

The NAFE logo features the letters "NAFE" in a large, bold, sans-serif font. The "N" is red, the "A" is grey, the "F" is green, and the "E" is blue. The background of the slide shows a hot air balloon with a colorful pattern of purple, blue, and yellow, floating over a vast green landscape under a cloudy sky.

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AVOIDING PENALTIES AND DEADLINE PITFALLS in DISTRIBUTION REPORTING

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DATAIR Employee Benefit Systems, Inc.*

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Kristina draws on her 40 years of qualified plan experience to serve as a liaison between government agencies, DATAIR's programmers and clients of DATAIR Employee Benefit Systems, Inc. Her primary responsibility is for DATAIR's Pension Reporter system which includes 5500 Series, PBGC forms, 1099-Rs and 5300 Series forms. In 2008, Kristina was the recipient of NIPA's Volunteer of the Year. She currently serves on the NAFE Planning Committee, the NIPA Designation Committee, the Great Lakes NIPA Study Group, and ASPPA's GAC Reporting and Disclosure Committee.



WHAT WE WILL COVER TODAY

- Trade Preferences Extension Act
 - Penalty Increases
 - Legislation
 - Regulations (and expected changes)
- Impact of Failing to Timely File or Furnish
 - IRS Notices and Process
 - Client Education
- Effective and Efficient In-House Practices
 - Plan Terminations
 - Participant Elections
 - Multiple Types of Distributions Requiring Multiple 1099-Rs

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Trade Preferences Extension Act of 2015

- PL 114-27
- Enacted June 29, 2015
- Effective for information returns filed after 12/31/15
 - Includes returns for prior years filed after 12/31/15
- Information Returns Included
 - W-2
 - 1098 Series
 - 1099 Series
 - ACA Forms 1094-B and 1095-B Series

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Trade Preferences Extension Act of 2015

- Provisions
 - Section 6721
 - Failure to Furnish an Information Return to IRS
 - Failure to Furnish a Correct Information Return to IRS
 - Section 6722
 - Failure to Furnish an Information Return to Recipient
 - Failure to Furnish a Correct Information Return to Recipient

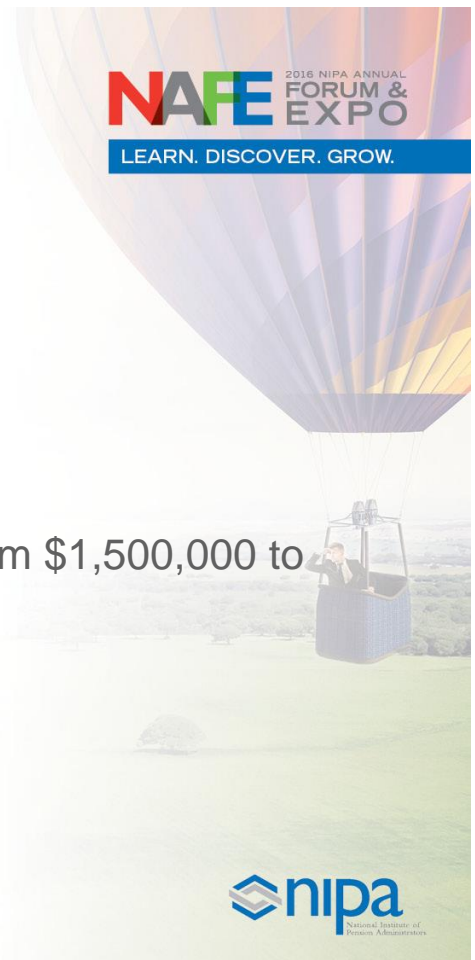
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Trade Preferences Extension Act of 2015

- Penalties
 - \$250 for each Failure to File
 - Up from \$100 for each Failure
 - \$250 for each Failure to Furnish
 - Up from \$100 for each Failure
 - Doubles the maximum penalty from \$1,500,000 to \$3,000,000



