NRS
NATIONAL RETIREMENT SERVICES, INC.

THREE RETIREMENT PLAN OPERATING ERRORS WITH EASY FIXES

As most of you know, a tax favored retirement plan must be in writing and must be administered strictly in accordance with its terms. The Treasury Department and the IRS have formulated rules that require any elective change in a plan's provisions be formally adopted in writing by the end of the plan year in which the change is effective. Smaller plans usually rely on outside third party administration firms, such as NRS, for plan administrative assistance. Normally, this scrutiny occurs after the close of the plan year. Similarly, audits of plans covering over 100 persons are largely conducted after the close of the plan year being examined. As a result, most plan operational errors are discovered after the plan year in which they occurred. This normally prevents an employer from correcting a mistake by changing the plan document terms to match the administrative practice. As a result, most operational errors are corrected by refunding erroneous salary deferral contributions to participants, additional employer plan contributions, or forfeiting erroneously allocated employer contributions.

Buried deep in the 100+ pages of Revenue Procedure 2013-12 ("RP 2013-12") is an exception to the rule requiring elective plan amendments to be adopted in the current plan year if the purpose of the amendment is to correct one of three specific operational errors. In addition, while most corrections that involve a retroactive amendment back to a prior plan year require IRS approval under their Employee Plans Compliance Resolution System, amendments fixing any of these three errors can be done without IRS involvement as a "self correction."

Early Inclusion of Otherwise Eligible Employees:

Employees who have not yet satisfied the plan's age or service requirements are sometimes erroneously allowed plan participation. This error is particularly serious when it involves salary deferrals under a 401(k) plan because refunding the erroneous deposits often affect the employee's already filed personal tax return. A correcting amendment can be retroactively adopted that permits the affected individuals to enter the plan when the employer first allowed them to make salary deferrals to the plan. The amendment can even specify applicable employee names and dates, if the mistaken inclusion did not follow a specific pattern, such as requiring only three months of service when the plan provisions call for one year of service. The amendment can only affect ineligible individuals who were wrongly included in the plan. Furthermore, the amendment is permitted only if the employees affected by the amendment are "predominantly non-highly compensated employees."

Hardship Distribution and Participant Loan Failures:

Employers with retirement plans that do not permit hardship distributions and/or participant loans can find themselves in a difficult position when a participant is in a very difficult financial situation and the employer wants to help. Frequently, the plan holds salary deferral amounts that represent the participant's own money. Under these circumstances, employers often decide to permit a hardship distribution or loan with the intent to retroactively amend the plan at a later date to authorize the practice. Current rules permit plans to be amended no later than the end of the plan year to formally establish an already implemented practice. Sometimes, the necessary amendment is not adopted by year end and a reversal of the transaction in question could be extremely burdensome to the affected employee or employees. Fortunately, RP 2013-12 permits the retroactive installation of loan or hardship distribution provisions without regard for the timing of the amendment adoption.

Failure to Recognize Required Compensation Limits:

While not as common as participant early inclusion, ad hoc hardship, or ad hoc loans, the dollar limit imposed under Code 401(a)(17) ($255,000 in 2013) is sometimes ignored. This results in one or more highly paid individuals receiving an allocation larger

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than called for by the plan's terms. RP 2012-13 permits a retroactive amendment that increases the employer contribution requirement for all but those who received the excess allocation. When the additional amounts are allocated, the overall allocation percentage represents the allocation that would have occurred had the Code 401(a)(17) compensation limit been applied in the first place. For example, suppose a money purchase plan calls for a 10% of (limited) compensation employer contribution for a two person plan. The individual who earned $300,000 in 2013 received a $30,000 allocation, while the second individual earning $50,000 received $5,000. However the first individual's allocation should have been based on the 2013 income limit of $255,000. After a corrective amendment, the second individual receives a total $5,882.35 allocated employer contribution. Now the allocation is a uniform 11.765% of limited compensation. Investment earnings must also be estimated and credited to the account of the participant earning $50,000.

An awareness of these permitted corrective amendments that involve no government involvement can often result in relatively painless solutions to what would otherwise represent thorny administrative problems.

