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Inside this issue
Senate passes fiduciary CRA, President vetoes .................................................................Page 2
SEC says it intends to release fiduciary rule next April..........................................................Page 2
Senate Finance Committee holds hearing on corporate integration ......................................Page 2
House Democrats send letter to Pres. Obama on auto-enrollment.......................................Page 3
House Republicans release retirement proposals ....................................................................Page 3
References and links used in this publication .........................................................................Page 5

Three lawsuits filed to challenge DOL fiduciary regulation.

Three lawsuits have been filed in an effort to stop the Department of Labor’s (DOL) fiduciary regulation from going into effect.

- The first lawsuit was filed on June 2 by the U.S. Chamber of Commerce, the Financial Services Institute (FSI), the Financial Services Roundtable (FSR), the Insured Retirement Institute (IRI), the Securities Industry and Financial Markets Association (SIFMA), and four Texas-based chambers of commerce.

- The second lawsuit was filed the same day by the National Association for Fixed Annuities (NAFA). Both lawsuits ask that the fiduciary rule and the referenced exemption changes be invalidated and that the DOL be precluded from taking any actions to enforce the rule and exemption changes, with the joint trades’ suit also requesting a postponement of the effective date of the rule and to maintain the status quo pending the conclusion of the case.

- On June 8, the American Council of Life Insurers (ACLI) and the National Association of Insurance and Financial Advisors (NAIFA) also filed a lawsuit challenging the regulation. “The ACLI-NAIFA litigation details how the rule is arbitrary and capricious, contrary to law, fails to provide notice and comment on changes made to different types of annuities, and violates First Amendment protections for non-fiduciary sales persons to provide accurate, non-misleading commercial speech about retirement products.”

Nationwide Comment: Nationwide’s goal is to provide America’s workers with the freedom to choose the financial products and services that best meet their individual needs. We continue to work closely with the Department of Labor and industry associations, including the ACLI and IRI, to
ensure consumers at all income levels continue to have access to the advice and products they rely on to prepare for and live in retirement. Our hope is that the financial services industry and the DOL can continue to work together to find a solution that ultimately works for everyone.

**Senate passes fiduciary CRA, President vetoes.**

On May 24, the Senate voted (56-41) in favor of the Congressional Review Act resolution to overturn the DOL’s fiduciary rule. Of note, three Democrats voted in favor of the resolution: Tester (MT), Donnelly (IN), and Heitkamp (ND). The House had passed the resolution in April by a vote of 234-183. The resolution would prevent the DOL from implementing the fiduciary regulation. DOL Secretary Perez met with House Democrats before the vote to secure unanimous Democrat opposition to the resolution.

Under the Congressional Review Act, both the House and the Senate must pass by simple majority a joint resolution of disapproval to stop the implementation of a rule or regulation or issuing a substantially similar regulation without congressional authorization. The measure was then sent to President Obama, who vetoed it on June 8. A two-thirds vote in both chambers of Congress would be needed to overturn a veto, which is considered extremely unlikely – therefore, there is no expectation this action will affect the implementation of the DOL fiduciary rule.

**Nationwide Comment:** While a veto was expected, Nationwide had worked with Members of Congress in both chambers to pass the measure in order to register their disapproval of the rule

**SEC says it intends to release fiduciary rule next April.**

In its regulatory agenda released May 18, the Securities and Exchange Commission (SEC) announced plans to publish its own fiduciary rule next April. The agency is not bound to this timeline and frequently misses self-imposed deadlines.

Further, the pending confirmation of two new Commissioners and the likelihood that SEC Chair White will be replaced next year by the new president raises questions about the SEC’s ability to develop its fiduciary rule by this deadline.

The SEC has authority under the 2010 Dodd-Frank financial reform law to issue a fiduciary rule and Chair White has said in the past she is in favor of rulemaking.

**Nationwide Comment:** Nationwide and the industry have long warned about the possibility of the SEC and the Department of Labor (DOL), which published its own final fiduciary rule in April, releasing contradicting rules. The SEC’s timetable would align its proposed rule’s release with the implementation deadline for major parts of the DOL’s rule, creating the risk for even greater turmoil in the retirement industry.
**Senate Finance Committee holds hearing on corporate integration.**

On May 17, the Senate Finance (tax) Committee held a hearing on corporate integration. Generally, corporate integration refers to the elimination of the current double taxation of corporate income – once at the corporate level and again at the shareholder level with a second level of tax on dividends received.

The elimination of double taxation is referred to as the “integration” of the corporate and individual level taxes. Chairman Hatch (R-UT) favors corporate integration as a way to provide tax relief to businesses without having to undergo a comprehensive reform of the tax code.

A main focus of the hearing was the proposal’s potential to disadvantage retirement plans, which depend on their tax-deferred or tax-exempt treatment to encourage participants to contribute.

_Nationwide Comment:_ While Chairman Hatch’s proposal has not yet been released, Nationwide and its industry partners continue to work with his and other Senators’ offices to ensure whatever plan is introduced does not adversely affect Americans’ ability to prepare for and live in retirement.

**House Democrats send letter to Pres. Obama on auto-enrollment.**

On May 6, a group of 66 House Democrats led by Democratic Caucus Vice Chair Crowley (NY) sent a letter to President Obama urging him to require all federal contractors to automatically enroll employees in their companies’ retirement plans.

The lawmakers asked the President to make the new requirement apply to full- and part-time workers and stated that companies that work with the federal government but that don’t have pensions or 401(k) options should use a new government-run retirement savings plan the Administration started recently, myRA.

_Nationwide Comment:_ Nationwide does not support the mandatory use of auto-enrollment, but encourages the voluntary adoption of it by employers.

**House Republicans release retirement proposals.**

On June 7, the House Republican Task Force on Poverty, Opportunity, and Upward Mobility released a blueprint document for “reforming our welfare, workforce, and education programs.” The plan was a set of retirement proposals, including:

1. Repealing the DOL fiduciary rule
2. Permitting open multiple employer plans (MEPs)
3. Allowing plans to provide disclosure electronically
4. Having Congress set premium levels that reflect the Pension Benefit Guaranty Corporation’s (PBGC) financial needs and prevent taxpayer bailout
5. Preventing pension plan funding rules from
   a. becoming overly burdensome
   b. being used for other spending priorities
   c. being insufficiently focused on ensuring benefit security

**Nationwide Comment:** These proposals are not expected to see passage this year and are merely meant as supplements to the broader Republican campaign effort.
References and source material used in this publication

Page 1

Chamber of Commerce of the U.S. v. Perez

National Association of Fixed Annuities v. Dept of Labor

Insurance Groups ACLI and NAIFA Sue DOL Over Fiduciary Rule’s Impact on Annuities

Page 2

Senate Rejects Fiduciary Rule; Obama Vows to Veto

SEC Plans to Propose Fiduciary Rule Next April

Integrating the Corporate and Individual Tax Systems: The Dividends Paid Deduction Considered

Page 3

Vice Chair Crowley Leads Letter Urging Obama to Expand Access to Retirement Savings Through Executive Order

A Better Way Poverty Policy Paper

(Back to the Table of Contents)
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.
- **Governmental 457(b) Guidebook** – which has been recently revised to include information about the Defending Public Safety Employees’ Retirement Act.

About this report

**BOB BEASLEY**, CRC, Communications Consultant, edits this report. Beasley brings 25 years of financial services communications experience to your plan. He has contributed to past editions of the 457(b) Governmental 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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