Trade Preferences Extension Act of 2015

- Reductions in Penalties if Failures are Corrected Quickly
 - If Corrected Within 30 days - \$50 per Failure
 - Was \$30 per Failure
 - If Corrected After 30 days, But Before August 1 of the Reporting Year - \$100 per Failure
- If it is determined that the failure was willful on the part of the Payer, all penalties are doubled

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Trade Preferences Extension Act of 2015

- Due Dates Vs Filing Dates and Penalties
 - Paper Filing Due 2/28
 - If Filed Before 3/31, \$50 per Form
 - If Filed Before 8/1, \$100 per Form
 - If Filed After 8/1, \$250 per Form
 - Electronic Filing Due 3/31
 - If Filed Before 4/30, \$50 per Form
 - If Filed Before 8/1, \$100 per Form
 - If Filed After 8/1, \$250 per Form

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Trade Preferences Extension Act of 2015

- Impact for the TPA
 - Larger Plans
 - Where Plan Sponsor Experiences a Contraction in their Business and thus the Number of Participants
 - Often the Most Important Plans for a TPA
 - Terminated Plans
 - IRS Notices – About a Year after August 1 of the Reporting Year
- All Notices are mailed to the Payer (Plan Sponsor or Trustee)
 - Form 8822-B

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Looming Complication

- Automatic Extension of Time to File
 - 30 Days Granted for Electronic Filers of Information Returns
 - IRS Will Eliminate this Automatic Extension for W-2s for the 2017 Filing Season (2016 Forms)
 - The Elimination of the Automatic Extension for All Other Information Returns
 - Change is an Attempt to Eliminate or Reduce Fraudulent Refund Claims

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Impact of Failing to Timely File or Furnish

- Notice 972CG Is Sent to the Payer
 - Notification of Late Filing with IRS
 - Provides
 - Penalty Amount and the Calculation
 - Provides for Instructions if in Total Agreement, Partial Agreement or Total Disagreement
 - Includes Payment Coupon

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Impact of Failing to Timely File or Furnish

- Notice 1948C Acknowledging Response to Notice 972CG
 - Names the Agent Making the Determination and Contact Information
 - Can Request Additional Information
 - Can be Notice of Abatement
 - Can be Notice that the Penalty Stands

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Impact of Failing to Timely File or Furnish

- Notice CP215 – Notice of Penalty Charge
 - Total Amount of Penalty Being Charged
 - Includes Date Interest Will Begin to Be Charged
- Notice 854C – Appeals Procedure
 - Mailed soon after the Notice CP215 is mailed.
 - Provides Name and Address of the Penalty Appeals Coordinator
 - Requests that any Appeal Response include the “Under penalties of perjury...” statement.
 - Note: a Form 2848 is Required for Appeals

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Impact of Failing to Timely File or Furnish

- Appeals Office Acknowledgement
 - Provides the Name and Contact Information for the Appeals Officer
 - Reviews the facts the IRS has about the filing
- Appeals Office Final Decision
 - Provides determined penalty – May be reduced
 - Includes Information as to how to appeal through the US District Court or the US Court of Federal Claims
 - Assessed Penalty must be Paid
 - Form 843, Claim for Refund and Request for Abatement must be filed to Disallow Claim
 - Lawsuit must be filed within 2 years

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Impact of Failing to Timely File or Furnish

- CP504B – Notice of Intent to Seize Property
 - If Penalty was not previously paid, it must be paid when this notice is received to avoid disruption of Payer's accounts and finances
- Other Notices
 - 2644C – Acknowledgement of Payer Letter, but explaining more time is needed to respond
 - 86C – Notification that a different office is in charge of the Penalty Process
 - Philadelphia sends original correspondence
 - Appeals Office is in Ogden UT

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Client Education Regarding IRS Communications

- Train Clients to:
 - Immediately Forward IRS Correspondence to You
 - No Response Is Assumed to be Agreement with IRS Position
 - If Client Was Responsible for Mailing the Paper Filing, Must Retain Information as to When the Mailing to the IRS Occurred.
 - Proof of Receipt by IRS Is Always Useful.
 - Retain records of When Information Was Provided for 1099-R Preparation and Electronic Filing.
 - Retain Undeliverable Payee Copies

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Client Education Regarding 1099-Rs and Withholding Deposits

