

## **SAVE YOUR PLAN DOCUMENTS OR CONSIDER PROTECTIVE MEASURES**

Periodically, such as in connection with an IRS plan examination or a voluntary employer submission for IRS approval, the IRS has occasion to review plan documents. This includes not only the current plan document, but also previous amendments and restatements. This review can go back for more than a decade. One of the things the IRS looks for is whether various amendments required by law or regulation changes (“interim amendments”) were adopted timely. Failure to timely adopt an interim amendment can result in plan disqualification. As a practical matter, the IRS negotiates a financial settlement with the employer (“Audit CAP”) in lieu of treating the plan as disqualified. However, Audit CAP sanctions can be substantial. Documents, whether stored in paper or electronic files can (and do) sometimes get lost. ERISA attorneys frequently recommend that employers and their advisors check their files to be sure that all restatements and interim amendments are on file, signed, and dated no later than the applicable deadline. If the employer has obtained a determination letter from the IRS, it is normally okay to just check documents from that point forward. The purpose of this document review is to spot any missing or late required documents and take corrective action. In most cases, the employer will need a little help from one or more of their advisors. NRS helps this process by requesting past documents when acquiring a client with an existing plan and by requesting executed copies of plan amendments adopted by NRS clients.

If required documents are adopted late, missing, or possibly never adopted, the safe course of action is to adopt the missing amendments and submit them to the IRS under their “VCP” correction program, along with any amendments that were adopted late. This results in protection in case the IRS later reviews the amendment, and does so at a small fraction of the Audit CAP cost.

## **IRS ISSUES FORM 5500-EZ FOR OWNER ONLY PLANS JUST IN TIME FOR JULY FILING**

The IRS has just released Form 5500-EZ for plans covering only the owner and/or the owner’s spouse covering plan years that began in 2010. The forms are due to be filed no later than seven months after the end of the plan year, but a 2½ month extension can be obtained. As reported in our June Newsletter, practitioners such as NRS were concerned that the forms would not be available in time to meet the initial filing deadline and requesting extensions needed to avoid penalties for late filing is a time consuming exercise. Although the IRS encourages sponsors of owner only plans to electronically file Form 5500, many will want to avoid the public disclosure that accompanies the electronic filing and opt for a paper filing. Filing of the paper Form 5500-EZ is accomplished by mailing a copy to the IRS Ogden, Utah office.

With the release of the 5500-EZ, NRS is prepared to timely complete the 2010 filings upon receiving necessary plan information.

## **EMPLOYEE PLANS COMPLIANCE UNIT – A MORE EFFICIENT IRS**

Every now and then the question arises as to whether it is permissible to have a tax qualified retirement plan with no participants. While relatively unusual, such plans do exist and there is no law or regulation that prohibits them. For example, a small defined benefit plan might have all eligible participants terminate employment and collect their vested benefits; but the employer anticipates future plan participants. Plans without participants were recently the subject of a mail inquiry by a unit in the IRS Employee Plans Examinations section. The Employee Plans Compliance Unit (“EPCU”) recently concluded a special inquiry directed at plans that filed form

5500 indicating that there were no participants. They found that most of the plans reporting zero participants did so as a result of a mistake. The interesting point is that the IRS devoted resources looking at this issue.

The EPCU is growing in importance at the Employee Plans Examinations section. It has been involved with inquiries into fully insured defined benefit pension plans, eligibility for employee deferrals in 403(b) plans, and potential partial plan terminations that trigger full vesting for affected participants, to name a few. The EPCU represents an efficient way of exploring various subjects without the need to deploy large numbers of on site auditors. They operate using mailed communications and initiate contact by requesting specific information within a specified timeframe. Based on IRS advice, employers should be responsive to EPCU requests or else the likelihood of an on site examination by an auditor is greatly increased. *Ignoring EPCU requests is not advised.* However, employers are free to request more time to gather requested information and/or contact the IRS for a better understanding of what they are looking for. NRS can help clients who may need assistance in working with the EPCU.

The normal deadline for filing Form 8955-SSA is the last day of the seventh month following the end of the plan year being reported. In view of the delays in releasing both the 2009 and 2010 versions of the Form, the IRS is providing two forms of relief for employers who must file the annual report form. To begin with, neither the 2009 nor the 2010 forms need to be filed before January 17, 2012. Furthermore, employers are allowed to combine reported data for both 2009 and 2010 and report this information on the 2009 Form. The IRS notes that if an employer chooses to combine the 2009/2010 years using the 2009 Form; the form must nevertheless indicate that the reporting period is for the 2009 plan year. For example, a plan with a calendar plan year that combines 2009 and 2010 data would report the start date as January 1, 2009 and the ending date as December 31, 2009. NRS will prepare the Form 8955-SSA for clients when and as required.

**FOR MORE INFORMATION OR TO REQUEST A PROPOSAL, PLEASE VISIT OUR WEBSITE AT [WWW.NRSERVICES.COM](http://WWW.NRSERVICES.COM), OR FOR SALES SUPPORT, PLEASE CONTACT:**

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## **2009 TERMINATED PARTICIPANTS FORM 8955-SSA NOW AVAILABLE**

When participants terminate employment, some lose track of pension rights they may have earned. ERISA provided a process for tracking those benefits involving annual reporting by employers who have former employees with deferred vested plan benefits. Historically, a Schedule SSA was appended to the annual report Form 5500, accomplishing this reporting. After extensive delays, 2009 Form 8955-SSA (the replacement for the Form 5500 Schedule SSA) is available. Work continues on creation of a 2010 version of the form and the IRS announced that it expected the form to be available for filing "later this year."