



## **MANY THINGS TO KEEP IN MIND FOR END OF 2009 AND A PEEK AT 2010**

The first decade of the third millennium will draw to a close in less than 30 days. During the past decade, two very significant tax laws were passed that had a substantial impact on America's private retirement plan system. In 2001, the Economic Growth and Tax Relief Reconciliation Act ("EGTRRA") had broad tax implications in several financial areas, including retirement plans. More recently, the Pension Protection Act of 2006 ("PPA") changed the retirement plan landscape more profoundly than any legislation since ERISA was passed in 1974. It is very likely that much attention will be focused on reforming the Nation's healthcare system during the remainder of 2009. However, an employer that sponsors a retirement plan has plenty of items that deserve attention before we usher in 2010.

### **2009 YEAR END CONCERNS**

By now 401(k) plan sponsors should have already provided 2010 employee notices about automatic enrollment, safe harbor provisions, and "Qualified Default Investment Alternatives." However, both EGTRRA and PPA have a spot on the list below, along with a host of other "to do" reminders.

- **Required Minimum Distributions** represent an important year end item. Defined benefit plans must be sure that required payments are made to both owners at or over age 70.5, as well as terminated rank and file participants over age 70 ½ by year end. Defined contribution plans (such as profit sharing, 401(k) and money purchase plans), on the other hand, must wrestle with advising and accommodating participants who would normally receive a required distribution in 2009

and who instead can skip the 2009 payment, voluntarily accept the distribution, or in some cases, return or rollover a 2009 distribution (see our November 2009 Newsletter).

- **Discretionary Plan Design Amendments** that are effective in the 2009 plan year must be adopted no later than the last day of that plan year. The only exception applies to plan design amendments that reduce future accrued benefits. These must be adopted *before* they go into effect. Similarly, any 401(k) plan that will be amended to include either an EACA (Eligible Automatic Contribution Arrangement) or QACA (Qualified Automatic Contribution Arrangement) for the 2010 plan year must amend the formal plan document *before* the amendment is effective.
- **2009 Owner 401(k) Deferrals from Earned Income** must be documented by a properly written election executed no later than December 31, 2009, if the reduction in otherwise taxable income is to apply to the 2009 tax year. Participants in calendar year 401(k) plans who wish to change the amount of their 2010 salary deferrals must generally do so on or before December 31, 2009.
- **403(b) Plans** must be documented starting with the 2009 plan year and the documents must be adopted no later than the end of 2009 for calendar year plans.
- **PPA Amendments** are required to be adopted by the last day of the 2009 plan year (see our August 2009 Newsletter for more details). NRS clients that use the NRS prototype documents will have this chore done automatically because NRS adopts the required amendment on their behalf. However, plans that do not use a prototype document, including NRS clients that



use volume submitter documents, must adopt the PPA amendment by the 2009 plan year end.

### **WHAT'S IN STORE FOR 2010?**

While we don't claim to be clairvoyant, several actions are going to be necessary in 2010 as set out below:

- **EGTRRA Restatements** will be very much a part of 2010 as remaining defined contribution plans with pre-approved documents rush to get their plans restated by April 30, 2010. In addition, employers that do not use pre-approved plan documents whose Employer Identification Number ends in "4" or "9" must restate (and submit to the IRS for a determination letter, if desired) their plans no later than January 31, 2010. Employers that use **pre-approved defined benefit plan documents will be restating their documents for EGTRRA by the middle of the year.**
- **EFAST-2** will require that the annual report for 2009 to be filed during 2010 must be done electronically in most cases. This will require adjustments for both plan sponsors who file the reports and the Third Party Administrators who draft them. The NRS 2009 data collection communication will address these changes in some detail.
- **Code 402(f) Notices** that describe the tax ramifications of distributions from tax qualified plans have been revised and the revised notices need to be used to advise participants receiving distributions in 2010 and later years.
- **Defined Benefit Participant Statements** are required to be distributed for the first time beginning with a statement for the 2009 plan year. NRS clients with defined benefit plans have routinely received these statements for a number of years, but that may not be the case for other defined benefit plan sponsors.

### **NEW RETIREMENT PLANS**

New Retirement Plans represent a source of tax relief for those fortunate enough to have substantial income in 2009 that is otherwise subject to immediate taxation. In order to be deductible for a particular tax year, the new retirement plan must be adopted no later than the last day of the taxpayer's fiscal year.

**If you have any questions regarding your retirement plan, or wish to establish a new retirement plan, please contact your NRS Account Manager or the marketing contacts below.**

**NRS wishes all of its clients, friends and associates a Joyous Holiday Season and a Happy and Prosperous 2010!**

For more information or to request a proposal, please visit our website at [www.NRServices.com](http://www.NRServices.com), or for sales support, please contact:

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