- 1099-R Data -- Payer
 - Identify the Payer EIN/TIN used for income tax withholding deposit
 - 945 Filing Must Match the EIN/TIN Used for the Deposit
 - IRS Inquiries for Differences Will Be Received in Late February or Early March
 - More Than One EIN/TIN Means More Than One Form 945
 - 1099-R filing Should Match the EIN/TIN Used for the Deposit and for the Form 945

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Plan Terminations and Penalty Risk

- Often Requires More than 10 1099-Rs
 - Potential Penalty
- Operations May Have Been Shut Down
 - Address the IRS Has May Not Have Been Updated
 - Responsible Party May Not Have Been Changed Since SS-4 Was Filed
 - Form 8822-B Should Be Filed
- Often Occurs Early in the Year
 - Easily Forgotten

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Participant Election Forms to Ensure Accuracy

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- Participant Distribution Form Items to Consider:
 - Recognition by the Participant that Name, Age, SSN and Address Shown in Termination Package Are Correct
 - Agreement by the Participant that if Address Changes Before 1/31 of the Following Calendar Year, the Payer Will Be Notified
 - Appropriate for 8955-SSA Statement When Reporting a D Code As Well
 - Form of Distribution Elected on Same Page

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Participant Distribution Information Retention

- In a Secure Location:
 - Copies of Signed Election Forms, with Financial Details of Distribution
 - All Distributions Made During a Calendar Year Retained in the Same Place
- Secure Location Can Be
 - Paper File Retained in a Safe
 - Electronic File Maintained in a Password Protected File
 - Encryption would be Ideal

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Form 1099-R Information to Ensure Correct Reporting

- Check Each Distribution As It Occurs for Complete Data
 - Name
 - Social Security Number
 - Address
 - Age on Date of Distribution
 - Determines Special Tax Treatment, Normal Distribution or Premature Distribution
 - Date of Distribution
 - Determines Tax Withholding Liability for Timely Deposits
 - Determines Normal or Premature Distribution

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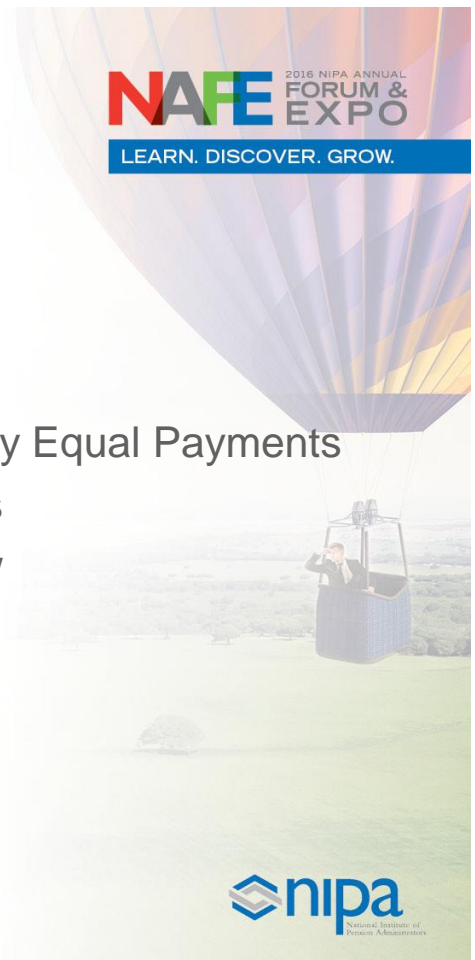
Form 1099-R Information Needed to Ensure Correct Reporting

- Reason for Distribution
 - Termination of Participant or Plan
 - Death
 - Disability
 - Retirement
 - Hardship Distribution
 - Deemed Distribution
 - Corrective Distribution
 - Required Minimum Distribution



Form 1099-R Information Needed to Ensure Correct Reporting

- Form of Distribution
 - Lump Sum
 - Direct Rollover
 - Periodic Payments or Substantially Equal Payments
 - Modification to Periodic Payments
 - Single Payment, Required by Law



