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# So, You Think You're Ready for the Tricycle DC Restatements?

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1

## Your Co-Hosts

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4

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## Your Presenters Today

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5

5

## Agenda

- Understanding the Technical
- Keeping Personnel Motivated
- Workflow Challenges
- Best Practices



6

6

## Understanding the Technical



7

7

## Why Are We Doing This?

- Rev. Procs. 2017-41, modified by 2018-42, provide guidance
- Historical schedule was unpredictable
  - Announcement 2004-71 created system of six-year remedial amendment cycles for pre-approved plans
  - Since GUST, things have run on a regular schedule (well, more or less)
- Interim amendments are still required to catch the activity and elections in between restatements



8

8

## Know Your Key Dates

- GUST 2001-2003 (4/30/03 extended to 8/30/03)
  - EGTRRA Good-Faith (12/31/2002)
  - 401(a)(9) RMD Good-Faith (12/31/2003)
  - 401(a)(31)(B) Automatic Rollover/Cash-out (12/31/2005)
  - Final 401(k)/(m) Regulations (12/31/2007)
- EGTRRA Restatement 2008 – 2010 (4/30/10)
  - Final 415 (12/31/2008)
  - PPA Good-Faith (12/31/2010)
  - HEART/WRERA (can be separate) (12/31/2010)
  - In-Plan Roth rollovers 1 (12/31/2011) - voluntary



9

9

## Know Your Key Dates (cont.)

- PPA Restatement 2014 – 2016 (4/30/2016 for most; 1/31/2017 is IDP moving to pre-approved)
  - In-plan Roth rollovers 3 (12/31/2014)
  - Forfeiture/QNEC Revision (end of PY put into effect – could be 2017 or 2018)



10

10

## What Won't Be in the Tricycle?

- Draft of Tricycle restatement was submitted for review by 12/31/2018 based on 2017 Cumulative List. Won't cover:
  - Final hardship regulations
  - SECURE Act interim
  - CARES Act/2020 RMD Waiver



11

11

## Rev. Proc. 2017-41

- M&P and VS Programs are combined
  - Now, just Standardized and Nonstandardized
  - Two formats: AA/BPD & single plan document
- Minor modifications are permitted
  - But, no reliance unless you submit Form 5307 (\$800 fee)
- Money Purchase, 401(k), and PS can now be covered in same adoption agreement



12

12

## Rev. Proc. 2017-41 (cont.)

- No ruling on exempt status of related trust or custodial account under § 501(a)
  - Trust must now be in separate document
  - If there is a conflict between the trust and the plan, the plan controls
  - Allows plans to use any trust
    - Useful if using outside discretionary or directed trustee



13

13

## Something New To Look For

- Documents are permitted to be dynamic (only the elections made will be shown)
  - So, some vendors are going to be using this method for drafting
  - PROS: Document will be shorter (and maybe clients might actually read it)
  - CONS: Every amendment will require a full restatement
    - Risk for errors will, therefore, increase



14

14

## What WILL Be in the Tricycle?

- 2017 Cumulative List is your guidance
  - Inclusion of Windsor decision: definition of marriage and spouse
  - Mid-year reductions or suspensions of safe harbor contributions
  - Other mid-year safe harbor 401(k) amendments per Notice 2016-16
  - Use forfeitures to offset safe harbor contributions
  - Language for rollover from plan account to plan's designed Roth account
  - Certain ESOPs can now be preapproved



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## What About Interims?

- Interim Amendments not contained in Tricycle restatement must be maintained separately
  - New clients will need Tricycle document, Hardship Withdrawal, and eventually SECURE/CARES
  - Challenges can exist with change-over of document
    - Remember 415? Interim happened mid-stream of EGTRRA Restatement. So, which version do you send clients?



