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DOL Secretary shares views on retirement issues

On February 4, the Senate Health, Education, Labor and Pensions Committee held a hearing to consider the nomination of Boston Mayor Marty Walsh for Labor Secretary. Retirement issues such as ESG and investment advice were not discussed. The senators’ focused on labor issues such as worker safety, the minimum wage, unions, and immigration.

In response to written questions submitted after the hearing, Walsh supported further review of the DOL’s investment advice rules, expanded access to retirement plans, and re-examining ESG rules. The committee approved his nomination on February 11. Walsh is still awaiting final approval from the full Senate.

Congressman introduces bill to reduce mutual fund fee litigation

On February 2, Rep. Tom Emmer (R-MN) introduced [H.R. 699](#), the Mutual Fund Litigation Reform Act. The bill heightens pleading requirements for plaintiff’s attorneys using Section 36(b) of the Investment Company Act of 1940, which grants the SEC and fund shareholders the right to sue a mutual fund adviser for fees believed to be excessive.

Specifically, the security holder would bear the burden of proving the breach of fiduciary duty “by clear and convincing evidence.” The bill is unlikely to advance in this Congress.

SEC seeks input on money market fund reform

On February 4, the SEC [published a request for comment](#) on potential reform measures to improve the resilience of money market funds as highlighted in a report of the President's Working Group on Financial Markets issued in December 2020.

That report, "[Overview of Recent Events and Potential Reform Options for Money Market Funds](#)," concludes that reforms are needed to reduce the risk that structural vulnerabilities in prime and tax-exempt money market funds will lead to or exacerbate stresses in short-term funding markets.

DOL allows investment advice rule to go into effect

On February 12, the U.S. Department of Labor's Employee Benefits Security Administration confirmed that the "Improving Investment Advice for Workers & Retirees" rule, an [exemption](#) for investment advice fiduciaries, would go into effect as scheduled on Feb. 16, 2021.

"This exemption allows for important investor protections, including a stringent 'best interest' standard of care for fiduciary recommendations of rollovers from ERISA-protected retirement accounts," said Ali Khawar, Deputy Assistant Secretary of Labor for the Employee Benefits Security Administration. "We recognize that investment advice providers have been preparing for the exemption, and this step will allow them to implement important system changes. That said, we will continue our stakeholder outreach to determine how we might improve this exemption, the rule defining who is an investment advice fiduciary, and related exemptions to build on this approach."

The DOL also announced that it would publish related guidance for retirement investors, employee benefit plans and investment advice providers. The temporary enforcement policy stated in Field Assistance Bulletin 2018-02 will remain in place until Dec. 20, 2021.

House considers COLA freeze for retirement plan contribution limits

On February 11, as part of the next COVID relief package, the House approved a cost-of-living adjustment freeze for retirement plan contribution limits. Effective for calendar years beginning after December 31, 2030, a "permanent" freeze of all cost-of-living adjustments (COLAs) will apply to:

- (a) the Internal Revenue Code Section 415 limits on overall contributions (\$58,000 in 2021) and benefits (\$230,000 annually for 2021), and
- (b) the maximum amount of compensation permitted to be taken into account under IRC Section 401(a)(17) (\$290,000 for 2021), except that these freezes do not apply to collectively bargained plans.

The provision was included as a revenue raiser to offset the cost of the [Butch Lewis Emergency Pension Plan Relief Act of 2021](#), which provides multi-employer and single-employer pension relief. Lawmakers hope to finalize the next COVID relief package by mid-March.

Congressman proposes inflation-related capital gains relief for retirees

On February 10, Rep. Tom Emmer (R-MN) reintroduced the Retirement Inflation Protection Act. The bill would index capital gains to inflation so that if an individual is at least 59½ years old and has held an asset for at least three years, taxes are not owed on gains that are simply the result of inflation.

The bill, identical to a measure that Emmer introduced in the previous Congress and died in committee last October, is not expected to receive serious consideration.

Arkansas and Illinois consider state-run retirement programs for the private sector

In Arkansas, legislation was recently introduced that would establish the “Every Arkansan Retirement Plan Opportunity Act.” [House Bill 1349](#) would create a board within the Department of Treasury to establish, implement and maintain a voluntary, multi-employer 401(k) retirement plan (open MEP) for private workers.

This bill would make the plan available on a voluntary basis to eligible employers and eligible self-employed individuals. It would require participating employers to automatically enroll all other eligible employees after a written notice is provided (unless the eligible employee opts out) and would require an automatic 5% contribution of his/her salary.

In Illinois, lawmakers recently introduced legislation ([H.B. 117](#)) that would expand the state’s Secure Choice Savings Program Act, making it applicable to employers with at least one employee, rather than fewer than 25 employees. The bill also provides for automatic increases in contributions.

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References and source material used in this publication

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Text of H.R. 699, the Mutual Fund Litigation Reform Act
<https://www.congress.gov/117/bills/hr699/BILLS-117hr699ih.pdf>

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SEC Requests Comment on Potential Money Market Fund Reform Options Highlighted in President's Working Group Report
<https://www.sec.gov/news/press-release/2021-25>

Overview of Recent Events and Potential Reform Options for Money Market Funds
<https://home.treasury.gov/system/files/136/PWG-MMF-report-final-Dec-2020.pdf>

Prohibited Transaction Exemption 2020-02, Improving Investment Advice for Workers & Retirees
<https://waysandmeans.house.gov/media-center/press-releases/ways-and-means-democrats-release-framework-achieve-health-and-economic>

Butch Lewis Emergency Pension Plan Relief Act of 2021
<https://www.dol.gov/sites/dolgov/files/EBSA/temporary-postings/fiduciary-duties-regarding-proxy-voting-and-shareholder-rights-final-rule.pdf>

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Text of House Bill 1349, Every Arkansan Retirement Plan Opportunity Act
<https://emmer.house.gov/2021/2/emmer-reintroduces-legislation-to-protect-retiring-americans>

Text of H.117, an amendment to the Illinois Secure Choice Savings Program Act
<https://legiscan.com/IL/text/HB0117/id/2240723>

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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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