PROPOSED SAFE RETIREMENT ACT DESERVES SUPPORT

The proposed SAFE Retirement Act of 2013, introduced by Senator Orrin Hatch on July 9, contains a number of sensible changes to retirement plan rules. In addition to proposing an insured alternative to expensive and underfunded government employee pension plans, the bill has a surprisingly large number of common sense reforms for plans in the private sector. These include the following:

- Change the rules so that employer retirement plans need to be amended only once every six years (five years for "individually designed plans") to reflect new laws and regulations.
- Permit retroactive plan amendments up to the employer's extended due date for filing the tax return for the year in which the plan year ends.
- Permit mid-year amendments to Safe Harbor 401(k) plans as long as they do not violate specified Safe Harbor requirements.
- Permit "hardship distributions" of both elective contributions to a 401(k) plan and investment earnings on those contributions and eliminate the requirement that the participant must take a loan before getting a hardship distribution. The current mandatory six month suspension of employee elective contributions following a hardship distribution is eliminated.
- Permit employers with SIMPLE retirement plans to upgrade to a Safe Harbor 401(k) plan mid-year.
- Permit recipients of required minimum distributions (made to those over 70½) to roll over these distributions to a Roth IRA.
- Change the limit on new retirement plan tax credit for small employers from the current $500 per year to $5,000 per year.

While we normally do not focus on proposed legislation, we believe that these changes will enhance the private retirement plan system by making plans more attractive to employers and employees alike and we encourage your support of this bill.

THE DEPARTMENT OF LABOR ("DOL") OFFERS FEE DISCLOSURE RELIEF!

The DOL has provided long-sought last minute relief in its just-issued Field Assistance Bulletin No. 2013-02 (FAB 2013-02)!

As you may remember, the final regulations for participant level disclosures (29 CFR 2550.404a-5) required that participant-directed individual account plans provide certain annual disclosures to plan participants, including:

- Plan-related information, including general plan information, administrative expense information, and individual expense information; and
- Investment-related information, including performance data, benchmarking information, fee and expense information, internet web access to investment-related information, and a glossary to assist participants with investment-related technology (the "comparative chart").

The deadline for the first annual disclosure for the vast majority of retirement plans was August 30, 2012. Subsequent notices must be provided at least once in any 12-month period, regardless of the operative plan year. This means that the second round of the annual participant-level disclosure would be due by the one-year anniversary of the first disclosure.

Under the FAB 2013-02, a Plan Administrator is considered to satisfy the "at least annually thereafter" requirement if the 2013 notices and disclosures are furnished no later than 18 months after the date that the prior notices and disclosures were provided. This will allow those plan administrators who have not yet provided the notices and disclosures the opportunity to "reset" the timing to align with other year-end participant notices.

If you have already provided the second round of notices and disclosures, that is fine. You may reset the deadline next year to align with other notices, so long as they are provided no later than 18 months after the date you provided the 2013 notices and disclosures.

REMINDERS FOR AUGUST

August 15 – Defined contribution plans that permit participant investment selection must issue quarterly plan participant benefit statements if the Plan Year ends on 12/31, 3/31, 6/30, or 9/30.

August 15 – Form 5500/8955-SSA – Forms are due for the Plan Year ending 10/31/2012 if they are on extension.

August 15 – Retirement plan employer contributions are due for corporate employer tax returns due August 15 covering the fiscal period ending 05/31/2013 and for the fiscal period ending 11/30/2012 that are on extension.

September 3 – Form 5500/8955-SSA – Forms due for Plan Year ending 1/31/2013 that have not been placed on extension.

And don't forget that calendar year 2014 Safe Harbor notices for 401(k) plans with Safe Harbor provisions and automatic enrollment notices for auto enrollment plans are required to be distributed during the months of October or November.

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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 507
E| jim.houpt@NRServices.com

PACIFIC & MOUNTAIN TIME

Nate DeLong
Sales Representative
T| (800) 350-2172 x 260
E| nate.delong@NRServices.com

Alex Froloff
Sales Representative
T| (800) 350-2172 x 224
E| alex.froloff@NRServices.com