NATIONAL RETIREMENT SERVICES, INC.

DOL MAY INCREASE RETIREMENT PLAN AUDITS

Like many of our associates in the qualified retirement plan administration business, we have noticed a definite rise in the number of audits conducted by the Employee Benefits Security Administration (EBSA) arm of the U S Department of Labor. Pointing out that nearly three of every four plans audited have ERISA violations, the DOL is rumored to be preparing for another increase in benefit plan audits for both retirement plans and health/welfare plans. EBSA examinations of retirement plans consist of traditional plan inspections at the employer's place of business, examinations by mail, and a combination of both. Our September 2011 Newsletter (see our web site "Planning Techniques") offered suggestions on how to avoid some of these audits. In addition, we offer below a list of items that are designed to result in technically correct retirement plan operations.

Company personnel and their advisors need to work together to assure correct retirement plan operation. The following items represent areas cited by the DOL as the source of many operating failures discovered during their audit process.

- Maintain a complete **Summary Plan Description**, being sure that copies are distributed and available to all eligible participants. If the Summary Plan Description is not up to date, be sure to notify participants of changes by distributing a *Summary of Material Modifications*.

- Be sure that new or transferred employees receive suitable information concerning their **plan eligibility** and are provided any tools necessary to enroll in the plan. Know which employee groups are eligible for the plan, so you can avoid offering the plan to those not entitled to it. Likewise, be sure that all who are eligible are aware of that fact.

- To the extent the plan involves employee contributions, including salary deferrals and repayment of plan loans, be sure to **deposit withheld monies as soon as administratively possible.**

- File the annual report **Form 5500** that is due to be filed with the DOL within 7 months after the close of each Plan Year (a 2½ month extension is available).

- Plans that permit employee investment discretion investing plan assets must provide a timely annual **notice concerning investment related information**, including fees and expenses. Mid-year changes may also require interim participant notices.

- Keep the **plan document up to date** and always operate the plan consistent with that document or else retroactively amend the document by Plan Year end to reflect any changes.

- Know how your plan document defines **Compensation** and gather appropriate payroll data to run the plan properly and consistently. Items such as commissions, bonuses, and overtime may be ignored by the plan.

- If the plan is a defined contribution plan that includes **difficult to value asset** items, be sure independent appraisals are performed, at least annually, to assure correct benefit payments.

- Know the rules governing required **independent outside plan audits**, and arrange for annual audits, if required.

Following the above checklist will help assure a well run plan, and makes good sense even if the plan is never audited by a Government Agency.

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IRS LETTER FORWARDING ELIMINATED FOR QUALIFIED RETIREMENT PLANS

Since 1994, the IRS has included tax qualified retirement plans in their letter forwarding program to assist plan administrators in locating missing participants with benefits payable. Citing the increase in the number and availability of alternatives for locating missing individuals, the IRS recently issued Revenue Procedure 2012-35. The Procedure points out that claiming retirement benefits from employer retirement plans will no longer be considered to be “a humane purpose” with respect to their letter forwarding program and will no longer be offered to retirement plan administrators. The program will continue to be available to individuals and governmental agencies attempting to convey urgent messages, such as serious illness or imminent death of a relative, and other emergency situations.

Elimination of the IRS letter forwarding program for retirement plans will have an impact on retirement plan administration. For example, the Department of Labor states in its Field Assistance Bulletin (FAB) 2004-02 that a retirement plan fiduciary is obliged to take specific steps (see our August 2011 Newsletter on our website under “Planning Techniques”) in efforts to locate a missing participant before these efforts are deemed to be reasonable. These steps include using a letter forwarding service. At the time the FAB was written, both the Social Security Administration (SSA) and the IRS had letter forwarding programs available to plan administrators. With the elimination of the IRS program for retirement plans, this leaves only the SSA program. While the IRS forwarding program is free, the SSA program currently costs $25 per letter and is rumored to possibly increase to $35 per letter. Given the greater availability of Internet based locators, and some very reasonably priced fee based location services, plan administrators will probably choose to use them instead of the SSA in many situations. If the participant is located, there is no need for other steps, including the SSA program.

REVISED EXTENSION FORM 5558 ISSUED

Form 5558 *Application for Extension of Time to File Certain Employee Plan Returns* was recently issued in revised form. The Form 5558 is used to request extensions for filing Forms 5500 *Annual Return/Report,* 8955-SSA *Annual Registration Statement Identifying Separated Participants*, and 5330 *Return of Excise Taxes*. The revised instructions confirm that no signature is required for extending Forms 5500 and 8955-SSA, but one is required for Form 5330. Many practitioners were not pleased with a new rule prohibiting the use of a single Form 5558 for multiple plans. Previously, extensions for up to three plans could be requested with one Form 5558. In addition, sending several Forms 5558 in a single envelope is discouraged. Since the Form 5558 cannot yet be filed electronically, requesting multiple plan extensions may be cumbersome.

REMINDER FOR SEPTEMBER

Safe harbor, EACA, and QACA participant notices for calendar year 2013 can be sent starting **October 1, 2012**. They must be provided no later than December 1, 2012 in order to be automatically deemed timely.

Calendar year plans on extension must file Form 5500 (and 8955-SSA if applicable) by **October 15**.

Plan Year March 31 plans must file Form 5500 (and 8955-SSA if applicable) by **October 31** or else obtain an extension.

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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