NRS
NATIONAL RETIREMENT SERVICES, INC.

LABOR DEPARTMENT CONTINUES STRONG FOCUS ON DEPOSIT TIMING OF EMPLOYEE CONTRIBUTIONS AND LOAN REPAYMENTS

Employers who sponsor 401(k) plans or any retirement plan that involves employee contributions, including loan payments need to be aware that the U.S. Department of Labor monitors employee money deposit timing. While not every retirement plan DOL audit is initiated by a concern over slow deposits of employee money, nearly every DOL audit examines this subject. How long it takes for an amount withheld from an employee's pay check to reach the plan is covered by DOL Regulation 2510.3-102 and these rules are strictly enforced. For example, the Annual Report Form 5500 series asks the employer to indicate whether there were any late deposits of employee money to the plan.

Technically, the DOL Regulation defines exactly when money received by the employer from the employee for deposit to the plan becomes a "plan asset." If the date the money becomes a plan asset occurs while the money is still in the employer's control, the employer is treated as having borrowed plan money. This means that investment earnings are payable to the employee and it also means that a prohibited transaction under ERISA has occurred. This triggers the need to report the transaction to the government, pay an excise tax, and file a Form 5330 that accompanies the excise tax payment.

NRS reminds clients of the need to promptly deposit employee retirement plan money with each annual request for employee data. We also have mentioned this topic in at least three newsletters over the past two years, including one in April 2013. Unfortunately, we continue to identify cases where the Regulation has been violated. **The rule is simple, *Always deposit employee money into the plan on the earliest date on which it can reasonably be accomplished.* The rule is tempered slightly for plans covering under 100 participants: as long as the money is deposited within seven business days after the payroll date the funds are not considered late.** The Regulation gives an example of a 401(k) plan covering 600 participants with multiple payroll centers using an outside payroll service: concluding that *3 business days* is the appropriate deposit date.

Calculating the appropriate investment losses can be challenging for employers with late deposits who choose not to participate in a Department of Labor Voluntary Fiduciary Correction ("VFC") program. Despite DOL encouragement and modest financial incentives, most affected employers choose to ignore the VFC program. Employers who choose to file under VFC are specifically permitted to use a DOL program to estimate lost investment opportunity. This is generally easier than estimating the actual lost investment opportunity for a plan that offers participant investment discretion with a variety of investment funds available. In addition, the excise tax can be waived, but only for employers who use the VFC and only if specified criteria are met, including a government prescribed notice to plan participants providing the address and phone number of their nearest Department of Labor office.

As always, NRS is available to work with clients who have failed to timely deposit employee money into the retirement plan, including calculating applicable investment losses and associated excise taxes.

401(K) PLAN PARTICIPANT ACCOUNTS RISE DRAMITICALLY – AS DOES RELIANCE ON 401(K) PLANS FOR RETIREMENT SECURITY

A major investment company reported that their average 401(k) account balance invested increased

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better than 8% to $80,900 for the 12 months ended March 31, 2013. The comparable average balance as of March 31, 2012 was $74,600. The increase was attributable to favorable investment results and continued employee and employer contributions. Looking back to March 31, 2009 at the Great Recession low point, the average account amounted to a meager $46,200, dramatically reflecting the financial markets recovery over the past four years.

Based on a recent Gallup poll, the most important source of retirement funds for non-retired individuals was their 401(k), IRA, or other retirement savings account. Nearly half (46%) of the respondents cited this as their most important source, followed by Social Security at 30%. As might be expected, nearly two-thirds (65%) of persons earning $75,000 or more named their 401(k) plan as the most important retirement income source, while only about one in four (26%) of those earning below $30,000 saw their 401(k) plan as a major source. As has been seen in other surveys, younger Americans simply do not place much value on the Social Security system as a retirement source. Less than one in five respondents between the ages of 18 and 29 years think Social Security will provide them a major source of retirement security and instead are anticipating that 401(k) and similar savings plans (53%) will be the major source of their financial security.

ALEX FROLOFF JOINS NRS

National Retirement Services, Inc. (NRS) is pleased to announce the hiring of Alex Froloff for NRS Business Development & Sales. Prior to joining NRS, Alex spent the past 8 years with Mullin TBG, a Prudential Company, as a client relationship manager for non-qualified deferred compensation and retirement plans. NRS is very excited that Alex has joined our team, and is confident that Alex will experience great success in supporting NRS's CPAs, Financial Advisors and Wholesalers in the Pacific and Mountain Time Zones. Please join NRS in welcoming Alex Froloff to its Sales and Marketing Team! Alex will be working at NRS's Huntington Beach, California, Headquarters, alongside Nate DeLong, NRS's other Pacific and Mountain Time Business Development & Sales representative. Alex's direct line is (714) 622-3239, or (800) 350-2172 ext. 224. Alex's email address is alex.froloff@NRServices.com.

REMINDERS FOR JUNE

June 14 – Defined contribution plans that permit participant investment selection must issue first quarter plan participant benefit statements if the Plan Year ended 01/31/2013.

June 17 – Form 5500/8955-SSA – Forms due for Plan Year ending 08/31/2012 that are on extension.

June 17 – Retirement plan employer contributions are due for employer tax returns due June 17 covering the fiscal period ending 03/31/2013 and for the fiscal period ending 09/30/2012 that are on extension until June 17.

June 30 – Form 5500/8955-SSA – Forms due for Plan Year ending 11/30/2012 that have not been placed on extension.

NATIONAL RETIREMENT SERVICES, INC.

FOR MORE INFORMATION OR TO REQUEST A PROPOSAL, PLEASE VISIT OUR WEBSITE AT WWW.NRSERVICES.COM, OR FOR SALES SUPPORT, PLEASE CONTACT:

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