



FEBRUARY 2017 | NRS NEWSLETTER

RULES GOVERNING PLAN AMENDMENT EFFECTIVE AND ADOPTION DATES

Employers who sponsor tax favored (“qualified”) employee retirement plans are required by law to state the plan provisions in writing and to administer the plan strictly in accordance with its written terms. Plan participants and other interested parties are entitled to review and obtain copies of the written plan instrument. However, it is important to note that the plan can be a flexible, ever evolving instrument that can be initially designed and later amended to change with the plan sponsor’s business structure, employee demographics, and cash flow availability. In short, it can serve both the changing needs of the employer and the employees. The IRS and Congress has developed a series of rules for adopting and amending formal plan documents, including the timing of the amendment’s adoption. Your tax/legal advisor and your NRS Account Manager can assist you in discussing the advisability of such amendments and how to execute them.

Plan amendments occur for a variety of reasons including:

-) The employer wishes to change one or more plan provisions, such as eligibility, benefit accruals, etc. (a “*discretionary* amendment”).
-) The plan must be amended to comply with recent changes in applicable laws or regulations (an “*interim* amendment”).
-) The plan is a pre-approved plan and is required by IRS procedures to be *amended and restated* to incorporate changes that have occurred over a period since the plan was last restated (typically six years).

Amendment Rules

The **first rule**, as to *timing*, says that an employer can amend a plan retroactively to reflect certain *discretionary* changes in the retirement plan, such as offering a plan participant loan feature, if the effective date is still in the plan year for which the amendment is effective. For example, a calendar year plan can be amended effective January 1, 2017 if the amendment is adopted by December 31, 2017 and is administered effective January 1, 2017. Many discretionary amendments fall in this category. However, the **second rule** described below may override this first rule.

The **second rule** concerns the *content* of the amendment. The amendment may not retroactively decrease anyone’s accrued benefit. Related to this rule is a requirement that a pension plan may not be amended to provide for a significant reduction in the rate of *future* benefit accrual unless participants receive prescribed advance notice. This rule also applies to plan provisions governing establishment of a 401(k) cash or deferred feature – the document must be adopted no later than the date of the first salary deferral contribution deposit into the plan’s trust fund.



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A **third rule** applies only to *interim amendments* and generally states that the amendment can be adopted as late as the extended due date for filing the employer's federal tax return for the tax year that contains the amendment's effective date. The plan sponsor is deemed to have obtained a filing extension for purposes of applying this rule. For example, an interim amendment effective 1/1/20, for a calendar year corporate taxpayer, could be adopted September 15, 2021.

In addition, some **special rules apply** in specific situations:

-) Defined benefit and money purchase *pension plans* may retroactively adopt an amendment effective the first day of the immediately preceding plan year up to 2½ months after the end of that year. Thus, this amendment would be due by March 15, of the year, following the year, of its effective date. This can be useful when the plan sponsor needs a larger than anticipated retirement plan contribution deduction for the immediately preceding year. However, the amendment may not decrease benefits already earned for that year and previous years.
-) An amendment designed to cure a failure to meet federal coverage or nondiscrimination requirements may be adopted as late as 9½ months after the end of the plan year. The amendment must be effective on the first day of the plan year and may not violate the **second rule** relating to benefit cut backs. This gives the plan sponsor a cost effective, retroactive "fix" for certain IRS requirements.
-) "Interim amendments" are to be adopted no later than dates prescribed by the Treasury Department in written official guidance.

Amendment Timing Examples

Suppose Company M has a calendar year 401(k) profit sharing plan that is being amended to change the eligibility requirements from one Year of Service to three months of employment. This amendment can be effective January 1, 2017 and adopted as late as December 31, 2017. However, if the plan currently requires three months of employment for plan eligibility and Company M wants to change this to one Year of Service, the amendment must be adopted on or before the effective date of the change.

Suppose Company M finds out in mid-2018 that their plan failed to meet the coverage rules contained in Internal Revenue Code section 410 during 2017. This flaw must be corrected to preserve the plan's tax favored status and so an amendment is crafted by their Third Party Administrator that retroactively expands coverage to include more employees. This amendment may be adopted as late as October 15, 2018.



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REMINDERS FOR FEBRUARY

February 15 – Minimum funding requirements for defined benefit, money purchase, and target benefit pension plan years ended 5/31/16 must be met by February 15 to avoid excise taxes. An electronic transfer must be completed or a check mailed by this date.

February 15 – Retirement plan employer contributions are due to be deducted on employer tax returns due to be filed February 15, 2017.

February 15 – Form 5500 Series/8955-SSA – Forms that are on extension are due for the Plan Year ending 4/30/2016.

February 28 – Form 5500 Series/8955-SSA – Forms are due for the Plan Year ending 7/31/16 that are not on extension.



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HOW ARE WE DOING? PLEASE COMPLETE THE NRS CLIENT SATISFACTION SURVEY!

We are grateful and thankful for the strong response to our Client Satisfaction Survey! In an effort to maintain high level client satisfaction, we need client feedback! The content of these replies will be sent directly to Executive Management. This survey takes less than 2 minutes to complete. To access the Client Satisfaction Survey, [please click here](#).

As always, NRS truly values your continued business!

For more information or to request a proposal, please visit our website at www.NRServices.com, or for sales support, please contact:

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