

Legislative and Regulatory Report

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

July 2024

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Senators introduce bipartisan bill permitting 403(b)s to invest in CITs

On July 31, Sens. Katie Britt, Raphael Warnock, Bill Cassidy and Gary Peters introduced [S.4917](#), the Retirement Fairness for Charities and Educational Institutions Act. This is the Senate companion bill to the House-passed bill of the same name. The bill provides the necessary securities exemption for institutional 403(b) plans to offer collective investment trusts (CITs) and separate account products. Private sector 401(k)s, governmental 457s and church-based 403(b)s are already permitted to offer these products. The next steps are not yet clear, but supporters are hopeful for movement during the lame-duck session later this year.

Court rulings put DOL Fiduciary Rule on hold

On July 25, the U.S. District Court for the Eastern District of Texas granted the Federation of Americans for Consumer Choice (FACC) motion for a [preliminary injunction](#) against the DOL Fiduciary Rule and associated changes to DOL exemption PTE 84-24. The injunction will apply on a national basis and is not limited to the parties to the case and their members. The injunction was issued based on the court's conclusion that the rule did not comply with the 2018 5th Circuit decision and that the plaintiffs were likely to win in the court's ultimate resolution of the case. The Department of Labor does have the option to immediately pursue an appeal of this decision to the 5th Circuit Court of Appeals. Similarly, on July 26, the U.S. District Court for the Northern District of Texas granted the Joint Trades Group (ACLI, NAIFA, NAFA, IRI, FINSECA) motion for a [preliminary injunction](#) against the DOL Fiduciary Rule. The injunction will apply nationwide, granting a stay of the effective date for the entire regulatory package. The DOL now has 60 days to decide whether to appeal this ruling.

SEC to abandon and repropose unworkable proposals

On July 5, the Office of Management and Budget (OMB) released its [Spring 2024 Regulatory Agenda](#). The SEC announced it will repropose both the Swing Pricing/Hard Close proposal and the Predictive Data Analytics (often referred to as PDA or AI) proposal. The Hard Close proposal would have prevented a mutual fund from accepting a trade unless the trade is received by the mutual fund, and not an intermediary such as a 401(k) recordkeeper, by 4 p.m. each day. This proposal is completely incompatible with the modern defined contribution omnibus recordkeeping system which batches and processes transactions after 4 p.m. each day. The SEC also announced plans to repropose its PDA rule which would have required broker/dealers and investment advisors (BD/IA) to determine whether any covered technology considers factors favoring the BD/IA. The definition of “covered technology” was enormously broad and conceivably includes tools such as Microsoft Excel and/or 401(k) retirement calculators. The expense of cataloging, testing, and mitigating concerns with the proposal would have been enormous, with no practical benefit to investors. Should the SEC repropose these regulations, the new proposals will come in 2025, meaning they may be abandoned depending on the 2024 election results.

Bipartisan working group releases AI oversight report

On July 18, the House Financial Services Committee released their [report](#) on artificial intelligence (AI). Key highlights include the committee playing a leading role in overseeing AI adoption in the financial services and housing sectors. The committee stressed the importance of enforcing existing laws and assessing regulatory gaps as AI becomes more prevalent among market participants. Additionally, the committee advocates for reforms to data privacy laws, particularly those related to consumer data, and underscored the importance of maintaining U.S. leadership in global AI innovation.

References and source material used in this publication

“S.4917 – A Bill to Amend the Federal Securities Laws to Enhance 403(b) Plans, and for Other Purposes,” <https://www.congress.gov/bills/118th-congress/senate-bill/4917?q=%7B%22search%22%3A%22Warnock%22%7D&s=3&r=1> (July 31, 2024).

“Case No. 6:24-cv-163-JDK” https://www.napa-net.org/sites/napa-net.org/files/FACC_fiduciary%20rule%20stay_072524.pdf (July 25, 2024).

“Civil Action No. 4:24-cv-00482-O,” <https://si-interactive.s3.amazonaws.com/prod/planadviser-com/wp-content/uploads/2024/07/28123639/MemoofOpinionOrder.pdf> (July 26, 2024).

“Agency Rule List – Spring 2024,” https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3235&csrftoken=048287ECF40D06D73757ADF6334A069323A07D45FD5B2749860C69F2CC5B1A140E3ADC4E3D0AA443E72F18FA3FB23F6C0F0A (July 5, 2024).

“AI Innovation Explored: Insights into AI Applications in Financial Services and Housing,” https://financialservices.house.gov/uploadedfiles/bipartisan_working_group_on_ai_staff_report.pdf (July 18, 2024).

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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