



# Federal Legislative & Regulatory Report

## October 2019

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### DOL advances e-delivery; RMD update; Scalia free to work on investment advice proposal

In October:

- The Department of Labor (DOL) proposed regulations expanding the use of electronic delivery for retirement plan disclosures
- Ethics officials confirmed that new Labor Secretary Eugene Scalia was free to participate in developing the DOL fiduciary proposal
- The Department of Treasury advanced an update to the required minimum distribution (RMD) mortality tables

On October 22, the Department of Labor [released proposed regulations](#) expanding the permitted use of electronic delivery for retirement plans disclosures. Under the proposed regulations, a new safe harbor provision would permit retirement plan sponsors to satisfy disclosure requirements by notifying participants and beneficiaries that the information will be made available on a website.

Individuals would be able to elect paper disclosures and opt out of electronic delivery entirely. Plans can also continue to rely on the existing DOL safe harbor provision for electronic delivery or furnish paper documents by hand-delivery or by mail.

The proposed regulations are the result of an executive order issued in August 2018 to “strengthen retirement security in America.”

Relatedly, on October 21, the Office of Management and Budget (OMB) completed its review of a notice of proposed rulemaking (NPRM) to update the life expectancy tables that apply for purposes of computing required minimum distributions (RMDs) under Section 401(a)(9). The OMB describes

the NPRM as updating “the life expectancy tables that apply for purposes of computing minimum required distributions from qualified retirement plans to more accurately reflect life expectancies based on the latest available empirical data.”

Now that the OMB has completed its review, the proposed rule will be published shortly, followed by a comment period. As with the e-delivery proposal, these RMD changes are the result of an executive order signed by President Donald Trump which instructed the DOL to identify and review actions that could be taken to improve the effectiveness of required notices and disclosures, and reduce cost to employers.

Back at the DOL, on October 29, ethics officials cleared the way for Secretary Scalia to work on the department’s pending fiduciary rulemaking. Since his nomination, questions existed about whether Scalia would need to recuse himself from the project because of his role challenging the now-invalidated Department of Labor fiduciary rule. The Department’s career ethics attorneys determined that neither applicable ethics rules nor the Trump administration’s ethics pledge required Scalia’s recusal.

The DOL has been working on a proposal to harmonize its rules with the Securities and Exchange Commission’s Regulation Best Interest and deal with the invalidation of the DOL’s fiduciary rule.

## Sen. Murray seeks clarification regarding changes at EBSA

On October 8, Senator Patty Murray (D-WA) sent a [second letter](#) to the Department of Labor asking for clarification regarding changes at the Employee Benefits Security Administration (EBSA). Specifically, Sen. Murray asked Assistant Secretary of EBSA Preston Rutledge to [explain the reason](#) for the changes and expected result.

Previously, Sen. Murray had contacted Rutledge to caution him against making changes that altered roles of certain career officials. While the Senator has concerns about the changes to the organizational and reporting structure at EBSA, it’s unclear whether the changes will have any substantive impact.

## Republican senators urge passage of SECURE

On October 16, a group of Republican senators sent a letter to Majority Leader Mitch McConnell (R-KY) encouraging “the Senate to take action on the SECURE Act as soon as possible.” The letter noted that Senate passage of the SECURE Act would “demonstrate to our constituents that the Senate can lead in a bipartisan way for workers saving for retirement, for tax fairness, and for family financial security.” The letter was signed by Senators Tim Scott (R-SC), Rob Portman (R-OH), Thom Tillis (R-NC), Joni Ernst (R-IA), Martha McSally (R-AZ), Susan Collins (R-ME) and Cory Gardner (R-CO).

Although the letter does not change the status of the holds from other Senate Republicans, Sens. Tillis, Ernst, McSally, Collins and Gardner all face tough re-elections in 2020, and the letter highlights for Leader McConnell that its passage is a priority for his members this election cycle.

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## References and source material used in this publication

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Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA

<https://www.federalregister.gov/documents/2019/10/23/2019-22901/default-electronic-disclosure-by-employee-pension-benefit-plans-under-erisa>

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Murray Rejects Evasive Response, Continues Pushing for Explanation of Hasty Move to Reorganize Employee Benefits Security Administration

<https://www.help.senate.gov/ranking/newsroom/press/murray-rejects-evasive-response-continues-pushing-for-explanation-of-hasty-move-to-reorganize-employee-benefits-security-administration->

Text of Second Letter of Senator Murray to Assistant Secretary of EBSA Preston Rutledge

<https://www.help.senate.gov/imo/media/doc/100819%20Followup%20EBSA%20Reorg%20Final.pdf>

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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](https://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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