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DEPARTMENT OF LABOR

DOL issues additional guidance re PTE 2020-02/fiduciary investment advice

On Tuesday, April 13 the U.S. Department of Labor released its as-promised additional [guidance](#) relating to [PTE 2020-02](#), *Improving Investment Advice for Workers & Retirees*, and, more generally, its regulation of fiduciary investment advice. The Department issued two documents, linked here:

- [“Choosing the Right Person to Give You Investment Advice: Information for Investors in Retirement Plans and Individual Retirement Accounts”](#) includes questions a retirement investor can ask when interviewing potential advice providers, background information to help them understand the purpose of each question, and investor-focused frequently asked questions about the exemption.
- [A set of compliance-focused frequently asked questions provides guidance for investment advice providers who are relying, or planning to rely, on the exemption.](#)

The Department indicates that it will be taking more actions relating to the regulation of fiduciary investment advice, including the possible amendment or revocation of other existing class exemptions. While PTE 84-24 was not called out specifically as a candidate for amendment or revocation, we anticipate this exemption will be considered for review and further regulatory action. Any regulatory actions will be preceded by notice and an opportunity for comment. NAFA is conducting a review of the guidance and will be providing analysis and additional information as it becomes available, and we will continue to closely monitor developments. The NAFA DOL Compliance Working Group plans will meet Tuesday, April 20, 2021 to discuss the implications of the guidance and strategy going forward.

If there are any questions, please contact [Pam Heinrich](#), General Legal Counsel & Director of Government Affairs or [Chuck DiVencenzo](#), President & CEO at NAFA

FEDERAL

Infrastructure Legislation Takes Center Stage in Congress and Retirement 2.0 Packages Are in the Works

Congress has returned from a two-week spring recess and is poised to move forward on an infrastructure plan released by President Biden on March 31 called the American Jobs Plan. This \$2.35 trillion proposed package contains spending for roads, schools, digital and internet access infrastructure, water pipe modernization, and electric cars, among other provisions.

At this point many details need to be worked out by congressional leaders and there might be several bills introduced in an effort to pass this plan. Budget reconciliation might be used by Democratic leaders to move certain spending and tax reforms not supported by Republicans where only a simple majority is needed to pass legislation. For policy items that are bipartisan, there could be a smaller package that could move through Congress via regular order. Of relevance to NAFA will be so-called “pay-fors” that are included to raise revenue to cover the costs of these new infrastructure plans. Much attention has been given to a proposal to raise the corporate tax rate from 21 percent to 28 percent. While such a change would cover much of the tab, most D.C. insiders are anticipating a series of other pay-for provisions to be considered. Accordingly, NAFA will be closely monitoring developments to ensure that there are no harmful impacts to annuities and retirement savings. (For example, the last COVID relief package that was signed into law in March initially contained a provision (later removed) that would have frozen the cost-of-living adjustment for overall contributions to defined contribution plans and would have capped the maximum annual benefit for defined benefit plans beginning in 2031.)

In addition to monitoring tax and spending provisions of the American Jobs Plan, NAFA will watch for any movement on the Protecting the Right to Organize (PRO) Act (H.R. 842), which the President called on Congress to pass as part of his infrastructure plan. The PRO Act contains a series of organized labor and worker protection reforms including fundamentally changing the definition of employee under the National Labor Relations Act. Essentially, the bill creates a presumption of classification of workers as full-time employees unless companies can prove independent contractor status under a 3-factor test, known as the ABC Test. Accordingly, independent insurance agents and brokers, producers who have single carrier relationships, and businesses licensed as direct sellers of insurance products would be reclassified as employees of carriers. The bill passed the House in March and while the President wants this bill to be enacted as part of the American Jobs Plan, it is not likely to move in the Senate because 60 votes are needed as the bill would not be ruled in order under budget reconciliation rules.

Lastly, NAFA remains optimistic for movement on new retirement savings legislation by this summer. We have continued meetings with key offices of the Senate Finance Committee and House Ways & Means Committee and understand that “retirement 2.0” legislation is on the agenda. In the coming months we expect a bill to be introduced in the House by Chairman Neal and Ranking Member Brady, and, in the Senate, bills will be introduced by Chairman Wyden and by Senators Cardin and Portman. These measures will contain a

number of bipartisan policy provisions, including extending RMDs to 75 and expanding contribution amounts and product choice for Qualified Longevity Annuity Contracts, policies that NAFA strongly supports.

Please stay tuned for alerts on the opening of registration for the upcoming virtual Annuity Leadership Forum, June 15-17!

If there are any questions, please contact [Cliff Andrews](#), Managing Principal at CapCity Advocates and Federal Legislative Strategist & Advocate at NAFA

STATE

And Then There Were Ten: Idaho, North Dakota, and Nebraska Become Latest States to Adopt MDL 275 Best Interest Requirement; Limited Progress on MDL 275 FAQs

In the past month, three additional states joined the seven states that had already adopted the new best interest standard for annuity transaction under the NAIC Model Regulation 275: Idaho, North Dakota, and Nebraska. Idaho has a July 1, 2021 effective date, while both North Dakota and Nebraska become effective on January 1, 2022. Also, Rhode Island's rule went into effect on April 1, 2021, joining Iowa and Arizona as the three states that are already in effect. In addition to Idaho, Michigan, Arkansas, Ohio, and Delaware will also implement their regulations later this summer. And, an additional seven states have formally proposed adoption of the revised 2020 model regulation: Kentucky, Alabama, Maine, Virginia, Texas, Montana, and Connecticut. NAFA was part of a joint trade association coalition to successfully defeat an effort in Nebraska to amend NE LB 22 that would have created a private cause of action for violations of the best interest rule – something that is expressly excluded in the language of the model regulation. You can read the joint trade comment letter [HERE](#). We are also currently working with our sister trades to ensure that the regulation being considered in several states, including Montana and Kentucky in particular, conform to the language of the model. NAFA has a meeting schedule in May with Kentucky regulators to hopefully persuade them to reinsert the best interest language (removed after the amended regulation was originally proposed), and we are working directly with the bill sponsor in the Montana Senate to remove troubling amendments that were added to MT SB 363 by the Montana House. And, NAFA is working directly with the Virginia Bureau of Insurance to extend the effective date beyond its current proposed date of May 1, 2021. We have been given verbal assurance that the regulation there will not go into effect until January 1, 2022, but we will continue to press for that outcome.

NAFA maintains a tracking [document](#), listing the current status of adoption by each state and includes topline information and links to the individual regulations, as well as comment letters submitted by NAFA. This tracking document is also available on the NAFA website.

Finally, the NAIC Annuity Suitability Working Group has not yet finished its work on the Model Regulation #275 “Frequently Asked Questions” [document](#), intended to provide

additional guidance around the revised model regulation and to promote its adoption by additional states. There was hope that they might complete the FAQs during the last meeting on March 25, but that did not happen. A date and time for the next meeting has not yet been announced. Outstanding issues that remain include the safe harbor provisions and requirements related to producer training.

If there are any questions, please contact [Pam Heinrich](#), General Legal Counsel & Director of Government Affairs at NAFA

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