



Federal Legislative & Regulatory Report

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DOL report confirms e-delivery is unlikely to have negative impact

On January 26, the Department of Labor (DOL) submitted a [congressionally requested report](#) on its 2020 e-delivery safe harbor and emphasized that the 2020 e-delivery rules were “unlikely to have any negative impacts” on rural, remote and or older populations of retirement savers because of the “specific safeguards” that were included in the final DOL e-delivery rules.

The DOL also cited data on the broad availability of internet access among the United States population at large and the nearly universal internet access found among retirement savers specifically. The report is the result of the Consolidated Appropriations Act (CAA) of 2021, signed into law in December 2020, which included, among other retirement provisions, a request for the DOL to review the impact of its 2020 e-delivery safe harbor on specific populations of retirement savers.

Trade groups sue DOL over 2020 fiduciary rule

On February 9, the American Securities Association (ASA) [sued](#) the Department of Labor (DOL) challenging PTE 2020-02, Improving Investment Advice for Workers & Retirees. The ASA lawsuit, filed in the 11th Circuit, seeks to invalidate FAQs 7 and 15 [issued by the DOL](#) in April 2021 regarding the fiduciary definition and 2020-02. Both FAQs are substantially identical to discussions in the preamble to 2020-02.

Separately, on February 2, the Federation of Americans for Consumer Choice (FACC) [sued](#) the DOL in the 5th Circuit seeking to invalidate the rule's preamble interpretation of the fiduciary definition. The lawsuit comes as the DOL has signaled its intention to issue an updated fiduciary rule similar to the one issued in 2016 and invalidated in 2018.

DOL issues climate-risk RFI

On February 11, the Department of Labor [published](#) a Request for Information seeking public comment on what actions, if any, the department should take under federal law to protect retirement savings and pensions from risks associated with changes in climate.

The RFI is part of the DOL's ongoing effort to implement President Biden's May 20, 2021, Executive Order on Climate-Related Financial Risks, which also resulted in last fall's proposal to modify the Trump administration's ESG and proxy voting rules.

The RFI poses over 20 questions on topics such as climate-related data collection on Form 5500 and by other means, the expansion of fiduciary responsibilities to non-ERISA arrangements, and the effectiveness of annuities in managing climate risk, among other things.

Comments are due May 16, 2022.

Congressmen reintroduce QDIA reform bill

On February 15, Reps. Don Norcross (D-NJ) and Tim Walberg (R-MI) [reintroduced](#) the Lifetime Income for Employees (LIFE) Act, which seeks to expand the QDIA regulations to permit the inclusion of not fully liquid annuity components. They originally introduced their bill in 2020 during the 116th Congress.

Under the bill, the current qualified default investment alternatives (QDIA) safe harbor regulations would be amended to allow (but not require) a QDIA, as a part of its mix of asset classes, to include a limited investment in a non-liquid annuity component that provides a guaranteed return on investment. Plan sponsors would not need to make any changes to their current QDIA. The bill is not included in SECURE 2.0 and faces other political obstacles to becoming law.

Lawmakers introduce auto-reenroll proposal

On February 18, Sen. Tim Kaine (D-VA) and Rep. Kathy Manning (D-NC) [introduced](#) the Auto Reenroll Act of 2022, legislation amending safe harbors in the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code to encourage plan sponsors to re-enroll non-participants at least once every three years, unless the individual affirmatively opts out again.

This proposal is not included in SECURE 2.0 — the bipartisan collection of retirement security proposals currently being debated in Congress. The Senate version of SECURE 2.0

(Cardin/Portman) does include a provision providing a three-year, \$500-per-year tax credit to small employers that adopt automatic re-enrollment.

Lawmakers introduce portable benefits proposal

On February 17, Sen. Mark Warner (D-VA), Sen. Todd Young (R-IN) and Rep. Suzan DelBene (D-WA) [introduced](#) the Portable Benefits for Independent Workers Pilot Program Act. The bill seeks to provide the growing gig economy workforce with access to workplace benefits typically provided through traditional full-time employment.

This legislation would establish a \$20 million grant fund within the Department of Labor to incentivize states, localities and nonprofit organizations to experiment with portable benefits models for the independent workforce.

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References and source material used in this publication

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EBSA Default Electronic Disclosure Report

<https://www.asppa-net.org/sites/asppa.org/files/EBSA%20--%20Default%20Electronic%20Disclosure%20Report%20%281.26.2022%29-3.pdf>

ASA Files Lawsuit to Protect America's Retirement Savers (press release)

<https://www.americansecurities.org/post/asa-files-lawsuit-to-protect-america-s-retirement-savers>

New Fiduciary Advice Exemption: PTE 2020-02 Improving Investment Advice for Workers & Retirees FAQs

<https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/new-fiduciary-advice-exemption>

Trade Association Challenges DOL Fiduciary Rule in Texas Federal Court (press release)

<https://facchoice.com/press-release-trade-association-challenges-dol-fiduciary-rule-in-texas-federal-court/>

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US Department of Labor Seeking Public Comment on Protecting Workers' Life Savings, Pensions From Climate-Related Financial Risks (press release)

<https://www.dol.gov/newsroom/releases/ebsa/ebsa20220211>

Reps. Norcross, Walberg Reintroduce Legislation to Improve Retirement Security for American Workers (press release)

<https://norcross.house.gov/media-center/press-releases/rep-norcross-walberg-reintroduce-legislation-improve-retirement>

Kaine & Manning Introduce Bicameral Auto Re-Enroll Act to Improve Americans' Long-Term Financial Stability (press release)

<https://www.kaine.senate.gov/press-releases/kaine-and-manning-introduce-bicameral-auto-re-enroll-act-to-improve-americans-long-term-financial-stability>

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Lawmakers Reintroduce Bipartisan, Bicameral Legislation to Test Portable Benefit Models (press release)

<https://www.wamer.senate.gov/public/index.cfm/pressreleases?ID=69EFDA95-645B-4263-8583-5EEFD92FA7BD>

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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 on the Employer page of our plan website, NRSforu.com/plansponsor.

About this report

BOB BEASLEY, CRC, Communications Consultant, edits this report. Beasley brings more than 30 years of financial services communications experience to your plan. He has contributed to past editions of the *Governmental 457(b) 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.

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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