THE DOL ISSUES FINAL "CONFLICT OF INTEREST" RULE FOR RETIREMENT PLAN INVESTMENT ADVICE PROVIDERS

Recently, the United States Department of Labor ("DOL") issued its final rule concerning potential conflicts of interest involving those who are paid to provide retirement plan investment advice. The rule updates regulations that had remained untouched since 1975 and has inspired considerable interest from professional investment advisors, Congress, and the news media. While NRS is not directly involved in this issue, the matter is of substantial importance to retirement plan sponsors, participants, and affected professional investment advisors. For this reason, we are providing our readers with this brief discussion of the new rule as it affects employer sponsored retirement plans.

This final rule was released April 6, 2016 following a six-year period of proposed rulemaking, including withdrawal of the initial proposal, issuance of a modified proposal in 2015, two comment periods, and close to 400,000 comments just since the re-proposal. Although the rule was published as "final", a bill has been introduced in the House of Representatives that would negate or modify this new rule if the bill is signed into law. Currently, the White House has promised to veto this bill, if passed by Congress. It is difficult to remember any federal action concerning retirement plans that has caused more heated discussion and debate.

By way of technical background, ERISA contains rules that prohibit certain financial transactions involving retirement plans and certain third parties. These "prohibited transactions" must be corrected (undone) upon discovery and an excise tax must be paid to the Government. Individuals providing fiduciary investment advice to plan sponsors or participants may not receive payments creating conflicts of interest without a prohibited transaction exemption. The definition of "fiduciary" is expanded in the 2016 rule so that it includes a much broader group. As might be expected, exemptions apply and the DOL has issued some exemptions as part of their 2016 announcement.

Simply put, the new rule requires that those who receive compensation for providing retirement plan investment advice must do so exclusively in the best interests of the party receiving the advice and must disclose the fees he or she will receive. If a conflict of interest exists, such as higher compensation being paid to the provider for certain investments, this information must be disclosed to the party receiving the advice. "Compensation" may be in the form of commissions, finder's

fees, revenue sharing payments, or some other medium. "Investment advice" is advice relating to buying, selling, holding, disposing, or exchanging investment securities or other investment property. Failure to follow this rule results in a "prohibited transaction" which must be reversed and that subjects the individual receiving such compensation to a 15% per year federal excise tax for the period between receipt of the money and correction of the transaction.

The new rule provides extensive discussion of what is not covered by the new rule. These exceptions include: advising participants about required minimum distributions after age 70½, providing proxy or other voting information to a class of investors, general explanations concerning the importance of portfolio diversification, and suggesting that participants consult with suitable financial advisors for assistance. Likewise, the rule does not cover providing general education about investments, appraisals or valuations of specific assets. It also does not prevent employees of the employer from communicating to the plan sponsor regarding plan investments, as long as the employee receives no compensation for this advice other than his or her normal compensation. Finally, a firm that provides an investment platform consisting of a variety of possible investments, along with associated recordkeeping, is permitted if no individualized investment advice is provided. Likewise, a business such as a third party administrator may recommend an organization maintaining an investment platform to a plan sponsor without running afoul of the new rule.

The effective date of the new rule is June 7, 2016, although the compliance date is extended until April 10, 2017. In addition, the compliance date can be delayed until January 1, 2018 if specified conditions are met.

Financial investing is not a NRS responsibility to clients. Therefore, we strongly suggest that you discuss this new "Conflict of Interest" rule with your financial advisor. However, we are prepared to provide limited assistance to our clients who have questions.

REMINDERS FOR MAY 2016

May 15 – Minimum funding requirements for defined benefit, money purchase, and target benefit plan years ended 8/31/15 must be met by May 15 in order to avoid excise taxes. An electronic transfer must be completed or a check mailed by this date.

May 16 – Forms 5500 Series/8955-SSA – Forms that are on extension are due for the Plan Year ended 7/31/15.

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

May 31 – Forms 5500 Series/8955-SSA – Forms are due for the Plan Year ended 10/31/15 that are not on extension.

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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