language of your plan up to date, you could face penalties and be held personally responsible to make good on any losses that result from your fiduciary failures. If your plan is out of compliance, you could also lose the tax deduction benefit for your contributions on your business's tax return, and you and your employees could lose the ability to save for retirement on a tax-deferred basis.

Questions to review before your meeting

Q: How often should I review the plan document for my business's retirement plan?

A: As a rule of thumb, it would be prudent to review the language of your plan document on an annual basis. In addition to law changes that may affect the terms of your plan, you may want to add features or make design changes by amending the plan document so your plan better supports your personal savings goals and your business's financial goals.

Q: Will I receive any assistance in keeping the language of my plan document up to date?

A: If you use a plan document that is provided from an outside vendor (e.g., your financial advisor or third-party administrator) who has put the document through a preapproval process with the IRS, you can expect the outside vendor to help you keep the plan in compliance with any law or regulatory changes. When required, the outside vendor will provide you with amendments to the plan language that are mandated by law to keep the document in compliance. Your plan document vendor can also assist you with any necessary amendments if you make discretionary changes to your plan.

If you hired an attorney to draft a custom plan for your business, you will need to consult with that individual on ways to ensure that the plan document is kept up to date on an ongoing basis to reflect mandatory changes. Consult the drafter of your plan if you want to make discretionary changes to your plan, as well.

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Q: How will I know if my plan is out of compliance, and what should I do if I discover it has not been properly amended?

A: Annually, the IRS publishes a cumulative list of changes in plan qualification requirements, which you could review with your attorney or third-party administrator. If you discover a deficiency in your document, you should correct it immediately. The IRS has a step-by-step correction program that you can enter into voluntarily to bring your plan document into compliance. Your attorney or third-party administrator can provide more detailed information on filing a Voluntary Correction Program submission with the IRS. If the IRS discovers the missed amendment during an audit of your plan, you must follow a separate correction program called an Audit Closing Agreement Program in order to correct the error.

Checklist to complete before your meeting

Your financial advisor can help you arrange for a formal review of your plan documents to determine if they are up to date for law changes. Before you meet with your financial advisor, you may want to gather some important information and documents:

- The original plan document and, if it is a preapproved plan, the adoption agreement
- All subsequent amendments or restatements to the plan document and/or adoption agreement
- Any opinion letter or advisory letter issued by the IRS
- Any determination letter issued by the IRS
- Board of directors' resolutions and minutes or similar records related to the plan

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