

MEMO# 31213

May 18, 2018

Department of Labor Issues New Regulatory Agenda, Reclassifying Two Projects as Long-Term Actions

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May 18, 2018 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: Department of Labor Issues
New Regulatory Agenda, Reclassifying Two Projects as Long-Term Actions

On May 9, 2018, the Department of Labor (DOL) issued its updated Semi-Annual Regulatory Agenda (Agenda) which includes DOL's projected dates for issuance of proposed and final regulations.[\[1\]](#) The Employee Benefits Security Administration (EBSA) did not add any new retirement projects to the Agenda. As described below, however, EBSA did reclassify two rulemaking projects as "long-term actions"—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.[\[2\]](#)

The most significant change in EBSA's Agenda is the reclassification of the following two regulatory projects:

- **Fiduciary Rule:** In July 2017, DOL issued a Request for Information (RFI) which included questions soliciting information on more streamlined compliance options in connection with the fiduciary rule and prohibited transactions exemptions.[\[3\]](#) ICI submitted comments in August 2017.[\[4\]](#) On the fall 2017 agenda, no further action was listed beyond analyzing comments, which was estimated to be completed by November 2017. On the current Agenda, EBSA reclassified the RFI project as a long-term action, with the next action listed as undetermined. EBSA also modified the description of the project, which now references the Presidential Memorandum dated February 3, 2017 that directed DOL to re-examine the rule, as well as actions taken by the SEC and state insurance commissioners. The description states that the RFI project "has completed its purpose," but that DOL is still conducting its reexamination and considering additional compliance options. Accordingly, EBSA is reserving the project on the Agenda as a long-term action. The description does not reference the decision of the Fifth Circuit Court of Appeals, nor any of the other litigation regarding the rule.
- **Form 5500:** 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.[\[5\]](#) ICI submitted a comment letter in December 2016.[\[6\]](#) On the fall 2017 agenda, no further action was listed beyond analyzing comments, which was estimated to be completed by January 2018. On the current Agenda, EBSA reclassified this project as a long-term action, with the next action listed as undetermined.

The updated Agenda also continues to include the following retirement items:

- **Abandoned Plan Program:** The Agenda indicates that DOL's expected issuance of an interim final rule amending the abandoned plan program regulations has been delayed to December 2018. DOL's fall 2017 agenda provided that DOL expected to issue the interim final rule in March 2018. 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.[\[7\]](#) ICI submitted a comment letter in response to the proposed amendments.[\[8\]](#)
- **Voluntary Fiduciary Correction Program:** The Agenda provides that DOL expects to issue an interim final rule amending and restating the Voluntary Fiduciary Correction Program (VFCP) in September 2018. The fall 2017 agenda provided that DOL expected to issue the interim final rule in February 2018. According to Agenda, this rulemaking project will expand the scope of some transactions currently eligible for correction under the VFCP and streamline correction procedures for others. The Agenda states that EBSA intends to issue a restatement of the VFCP in its entirety and request public comments.
- **Pension Benefit Statements:** The Agenda continues to include this rulemaking project as a long-term action and lists EBSA's next action as undetermined. Part of this initiative, according to the Agenda, will explore the inclusion of lifetime income stream illustrations on pension benefit statements for defined contribution plan participants. 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.[\[9\]](#)
- **Selection of Annuity Providers:** The Agenda continues to include this rulemaking project as a long-term action and lists the next action as undetermined. 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, based on responses DOL received in response to its 2010 RFI Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans.[\[10\]](#)
- **Qualified Default Investment Alternatives (QDIA):** The Agenda continues to include this rulemaking project as a long-term action and lists EBSA's next action as undetermined. The Agenda provides that EBSA may issue an RFI for this project and will consider 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.

endnotes

- [1] DOL's Spring 2018 Agency Rule List is available here:
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] DOL's Spring 2018 Agency Rule List – Long-Term Actions is available here:
https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPubId=201804&showStage=longterm&agencyCd=1200&Image58.x=40&Image58.y=8&Image58=Submit.
- [3] See ICI Memorandum No. 30767 dated July 6, 2017. *Available at* https://www.ici.org/my_ici/memorandum/memo30767
- [4] See ICI Memorandum No. 30818 dated August 8, 2017. *Available at* https://www.ici.org/my_ici/memorandum/memo30818.
- [5] See ICI Memorandum No. 30071 dated July 25, 2016. *Available at* https://www.ici.org/my_ici/memorandum/memo30071.
- [6] See ICI Memorandum No. 30458 dated December 6, 2016. *Available at* https://www.ici.org/my_ici/memorandum/memo30458
- [7] 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.
- [8] See ICI Memorandum No. 27050, dated February 26, 2013. *Available at* https://www.ici.org/my_ici/memorandum/memo27050.
- [9] 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.
- [10] 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.