We at NRS wish you and yours a very happy, healthy, and prosperous New Year!

In preparing for our heavy workload season, the following topics present helpful information to you as it concerns the submission of your plan year-end data, as well as a timely reminder regarding the Restatement of your Plan Document as required under the Pension Protection Act ("PPA").

COMPENSATION DEFINITIONS FOR QUALIFIED RETIREMENT PLANS: NON-DISCRIMINATION TESTING AND SAFE HARBORS

As discussed in our November 2015 newsletter, employers who sponsor tax qualified retirement plans have a good deal of flexibility when deciding what compensation to use for allocating employer contributions or determining pension plan benefits. One of the most significant requirements for tax qualified retirement plans is that the plans "do not discriminate in favor of highly compensated employees." This provision, contained in Internal Revenue Code sections 401(a)(4), 414(q), and in extensive federal regulations, is a key requirement for tax favored retirement plans.

Beyond this, it is important to keep in mind a number of other key concepts.

First, regardless of the definition of compensation used by the plan or selected for discrimination testing, compensation above a statutory limit ($265,000 in 2015 and 2016) is ignored for all plan purposes.

Second, it is important to realize that your retirement plan document is your unique blue print for your qualified retirement plan. Thus, your HR/payroll staff needs to consult your specific plan document, not merely the Summary Plan Description ("SPD").

For example, when in doubt, treat anything on a Form W-2 as compensation, subject to a 401(k) deferral, or an employer contribution. This includes "manual checks", but not the occasional non-cash gift.

Third, your retirement plan document may have been designed as a "safe harbor" to satisfy the non-discrimination requirement, or be more creative in plan design, and then test each year as described in the regulations to be sure that the resulting benefits do not discriminate. "Safe harbor" options for 401(k) plans consist of prescribed employer matching or non-elective contributions. Safe harbor employer contribution allocation formulas for defined contribution plans and safe harbor benefit formulas for defined benefit plans are provided in detailed regulations. Plans that are designed without safe harbor formulas must demonstrate the absence of prohibited discrimination in plan benefits by performing complex mathematical tests. Whichever way is used to meet the non-discrimination requirements, compensation used for testing or for making 401(k) plan safe harbor employer contributions must satisfy the requirements of Internal Revenue Code.

"Plan Compensation" could be before any exclusion for overtime, bonuses, commissions, or any other exclusion. Generally, employee deferral contributions to a cafeteria, 401(k),

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403(b), or 457(b) plans are included in plan compensation. Nevertheless, employee deferral contributions may be included or excluded for testing purposes at the employer's option on a year by year basis. "Plan Compensation" can also exclude all fringe benefits, expense reimbursements, deferred compensation payments and welfare benefits. In addition, any other form of compensation that is paid only to "Highly Compensated Employees" (generally those employees earning above a specific compensation amount that is inflation indexed or those owning more than 5% of the employer) may be ignored when determining Plan Compensation. Compensation based on this definition is referred to in this article as "pre-approved compensation."

Employers wishing to use an alternate definition of compensation may do so provided the resulting compensation passes certain additional testing. Tax law and regulations provide employers a good deal of flexibility in the definition of compensation for retirement plan design purposes. Although complicated, the rules permit employers to simplify compliance requirements through the use of safe harbor designs. They also provide employers the option for more sophisticated plan designs, while introducing additional complexities to the process. Again, when in doubt, consult your Plan document and then your NRS Account Manager.

TIME IS RUNNING OUT FOR YOUR RETIREMENT PLAN'S PPA RESTATEMENT

As we advised clients in previous newsletters, every defined contribution plan administered by National Retirement Services, Inc. ("NRS") must be amended and restated in order to update IRS pre-approved language. This amendment/restatement must be completed and signed by the employer no later than April 30 to safeguard the tax and financial advantages of the qualified retirement plan. Failure to restate your qualified plan by April 30, 2016 allows the IRS to disqualify your retirement plan with severe and immediate tax consequences.

Since NRS processes all PPA Restatements on first in, first out basis, it is important for clients to follow-up their restatement retainer with the balance due so that we can appropriately prioritize completion of the restatements. Your plan can pay this restatement fee from plan assets if desired. Please consult your NRS Account Manager.

REMINDERS FOR JANUARY

January 15 – Retirement plan employer contributions are due in order to be **deducted** on employer tax returns due to be filed January 15.

January 15 – Minimum funding requirements for defined benefit plan years ended 04/30/15 must be met by January 15 in order to avoid excise taxes.

January 15 – **Form 5500 Series/8955-SSA** – Forms that are on extension are due for the Plan Year ending 03/31/2015.

February 1 – **Form 5500 Series/8955-SSA** – Forms are due for the Plan Year ending 06/30/15 that are not on extension.

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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