



Federal Legislative & Regulatory Report

May 2018

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President Signs Dodd-Frank Reform, Senior\$afe Act

On May 25, the President signed [S. 2155](#), the Economic Growth, Regulatory Relief, and Consumer Protection Act into law. The bill is the first major reform of the post-financial crisis regulation known as Dodd-Frank. S. 2155 primarily provides relief to small- and medium-sized banks subjected to regulatory requirements disproportionate to the risk they pose to the broader financial system.

Notably, the bill includes the language of the [Senior \\$afe Act](#) which aims to protect seniors from fraud by increasing communication between regulators and insurance providers, creating a safe harbor for employees so long as they receive proper training on identifying financial abuse.

States Appeal Denial of Motion to Intervene in DOL Fiduciary Rule Suit

The Fifth Circuit has [denied a motion from California, New York and Oregon](#) to intervene in the Department of Labor (DOL) fiduciary rule case. The court had previously denied the initial motion by the state AGs, asking to replace the DOL in the litigation. Once it became clear that the Department would not appeal the decision invalidating the fiduciary rule, the state AGs hoped to replace the DOL and continue to defend the rule.

The DOL has until June 13 to appeal the 5th Cir. decision to the Supreme Court and the state AGs could appeal the denial of their motion to the Supreme Court. Continued attempts to appeal could delay certainty that the rule is invalidated. The DOL had until midnight on April 30 to file for a rehearing of the 5th Cir. decision before the full court.

Nationwide Comment: Attempts to appeal to the Supreme Court seem unlikely to be successful.

DOL and IRS Announce Enforcement Action Relief

The Department of Labor (DOL) and Internal Revenue Service (IRS) announced on May 7 regulatory relief [from uncertainty created by the invalidation of the DOL fiduciary rule](#). Invalidation of the rule means that firms that have 1) embraced fiduciary status in some contexts and 2) conveyed to individual consumers that they are fiduciaries may now be exposed to liability. This is because the court's invalidation of the rule also invalidated the related exemptions needed to avoid an ERISA prohibited transaction.

The relief is a non-enforcement policy with respect to prohibited transactions triggered by the above situation. The policy provides that neither the DOL nor the IRS will take enforcement actions regarding the prohibited transactions described above, by allowing fiduciaries to qualify for relief by showing that they are working diligently and in good faith to satisfy the Impartial Conduct Standards. Those standards generally require that fiduciaries act in the best interest of their clients, charge no more than reasonable compensation, and do not make materially misleading statements.

SEC Publishes New Best Interest Rule

The Securities and Exchange Commission (SEC) published on May 9 its [proposed best interest standard for investment advice](#) in the *Federal Register*. Publication of the rule starts the 90-day comment period, setting a comment deadline of August 7.

The 900-plus page proposal includes three main components:

1. Regulation Best Interest for Broker-Dealers
2. Interpretive Guidance Regarding Standards for Conduct for Investment Advisors
3. A CSR Relationship Summary, a required disclosure in retail communications, and restrictions on BD's use of certain names and titles (i.e., "advisor" and "adviser").

Michael Piwowar, a Republican member of the Securities and Exchange Commission and frequent critic of post-crisis regulations, [announced his intention](#) to leave the SEC on July 7. His departure would leave the agency with four commissioners – which could soon fall to three as Democratic Commissioner Kara Stein can serve no longer than December 2018.

Under SEC rules, the vote of a three-member SEC can be blocked if one member simply refuses to participate, meaning some votes could be deadlocked if the SEC's other Democratic commissioner opposes a measure.

Nationwide Comment: Given the long process and current backlog of Senate confirmations, it is reasonable to assume these departures will complicate the process of approving the SEC's new best interest proposal.

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House Committee Holds Hearing on Retirement Legislation

On May 16, the House Committee on Education and Workforce's Subcommittee on Health, Employment, Labor, and Pensions (HELP) held a hearing titled "[Enhancing Retirement Security: Examining Proposals to Simplify and Modernize Retirement Plan Administration](#)." The hearing covered retirement legislation addressing the issues of open MEPs, an annuity provider selection safe harbor, increasing cash-out limits, and allowing for e-delivery as the default method of communicating plan documents. The four legislative proposals discussed at the hearing were:

- H.R. 854, the Retirement Security for American Workers Act, which would (1) allow unrelated employers to offer open multiple employer plans (open MEPs) and (2) generally eliminate the "one bad apple" rule
- H.R. 4158, the Retirement Plan Modernization Act, which would raise the automatic cash-out limit from \$5,000 to \$7,600, and index it for inflation
- H.R. 4604, the Increasing Access to a Secure Retirement Act, which would modify the rules that provide a fiduciary safe harbor when selecting an annuity provider
- H.R. 4610, the RETIRE Act, which would provide that pension plan documents may be furnished to plan participants in electronic form if certain requirements are met, while establishing consumer protections for participants who would prefer paper documents

[Also discussed](#) was H.R. 5282, the Retirement Enhancement and Savings Act (RESA). RESA is a larger package of retirement improvements that includes provisions found in the bills above. The House panel expressed bipartisan support for the proposals and encouraged the Committee and House to work expeditiously to advance the proposals.

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References and source material used in this publication

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Summary and Text of Economic Growth, Regulatory Relief, and Consumer Protection Act
<https://www.congress.gov/bill/115th-congress/senate-bill/2155>

Summary and Text of the Senior Safe Act of 2017
<https://www.congress.gov/bill/115th-congress/house-bill/3758>

5th Circuit Denies States' Second Attempt to Defend DOL Fiduciary Rule
<http://www.investmentnews.com/article/20180522/FREE/180529985/5th-circuit-denies-states-second-attempt-to-defend-dol-fiduciary-rule>

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DOL Puts Fiduciary Rule Enforcement on Hold
<https://www.napa-net.org/news/managing-a-practice/regulatory-compliance/dol-fiduciary-rule-enforcement-policy-extended-until-further-notice/>

SEC Publishes Advice Rule, Sets Aug. 7 Comment Deadline
<http://www.investmentnews.com/article/20180509/FREE/180509912/sec-publishes-advice-rule-sets-aug-7-comment-deadline>

Statement of Commissioner Michael S. Piwowar
<https://www.sec.gov/news/public-statement/piwowar-statement-letter-050718>

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HELP Subcommittee Hearing: Examining Proposals to Simplify and Modernize Retirement Plan Administration
<https://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=402710>

Subcommittee Seeks Bipartisan Solutions to Update Retirement Plan Administration
<https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=402742>

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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.
- *Governmental 457(b) Guidebook*

About this report

BOB BEASLEY, CRC, Communications Consultant, edits this report. Beasley brings nearly 30 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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NRM-17108AO (06/18)

