



Federal Legislative & Regulatory Report

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DOL releases proposed fiduciary rule

On June 29, the Department of Labor (DOL) [released](#) its long-awaited proposed fiduciary rule and related [fact sheet](#) explaining the proposal. The proposal would create a new [prohibited transaction class exemption](#) (PTE) for investment advice fiduciaries that “would allow investment advice fiduciaries to give more choices for retirement using Impartial Conduct Standards.”

The press release said that “Impartial Conduct Standards are a best interest standard; a reasonable compensation standard; and a requirement to make no materially misleading statements.” The proposal clarifies DOL’s views on when rollover advice could be considered fiduciary advice under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code.

Moreover, the DOL is amending the Code of Federal Regulations to officially implement the 5th Circuit’s vacatur of the 2016 fiduciary rule. Specifically, the Department is reinstating the “five-part test” for fiduciary status, Interpretive Bulletin 96-1, and the PTEs that had been amended in connection with the 2016 rule. Comments on the proposal are due 30 days following publication in the Federal Register.

Earlier, on June 24 while the proposal was still being reviewed by the Office of Management and Budget (OMB), Reps. Ann Wagner (R-MO), Steve Stivers (R-OH), French Hill (R-AR), Andy Barr (R-KY), Scott Tipton (R-CO) and Van Taylor (R-TX) sent a letter to OMB expressing concerns about

the upcoming DOL fiduciary rule. The core message of the letter is that DOL should not modify the pre-2016 definition of a fiduciary.

IRS postpones certain dates because of COVID-19

On May 28, the IRS released [Notice 2020-35](#), which postpones deadlines for certain time-sensitive actions on account of the COVID-19 emergency. Highlights include:

- Form 5498 — The deadline for filing Form 5498 with the IRS and providing copies to IRA owners with respect to the 2019 tax year is extended to August 31, 2020.
- 403(b) plans — Certain deadlines for making remedial amendments to 403(b) plans are extended to June 30, 2020.
- EPCRS — With respect to a compliance statement issued under the Voluntary Correction Program (VCP) of the Employee Plans Compliance Resolution System (EPCR) that are otherwise required to be completed on or after March 30, 2020, and before July 15, 2020, can be completed by July 15, 2020.
- Form 5330 — The deadline for filing Form 5330, regarding certain excise taxes with respect to employee benefit arrangements, and for paying the associated excise taxes is postponed until July 15, 2020.
- Defined benefit plans — Certain funding deadlines for single-employer defined benefit plans and multiemployer defined benefit plans are postponed until July 15, 2020.

IRS provides remote signature relief for retirement plans

On June 3, the IRS provided temporary administrative relief to help certain retirement plan participants or beneficiaries who need to make participant elections by allowing flexibility for remote signatures.

[Notice 2020-42](#) provides participants, beneficiaries, and administrators of qualified retirement plans and other tax-favored retirement arrangements with temporary relief from the physical presence requirement for any participant election:

- Witnessed by a notary public in a state that permits remote notarization, or
- Witnessed by a plan representative using certain safeguards

In the case of a participant election witnessed by a notary public, for the period from January 1, 2020, through December 31, 2020, the individual may use an electronic system facilitating remote notarization if executed via live audio-video technology that otherwise satisfies the requirements of participant elections and that is consistent with state law requirements that apply to the notary public.

IRS approves HRA funding arrangement

On June 5, the IRS released a [private letter ruling](#) approving a benefit design allowing employees to choose, on an annual basis, between an employer contribution to a defined contribution retirement plan or a health reimbursement arrangement (HRA). This ruling is another step in the IRS's recent loosening of the rules governing employee elections and HRAs.

IRS releases more CARES Act guidance

On June 19, 2020, through [Notice 2020-50](#), the Internal Revenue Service (IRS) issued guidance on the CARES Act's retirement plan distribution and loan relief. The IRS previewed this guidance through a set of FAQs published on the IRS website on May 4, 2020. Consistent with those previously released FAQs, Notice 2020-50 closely resembles IRS [Notice 2005-92](#), which provided guidance on similar distribution and loan relief passed by Congress in response to Hurricane Katrina.

Key takeaways from Notice 2020-50 include that distribution and loan relief is optional, expansion of the definition of "qualified individual," and it allows for self-certification.

