July 2015

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Senate Democrats ask for guidance on state-based retirement initiatives.

On May 18, 2015, twenty-six Democratic Senators (lead by the Ranking Members of the HELP and Finance Committees) sent a letter to President Obama urging him to ask the Departments of Labor (DOL) and Treasury to issue guidance clarifying that state-sponsored retirement savings initiatives are not preempted by ERISA.

The Senators encourage the Obama Administration to clarify that ERISA does not apply or limit the “state-k” arrangements that have been enacted in various forms in California, Illinois, and Washington (state) and to push for the creation of these programs in other states.

Nationwide Comment: Nationwide has actively opposed the programs in California, Illinois, Washington, and others as the private sector has an abundance of offerings to address this market, making state-created offerings unnecessary.

GAO issues report on retirement security.

June 2, the US Government Accountability Office (GAO) released a report titled, Retirement Security: Most Households Approaching Retirement Have Low Savings.

The report was made at the request of Sen. Sanders (I-VT), Ranking Member, Primary Health and Retirement Security Subcommittee, Health, Education Labor and Pensions (HELP) Committee, and
GAO examined what financial resources workers approaching retirement and current retirees have, and what evidence do studies and surveys provide about retirement security for workers and retirees.

The report concludes that, among households age 55 and older:

- 48% have some retirement savings
- 23% are covered by a DB plan, but have no retirement savings
- 29% are not covered by a DB plan, nor have retirement savings

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DOL says fixes are coming for proposed fiduciary rule.

On July 16, 2015, at the Securities and Exchange Commission’s (SEC) Investor Advisor Committee’s meeting (held in part to discuss the rule), a Department of Labor (DOL) deputy assistant secretary stated, “The fear of complying with the various disclosure provisions is what’s motivating people to say they might not use the best interest-contract exemption” and that “we’ve [the DOL] indicated an enormous amount of flexibility to those things.”

While DOL officials did not discuss specific changes they would consider, the officials did indicate their hope that written comments in response to the rule (due July 21) will be “very specific about what words are causing confusion so we can write different words.”

Nationwide Comment: The DOL has made similar assurances in the past, yet consistently fail to provide workable solutions. Nationwide is finalizing its comment letter to the DOL, which will focus on the need for a workable best interest standard which protects Americans’ ability to plan for and live in retirement without upending existing business models.

Background

Congressional Appropriations Committee acts to block DOL fiduciary funding.

On June 25, the Senate Appropriations (full) Committee approved a bill (16-14) that includes language to deny funding to the DOL to finalize and implement its fiduciary proposal. The rider, part of the Senate’s DOL, Department of Health and Human Services, Department of Education, and other agencies spending bill, is similar to language in the House bill for the same purpose. That House spending bill was favorably voted out of Committee (30-21) on June 24 and will now move to the House floor for consideration. No timeline for floor consideration in either chamber has been released. Sen. Durbin (D-IL) offered an amendment to strip the fiduciary provision from the Senate bill, which failed by voice vote. No amendments to strip the fiduciary section from the bill were offered to the House bill. It is unlikely, even if either bill unexpectedly passes both chambers, that it would survive a Presidential veto unless attached to a “must pass” piece of legislation (such as a debt limit increase or government funding bill).

Nationwide Comment: Nationwide believes the most likely and productive approach to improve the fiduciary rule is to advance a bipartisan compromise bill that includes a workable best interest standard protecting American savers -- but does not upend the industry business model for providing access to investment advice and retirement savings products.
Groups explore how fiduciary rule may affect workers, retirees, small business.

House Education and Workforce Subcommittee holds hearing on fiduciary standard.

On June 17, the House Education and Workforce Committee’s Subcommittee on Health, Employment, Labor, and Pensions held a hearing (“Restricting Access to Financial Advice: Evaluating the Costs and Consequences for Working Families and Retirees”) on the Department of Labor’s (DOL) fiduciary standard re-proposal, which was released in April. DOL Secretary Perez was the primary witness advocating for the rule.

