NATIONAL RETIREMENT SERVICES, INC.

BONDS AND ERISA COVERED RETIREMENT PLANS

Retirement plans covered by ERISA are legally required to have a fidelity bond issued by a Government approved surety company. Plans that cover only the owner or owner and spouse or partners and their spouses are exempt from this requirement. The bond is issued to protect the plan from money that might be lost due to fraud or dishonesty on the part of plan officials. In this way, worker's retirement money cannot be lost due to malfeasance on the part of those entrusted to handle the plan's assets. The bond applies to anyone, not just plan fiduciaries, who 1) have physical contact with plan funds, 2) have the power to transfer plan funds, 3) have authority to make plan disbursements, 4) have check writing authority, or 5) exercise supervisory authority over the above plan related activities. Financial institutions and broker/dealers that handle plan funds need not be covered by the bond. The amount of the bond should at least equal 10% of the highest amount of the funds handled in the prior year, with a minimum of $1,000 and a maximum of $500,000 ($1,000,000 for plans that hold employer securities). By law, the fidelity bond must not have a deductible with respect to the above minimum bonding requirements. The bond must last for at least one year and the bond cost can be paid by the plan, the employer, or an interested third party. It is unlawful for a plan official to permit any other plan official to receive, disburse, or otherwise exercise custody or control over plan assets without first being properly bonded.

Due to special rules concerning exemption from ERISA required annual financial audits, small plan filers that have more than 5% of plan assets invested in "non-qualifying assets" (generally assets not at a regulated financial institution or participant loans) may wish to expand the fidelity bond to cover at least 100% of the non-qualifying assets. This is not mandated by law, but will produce significant savings in the form of CPA audit fees since properly bonded small plan filers qualify for a waiver of a CPA audit.

A Fidelity Bond is not Fiduciary Liability Insurance nor Fiduciary Indemnification

Employers and others often make the common mistake of confusing the ERISA mandated fidelity bond with fiduciary liability insurance. The two are quite different. To begin with, fiduciary liability insurance is designed to *protect the fiduciary*, not the plan. Accordingly, there is no legal requirement that such insurance be acquired. There is, however, a legal requirement that any such insurance issued must permit recourse by the insurer against the fiduciary. Premiums for such insurance can be paid by the employer or by the fiduciary. The employer is also free to indemnify the fiduciary from liability incurred by the fiduciary, provided it leaves the fiduciary fully responsible and capable of exercising his or her independent judgment on behalf of the plan and its participants.

DEFENSE OF MARRIAGE ACT REPEAL: IMPACT ON QUALIFIED RETIREMENT PLANS

When the Supreme Court's U.S. vs. Windsor decision was announced on June 26, 2013, it was clear that the ruling would have a significant impact on tax qualified retirement plans. For nearly the past forty years, qualified retirement plans have contained special provisions that provide preferential treatment to spouses. These include continuation of lifetime pensions after the death of the participant, rules concerning rollover of plan distributions, division of benefits upon a participant's divorce, payment of required minimum distributions following a participant's death, participant distributions due to a hardship experienced by the spouse, and a number of other provisions.

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Some clarification was provided on September 16, 2013 with the publication of Revenue Ruling 2013-17. That ruling deals with the general definition of the terms "spouse," "marriage," "husband," and "wife" in the general context of federal tax law. The above terms include same-sex marriages if the individuals are lawfully married under state law. Furthermore, same-sex spouses of individuals who were lawfully married in a state other than the state of current residence are also recognized for federal tax purposes. At present, licenses for same-sex marriages may be issued in California, Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Rhode Island, Vermont, Washington, and the District of Columbia. Individuals who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is *not* denominated as a marriage under the laws of that state, are not recognized as married for federal purposes and their union is not recognized as a marriage.

Even more recently, the U.S. Department of Labor issued a pronouncement to the effect that the rules set out by the Treasury Department would also be followed with respect to Labor Department employee plan issues. This is welcome news because a single uniform standard can be applied by employee plans when determining marriages and spouses for plan administrative purposes.

The Revenue Ruling did not provide specific guidance concerning employee benefit plans, but acknowledged that further guidance for these plans, including retroactive application, would be provided in the future. The Ruling also promised that the future guidance will permit adequate time for plan amendments and other necessary corrections so that plans would continue to be tax qualified. While it may be too soon for an employer to implement the new rules pending further clarification, employers can begin to obtain employee same-sex marriage information.

Employers, or their advisors, may also wish to begin the process of examining plan provisions that will likely be impacted by implementation of the new rules and can also review company policies and procedures that relate to spouses and domestic partners.

OCTOBER 2013 REMINDERS

October 15 - Form 5500/8955-SSA – Forms are due for Plan Years ending 12/31/2012 if they are on extension.

October 15 – Retirement plan employer contributions are due for corporate employer tax returns due October 15, 2013 covering the fiscal period ending 7/31/2013 and for the fiscal period ending 1/31/2013 that are on extension.

October 31 – Form 5500/8955-SSA – Forms are due for Plan Years ending March 31, 2013.

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 and 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