

MEMO# 31058

January 29, 2018

ICI Letter to New EBSA Assistant Secretary Preston Rutledge

[31058]

January 29, 2018 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: ICI Letter to New EBSA Assistant Secretary Preston Rutledge

The Institute sent the attached letter to the Honorable Preston Rutledge, who recently was confirmed as Assistant Secretary of Labor for the Department of Labor's (DOL) Employee Benefits Security Administration (EBSA). The letter congratulates Mr. Rutledge on his confirmation and shares our views on several key issues likely to be priorities for EBSA under his leadership. The letter makes the following recommendations:

- **Complete the reexamination of the fiduciary rule, coordinating with the SEC in crafting exemptions.** We reiterate recommendations from prior comment letters that, after the SEC develops a best interest standard of conduct for SEC-registered broker-dealers, DOL should adopt a new prohibited transaction exemption for advice subject to an SEC-governed standard of conduct. The letter also reiterates that DOL make critical changes to the expanded definition of fiduciary investment advice.
- **Modernize the rules for electronic delivery of information to participants.** The letter urges DOL to amend its outdated rules to allow participants to opt out of electronic delivery, rather than requiring that they opt in.
- Streamline and consolidate required notices for the benefit of participants. We urge DOL to work (with the Treasury Department and IRS) toward eliminating redundant and irrelevant notices and to streamline and consolidate remaining notices in a way that will focus participants on the key information they need for effective decision-making.
- **Carefully reconsider changes to the Form 5500 to make it compatible and consistent with related disclosure requirements.** The letter recommends that DOL and other involved agencies should withdraw 2016 proposed modifications and re-propose new changes that will enhance transparency, harmonize service provider reporting, and increase the utility of the Form 5500, without imposing undue burdens on plan sponsors and service providers.
- **Explore how to encourage more employers to offer workplace plans and participation in such plans by employees.** We encourage DOL to evaluate legal requirements that create obstacles to plan sponsorship among smaller employers and

consider providing guidance, where appropriate, that would ease those burdens. For example, DOL could make adoption of multiple employer plans a more realistic option for smaller employers.

- **Clarify application of ERISA's preemption doctrine to state-run plans.** The letter notes that, although well-intentioned, state-run retirement savings programs for private-sector workers raise a number of concerns, including subjecting employers to varying and inconsistent state and local laws. We explain that DOL could address some of these issues through guidance clarifying how ERISA's preemption of state laws relating to employee benefit plans applies to these programs.

As stated in the letter, the Institute intends to follow up with a meeting to discuss these issues with Mr. Rutledge and his staff in the near future.

Elena Barone Chism
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[Attachment](#)

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