

MEMO# 32079

December 5, 2019

DOL Issues Updated Regulatory Agenda

[32079]

December 5, 2019 TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: DOL Issues Updated Regulatory Agenda

The Department of Labor (DOL) recently issued its updated Semi-Annual Regulatory Agenda (Agenda) which includes DOL's projected dates for issuance of proposed and final regulations.^[1] Of particular note, the Employee Benefits Security Administration (EBSA) added one new item to the Agenda (related to proxy voting rights associated with ERISA plan investments) and removed two items from the Agenda (related to the Form 5500 and an amendment to its Abandoned Plan Program).

DOL includes the following regulatory projects under EBSA on the current Agenda:

- **Open MEPs and Other Issues Under Section 3(5) of ERISA.** In conjunction with its July 2019 publication of a final regulation intended to expand the use of multiple employer plans (MEPs) to provide workplace retirement benefits, DOL issued a Request for Information (RFI) on "open MEPs" (i.e., MEPs adopted by otherwise unrelated employers).^[2] The comment period for the RFI ended on October 29, 2019.^[3] DOL's regulatory agenda lists this project as being in the pre-rule stage, and does not specify a date for expected next steps.
- **Default Electronic Disclosures by Employee Benefit Plans Under ERISA.** DOL recently published a proposed regulation on electronic delivery for ERISA retirement plan notices and disclosures and a related RFI "that explores whether and how any additional changes to ERISA's general disclosure framework, focusing on design, delivery, and content, may be made to further improve the effectiveness of ERISA disclosures."^[4] The comment period for the proposed regulation and RFI ended on November 22, 2019.^[5] DOL does not specify an expected date for publication of a final regulation or for further action regarding the RFI.
- **Fiduciary Rule and Prohibited Transaction Exemptions (PTEs).** As on its Spring 2019 regulatory agenda, DOL lists its fiduciary rule and PTE project, indicating that it expects to issue a proposed regulation by December 2019. The project description indicates that DOL "is considering regulatory options in light of the Fifth Circuit opinion." DOL staff have also stated that another goal for this project is to align DOL's fiduciary rule with the SEC's recent regulatory package.^[6]
- **Proxy Voting Update.** DOL first included this project on its Spring 2019 agenda as a

long-term agenda item.[\[7\]](#) In the current Agenda, DOL estimates that it will issue a proposed regulation by December 2019. It describes the project as follows: “This deregulatory action would modernize fiduciary practices related to the voting rights associated with ERISA plan investments and harmonize those regulations with the requirements of other regulators. The goal of this proposal would be to protect the interests of participants and beneficiaries by: (1) addressing practices that could present conflicts of interest associated with proxy advisory firm recommendations; (2) ensuring that proxy voting decisions are based on best information; and (3) ensuring that proxy voting decisions are solely in the interest of, and for the exclusive purpose of providing plan benefits to, participants and beneficiaries.” While DOL does not identify any particular regulations of other regulators with respect to which it is seeking to “harmonize,” it is worth noting that the Securities and Exchange Commission (SEC) has taken significant action on proxy firms this year, issuing final guidance in August 2019 and proposing new requirements last month.[\[8\]](#)

- **Adoption of Amended and Restated Voluntary Fiduciary Correction Program.** DOL plans to amend and restate its Voluntary Fiduciary Correction Program (VFCP), which is designed to encourage the voluntary correction of fiduciary violations by permitting persons to avoid civil actions and penalties if they take steps to correct identified violations. According to the Agenda, “[t]he amendments will expand the scope of some transactions currently eligible for correction and streamline correction procedures for certain others.” This project has remained on DOL’s regulatory agenda for a number of years, and DOL currently estimates that it will issue an interim final rule by April 2020.[\[9\]](#)

DOL includes the following regulatory projects under EBSA on the long-term Agenda:

- **Pension Benefit Statements.** DOL’s Agenda continues to include this rulemaking project as a long-term action and lists EBSA’s next action as undetermined. According to the Agenda, this initiative will focus solely on exploring the inclusion of lifetime income stream illustrations on pension benefit statements for defined contribution plan participants.[\[10\]](#)
- **Lifetime Income Safe Harbors for Individual Account Plans.** This long-term Agenda item combines two separate items to promote lifetime income that appeared on DOL’s Spring 2019 long-term agenda: (1) Selection of Annuity Providers--Safe Harbor for Individual Account Plans, and (2) Fiduciary Relief for Investments in Qualified Default Investment Alternatives (QDIA). The Agenda lists EBSA’s next action on this project as undetermined. Regarding the QDIA rules, the agenda provides that EBSA will explore whether it should consider amendments to regulations (§ 2550.404(c)-5) to facilitate the use of lifetime income products and features as, or as part of, QDIAs.[\[11\]](#) Regarding the annuity selection rules, the Agenda states that DOL may develop proposed amendments to the annuity selection safe harbor primarily focused on the condition in the safe harbor relating to the ability of the annuity provider to make all future payments under the annuity contract.[\[12\]](#)

DOL removed the following items that appeared in the Spring 2019 regulatory agenda:

- **Amendment of Abandoned Plan Program.** In December 2012, DOL issued proposed amendments to the abandoned plan regulations, which focused primarily on the ability of a chapter 7 bankruptcy trustee to act as a Qualified Termination Administrator and utilize the existing abandoned plan program to terminate abandoned plans and distribute benefits.[\[13\]](#) The Spring 2019 agenda indicated that DOL expected to issue an interim final rule amending the abandoned plan program

regulations in April 2020. DOL removed this project in its current Agenda.