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## Safe Harbor Plans

- Notice 2016-16 limits ability to amend mid-year
  - If amendment changes information required in safe harbor notice, must provide updated notice and allow participants to change deferral elections
  - Certain changes forbidden mid-year. Does this include restatements?
    - Yes, if they change substance
    - As a result, be careful of including amendments into restatement
    - If you do have a substantive amendment, consider making it effective at the beginning of the following PY



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## Transition Period

- BEWARE!
- Transition period under IRC 410(b)(6)(C) requires that coverage can't change, or you lose benefit
  - Conservative approach: don't change anything impacting participation or contributions during transition period
  - Restatement shouldn't cause loss of transition window, if no substantive changes made



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## Plan Terminations

- When plans terminate, they must be updated for all current laws
  - Doesn't require a restatement, but could be easier way to meet this requirement
  - Snap-on amendment will need to be issued for 2020 RMD waiver, SECURE, and CARES even though not required to be adopted until end of 2022
  - Check with your document provider on how they are handling this



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## Client Termination

- So, your client is leaving you, or you've fired the client.....
  - If restatement/interim amendment haven't been done, best practice to state affirmatively that this is not your monkey, not your circus
  - Suggested text:
    - If we are your document provider, our duties and obligation to maintain the compliance of your document with the law and/or plan operations immediately ceases when our relationship terminates.



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## If You Love Something, Set It Free

- Instructions to client must be clear that they are to sign **AND date**
  - Undated documents are not so helpful
  - Unsigned documents are even less helpful
- Clients need to understand the multiple locations that require a signature
- Plan Sponsor's signature should be someone authorized to act on behalf of the Employer



21

21

## Tracking All the Choices

- Options for SECURE and CARES Acts need to be tracked
  - GUST required an Appendix listing all testing methods used – NIGHTMARE!!
- Additional Plan Data form going out at the end of 2020/early 2021 should be updated to capture new elections
- Reminders about tracking long-term, part-time employees starting now (for vesting)



22

22

# Keeping Personnel Motivated



23

# Managing Employees

- Remote workers create unique challenges
- Set specific goals with specific deadlines
  - How many plans are assigned to each employee?
  - How many plans must an employee complete each month?
- Have a plan for when each client will be contacted and their work completed
  - Identify off-calendar year plans
  - Use internal calendar reminders

24

## Managing Employees

- Shift assignments around, as needed
  - Matt has only been able to track down three of his clients. Tina has the go ahead from five clients, but now one of her clients wants to do an in-depth review of plan provisions
    - Matt can take over one or more of Tina’s restatements while Tina reallocates time to the review
  - Matt isn’t so good at restatements, but he’s great at testing. So, shift Tina’s testing to Matt and devote Tina to restatements
    - May need to temporarily shift personnel around within the organization



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## Managing Employees

- Don’t give all the problem children to one employee
  - Know which clients are likely to require extra help or scrutiny with drafting
  - Good to have experienced employees on these, but balance so they are not overwhelmed
- Don’t let senior employees dump their work on their juniors
  - Need to monitor workflow as you go
  - Keep up with how work is being shifted



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## Managing Burnout

- How can you help ensure your employees are successful when their workload feels out of control?
- Put emphasis on Training
  - Employees need to understand the documents thoroughly to be efficient in preparing the restatements
  - If you notice someone is making consistent mistakes, re-train them!
- Don't forget staffing
  - Your business has likely grown since the last restatement cycle. How much? Has your employee population grown proportionately?
  - Retention: It's not enough to hire new people. What issues have departing employees raised? Have you addressed those concerns internally?



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## Managing Burnout

- Financial Incentive Programs
  - Bonuses could be based on the number of restatements prepared or paid out as clients return signed documents
  - Considerations: Do you have the income to sustain bonus payments? How do you incentivize work to be done both quickly and carefully?
- Non-Monetary Incentives
  - Provide dinner for those working late
  - Massage gift certificates for meeting goals
  - Notify the entire group on positive client feedback, etc.