Form 1099-R Information Needed to Ensure Correct Reporting

- Money Sources in the Distribution
 - Pre-Tax Money
 - Employee After-Tax Contributions
 - Cost of Insurance, Taxed in the Past
 - Roth Contributions
 - Year Roth Contributions Commenced or Roth Account was Established
 - Employer Securities
 - Loans
 - Capital Gains



Form 1099-R Information Needed to Ensure Correct Reporting

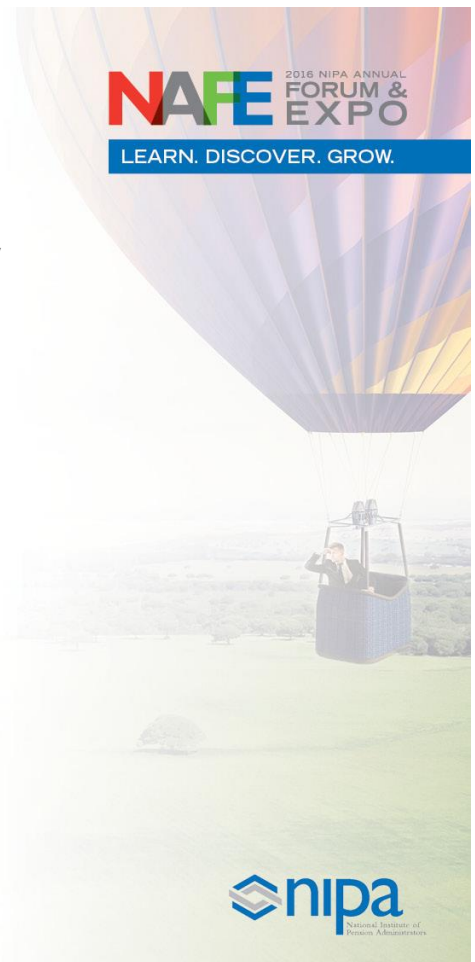
- Gross Amount of Distribution
- Amount of Federal Income Tax Withheld
- Taxable Amount of the Distribution
- Basis Amount of the Distribution

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Form 1099-R Preparation

- Distribution Codes Determined By
 - Recipient Age, and/or
 - Reason for Distribution, and/or
 - Method of Distribution, and/or
 - Source of Distribution



Form 1099-R Preparation

- Distribution Codes Based on Recipient Age
 - Under Age 59 ½
 - Code 1 or 2 for Distributions Paid to Recipient
 - Over Age 55, but Under 59 ½ and Modified Substantially Equal Payments
 - Code 1
 - Over Age 59 ½
 - Code 7

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Form 1099-R Preparation

- Distribution Codes Based on Reason for Distribution
 - Death – Code 4
 - Disability – Code 2 or 3
 - Corrective Distribution – Code 8 or P
 - Exceeded Code 415 Limit – Code E
 - Deemed Distribution – Code L
 - Cost of Insurance – Code 9

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Form 1099-R Preparation

- Distribution Code Based on Method of Distribution
 - Lump Sum Distribution – Code 1, 2, 4 or 7
 - Lump Sum Distribution of Designated Roth Account – Code 1, 2 or 4
 - Rollover to Regular IRA or Conduit IRA – Code G
 - Substantially Equal Payments – Codes 2, 3 or 7

