December 2015

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Representatives propose a new long-term savings program.

On November 18, Reps. Crowley (D-NY) and Ellison (D-MN) introduced the USAccounts: Investing in America’s Future Act of 2015. The bill would create a new savings program called USAccounts, a long-term savings account that would be opened in a child’s name with an initial government contribution of $500 upon the birth of the child.

The bill would also increase the child tax credit to match the amount of their contribution to the account, up to $500. If the family also qualifies for the Earned Income Tax Credit, the government would contribute up to an additional $500 in matching funds into an account.

The USAccounts bill is the first part of Crowley’s Building Better Savings, Building Brighter Futures plan to address the savings and retirement crisis in America, which had been announced last Congress by Rep. Crowley.

DOL proposes guidance for state-run retirement plans for private sector workers.

The Department of Labor (DOL) has proposed regulations clarifying when state-based IRA programs are exempt from coverage under the Employee Retirement Income Security Act of 1974 (ERISA).

The President had directed the DOL to publish this guidance at the 2015 White House Conference on Aging to support the efforts of the states which have established (California, Illinois, Oregon) or are thinking of establishing (West Virginia, Maryland) state-run savings programs for private-sector workers who lack access to retirement plans.
In response to that directive, the DOL proposed two pieces of guidance on the subject.

- The first is a proposed regulation that would provide an exemption from ERISA for IRA-based state(k) plans using automatic enrollment. The proposed regulation will go through the regulatory notice and comment period. Comments are due January 19, 2016.
- The second set of guidance is an “Interpretive Bulletin” that explains DOL’s views on voluntary state-based arrangements intended to be full ERISA plans. The Interpretive Bulletin does not require notice or comment and is effective immediately.

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Proposals and counter-proposals heat up debate over fiduciary rule.

Senators urge Sec. of Labor to include Congress in standard-making process.

On December 4, Senators Portman (R-OH) and Cardin (D-MD) sent a letter to Labor Secretary Perez emphasizing the need for Congressional involvement in the fiduciary standard process and in the making of any changes to the retirement landscape.

The letter also emphasizes the need for a best interest standard but relays concerns the Senators have about the DOL’s rule’s potential impact on low- and moderate-income savers’ access to investment advice and education.

Meanwhile, the DOL and its supporters went on the offensive after a bipartisan group of lawmakers announced their list of fiduciary legislative principles. Reps. Roe (R-TN), Neal (D-MA), Roskam (R-IL), Grisham (D-NM), Larson (D-CT), and Carter (R-GA) have faced criticism from proponents of the DOL rule as well as from the Department itself.

The DOL issued a statement defending the proposed rule and stating it had no intention of allowing Congress to influence the rulemaking process. The DOL also stated, “it is puzzling and disappointing that after the department’s five-year extensive and inclusive outreach process, Congressman Neal would embark on a closed-door initiative — in partnership with Republican leadership and a select few from Wall Street — that lacks the inclusiveness and thoroughness he and others have called for.”

Reps. Waters (D-CA) and Scott (D-VA) circulated a Dear Colleague letter opposing any legislation that would undermine the Department of Labor’s proposed fiduciary rule, such as the bipartisan principles. Despite this opposition, the bipartisan group is still working toward releasing their principles as a more fully formed solution in the form of a bill in the coming weeks.

SEC expects to release its own fiduciary standard in October 2016.

The Securities and Exchange Commission (SEC) released its Notice of Proposed Rulemaking (NPRM) for its own fiduciary standard. No other details as to the content of the rule were released,
but the fact that it was listed is seen as a sign it is a priority for the agency, which has authority to write a fiduciary standard under the 2010 Dodd-Frank reform law.

Securities and Exchange Commission (SEC) Chairwoman White testified at a House Financial Services Committee hearing titled, “Examining the SEC’s Agenda, Operations and FY 2017 Budget Request.” Several Members, including Chairman Hensarling (R-TX) and Ranking Member Waters (D-CA), asked about the fiduciary issue, which under the 2010 Dodd-Frank reform law the SEC has the authority to write its own standard.

In response to questioning, Chairwoman White said that:

- SEC is aware of the investment advice gap that has resulted in the UK from a similar rule and is working to prevent a similar situation in the US
- Due to its powers under ERISA, the DOL is not stepping on the SEC’s authority to write its own rule
- SEC is working with the DOL to prevent conflicting rules

Of particular note, Chairwoman White cited lack of funding as the reason the SEC cannot complete all its assigned tasks, such as fiduciary.

Although the release date is listed as October 2016, it is fairly common for agencies to miss expected deadlines. The DOL released its own fiduciary proposal in April 2015 and many in the industry and in Congress have highlighted the lack of coordination between the two agencies and the potential for different and conflicting proposals.

**Education and Workforce HELP Subcommittee holds fiduciary hearing.**

On December 2, the House Education and the Workforce Subcommittee on Health, Employment, Labor, and Pensions held a hearing titled, “Principles for Ensuring Retirement Advice Serves the Best Interest of Working Families and Retirees.” The hearing focused on the set of legislative principles developed by Subcommittee Chairman Roe (R-TN) and Reps. Roskam (R-IL), Neal (D-MA), and others to guide the development of a possible legislative solution to the DOL conflict of interest proposal. Topics discussed in the hearing included, but were not limited to:

- Access to advice
- Impact on small businesses
- Impact on advisers
- DOL authority
- Best Interest Contract Exemption (BICE).

Observers considered the outcome of the hearing to be positive but it did not result in any concrete changes going forward.

**Clinton takes up fiduciary mantle.**

Presidential candidate Hillary Clinton earlier this month injected herself into the Congressional debate over the direction of the DOL’s proposed fiduciary standard. The former secretary of state
directed Democrats in Congress to “do everything they can to stop” Republican lawmakers from adding language to a government spending bill that would effectively dictate parameters of a pending Labor Department rule. Such a measure would kill the plan the agency issued earlier this year.

*Investment News* reported that Clinton has made it clear that if she becomes the next president, she will pursue even stronger rules for financial firms.
References and source material used in this publication

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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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NRM-13533AO (12/2015)