TIME IS RUNNING OUT FOR CALENDAR YEAR 2015 SAFE HARBOR 401(K) PLAN START-UPS

When considering 401(k) plan options, one popular feature is a safe harbor plan. A safe harbor plan is a plan that makes prescribed employer contributions, avoids nondiscrimination testing, and generally allows the eligible highly compensated employees to contribute the maximum deferral amount. Safe harbor plans face a much shorter time frame due to requirements found in the 401(k) regulations. Employers who are interested in starting a safe harbor 401(k) plan for calendar year 2015 must act quickly. There are <u>two (2) special due dates</u> for differing 401(k) plan sponsors:

(1) For ***brand new,*** **safe harbor, 401(k) arrangements**, these employer/plan sponsors have until **October 1**, 2015 to design, communicate, and administer a new, safe harbor 401(k) plan.

(2) In contrast, for ***existing*** **safe harbor 401(k) arrangements**, these employers must take certain notification action by **December 1**, 2015.

For a ***brand new*** safe harbor plan, if the employee deferrals are to be invested with a financial services provider, one must be selected and the administrative mechanics of receiving and investing plan money must be established and operational when the employee deferral contributions begin. In addition, all of the detailed plan provisions must be described in a formal Plan document and communicated to participants. NRS is here to assist you!

An employer with an established profit sharing plan is permitted to add a 401(k) cash or deferred arrangement to the plan during the year provided the profit sharing plan was not established or maintained shortly after plan assets from a previous 401(k) plan were distributed because of a plan termination.

Employers with new plans or existing profit sharing plans that are adding a new 401(k) feature during the year must adopt or amend the plan and have deferrals established for a minimum of three months if they want a *safe harbor plan*. For calendar year plans, this means the new plan must be adopted and in operation by **October 1**. If this date is missed, the new calendar 401(k) plan can be established later in the year, but will be required to perform nondiscrimination tests for the 2015 short year. This is true whether the employer makes the contributions required for safe harbor plans or not.

If a calendar *safe harbor plan* is desired by the employer and there is not enough time to establish such a plan by October 1, 2015, alternatives exist. One option would be to establish the calendar *safe harbor plan* effective January 1, 2016. A second option is to establish a 401(k) plan which is not a *safe harbor plan* in 2015, but nondiscrimination testing must be conducted for the short initial plan year and employer contributions may be required in order to pass the test.

On a related note, notices to plan participants advising them of 2016 *safe harbor and automatic enrollment plan* provisions generally must be provided between 30 and 90 days

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before the start of the year. For calendar year plans, this means that notices can be provided as early as October 1. NRS will be providing these notices to clients with existing plans.

PENSION BENEFIT GUARANTY CORPORATION COVERAGE STRATEGIES

The Pension Benefit Guaranty Corporation ("PBGC") was established in 1974 to insure the benefits of most U.S. private sector employers' defined benefit pension plans. Plans maintained by professional service employers are not covered, nor are plans that cover only substantial owners. Premiums for this insurance are paid by the employers who sponsor PBGC covered plans. These premiums are established by Congress. While employers generally view these premiums as a necessary cost of maintaining a defined benefit pension plan, some smaller employers, who view their retirement plan as a tax deferral vehicle, are pleased to pay what they see are modest premiums. This is because PBGC coverage provides the employer the opportunity to make a much larger 25% of compensation employer deductible contribution to a defined contribution plan in addition to deductible defined benefit plan contributions. Employer deductible contributions to a defined contribution and defined benefit plan that is not PBGC covered are more limited, often resulting in a maximum 6% of compensation deduction limit for the defined contribution plan.

Premiums are determined in a two part process. First, a per participant charge is assessed. Second, if the pension plan is underfunded, as measured by governmental standards, a variable premium is charged. This variable premium is expressed as a dollar amount per $1,000 of unfunded liability and is in addition to the per participant premium.

PBGC premiums were significantly increased under the Bipartisan Budget Act of 2013. For example, in 2012, the flat rate per participant premium was $35 and the variable premium rate was $9. In 2015, the flat rate is $57 and the variable equals $24 per $1,000. The 2016 flat rate is $64 per participant, while variable rates for 2016 are estimated to be $29 per $1,000 of unfunded liability.

Employers that want to *minimize* the amount of PBGC premiums (that can be paid from the plan assets) look at ways to control the number of participants and the unfunded liability. For example, a plan that offers terminated vested employees the opportunity to cash out their deferred benefits for a current single sum can reduce the flat rate premium by reducing the number of participants. In addition, more aggressive funding or deferral of benefit increases will decrease unfunded plan obligations and so reduce or even eliminate the variable rate premiums.

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SEPTEMBER 2015 REMINDERS

September 15 - Retirement plan employer contributions are due if contributions are claimed as deductions on tax returns due September 15, including returns on extension.

September 15 - Defined benefit plan minimum 2014 contributions are due for calendar year plans.

September 15 - Forms 5500 series and Form 8955-SSA are due for Plan Years ending November 30, 2014 if they are on extension.

September 30 - Forms 5500 series and Form 8955-SSA are due for Plan Years ending February 28, 2015, unless an extension applies.

HOW ARE WE DOING? PLEASE COMPLETE THE NRS CLIENT SATISFACTION SURVEY!

We are grateful and thankful for the strong response to our Client Satisfaction Survey! In an effort to maintain high level client satisfaction, we need client feedback! The content of these replies will be sent directly to Executive Management. This survey takes less than 2 minutes to complete. To access the Client Satisfaction Survey, please click here.

As always, NRS truly values your continued business!

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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