A second panel of witnesses from across the financial services industry testified about the significant problems associated with the rule. The hearing highlighted the support on Capitol Hill for finding common ground on the best interest standard as well as bipartisan concerns about the proposed rule. Multiple Members, including Ranking Member Polis (D-CO), expressed hope that the rule could be made workable.

Sec. Perez reiterated throughout his testimony that he wants to create an enforceable best interest standard, that he has performed extensive outreach to stakeholders and received input from SEC, and that the public has over 140 days to comment. He also stated that he is seeking the public’s input to “operationalize” the requirements of the best interest standard.

Nationwide Comment: Nationwide believes the proposed rule contains several concerning elements that must be addressed to ensure that Americans will continue to have the information and guidance needed to prepare for and live in retirement and is encouraging Congressional interest and input on the issue.

Chamber reports on rule’s effect on small business retirement savings.

On June 9, the U.S. Chamber of Commerce released “Locked out of Retirement: The Threat to Small Business Retirement Savings,” which found the DOL’s recently re-proposed fiduciary rule would threaten $472 billion in small business retirement savings.

The report, which focuses on those small businesses/employees that use Simplified Employee Pension IRAs (SEP IRA’s) and Savings Incentive Match Plan for Employees IRAs (SIMPLE IRAs), found that nine million small business-supported households will either completely lose access to employer-sponsored retirement plans or face dramatically higher fees under the new rule.

Nationwide Comment: As a leader in providing retirement solutions to small businesses, Nationwide applauds the Chamber’s effort to bring the rule’s unintended effects to the public’s attention. Nationwide continues to encourage its trade groups to weigh in with the DOL, Congress, and the public to voice their opposition to the overly broad nature of the DOL’s proposal.
SEC launches retirement advice review program.

On June 22, the Securities and Exchange Commission (SEC) announced a new multi-year review program which could potentially influence any future fiduciary proposal from the regulator. The Retirement-Targeted Industry Reviews and Examinations (ReTIRE) program will investigate “certain higher-risk areas of registrants’ sales, investment, and oversight processes, with particular emphasis on select areas where retail investors saving for retirement may be harmed.”

The SEC will also investigate investment recommendations made to retirees, conflict disclosure related to compensation and relationships with service providers, supervision and compliance controls, and marketing and disclosures toward retail investors.

While the 2010 Dodd-Frank reform law gave the SEC authority to write its own fiduciary standard, it has allowed the Department of Labor (DOL) to take the initiative on the rule, despite SEC Chair White’s comments earlier this year that the SEC should proceed with its own rule.

Nationwide Comment: Nationwide has several serious concerns with the DOL’s proposal, released in April, including its potential to conflict with a future rule from the SEC.
References and source material used in this publication

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Retirement Security: Most Households Approaching Retirement Have Low Savings

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“Fiduciary” Rule Would Have Serious Consequences for Working Families, Small Businesses
Locked Out of Retirement

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SEC Launches Compliance Review to Protect Retiree Investors
www.reuters.com/article/2015/06/22/us-sec-retire-compliance-idUSKBN0P21YD20150622

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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 in the Employer page of our plan website, NRSforu.com. In addition, we report guidance on legislative and regulatory activity relevant to government sector plans through:

- **Federal Legislative and Regulatory Report** – distributed monthly and posted in the Plan Sponsor section of NRSforu.com. It’s available online and for download.
- **Plan Sponsor Alerts** – published as needed to announce breaking news.
- **457 Guidebook** – which has been revised to include information about the American Taxpayer Relief Act of 2012, Pension Protection Act of 2006; The Heroes Earnings Assistance and Relief Tax Act of 2008; Worker, Retiree & Employer Recovery Act of 2008; and The Small Business Jobs Act of 2010.

About this report

**BOB BEASLEY**, CRC, Communications Consultant, edits this report. Beasley brings 25 years of financial services communications experience to your plan. He helped prepare the four most recent editions of the 457 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 and telephone greetings.

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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NRM-13321AO (07/2015)