



PLAN AMENDMENTS REQUIRED FOR 2010

Employers who sponsor qualified retirement plans and those who assist them with respect to plan level compliance must keep in mind that all plan documents require an amendment for the 2010 year to reflect applicable current laws. The Heroes Earnings Assistance and Relief Tax Act of 2008 (“HEART”) requirements were further clarified by federal guidance issued earlier this year. As a result, tax qualified plans must amend their formal documents to incorporate these new provisions that provide plan benefits to employees on military leave under various circumstances. Technically, the amendment must be adopted no later than the last day of the plan year that started in 2010. However, NRS intends to release the amendments to clients in time for them to be adopted by December 31, 2010. Amendments applicable to defined contribution plans, such as 401(k), profit sharing, and money purchase plans will also address the 2009 suspension of required minimum distributions. Timely adoption of these amendments is necessary to preserve the tax qualified status of retirement plans and NRS is taking steps to get the amendments adopted timely.

RECORD RETENTION: A PLAN SPONSOR FIDUCIARY DUTY

Why Records Must be Kept

Qualified retirement plan records include trust asset information and other data needed to prepare the annual form 5500 series, as well as the employee records necessary to determine and substantiate individual employee benefits. ERISA states that “Every employer shall maintain *records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees.*” The necessary records vary depending upon the provisions of each plan,

but Plan Sponsors/Employers generally are required to maintain records concerning employee age, service, number of hours, and compensation paid. Even more important is the need to preserve and retain all plan documents and amendments that provide the rules by which the plan operates, including a history of those rules. Plan Sponsors/Employers who fail to keep these records may be subject to fines and may be unable to defend against inaccurate benefit claims.

How and How Long Records Must be Kept

Retaining records for protracted periods can be a hassle, as well as an expensive proposition. As a result, the questions of how long to keep records and in what form are important financial considerations. Some federal guidelines are available with respect to the length of time the records must be retained. Any records that provide the basis for an annual form 5500 series are required to be retained for a minimum period of six years. The length of time to retain employee benefit related data is less precise. The answer depends upon the type of data and the provisions of the applicable plan or plans. Generally, defined benefit plans require the longest record retention because an employee’s retirement benefit calculations may be done as much as 30 or 40 years after the record is created. Defined contribution plans generally require shorter time frames because the employee’s benefit is his/her account balance and that balance is updated and reported to the employee periodically. However, service records need to be retained for purposes of determining vesting percentages, as well as eligibility for plan participation. The government has made it clear that *paper* records are unnecessary, as long as electronic records are maintained in a system that meets prescribed federal standards. These standards include the reliable ability to legibly convert a record to paper and the ability to organize and conveniently access the electronic data. We



recommend that employers consult legal counsel to determine their particular record retention policy.

National Retirement Services does not act as a Plan Fiduciary, therefore retaining client records is viewed as the Plan Sponsor's/Employer's responsibility. However, in some cases NRS will retain Client records no longer than seven years as a matter of policy.

LATE EGTRRA RESTATEMENTS FOR DEFINED CONTRIBUTION PLANS

April 30, 2010 was the last day to restate a pre-approved 401(k), profit sharing, or money purchase pension plan ("EGTRRA restatement") without risking penalties. In general, an employer who uses a pre-approved plan, and nearly all NRS clients do, and who missed the deadline must file under a federal Voluntary Correction Program to cure the problem. This involves a government fee, plus paying an ERISA attorney or other third party to draft the submission. However, there is a beneficial exception for employers who were "late" in adopting their EGTRRA restatements if they are lucky enough to have a federal Employer Identification Number ("EIN") ending in either a 5 or a 0. Due to a quirk in the IRS rules and procedures, these employers actually have until January 31, 2011 to adopt the restatement without penalty. If you are an NRS client and you failed to meet the April 30, 2010 deadline, please contact your NRS Account Manager for more information.

LATE BREAKING NEWS: IN PLAN ROTH ROLLOVERS

On September 27, 2010, the President signed the Small Business Jobs and Credit Act of 2010. Two retirement plan related items are included in the new law. The first allows 401(k) or 403(b) retirement plans that offer ROTH accounts to also offer the rollover of money in non-ROTH accounts

to the ROTH account offered by the same plan. This transaction is only available when plan benefits are otherwise distributable. This provision can be very helpful to small business owners who want a ROTH rollover, but their retirement plan lacks sufficient liquid assets. The second item allows Section 457 governmental deferred compensation plans to treat elective deferrals as ROTH contributions, the same way that 401(k) and 403(b) plans are already allowed to do.

Due to a special tax rule that permits 2010 ROTH rollovers to be declared as taxable income in equal installments in 2011 and 2012, ROTH rollovers may be popular during the remainder of 2010. While a plan document amendment will be required for *in plan* ROTH rollovers, the necessary amendments will not need to be in place until after the transaction occurs. Further details concerning this new law will be forthcoming.



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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