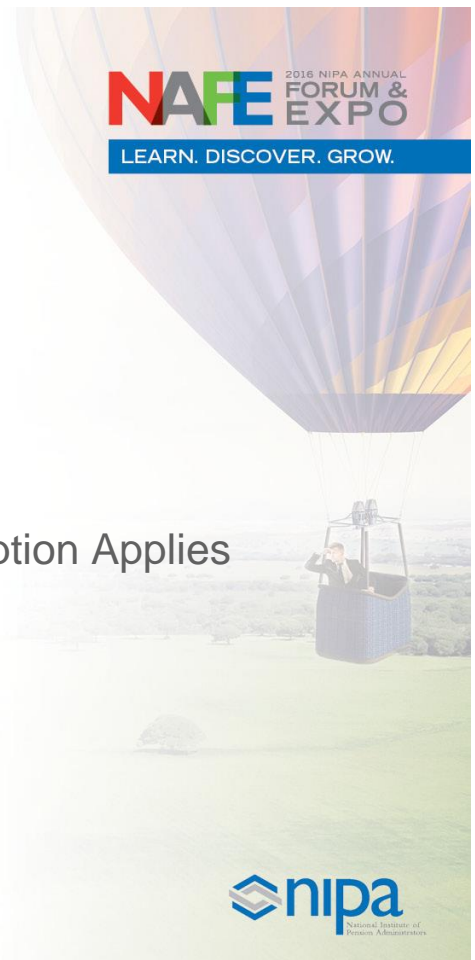
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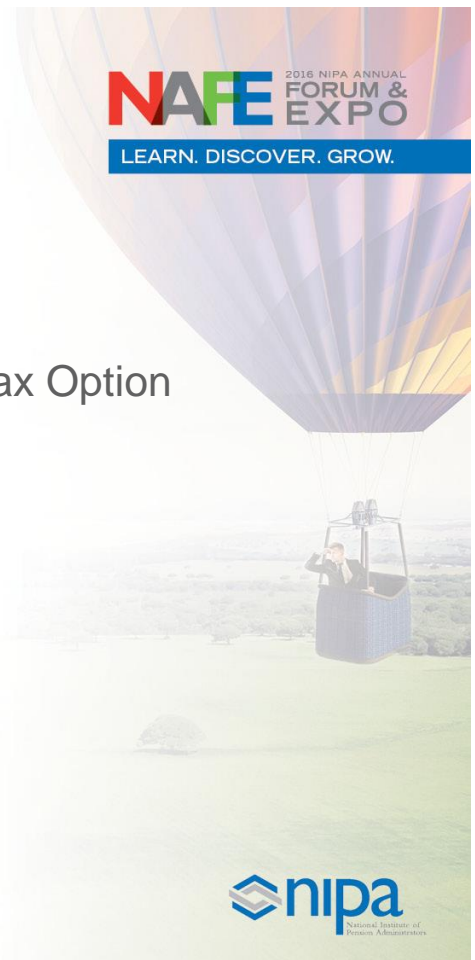
Forms 1099-R Preparation

- Distribution Code Combinations
 - Code 1 – Early Distribution
 - 8 or P – Corrective Distributions
 - B – Roth Contributions
 - L – Deemed Distribution
 - Code 2 – Early Distribution, Exception Applies
 - 8 or P – Corrective Distributions
 - B – Roth Account



Form 1099-R Preparation

- Code 4 – Death
 - 4 or P – Corrective Distributions
 - A – May be Eligible for 10-Year Tax Option
 - B – Roth Contribution
 - G or H – Direct Rollovers
 - L – Deemed Distribution



Form 1099-R Preparation

- Stand-Alone Distribution Codes
 - Code 3 – Disability under Section 72(m)(7)
 - Code 9 – Cost of Current Life Insurance Protection
 - Code E – Excess Annual Additions under Section 415 or Certain Amounts under 403(b) Plans

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Multiple 1099-Rs Required

- Example: HCE Participant receives a lump sum distribution consisting of Roth and Non-Roth money in December, 2016. He also had an insurance policy in the plan. In March, 2017 ADP and ACP tests fail and HCE should have corrective distributions
 - Prepared in January, 2017
 - 1 1099-R for Eligible Rollover of Non-Roth Funds
 - 1 1099-R for Eligible Rollover of Roth Funds
 - 1 1099-R for Cost of Insurance

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Multiple 1099-Rs Required

- In March, 2015 ADP and ACP Tests Fail
 - 2 Corrected 1099-Rs Prepared for Eligible Rollover Portions
 - 1 New 1099-R for Non-Roth Corrective Distribution
 - 1 New 1099-R for Roth Corrective Distribution

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Multiple 1099-Rs Required

- Participants Subject to Required Minimum Distributions Under the Same Scenario Would Have an Additional 1099-R for the RMD
- Roth and Non-Roth Monies Are Always Reported on Separate 1099-Rs

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