NATIONAL RETIREMENT SERVICES, INC.

“TRUE UP” MATCHING CONTRIBUTIONS FOR 401(K) DEFERRALS

Employer matching contributions have been around for as long as 401(k) plans. One wrinkle that can arise when an employer decides to match a portion of contributions with an employer matching contribution is the answer to the question: “Will the match be calculated on the basis of contributions and compensation for the entire year or will it be calculated on a payroll by payroll basis?” The answer to this question should be located in the formal Plan Document and those who administer matching contributions are well advised to be familiar with which option is selected. Contributions that are calculated on an annual basis may be matched on a per payroll basis, but may require additional “true up contributions” after Plan Year end.

For example, suppose an employer promises to match 50% of all deferrals that do not exceed 6% of compensation and calculates the contribution on an annual basis. If a participant earns $40,000 during the year and elects to defer 3% of compensation during the first six months and 9% during the last six months, a total of $2,400 will be deferred during the entire year. If the matching contribution is calculated at the time of each deferral contribution, the match will work out to be $900 for the full year. The first six months match equals $20,000 x 3% x 50% = $300, while the last six months would be calculated as $20,000 x 6% (maximum) x 50% = $600. However, deferrals for the entire year amounted to $2,400. This is exactly 6% of compensation for the year and 50% of $2,400 is $1,200. The resulting true up contribution amounts to $300. This amount must be paid to the plan and credited to the participant’s account no later than the date specified in the Plan Document. Failure to make the payment by that date constitutes a plan operational failure that can normally be “self corrected” without IRS involvement according to the IRS Employee Plans Compliance Resolution System, but the eventual contribution must include lost earnings.

If a Plan Document provides for calculation of matching contributions on an annual basis, but the employer wants to deposit matching contributions at approximately the same time as the deferrals are made, the employer might consider amending the Plan Document so that matching contributions are calculated on a per payroll basis. This eliminates true up contribution complications.

NRS calculates both true up contributions and lost earnings amounts where appropriate.

MINIMUM FUNDING RELIEF FOR DEFINED BENEFIT PENSION PLANS (“FUNDING STABILIZATION”)

Earlier in 2012, we commented that bond interest rates were at their all time low since the 1974 passage of ERISA and that defined benefit plans would be faced with higher contribution requirements to offset expected lower investment returns. Congress has just changed these funding requirements by using rates averaged over the last 25 years, instead of the two year average previously used. Absent this change, some businesses might have had to terminate their pension plans due to the historically high required contributions.

The new federal transportation law (Moving Ahead for Progress in the 21st Century Act “MAP-21” for short) has several defined benefit pension plan features tacked on to it. Signed on July 6 and generally effective for Plan Years beginning in 2012, MAP-21 creates both a ceiling and a floor on interest rates used to calculate minimum pension plan funding and for calculating funding sufficiency in connection with implementing

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restrictions on benefit payments and accruals. The long term impact of the change establishes a floor interest rate equal to 70% of the average rate over the prior 25 years and a ceiling rate equal to 130% of that average. These limits are phased in starting in 2012, where the corridor equals plus or minus 10% of the 25 year average and increases by 5% each year until reaching plus or minus 30% in 2016. These new interest rate limits do not apply to calculating maximum deductible contributions, PBGC premiums, or minimum lump sum distributions. NRS will review options and elections with defined benefit plan sponsors after regulations are issued.

MAP-21 also increased PBGC premiums starting in 2013. Single employer plans will pay a flat rate premium equal to $42 per participant in 2013 and $49 starting in 2014 (up from $35 in 2012). The corresponding variable rate will increase from the current $9 per $1000 of unfunded liability to $13 in 2014 and $18 per $1000 in 2015. Automatic inflation based increases will apply to both rates after that. The doubling of the variable premium rate will be mitigated by the introduction of a per participant cap equal to $400 per participant indexed for inflation for plans with over 25 participants ($125 for smaller plans).

GUIDANCE ISSUED CONCERNING BENEFIT REDUCTION NOTICES

The Pension Protection Act of 2006 introduced a series of administrative actions that are designed to minimize immediate cash outflow from a pension plan whenever the plan is in a significantly underfunded condition. When the plan's funding condition is deemed to be between 80% and 60%, single sum benefit payments in lieu of periodic payments are curtailed. If the funding ratio is below 60%, no single sum payments are permitted and all benefit accruals freeze. These events must be announced to affected plan participant by means of a notice, as described in ERISA 101(j) ("101(j) Notices"). IRS Notice 2012-46 was issued July 3 providing guidance as to who is to receive these notices, when they must be provided and minimum notice content requirements. The formal guidance is effective November 1, 2012; but plan administrators may rely on the guidance immediately.

NRS will be certain that draft 101(j) notices provided to clients will comply with the new requirements on or before November 1, 2012.

REMINDER FOR AUGUST

Plans (other than single owner only plans) that permit participant direction of investments must provide the Regulation 404a-5 annual disclosure notice by August 30, if the Plan Year ends between November 1, 2011 and July 1, 2012.

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

Central & Eastern Time

Jim Houpt
Executive Vice President
T| (800) 627-1610 x 2207
E| jim.houpt@NRServices.com

Pacific & Mountain Time

Kevin Spaeth
Sales Representative
T| (800) 350-2172 x 260
E| kevin.spaeth@NRServices.com

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