

## **PRE-APPROVED DEFINED CONTRIBUTION PLAN DOCUMENTS AND THE SIGNIFICANCE OF APRIL 30, 2016**

Much has been written about the need for employers who use IRS pre-approved plan documents to replace their current defined contribution plan documents with newer pre-approved documents no later than April 30, 2016. We have discussed this issue frequently in our newsletters and use the generally accepted retirement industry term “PPA Restatements” as a label for these newer pre-approved documents. The name was given in recognition that the Pension Protection Act of 2006 created many of the required changes in retirement plan documents. This restatement represents a replacement for pre-approved documents previously adopted by employers no later than April 2010.

The plan restatements are part of a complex system established by the Internal Revenue Service in 2007 to issue and periodically update retirement plan documents that need not be individually reviewed and approved by the IRS. The system is in place for both defined contribution and defined benefit plans, but each type of plan has its own schedule. Recognizing that the laws and regulations affecting tax qualified retirement plans require almost constant document changes, the IRS established a six-year period as the planned duration for retirement plan documents that they pre-approve. In effect, each pre-approved plan

document is due to be replaced after about six years. For employers that have been using pre-approved defined contribution plan documents for a number of years, the “PPA Restatement” is replacing a document called the “EGTRRA Restatement,” named after the Economic Growth and Tax Relief Reconciliation Act of 2001, which required many of the updates in that document.

Every tax qualified retirement plan sponsor that uses pre-approved plan documents (and the vast majority do) must be prepared to restate the plan document about once every six years. Sponsors of defined benefit plans were required to adopt an EGTRRA restatement by the end of April 2012. Due to the IRS decision to draft and offer pre-approved cash balance defined benefit pension plans, there will be delays. Current defined benefit plan documents adopted by April 2012 will be allowed to continue beyond six years in order to enable employers with cash balance plans to use pre-approved documents, along with employers with more conventional defined benefit plans.

### *What if Employers miss the established deadlines for adopting a restatement?*

The IRS has included what they refer to as “nonamenders” in their Employee Plans Compliance Resolution System (EPCRS). A “nonamender” includes an employer who uses a pre-approved plan document but

fails to restate it by the date established by the IRS (April 30, 2016 for employers with pre-approved defined contribution plans). A nonamender is free to utilize the Voluntary Correction Program (VCP) by making a special submission to the IRS and paying an established fee. The fee varies, depending upon the number of plan participants, but if the submission is made no later than one year after the deadline, the fee is one-half of the fee otherwise charged. For example, a plan that covers 20 or fewer participants would normally pay a \$500 fee for corrections under the VCP program, but only pays \$250 if the submission is not more than a year late. A plan covering 1,001 participants would normally pay \$10,000, but need only pay \$5,000 if submitted within a year. Of course, most employers do not have the staff nor wish to handle IRS submissions, so added fees must be paid to attorneys or third party administrators.

We have not discussed the situation where an employer misses the restatement deadline and decides to simply ignore the fact that the plan document is not restated. Upon examination by the IRS or upon submitting the plan to the IRS upon plan termination, this document shortcoming would very likely be discovered by even the most inexperienced IRS examiner. If discovered during a voluntary submission to the IRS, such as for a plan termination, a pre-determined fee is charged based on the number of plan participants. For example, a plan covering fewer than 21 participants

would pay \$2,500, while a plan covering 1,001 plan participants pays \$25,000. If the nonamender failure is discovered by an IRS initiated examination, the employer would face a financial sanction that is individually calculated under the “Audit Closing Agreement Program.” This involves estimating what tax advantages the retirement plan enjoyed during the past three years due to its tax qualified status and negotiating a sanction with the employer in lieu of actually removing the plan’s tax qualified status. This process clearly involves an additional amount of time and money, over and above doing it “right” the first time.

NRS is working hard in an effort to timely complete all required PPA amendments. Please ensure that the necessary retainer, or information related to the restatement, is timely received by NRS to avoid a possible delay in your PPA plan document.

**REMINDERS FOR  
FEBRUARY 2016**

**February 15 (Holiday) – Minimum funding requirements** for defined benefit, money purchase, and target benefit pension plan years ended May 31, 2015 must be met by February 15, 2016 in order to avoid excise taxes. An electronic transfer must be completed or a check mailed by this date.

**February 16** – Retirement plan employer contributions are due in order to be **deducted** on employer tax returns due to be filed February 16, 2016.

**February 16 – Form 5500 Series/8955-SSA** – Forms that are on extension are due for the Plan Year ending 04/30/2015.

**February 29 – Form 5500 Series/8955-SSA** – Forms are due for the Plan Year ending 07/31/15 that are not on extension.

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