



CALENDAR YEAR 2009 YEAR END REMINDERS

As the remainder of calendar 2009 rapidly winds down, there are several reminders we would like to pass on.

- Any 401(k) plan sponsor that intends to use a **safe harbor** in 2010 to avoid nondiscrimination testing must provide a participant notice containing government prescribed information at least 30 days before the new Plan Year. For a calendar year 401(k) plan, that would be December 1. This notice and timing requirement also applies if the employer wants to leave open the possibility of making a safe harbor non-elective contribution for the 2010 Plan Year.
- Limits on deferrals, employer contributions, defined benefits, and a variety of other amounts normally change with each new calendar year. Due to the absence of a cost of living increase, there will be **no changes in the limits for 2010**. This includes the maximum benefit insured by the PBGC. However, the basic PBGC premium rate will be increasing by \$1 per participant for 2010 to \$35 per participant.
- While a required **minimum distribution** is not required from defined contribution plans during 2009, affected participants must be made aware of their right to request to receive such a distribution and be advised that any such distribution can be rolled over to an IRA or another retirement plan.
- The Pension Protection Act of 2006 (“PPA”) requires that all plans be amended to comply with PPA provisions by the last day of the plan year that began in 2009. NRS clients that use an NRS prototype document will have that amendment adopted on their behalf, but employers who use a “volume submitter” document and cash balance plan sponsors will

need to execute a separate **PPA amendment** for their plans.

- Defined benefit plans with a **Normal Retirement Date under age 62** will generally be required to amend their plans by the end of their current Plan Year as discussed in our July 2009 newsletter.
- Starting with the **2009 Form 5500** that will be prepared in 2010, virtually all 5500s will have to be **electronically filed**. Paper forms will only be allowed for “one person” retirement plans. One of the requirements for such “E-filing” will be the acquisition of an email address for each plan sponsor and plan administrator. The Department of Labor will supply more information later this year.

IRS ENDS CONFUSION OVER 2009 SUSPENSION OF REQUIRED MINIMUM DISTRIBUTIONS

As some of you may recall, last year’s “WRERA” (*Worker, Retiree, and Employer Recovery Act of 2008*) legislation suspended otherwise required 2009 minimum distributions for retirement plan and IRA participants age 70 ½ or older. The suspension applied to employer sponsored defined contribution plans, but not to defined benefit plans. The reasoning was clear: Requiring participants to withdraw money from their IRAs or company defined contribution retirement plan when the market value is depressed results in “buying high and selling low.” The provision was enthusiastically received, but raised several questions that remained unanswered since the December 2008 WRERA enactment. This September, the government clarified documentation and rollover issues by publishing *Notice 2009-82*.

Continued on the next page...



Documentation Concerns

The Notice clarified that companies with defined contribution retirement plans have until the end of the plan year beginning in 2011 to retroactively amend their plan to document the 2009 holiday. (IRAs do not need to be amended “pending the issuance of further guidance”). It also provided sample pre-approved amendment language that employers may use to amend their plans. Two versions are provided that vary depending upon which default is selected. The default relates to participants otherwise required to receive a minimum distribution in 2009 who fail to communicate whether they want to receive the distribution. One version automatically pays the 2009 minimum unless the participant elects to skip it, while the other version provides that there is no distribution for 2009 unless the participant selects one. Either way, the affected participant must be advised of his/her right to select whether the payment is made.

Relief in Form of Liberalized Rollover Rules

The Notice responded to confusion experienced by many plan administrators who made 2009 distributions without the consent of the participant. A special rule allows recipients of minimum distributions in 2009 to roll over these distributions until the later of November 30, 2009 (or 60 days after the distribution was received). The rollover can be to an IRA, another employer plan, *or back to the same plan that made the distribution*. This relief also applies to individuals who received distributions from IRAs, although only one rollover is allowed during the year.

MORE FLEXIBILITY FOR DEFINED BENEFIT PLAN FUNDING

In a highly technical release, the IRS has provided defined benefit sponsors (or their actuaries) more flexibility in determining 2009 AFTAP (adjusted

target attainment percentage) and minimum funding amounts. In a nutshell, the new guidance permits the employer to use one approach in selecting interest rates for 2009 purposes and use a different basis for selecting rates for 2010 and subsequent years. This development may permit lower funding requirements and minimize benefit restrictions.

NRS CLIENT SATISFACTION SURVEY

While the results are by no means complete, we are grateful and thankful for the strong response to our Client Satisfaction Survey. We know that many of our clients are challenged by a less than robust economy and yet so many took the time to share their NRS experience with us.

The feedback that we receive from our clients helps NRS maintain its total commitment in providing the best service possible. 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:

PACIFIC & MOUNTAIN TIME

Kevin Spaeth
Sales Representative
(800) 350-2172 x 260
kevin.spaeth@NRServices.com

CENTRAL & EASTERN TIME

Jim Houpt
Executive Vice President
(800) 627-1610 x 2207
jim.houpt@NRServices.com