On June 23, the IRS released [Notice 2020-51](#), which provides guidance relating to the waiver of required minimum distributions (RMDs) for 2020 that was enacted as part of the CARES Act. The Notice:

1. Permits rollovers of waived RMDs and certain related payments, including an extension of the 60-day rollover period for certain distributions to August 31, 2020.
2. Waives the "one-rollover-per-year" limitation and waives the rules that otherwise prohibit non-spouse IRA beneficiaries from rolling over distributions, provided that the owner or beneficiary repays the distribution to the same IRA.
3. Sets forth a number of Q&As addressing issues relating to the 2020 RMD waiver for qualified plans and IRAs.
4. Addresses certain qualified plan issues and provides a sample plan amendment relating to the 2020 RMD waiver.

DOL greenlights access to private equity for 401(k) plans

On June 3, DOL issued an [Information Letter](#) under the Employee Retirement Income Security Act (ERISA) concerning private equity investments as a component of a professionally managed asset allocation fund offered as an investment option for participants in defined contribution plans.

The letter assures defined contribution plan fiduciaries that private equity may be part of a prudent investment mix and a way to enhance retirement savings and investment security. The letter follows an executive order issued in May by President Trump directing agencies "to remove barriers to the greatest engine of economic prosperity the world has ever known: the innovation, initiative and drive of the American people" so that we may "overcome the effects the virus has had on our economy."

DOL releases ESG proposal

On June 24, DOL announced a new proposed [Investment Duties Rule](#) to provide clear regulatory guideposts for plan fiduciaries in light of recent trends involving environmental, social and governance (ESG) investing.

The proposal is designed, in part, to make clear that ERISA plan fiduciaries may not invest in ESG vehicles when they understand an underlying investment strategy of the vehicle is to subordinate return or increase risk for the purpose of nonfinancial objectives.

The proposal is, at least in part, in response to President Trump's April 2019 [Executive Order on Promoting Energy Infrastructure and Economic Growth](#). That EO reflects concerns that ESG trends may be harming the energy sector and directed DOL to review retirement plan energy investment trends and the agency's proxy voting guidance.

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References and source material used in this publication

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U.S. Department of Labor Proposes to Improve Investment Advice and Enhance Financial Choices for Workers and Retirees

[dol.gov/newsroom/releases/ebsa/ebsa20200428](https://www.dol.gov/newsroom/releases/ebsa/ebsa20200428)

Fact Sheet: Improving Investment Advice for Workers & Retirees

[dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2020-01](https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2020-01)

DOL: Improving Investment Advice for Workers & Retirees

[dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/proposed-regulations/investment-advice-fiduciaries/improving-investment-advice-for-workers-and-retirees.pdf](https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/proposed-regulations/investment-advice-fiduciaries/improving-investment-advice-for-workers-and-retirees.pdf)

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IRS Notice 2020-35: Additional Administrative Relief with Respect to Deadlines Applicable to Employment Taxes, Employee Benefits, and Exempt Organizations Affected by the Ongoing Coronavirus Disease 2019 Pandemic

[irs.gov/pub/irs-drop/n-20-35.pdf](https://www.irs.gov/pub/irs-drop/n-20-35.pdf)

Temporary Relief from the Physical Presence Requirement for Spousal Consents Under Qualified Retirement Plans

[irs.gov/pub/irs-drop/n-20-42.pdf](https://www.irs.gov/pub/irs-drop/n-20-42.pdf)

IRS Private Letter Ruling Approving HRA Funding Arrangement

[irs.gov/pub/irs-wd/202023001.pdf](https://www.irs.gov/pub/irs-wd/202023001.pdf)

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Guidance for Coronavirus-Related Distributions and Loans from Retirement Plans Under the CARES Act

[irs.gov/pub/irs-drop/n-20-50.pdf](https://www.irs.gov/pub/irs-drop/n-20-50.pdf)

Hurricane Katrina Relief under sections 101 and 103 of the Katrina Emergency Tax Relief Act of 2005

[irs.gov/pub/irs-drop/n-05-92.pdf](https://www.irs.gov/pub/irs-drop/n-05-92.pdf)

Guidance on Waiver of 2020 Required Minimum Distributions

[irs.gov/pub/irs-drop/n-20-51.pdf](https://www.irs.gov/pub/irs-drop/n-20-51.pdf)

DOL Information Letter Concerning Private Equity in 401(k) Plans

[dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/information-letters/06-03-2020.pdf](https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/information-letters/06-03-2020.pdf)

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U.S. Department of Labor Proposes New Investment Duties Rule
dol.gov/newsroom/releases/ebsa/ebsa20200623-0

Executive Order on Promoting Energy Infrastructure and Economic Growth
whitehouse.gov/presidential-actions/executive-order-promoting-energy-infrastructure-economic-growth/

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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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