



## **PENDING DOCUMENT AMENDMENT DEADLINES MISSTEPS CAN BE COSTLY**

Most employers that sponsor tax qualified retirement plans are aware of the need to periodically update the documents that legally describe the terms and conditions of their plans. Since applicable pension laws and associated regulations continually evolve, plan amendments are a necessary fact of life. Keeping the plan documents timely amended is critical to preserving the plan's tax qualified status, so sponsors and their advisors must maintain compliance or find themselves facing costly government sanctions.

### **EGTRRA Restatement Documents**

The rules relating to the timing of amendments vary depending upon which law or regulation is involved, and what kind of plan document (individually designed or pre-approved) is being used. Currently, employers who sponsor defined contribution plans (profit sharing, 401(k), or money purchase pension plans) that use pre-approved documents must restate those documents to be consistent with new pre-approved language. These "EGTRRA restatements" are due to be completed no later than April 30, 2010. While most plans have already been restated (the restatement program has been in full swing for nearly two years), there are still some pre-approved plans that require the restatement. Missing the April 30, 2010 deadline will require a special IRS filing to obtain approval for the late restatement. This involves government fees, as well as preparation expenses. Any employer with a pre-approved profit sharing, 401(k), or money purchase pension plan that has not already made arrangements for the restatement had better make them quickly.

### **PPA Amendments**

While many plans have already been amended to comply with the Pension Protection Act of 2006 ("PPA"), the absolute deadline for some is rapidly approaching. All retirement plans must be amended for PPA by the last day of the Plan Year that started in 2009. While that due date has passed for calendar year plans, some off-calendar year plans still have a little time. There is a trap for the unwary, however. Many plans were amended for PPA before the Treasury Department issued detailed regulations in October 2009. These plans must be further amended to reflect the October 2009 regulations and that amendment is due by the last day of the plan year that begins in 2010.

*We are pleased to report that all PPA Amendments coordinated by NRS complied with the October 2009 regulations and will not need the additional amendment.*

### **Normal Retirement Age Amendments**

Most defined benefit and money purchase pension plans that feature a Normal Retirement Age younger than 62 must be amended to change that age to 62 or older. This amendment must be effective on the first day of the first plan year after June 30, 2008. The amendment must be adopted by the later of (a) the last day of the first plan year that began after June 30, 2008 or (b) the extended due date for filing the employer's federal income tax return for the fiscal year that included the amendment's effective date. For example, a corporation with a calendar tax year and calendar plan year is required to adopt an amendment by the March 15, 2010 due date of their 2009 income tax return, or by September 15, 2010 if a six month extension is obtained. As is the case for PPA amendments and EGTRRA restatements, failure to timely amend can result in dire financial



consequences, so prompt action is required if you sponsor, or assist the sponsor of, a defined benefit or money purchase pension plan with a pre-62 Normal Retirement Age.

National Retirement Services, Inc. is ready to assist clients and their advisors in the maintenance and operation of their retirement plans. We are here to help!

## **EFAST-2 AND THE “OWNERS ONLY” PLAN**

As we have mentioned in previous newsletters, the form 5500 filing will be filed electronically for most retirement plans, starting with the plan year that began in 2009. However, plans that cover only an owner, owner’s spouse, partner, partner’s spouse, or greater than 2% shareholders in an S-Corporation, or their spouses are not subject to the electronic filing requirement. Such plans are generally exempt from any filing if the total value of plan assets is equal to or less than \$250,000, when aggregated with all plans sponsored by the employer as of plan year end. But, voluntary filing is permitted. Plans that cover just these owners and their spouses where assets exceed \$250,000 are required to file a paper form 5500-EZ. While plans that cover non-owner employees must file either form 5500 or form 5500SF electronically with the Department of Labor, plans filing form 5500-EZ file their paper forms with the IRS. Preparation and distribution of the 2009 form 5500-EZ has been delayed and knowledgeable sources predict that it will not be ready until early this summer. A recent IRS announcement permits filers of form 5500-EZ to use the 2008 form for filing the 2009 report. This will avoid the need to rush preparation of the 2009 form in order to comply with the July 31, 2010 deadline for calendar year plans or to request a filing extension. Another alternative for the “owner only” plan is to voluntarily file form 5500SF electronically. This option, however, results in the report being made available to the public.



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