NRS
NATIONAL RETIREMENT SERVICES, INC.

NEW FEE DISCLOSURE RULES SET TO TAKE EFFECT IN APRIL

One of the big news items of 2011 had to do with new Department of Labor rules and regulations requiring greater transparency with respect to retirement plan investments and plan paid fees. This transparency applies to plan participants who are able to direct their plan investments and also to plan fiduciaries who hire service providers to provide plan services that are paid for by the plan. DOL regulation is pending relating to ERISA section 408(b) (2) ("408(b)(2) "). This deals with fee disclosures from plan services providers to defined contribution plan fiduciaries whenever these fees are paid from plan assets, rather than directly by the employer. A second DOL Regulation 2550.404a-5 ("404a-5") deals with a Plan Administrator's duty to provide both annual and quarterly disclosure information to participants who are permitted to direct their plan investments. The new participant disclosures apply to the majority of 401(k) and 403(b) plans, as well as many profit sharing and money purchase plans.

The 408(b)(2) disclosures apply to firms providing retirement plan related service that are reimbursed more than $1,000 from retirement plan assets. They must provide plan fiduciaries (usually the employer) with full disclosure of both direct and indirect compensation received. They must also describe the services rendered for this compensation. This requirement is currently scheduled to be effective April 1, 2012, but will be extended if the 404a-5 effective date is extended. The requirement applies to a variety of service providers, including NRS in some cases. NRS intends to fully comply with these requirements and will be in touch with affected clients in the coming months.

The 404a-5 regulation was issued in October 2010 and amended in July 2011 to extend its effective date. The current effective date is August 14, 2012 for calendar year plans. Additional DOL guidance was expected in October or November, 2011 and had not been issued as of the end of December when this article was written. Several professional groups are urging DOL to extend the effective date again, given the lack of what they consider timely required guidance. Regulation 404a-5 disclosures will consist of both quarterly statements that report expenses charged against each participant's account and annual disclosures. The annual disclosures concern investment alternatives, procedures for directing investments, administrative expense information, and a variety of other related data. Plan administrators are required to deliver the statements to participants; but investment service providers will provide major assistance in this regard.

ONE PARTICIPANT PLANS NOW ABLE TO FILE ELECTRONICALLY – AND MAINTAIN PRIVACY

Tax qualified retirement plans covering only an owner or owner's spouse may file a different annual report Form 5500 series form known as Form 5500-EZ. This form is a paper form and is filed with the IRS. Such plans may instead electronically file Form 5500-SF with the Department of Labor using their EFAST2 filing system. While electronic filing is relatively easy and environmentally friendly, there was a catch: all DOL electronic filings were open to public inspection on the internet. Because of this, one person plans typically filed using the paper filing approach.

Effective January 1, 2012, the DOL has eliminated the major stumbling block to electronically filing Form 5500-SF by making the filed form unavailable to the public. This means a one person plan can electronically file their 5500-SF with the

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DOL without worrying about going public with their retirement plan details. While this change should result in a greater number of very small plans filing electronically, paper filing of Form 5500-EZ with the IRS is still permitted.

IRS WIDENS USER FEE WAIVER ELIGIBILITY

Employers with qualified retirement plans using pre-approved plan documents usually request IRS determination letters to establish that the termination of a retirement plan does not adversely affect the plan's tax qualified status. The IRS review and approval process can be expensive, currently $2,000 or more. Employers using documents that are not pre-approved pay more user fees because these plans are normally IRS reviewed at inception and restatement, as well as at plan termination.

IRS user fees are waived for plans of employers who employ fewer than 100 workers, at least one of whom is a non-highly compensated employee participating in the plan, provided the submission occurs during the first five years after the plan was effective. There is an extension to the five year requirement that has produced a good deal of confusion: if at the end of the first five years of its existence the plan is in a "remedial amendment period," the employer can still get the user fee waiver if submitted by the end of that period.

The IRS recently simplified and expanded the process of determining waiver eligibility. Under Notice 2011-86, a plan is deemed to have met the five year requirement if (a) the submission is made by the last day of the plan's current remedial amendment cycle and (b) the plan was effective no earlier than January 1 of the tenth calendar year immediately preceding the year in which the submission period begins. This means that a terminating defined contribution plan effective as early as January 1, 2004 is eligible for the IRS fee waiver provided the submission occurs by April 30, 2016, assuming the other requirements mentioned above are satisfied. A terminating defined benefit plan with an effective date as early as January 1, 2000 is eligible for the waiver if the submission occurs by April 30, 2012.

NRS routinely determines whether a plan is subject to the fee exemption as part of our services associated with an IRS submission.

FOR MORE INFORMATION OR TO REQUEST A PROPOSAL, PLEASE VISIT OUR WEBSITE AT WWW.NRSERVICES.COM, OR FOR SALES SUPPORT, PLEASE CONTACT:

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