Nationwide Retirement Solutions

Legislative and Regulatory Report

A monthly review of the latest information of importance to retirement plan sponsors

June 2023

Inside this issue

House passes Senior Security Act

On June 5, the House of Representatives passed H.R. 2593, the Senior Security Act of 2023, to strengthen financial fraud protections for senior citizens. The bill, introduced by Rep. Josh Gottheimer (D-NJ) and Rep. Ann Wagner (R-MO), requires the Securities and Exchange Commission to report to Congress recommendations for legislative and regulatory changes on how to combat financial exploitation of older people and vulnerable adults. The bill also permits a registered open-end investment company or transfer agent for that company, including mutual funds, to delay the redemption period of any redeemable security if it was reasonably believed that such redemption was requested through the financial exploitation of a security holder who is an older adult or an individual unable to protect their own interests.

Labor Secretary testifies before House Committee

On June 7, Acting Labor Secretary Julie Su testified before the House Committee on Education & the Workforce regarding the Department of Labor's budget request, as well as recent and future regulatory projects at the Department. From a retirement savings perspective, it was notable that Su emphasized the Employee Benefits Security Administration's need for more funding to create the Lost and Found office mandated by the SECURE 2.0 Act. Su was also questioned about the Department's work on worker classification, ESG, and the fiduciary rule — although no real news was made on those topics. Su has been nominated by President Joe Biden to assume the role of Secretary of Labor; however, her nomination has stalled in the Senate, and the outlook for her confirmation remains unclear.

White House releases Spring regulatory agenda

On June 13, the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) released its Spring 2023 regulatory agenda, which lists the status of agency rulemaking activities. All federal agencies are required by law to submit their list to OIRA for a "Unified Agenda" twice per year, and the update is usually a good indication of where agencies plan to focus their attention in the quarters ahead. However, the published timelines are always subject to change and often do. Of note: The Department of Labor confirmed its plans to once again revisit the Fiduciary Rule. Tentatively titled "Conflict of Interest in Investment Advice," the anticipated rulemaking would "amend the regulatory definition of the term fiduciary ... to more appropriately define when persons who render investment advice for a fee to employee benefit plans and IRAs are fiduciaries[.]" The rulemaking will also "evaluate available prohibited transaction class exemptions and propose amendments or new exemptions to ensure consistent protection of employee benefit plan and IRA investors." The Department of Labor has signaled its intention to propose a rule by August 2023. The Securities and Exchange Commission is looking to finalize numerous proposals by year-end, including the proposed swing pricing rule. Again, the dates included in the unified regulatory agenda are often incorrect.

Lawmakers reintroduce QDIA improvement bill

On June 13, Reps. Tim Walberg (R-MI) and Donald Norcross (D-NJ) reintroduced H.R. 3942, the Lifetime Income for Employees (LIFE) Act. The bill would amend the current qualified default investment alternative (QDIA) safe harbor regulations to allow a QDIA to include a limited investment in less liquid annuities that can therefore provide a higher return to investors. The bill stipulates that not more than 50% of investments can be allocated into a qualifying annuity component, ensuring that the QDIA continues to provide a retirement saver with diverse asset classes. The bill also requires that savers who defaulted into a QDIA with an annuity component are notified of their participation within 30 days of their initial investment. It also provides the option to reallocate their investment penalty-free within 180 days. Additionally, the bill would not cause plan sponsors to have a need to make any changes to their current QDIA but would have the option of adding less liquid, higher-returning annuities as default investment options. Norcross and Walberg proposed a similar bill in 2020 and reintroduced it again in 2022, but the legislation did not make it out of committee.

Congressman reintroduces bill to limit consideration of ESG

On June 21, Rep. Andy Barr (R-KY) reintroduced the Ensuring Sound Guidance (ESG) Act. The bill would require investment advisers and ERISA retirement plan sponsors to prioritize financial returns over nonpecuniary factors — such as environmental, social and governance issues — when making investment decisions on behalf of their clients. The bill includes a few changes to the version he introduced in the previous Congress, including the addition of a client disclosure and consent requirement if an adviser or broker considers nonpecuniary factors. The bill is not expected to become law. Earlier this year, Rep. Barr led the failed Congressional Review Act effort aimed at overturning the Department of Labor's final rule, "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights."

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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.

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