GOOD NEWS FOR SAFE HARBOR 401(K) PLANS: MOST MID-YEAR AMENDMENTS ARE NOW PERMITTED

Employers that sponsor 401(k) plans making use of a special employer contribution ("safe harbor contribution") designed to avoid the need for non-discrimination testing have reason to celebrate. IRS Notice 2016-16 ("The Notice") was issued on January 29, 2016 and addressed a long standing general prohibition against such plans making mid-year plan changes. As discussed in more detail below, the IRS has substantially changed a rule that has been in place for the last decade. Instead of allowing only a small number of exceptions to a general *prohibition* on mid-year amendments, the IRS now *permits* all mid-year amendments with a handful of limited exceptions.

Before the Notice, the IRS permitted only six specific exceptions to a rule found in the final 401(k) regulations. Reg. 1.401(k)-3(e)(1) requires a plan using safe harbor contributions to have plan provisions affecting the year in question adopted by the employer before the first day of the plan year and remain in effect for the entire 12-month plan year. The regulation points out that any exceptions to this rule would be published in the Internal Revenue Bulletin.

After the Notice (which was published in the Internal Revenue Bulletin), any mid-year change not specifically prohibited in the Notice is permitted, effective for mid-year changes made on or after January 29, 2016. Changes affecting plan provisions contained in the annual participant notice must be disclosed in an updated safe harbor participant notice describing the change within a "reasonable" period of time *before the change is effective*. Participants must also be offered the opportunity to change their salary deferral elections before the effective date of the change. The Notice mentions providing the updated participant notice and deferral change opportunity between 30 and 90 days before the change effective date, but permits notices as late as 30 days *after* the change "if it is not practicable for the opportunity to be provided before the effective date of the change."

The following mid-year amendments are **prohibited** under the Notice:

- An amendment changing the type of safe harbor plan. For example, changing between a qualified automatic contribution arrangement ("QACA") safe harbor plan and a traditional safe harbor plan.

- An amendment increasing the number of years required for vesting of safe harbor contributions in a QACA safe harbor plan.

- An amendment to reduce the group of

Continued on the next page…

- employees eligible to receive safe harbor contributions (but changes can be made to eligibility or entry date requirements that do not affect already eligible participants).

- An amendment adopted in the last three months of the plan year that modifies or adds a matching contribution formula if the change increases the match or permits matching contributions at the employer's discretion. Changes adopted more than 3 months before plan year end can be retroactively effective to the beginning of the plan year.

The Notice makes the following examples of mid-year changes **possible** (all examples presume a calendar plan year):

- Safe harbor non-elective contributions are increased from 3% of compensation to 4% effective July 1.

- Safe harbor matching contributions are retroactively increased from 4% to 5% effective January 1 by an amendment adopted August 31.

- The formula for allocating employer profit sharing contributions (other than non-elective safe harbor contributions) is changed effective January 1 by an amendment adopted December 4.

This change in the IRS position is very welcome and removes a strict rule that complicated safe harbor 401(k) plans and served to discourage some employers from adopting safe harbor plan provisions.

PPA RESTATEMENTS GETTING DOWN TO THE WIRE

As previously notified in late 2014 and throughout the 2015 year, and once again discussed in our February newsletter, every pre-approved defined contribution plan must be amended and restated in order to update IRS approved language. This amendment/restatement must be completed and signed by the employer **no later than April 30, 2016** 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 adverse tax consequences.

NRS processes all PPA Restatements on a first-in, first-out basis and it is essential 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 if payment has not yet been made for this essential NRS service.

REMINDERS FOR MARCH 2016

March 15 – **Minimum funding requirements** for defined benefit, money purchase, and target benefit pension plan years ended 6/30/15 must be met by March 15, 2016 in order to avoid excise taxes. An electronic transfer must be completed or a check mailed by this date.

March 15 – Calendar year 401(k) plans must process corrective distributions for failed nondiscrimination tests to avoid being subject to a 10% excise tax. (Certain automatic enrollment plans have until June 30).

March 15 – Calendar year defined benefit plans may adopt an amendment retroactive to January 1, 2015. For example, an amendment improving 2015 benefit accruals would increase deductible contributions for fiscal 2015.

March 15 – **Forms 5500 Series/8955-SSA** – Forms that are on extension are due for the Plan Year ending 5/31/15.

March 15 – Retirement plan employer contributions are due in order to be **deducted** on employer tax returns due to be filed March 15, 2016.

March 31 – **Form 5500 Series/8955-SSA** – Forms are due for the Plan Year ending 8/31/15 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:

CENTRAL & EASTERN TIME

Jim Houpt
Executive Vice President
T| (800) 627-1610 x 507
E| jim.houpt@NRServices.com

Amber Waddell
Sales Representative
T| (800) 627-1610 x 501
E| amber.waddell@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