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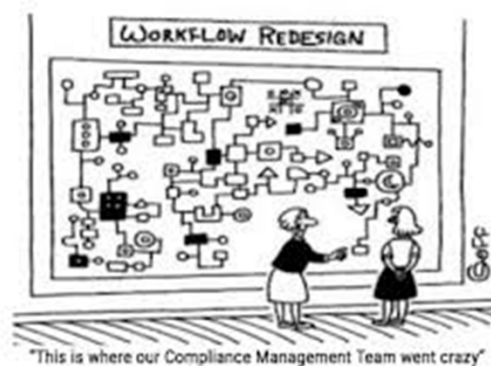
28

28

## Protect Your Employees

- Cybersecurity concerns are increased
  - Overworked and exhausted employees + Huge volume of emails/documents = Recipe for Disaster
- Give a cybersecurity refresher training to your employees
- Enable Multi-Factor Authentication (MFA) for logins
- Put your IT security team on alert to scan more frequently for malware, forwarding codes, etc.

## Workflow Challenges



## Considerations

- Client Communication
- Resources (No pixie dust available. Sorry.)
- Get it Going!
- Document Providers – Know the Differences
- Recordkeeper and Tracking Considerations
- Quality Control
- E-Sign versus Paper
- Fees (Yes, we're making you talk about money)



31

31

## Communicating with Clients

- Be the early bird
  - Notice of upcoming restatement with 2020 annual plan data request
  - If clients are amending their plan before the deadline, consider doing full restatement instead (two birds, one stone... who throws stones at birds??)
- Keeping a proper tone
  - Stress the importance of adopting the restatement timely
  - Encourage them to review with counsel and reach out with questions
  - The specter of disqualification/costs for correction
  - Don't rely on EPCRS! Treat the deadline as a hard deadline



32

32



## Communicating with Clients

- Maintaining customer service while hectic
  - Who will be the point of contact for clients? Is there a call center?
  - Do your relationship managers and call center employees understand the plan documents in detail?
  - Train all employees on the new documents, especially if they are client facing and do not typically work with the documents



33

33

## Communicating with Clients

- Tracking down the right party
  - Try the usual contacts at the client first
    - Explain who is legally supposed to sign where (only certain people are authorized to sign on behalf of the Plan Sponsor)
  - Update your records to reflect any new contacts
  - Use email and phone to follow up
  - Go up the chain of command, if necessary
    - Balancing considerations: You do not want to upset your usual contact, but you also don't want have to tell the owner why a restatement is missing



34

34

## Staffing – Internal vs. Outsourcing

- Can your current employees perform their current duties and assist with restatements?
  - Doing more work for the same pay – how fun!
- Do you want to hire new employees or interns?
  - Training and teleworking issues
- Cost of subcontracting – both hard and soft
  - You are responsible for the work produced by the subcontractor
  - And, it's your reputation that's going to be on the line



35

35

## Get it Going!

- Prepare your workflow now
- Incorporate invoicing into the workflow
- Establish a start and target end date
  - End date should NOT be 7/31/2022
- Build in quantifiable progress tracking
  - Manage employee workload
  - Identify training opportunities and pain points
  - Ensure your team is on track to complete restatements by the target end date
- Establish internal and external processes
- Launch the project!
  - Update due dates as needed



36

36

## Document Providers

- Spend time reviewing the new plan documents
  - What other things changed? (Look for that sneaky stuff in the BPD.)
- Establish plan provision preferences
- How does the document provider map plan provisions from the prior version?
  - Provide guidance for provisions to watch out for
- Who has access to modify these provisions?
  - Fat fingers can cause havoc
  - Limiting access could cause a bottleneck in preparation
- Does your provider offer additional services that may help?
  - This discussion should be happening NOW



