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After releasing proposed fiduciary rule, DOL extends comment period.

On May 15, 2015, the Department of Labor (DOL) announced via a memo that the agency is adding 15 days to the initial comment period of 75 days, set to begin after public hearings on Aug. 10. The rule proposal extends a fiduciary standard to brokers and advisors providing investment advice on retirement accounts.

Public comments on the rule proposal may even stretch beyond 140 days. “This is considerably longer than the typical comment period for the Employee Benefits Security Administration’s other proposed rulemakings,” a department spokesman said. “The length of the extension takes into account the views of stakeholders who have asked the department not to alter its timeline for the comment period at all.”

On April 14, the DOL released its long-awaited re-proposal of the definition of fiduciary after an expedited review process. The rule, which is approximately 700 pages long, is still being analyzed for its specific impact. However, a first read of the proposed rule exposes 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.

A group of 16 trade associations sent a letter to the DOL April 21 requesting the 75-day public comment period be extended to 120 days. On April 23, DOL Secretary Tom Perez made public remarks suggesting the DOL may be unwilling to grant the extension. The May 18 memo counters his remarks.
**Nationwide Comment:** Nationwide is continuing to scrutinize the rule to determine the specific areas of the rule that are most concerning to Nationwide. Nationwide, along with its industry partners and trade associations, is assessing how to respond to the proposed rule. Furthermore, Nationwide, as a member of many of the trades listed on the letter requesting a comment period extension, encouraged the organizations to weigh in with the DOL.
Crowley announces retirement action plan.

On April 21, Congressman Crowley (D-NY) announced his action plan for building better retirement security for Americans. There is no timeline for introduction of the bills. The Congressman’s plan includes:

- Legislation to create USAccounts, which will create a new savings vehicle for children at birth, which would start with an investment of $500 from the federal government, and families will be able to add up to $2,000 annually, post tax.
- Making the President’s myRA proposal permanent; and
- A mandate that employers with 10 or more employees that do not already offer a retirement plan, to open individualized retirement accounts (Secure, Accessible, Valuable, Efficient Universal Pension accounts (SAVE UP accounts)) for their employees, which would have traits similar to the federal Thrift Saving Plan. The account would include both employer and employee contributions with auto-enroll and auto-increase features.

**Nationwide comment:** Nationwide feels that a robust market exists to meet the retirement needs of private sector employees and continues to work with industry associations to convey this message.
Senate Finance Committee publishes tax reform working group submissions.

The Senate Finance (tax) Committee recently published the submissions it received as part of the Committee’s ongoing tax reform working group activity. More than 1,400 comments were submitted to the working groups, with Nationwide providing comments through our trade associations.

It is Nationwide’s understanding that the working group activity has been limited to staff conversations at this point. It should become clear in the next several weeks whether Senators serving on the Committee will actively engage in the working group process.

Of note, Senator Brown (D-OH) is chairing the Savings and Investments group and serves on the International Tax group. Senator Portman (R-OH) is chairing the International Tax group and serves on the Business Income Tax group.

Nationwide Comment: Nationwide worked with the ACLI to ensure their submission included references to Nationwide’s key company and product tax concerns. Specifically, the submission highlighted the importance of the current tax treatment of Corporate-Owned Life Insurance (COLI), retirement plans tax incentives, as well as preserving the existing tax structure of life insurance companies.

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Senate Banking Committee holds hearing on insurance regulation.

While the focus of the April 28 hearing was on the Federal Reserve’s (Fed) ongoing rule writing on capital standards for insurers as well as capital standards development at the international level, several other topics relating to insurers were discussed. Senator Brown (D-OH) raised concerns about captives and the need to close loopholes, entering into the hearing record a statement from NY Superintendent Lawsky expressing his previously stated negative views on the practice.

Senator Warren (D-MA) focused on annuity sales practices, citing agent “kickbacks” and “giveaways,” many believe in an effort to emphasize the need for the Department of Labor’s (DOL) recent fiduciary rule re-proposal.

Following the hearing, Sen. Warren sent a letter to the 15 largest annuity providers, including Nationwide, requesting information on rewards and incentive practices offered by those companies to those who sell annuities on their behalf.

Nationwide Comment: Nationwide continues to work through the ACLI to address concerns surrounding the use of captives and sales practices. Nationwide is also working with the ACLI in our response to respond to Senator Warren’s letter regarding annuity sales incentives.


Both articles were published in mid-April. The first claims that a “boom” in captive reinsurance deals has led to billions of dollars of unpaid federal taxes. The article explains that the Internal Revenue Code says companies must use the National Association of Insurance Commissioners (NAIC) formulas to calculate their reserves, and deduct that amount. But the article claims companies do a second calculation of their reserves, which is smaller than the NAIC method, leaving about $560 million of taxes avoided.

The second article highlights small captives, used by small businesses to insure risks so unlikely that the captives will never pay out the claim and thus leave the premiums to their heirs with little/no tax. These transactions were included in the IRS’s list of “Dirty Dozen tax scams.” This list includes other scams such as phishing and identity theft and therefore paints captives broadly in a negative light.

Thus far, there has been relatively little interest in the issue among Capitol Hill tax writers.

Nationwide Comment: Nationwide continues to work through the ACLI to address concerns surrounding the use of captives.
IRS issues new methods for correcting 403(b) plan elective deferral errors.

The Internal Revenue Service has issued Revenue Procedure 2015-28 to detail how plan sponsors can avoid or pay reduced corrective contributions for certain elective deferral errors in 401(k) and 403(b) retirement plans, including:

- Incorrect automatic contributions or automatic escalation of elective deferrals
- Failure to correctly determine or withhold elective deferrals
- Exclusion of eligible employees

Revenue Procedure 2015-28 contains the details and conditions for new safe harbor correction methods. These methods supplement, but do not replace, Revenue Procedure 2013-12.

The IRS also announced that the Employee Plans Compliance Unit conducted a project related to 403(b) plan sponsorship eligibility for organizations that lost their 501(c)(3) exempt status due to the automatic revocation for not filing a required return for three consecutive years. The Service learned that some entities were unaware their 501(c) status affected their eligibility to sponsor a 403(b) plan.

In response, the agency has published a webpage entitled, Maintaining Eligibility to Sponsor a 403(b) Plan, covering key information tax-exempt employers that are 403(b) plan sponsors should know about plan eligibility, reporting requirements for 501(c)(3) organizations, 501(c)(3) reinstatement, and procedures to fix mistakes and avoid the consequences of 403(b) annuity contracts or custodial accounts disqualification.
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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:

- 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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