

FAQ for Cycle 3 Restatement

General

Why do I need to restate my plan document?

The Internal Revenue Service (IRS) requires all employers to restate their retirement plan documents every six years to reflect legislative and regulatory changes since the last restatement. Restating the plan document in a timely manner is necessary to avoid a document compliance failure, jeopardizing the tax-qualified status of your plan.

Which interim amendments are included in the Cycle 3 restated document?

This restatement incorporates the update to the Treasury-issued regulation that changed the definition of Qualified Nonelective Contributions (QNEC) and Qualified Matching Contributions (QMAC) and the Department of Labor's disability claims procedures regulations (Labor regulation Section 2560.503-1).

When does my Cycle 3 document need to be signed?

The Cycle 3 restated document prepared for you is required to be signed by all parties before the stated effective date on the document. The deadline to complete the Cycle 3 restatement without creating a document failure is July 31, 2022.

What if my Cycle 3 document is not signed timely?

If your document is not fully executed by the end of the IRS-prescribed restatement window (which ends July 31, 2022), then your plan will incur a plan qualification failure, which may result in adverse tax consequences for you and your plan participants. If this occurs, the IRS's Employee Plan Compliance Resolution System (EPCRS) program may be available for correcting the qualification failure.

Participating Employers

What is a participating employer?

Generally, qualified retirement plans are intended for the employees of a single employer. However, some plans are drafted to allow more than one employer to participate in the plan. There are two types of participating employers: related participating employers and participating employers that are not related.

A related employer who participates in the adopting employer's plan is referred to as a participating related employer. There are ownership and control circumstances under the controlled group rules found under IRC 414(b) and (c) or the affiliated service group standards found under IRC 414(m) that require a group of separate but related businesses to be treated as a single employer for qualified retirement plan purposes. A business entity that falls under this definition is referred to as a related employer. A plan in which only related employers participate operates as a single employer plan.

When an employer that does not meet the definition of a related employer above participates in the adopting employer's plan, the plan must be operated as a multiple employer plan and not a single employer plan.

If my plan has participating employers, do the participating employers need to sign the Cycle 3 restated document?

This depends on whether the participating employers are related employers and if all related employers are participating, or whether any participating employers are not related.

If all related employers of the adopting employer participate in the plan, and there are no employers who are not related participating, the participating employers do not need to sign the Cycle 3 document.

If only some of the adopting employer's related employers participate in the plan, or if employers who are not related participate, each participating employer may only participate in the plan if they are listed on a *Participating Employer Election Attachment*, and the attachment is completed and signed.

Please be aware that if a related employer is not participating in the plan, your plan's annual nondiscrimination tests still require that you include those excluded employees in the testing calculations.

Does a participating employer need to do anything for the Cycle 3 restatement beyond signing the document when presented?

Yes. Once all signatures have been secured and the document is completed, you, as the adopting employer, should provide the participating employers with copies of the final restated document and advise them to distribute any applicable documentation (e.g., *Summary Plan Description*) to their participants.

Trust/Custodial Agreements**If the document package contains separate Trust/Custodial documents, do I need to sign these?**

Yes. The Trust Agreement and/or the Custodial Agreement is part of your plan's documents and it also contains a section to identify the limited trustee. The agreement must be signed by the adopting employer, the trustee or custodian, and the limited trustee. Once completed with all appropriate signatures, the agreement should be downloaded, along with a complete copy of your plan's executed documents for your plan documents file.