37

37

## Document Provider Timing

- Document providers may not have all of the interim amendments available at the start of your restatement preparation.
  - Do you want to wait to provide the restatement and interim amendments at the same time?
  - This could cause unnecessary delay and put additional pressure on your staff
    - The restatement deadline is 7/31/2022
- Do you want to provide the restatement and interim amendments separately?
  - Create additional projects to track amendments
    - The hardship amendment deadline is 12/31/2021. The deadline for SECURE, CARES, and 2020 the RMD waiver is 12/31/2022 for calendar year plans.
  - Integrate restatement and amendment workflow to avoid duplicative client communications



38

38

## Review of Recordkeepers

- Prior to sending out CARES and hardship tracking questionnaires review the recordkeeper's policies
  - Did the recordkeeper choose default provisions? Could the plan sponsor decide?
- How can you incorporate these selections into your workflow?
  - Complete questionnaire with available information and ask for the client's confirmation
- What is the recordkeeper's process for plan provision changes?
  - If the recordkeeper requires client authorization, provide the form or instructions while you have the client's attention



39

39

## Quality Control

- You will be exhausted, and mistakes will get made. That is just reality. How can you ensure careful review of work?
- Allow employees to work uninterrupted
  - Schedule blocks of time in the day for specific clients and don't schedule meetings during those times
  - Only return phone calls or emails at set times of day to allow yourself time to focus



40

40

## Quality Control

- Don't rely on memory
  - Check all plan provisions against all prior documents and notes
  - If possible, have an employee unfamiliar with the client do a review – they may notice discrepancies or unusual provisions that others have begun to accept without questioning
  - Check how the plan was actually tested and operated
    - Example: is the testing method current, but maybe it was actually done using prior year?
    - Example: match has a last day requirement, but funded per payroll



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## Quality Control

- All completed documents should go through at least one additional review by another senior employee before going to clients
  - Do you have employees with detailed knowledge of the documents to perform this review?
  - How will you get your document experts up to speed in time?
- Review documents once returned
  - Are they signed? Are they dated? Are signatures in the correct locations?



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## Quality Control

- Create internal checklists and procedures for each stage
  - Document Drafting: Do the provisions match the prior document and any amendments?
  - Review: Is the client name and EIN correct? For any provisions that have changed, do you have an explanation as to why?
  - Signed Documents: Were they signed and dated correctly? Are they filed in your records?



43

43

## E-Signature Versus Paper

- Who is your client base?
  - Old school clients may not know how or want to e-sign
  - Do want to push your clients to use e-signature?
- Providing paper signature options
  - Build in additional review for signatures and provision changes
  - Consider how to build paper into your current workflow or create a separate workflow
  - Additional cost of providing a paper option



44

44

## E-Signature

- Have you purchased e-signature software?
  - Not all software is created equal
- Choosing the right features with your e-signature software provider
  - Don't forget about cybersecurity concerns
- Using templates
  - Create signature template to increase efficiency
  - Review signature lines, contents of package, and contacts prior to sending.



45

45

## Fees

- Clear communication to set fee expectations upfront
  - How far in advance do you tell them? (Will they remember in nine months?)
  - Option to pay out of plan assets
  - If you update your fees, follow the requirements of your service agreement and provide at least 60 days' notice
- Document maintenance fees
  - Will the client be faced with any surprise fees? (Hint: No)
  - What does your service agreement say about restatements?
- Ad hoc fees
  - Discuss whether to charge separately for Tricycle, Hardship, SECURE, RMD, and CARES (Beware - Death by 1,000 paper cuts)



46

46

## Are You Charging Enough?

- Make sure your fees will cover the cost of preparing the restatements
  - Time the process start to finish
- Review your workflow to determine what software is necessary to get the job done. How much will additional licenses cost?
- You should also consider whether your fees are reasonable in your market space
  - Don't underestimate how cheap people are. They will move to a new vendor just to get a 'free' document
- Additional staffing and bonus pay doesn't come cheap



47

47

## Revenue Stream

- Revenue vs. cost
  - The cost of incentive pay/bonuses may exceed the revenue you are receiving from restatements throughout the year. Do you have enough reserved to get you through it?
- Pre-billing
  - Will provide revenue upfront and lessen the burden of the restatement throughout the year.
  - Encourage clients to pay early by offering a discount if paid upfront
- Pay as completed
  - Provide additional revenue for hourly services
  - Inconsistent revenue stream
  - You could incur a loss if your client stiffs you.
  - Consider requiring a retainer upfront. Review your service agreement.



