NRS
NATIONAL RETIREMENT SERVICES, INC.

## DEFINED BENEFIT PLANS REQUIRE AN AMENDMENT FOR LIMITATIONS DUE TO LOW FUNDING

Most, if not all, tax qualified defined benefit plans will require an amendment by the end of their 2012 plan year, or by the extended due date of their 2012 tax return, if the plan year and tax years coincide. The amendment is required as a condition of continued plan qualification. It focuses on benefit limitations when the plan's funding ratio, technically the adjusted funding target attainment percentage ("AFTAP"), falls below pre-determined legal limits.

The amendment reflects provisions found in the recently enacted Moving Ahead for Progress in the 21st Century Act (MAP-21) that was discussed in our August 2012 newsletter, located on our web site under Planning Techniques. The amendment also reflects provisions of a recent regulation and other government provided guidance. It is designed so that various approaches may be taken by each adopting employer. Most notable is the answer to the question, "My plan benefits were frozen because the AFTAP dropped below 60%. The actuary has now certified that the ratio is above 60%. What happens to accrued benefits?" The amendment allows three options:

- Benefit accruals recommence and benefits that would have accrued during the freeze period are retroactively restored.
- Benefit accruals recommence, but benefits that would have accrued during the freeze period are not restored.
- Benefit accruals remain frozen at the level they were when benefits were frozen due to the low AFTAP.

Regardless of the option specified in the adopted amendment, an employer is free to amend the plan during any AFTAP benefits freeze and select a different option. The option selected can be for just a specific year or may represent a new ongoing automatic plan provision.

In an effort to provide employers with maximum flexibility and control, NRS prototype plans will contain a default provision using the third option above. In this way, employers can evaluate the decision concerning benefit accrual resumption and, when the time is right, amend the plan to provide for either the first or second of the above options. Employers who prefer to "hard wire" automatic accrual resumption into their prototype document are provided the opportunity to do so.

NRS clients with defined benefit plans will be individually contacted in the coming month regarding this significant amendment.

## DEFINED CONTRIBUTION RETIREMENT PLANS ACCOUNT FOR LARGER PERCENTAGE OF FAMILY ASSETS

According to statistics recently released by the Federal government, balances in defined contribution plans approached two-thirds of the average American family's assets. According to the *Survey of Consumer Finances*, balances in employer sponsored defined contribution retirement plans (chiefly 401(k), 403(b), profit sharing, and money purchase plans) accounted for 61.4% of families' total financial assets in 2010. This figure is up from 58.1% of assets in 2007. The change was influenced by a sobering 38.8% decline in net worth, coupled with a 7.7% decline in income.

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Considering the likelihood of future cuts in federal tax deductible items, the magnitude of retirement plan assets in a typical American family's financial status is a cause for concern if Congress considers 401(k) salary deferral limit cuts. In our view, employer sponsored 401(k) and 403(b) plans represent what is probably the best vehicle for the average American worker to save money on a tax deferred basis. Later this year, Congress will probably deliberate painful cuts concerning income tax deductions. NRS intends to provide clients and other associates with information concerning a new web site providing an automated way to communicate retirement plan concerns directly to federal representatives. This web site will inform readers concerning reasons why 401(k) savings are fundamentally different from other tax deductions and why they are of critical importance to the nation and the nation's employees.

## NOVEMBER REMINDERS – PARTICIPANT COMMUNICATIONS

Employers who sponsor calendar year 401(k) plans must be aware of several different participant notices and reports that are due in November or by December 1. Plans expecting to use a safe harbor alternative to nondiscrimination testing for 2013 must provide the annual notice to plan participants no later than December 1, 2012 in order to be assured that the notice was delivered timely. If the plan features automatic enrollment, a suitable employee notice describing the auto enrollment rules must also be provided by that date.

Calendar year plans offering participant investment direction must provide a quarterly benefit statement to participants by November 14, 2012, including the newly required fee disclosure information. Those with automatic enrollment provisions must also provide a Qualified Default Investment Alternative ("QDIA") notice which describes the default investment no later than December 1, 2012.

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**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**