- **Revision of the Form 5500 Series and Implementing Related Regulations Under ERISA.** In 2016, DOL, with IRS and PBGC, issued proposed revisions to the Form 5500 and the related regulations that would have significantly increased plans' reporting burden.^[14] ICI submitted a comment letter in December 2016.^[15] On the Spring 2018 agenda, EBSA reclassified this project as a long-term action, with the next action listed as undetermined. In the current Agenda, DOL has removed this project completely.

Shannon Salinas
Assistant General Counsel - Retirement Policy

endnotes

[1] DOL's Fall 2019 Agency Rule List is available at https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=1200&Image58.x=52&Image58.y=19&Image58=Submit.

[2] For a description of the final regulation and the RFI, see ICI Memorandum No. 31881, dated August 1, 2019, available at https://www.ici.org/my_ici/memorandum/memo31881.

[3] For a description of ICI's comment letter in response to the RFI, see ICI Memorandum No. 32030, dated October 29, 2019, available at https://www.ici.org/my_ici/memorandum/memo32030.

[4] For a description of the proposed regulation and RFI, see ICI Memorandum No. 32022, dated October 24, 2019, available at https://www.ici.org/my_ici/memorandum/memo32022.

[5] For a description of ICI's comment letter responding to the proposed regulation and RFI, see ICI Memorandum No. 32062, dated November 25, 2019, available at https://www.ici.org/my_ici/memorandum/memo32062.

[6] ICI recently met with DOL officials to discuss this project and submitted a letter to DOL following up on issues raised in the meeting. See ICI Memorandum No. 32050, dated November 12, 2019, available at https://www.ici.org/my_ici/memorandum/memo32050.

[7] "Long-term actions" are items under development for which the agency does not expect to have a regulatory action within the 12 months after publication of the current edition of the United Agenda. DOL's Fall 2019 Agency list of long-term actions is available at https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPubId=201910&showStage=longterm&agencyCd=1200&Image58.x=39&Image58.y=5&csrf_token=CB689989341BF3B3144C796774CC89E8A8C0EDB1B979D1B9F72DFA9D79C42B98F5E1E2FB7F6CFAFA27279E63B12258732028.

[8] For a description of the proposals the SEC issued in November regarding proxy rules affecting proxy advisory firms and shareholder proposals, see ICI Memorandum No. 32048, dated November 11, 2019, available at

https://www.ici.org/my_ici/memorandum/ci.memo32048.idc. For a description of the proxy-related guidance to investment advisers and proxy advisory firms that the SEC approved in August, see ICI Memorandum No. 31916, dated August 22, 2019, available at https://www.ici.org/my_ici/memorandum/memo31916.

[9] For a description of the latest revision to the VFCP, see ICI Memorandum No. 20012, dated May 5, 2006, available at <https://www.ici.org/pdf/memo20012.pdf>.

[10] DOL issued an Advance Notice of Proposed Rulemaking (ANPRM) regarding lifetime income stream illustrations in May 2013 and ICI submitted a comment letter in response to the ANPRM. For a description of the ANPRM, see ICI Memorandum No. 27228, dated May 8, 2013, available at https://www.ici.org/my_ici/memorandum/memo27228. For a description of ICI's comment letter, see ICI Memorandum No. 27446, dated August 7, 2013, available at https://www.ici.org/my_ici/memorandum/memo27446.

[11] In 2018, the ERISA Advisory Council studied the topic of Lifetime Income Solutions as a Qualified Default Investment Alternative. For a description of the Council's report, including its recommendations to DOL, see ICI Memorandum No. 31743, dated May 2, 2019, available at https://www.ici.org/my_ici/memorandum/memo31743. ICI testified at the August 2018 hearing. For a description of ICI's testimony, see ICI Memorandum No. 31338, dated August 16, 2018, available at https://www.ici.org/my_ici/memorandum/memo31338.

[12] This project is based on responses DOL received in response to its 2010 RFI Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans. For a description of the RFI, see ICI Memorandum No. 24125, dated February 2, 2010, available at https://www.ici.org/my_ici/memorandum/memo24125. For a description of ICI's comment letter, see ICI Memorandum No. 24278, dated May 3, 2010, available at https://www.ici.org/my_ici/memorandum/memo24278.

[13] For a description of the proposed amendments, see ICI Memorandum No. 26799 dated December 20, 2012, available at https://www.ici.org/my_ici/memorandum/memo26799. For a description of the comment letter ICI submitted in response to the proposal, see ICI Memorandum No. 27050, dated February 26, 2013, available at https://www.ici.org/my_ici/memorandum/memo27050.

[14] See ICI Memorandum No. 30071 dated July 25, 2016, available at https://www.ici.org/my_ici/memorandum/memo30071.

[15] See ICI Memorandum No. 30458 dated December 6, 2016, available at https://www.ici.org/my_ici/memorandum/memo30458.

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