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DOL holds public hearing on fiduciary proposal

On September 3, the Department of Labor held a six-panel hearing titled, "Improving Investment Advice for Workers & Retirees." The panels were organized into six areas:

1. **Rollovers** — Concern was expressed about rollovers and the potentially hidden nature of indirect compensation through the advantaged nature of a service provider representative.
2. **Conflicted advice** — Consumer advocate groups testified to weakening the fiduciary standard, how it leads to conflicted advice, and the need for a strong fiduciary standard.
3. **Insurance products** — Concern was voiced about the reinterpretation of the five-part test, its potential to limit advice models and product types, and the inconsistency of applying a securities standard (Reg BI) to the independent insurance agent model.
4. **Consumer advocates** — This proposal should be withdrawn, and a strong fiduciary standard should be applied.
5. **Preamble and disclosure** — This panel gave general support for the rule and its alignment with Reg BI. The focus was on the improper reinterpretation of the five-part test.
6. **Failures of Reg BI** — This panel pled the need for more time to understand the impact of Reg BI before using it as a model. Ohio Commissioner of Securities Andrea Seidt testified on behalf of NAASA.

Testimony was largely predictable with consumer advocates calling for the rule to be withdrawn because of its weakening of the fiduciary standard, while industry representatives supported the proposal generally but highlighted problems with the preamble and its applicability to the insurance model. The consumer advocates also routinely criticized the speedy process under which the rule has been proposed. Themes of investor confusion, inadequacy of disclosure and conflicting advice persisted throughout.

There was discussion across the panels and Employee Benefits Security Administration (EBSA) staff about the potentially confusing nature of the fiduciary status disclosure. Several panels were asked about an alternative disclosure related to the standard of conduct (as opposed to fiduciary status) similar to Reg BI. A transcript of the witness testimony will be available in the next week or so. A Wall Street Journal report highlighting problems with CRS disclosures was mentioned several times.

DOL proposes proxy voting rule

On August 31, the Department of Labor released proposed amendments to its "Investment Duties" regulation to address the application of ERISA's fiduciary duties with respect to proxy voting and the exercise of other shareholder rights.

Under the proposal, a plan fiduciary must vote any proxy where the fiduciary "prudently determines that the matter being voted upon would have an economic impact on the plan after considering [the six specific standards listed above] and taking into account the costs involved (including the cost of research, if necessary, to determine how to vote)."

Additionally, the proposal would prohibit a plan fiduciary from voting any proxy unless the fiduciary "prudently determines that the matter being voted upon would have an economic impact on the plan after considering [the six specific standards listed above] and taking into account the costs involved (including the cost of research, if necessary, to determine how to vote).

Like the recently proposed ESG rule, the Proxy Voting Proposal emphasizes DOL's view that ERISA's duties of prudence and exclusive purpose require plan fiduciaries to act solely for the economic benefit of plan participants and beneficiaries when managing plan assets.

IRS issues more SECURE Act guidance

On September 2, the IRS issued Notice 2020-68, providing guidance on certain provisions of the SECURE Act and the Bipartisan American Miners Act of 2019. The notice addressed five areas:

1. Updating traditional IRAs and disclosure statements for post-age 70½ contributions
2. Qualified birth or adoption distributions
3. Difficulty of care payments
4. The Miners Act
5. IRA and plan amendments

Among other things, the notice states that IRA endorsements must be amended to reflect the SECURE Act by December 31, 2022, effectively confirming that the SECURE Act's remedial amendment periods apply to IRAs. The notice also states that issuers who wish to accept traditional IRA contributions after age 70½ must amend their IRA endorsements to "provide for" such contributions. Public comments are due November 2, 2020.

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References and source material used in this publication

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Improving Investment Advice for Workers & Retirees
dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/proposed-regulations/improving-investment-advice-for-workers-and-retirees

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Firms Failing to Report Advisors' Disciplinary Histories on Form CRS: WSJ
thinkadvisor.com/2020/09/02/firms-failing-to-report-advisors-disciplinary-histories-on-form-crs-wsj/

U.S. Department of Labor Proposes Rule on Employee Benefit Plan Proxy Voting and Exercises of Other Shareholder Rights
dol.gov/newsroom/releases/ebsa/ebsa20200831

Miscellaneous Changes Under the Setting Every Community Up for Retirement Enhancement Act of 2019 and the Bipartisan American Miners Act of 2019
irs.gov/pub/irs-drop/n-20-68.pdf

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Keeping watch

You can find the most recent information on issues affecting governmental defined contribution plans, plan sponsors and plan participants on the Employer page of our plan website, NRSforu.com/plansponsor.

About this report

Bob Beasley, CRC, Communications Consultant, edits this report. Beasley brings more than 30 years of financial services communications experience to your plan. He has contributed to past editions of the *Governmental 457(b) Guidebook,* edits countless newsletters and plan sponsor communications, and in 2001 authored "What you should know about the Economic Growth and Tax Relief Reconciliation Act of 2001." He often voices Nationwide's online presentations.

Beasley has served on the Education and Communication Committee for the Plan Sponsor Council of America and as a member of the National Association of Government Defined Contribution Administrators.

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