48

48



## Best Practices



## Client Communication

- Consistent and clear communication
  - Automated reminders
  - Personal reminders
- Elections for hardship, CARES, and SECURE provisions
- Conference call to review document
  - Yes, this is a time suck, but soooo valuable
- Escalate communication and frequency within your workflow as deadlines approach. (DO NOT RELY ON EPCRS TO FIX IT)

## Finding Opportunities

- Restatements can be a great opportunity for providing additional support to your existing clients and attracting new clients
- Takeover Clients – Include restatement in your onboarding process such that they are getting the restatement done for free
  - Offer a detailed review of their existing plan provisions as part of this process
  - Always good to stop the bleeding if there is an operational failure



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## Finding Opportunities

- Sharing Your Knowledge – New documents create new challenges
  - Consider offering training on the new documents to the financial advisors you know to build relationships
    - Advisors are looking for opportunities to shine
    - Ask if they want to be included in communications
  - Offer training on the documents to those in HR at the clients so that they can impress their bosses!



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## Quality Control

- Allow employees to block time and work uninterrupted
- Don't rely on memory
- Have (ideally) several levels of review
- Ensure returned documents were signed and dated in the correct locations
- Create internal checklists for drafting and review



53

53

## Managing Client Documents

- Check everyone's existing documents
  - Do you have signed and dated copies of all prior restatements? Were they adopted timely?
  - Do you have copies of any applicable interim amendments?
- Review key provisions with the client (for a fee?)
  - Go over the common pain points to ensure client understanding at the very least
    - E.g., compensation, match formula and allocation conditions, eligibility requirements and exclusions



54

54

## Managing Client Documents (cont.)

- Great opportunity to make redesign recommendations based on how the employer has changed/operated in the past six years
  - E.g., ADP failures every year may mean automatic enrollment, safe harbor, HCEs deferral limits, etc. might be a good fit



55

55

## Managing Client Operations

- Be prepared to provide solutions if you find issues with operations:
  - Can the plan be amended to better meet the client's goals?
  - Does the plan need to be corrected through the IRS's Voluntary Correction Program or the DOL's Voluntary Fiduciary Correction Program?
  - Do you know how to use these correction programs or can you refer them to someone who does?



56

56

## Managing Client Governance

- Disclosure requirements for Summary Plan Description
  - Provide summary of timing requirements with the SPD
  - Check if clients are interested in moving to electronic notices
- When will you provide the SPD to clients?
  - With Restatement: May trigger changes to plan provisions and require new SPD
  - Separately: Easy for client (or you) to miss



57

57

## Managing Client Governance

- Establish plan procedures
  - For distributions, loans, QDROs
- Have they been keeping meeting minutes or memos that confirm decision-making related to the plan?



58

58

## Managing Client Governance

- Record retention reminder and explanation of rules under ERISA
  - Six-Year Requirement – Records to substantiate any report or certified information that must be filed (or would be filed, absent an exemption)
  - Perpetuity Requirement – Records sufficient to determine benefits due or which may become due
- Offering a record retention policy for the client to customize is a big win



59

59

## Managing Client Engagement

- Repaper client service agreements
  - Has there been any change to your service model? If so, what additional services do you now offer? How can they be of use to your client?
  - E.g., you now distribute SPDs directly to participants, upon request and for a fee
- Do you need to update your fees overall?
  - When were they last updated?
  - Should you require clients to provide you with data in a specific manner? Should there be additional charges if clients provide you with data in a nonconforming manner (e.g., paper records)?



60

60

# Questions?



61

61



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26

62

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63