
Anecdotal Evidence: Fresh News from the Emerald City

By Kerry Pechter *Wed, Apr 5, 2017*

Here's the latest from the nation's capital on the fiduciary rule, the state-sponsored auto-IRA 'Secure Choice' retirement plans, and the 'auto-portability' of 401(k) accounts from old employer to new.



A quick trip to Washington, D.C. last week yielded some new information about three issues: the fiduciary rule, the state auto-IRAs, and “auto-portability” of 401k accounts.

On the topic of the fiduciary rule, a lawyer for the major defined contribution recordkeepers has been trying to keep alive the idea of clearly exempting recordkeepers from liability to lawsuits for things—marketing messages instead of education—that their phone reps might say to 401(k) plan participants about rollovers.

Some recordkeepers also have IRA rollover businesses beyond their passive services as utilities in 401k world, and therefore have a potential conflict of interest when speaking to participants.

But, in visiting the Department of Labor on behalf of his clients, the lawyer has found no one to talk to at the Employee Benefits Security Administration but the same career DOL lawyer that served as point-person for the fiduciary rule that he talked to during the Obama administration, Tim Hauser. Hauser’s boss was EBSA chief Phyllis Borzi, and Borzi’s job has not been filled because Trump-appointee Alexander Acosta has not yet been approved as the new Secretary of Labor.

On state auto-IRAs, the Senate voted 50-49 on a straight party line basis against the exemption from ERISA that would allow cities and counties to be sure they didn’t have to answer to the DOL about their plans. (A vote against a similar provision that would have exempted states will presumably follow.)

Pensions & Investments magazine, the Investment Company Institute, which represents the mutual fund industry, and the American Council of Life Insurers promptly labeled the exemption an attempt to deprive workers of their right under ERISA.

That was baffling. In fact, they described the opposite of what the states like California and

cities like New York have hoped to do, which is to get minority- and low-income workers to save, as the United Kingdom has done with its mandatory NEST defined contribution plan. They asked the DOL for exemption from ERISA for their plans.

Not everyone in the financial industry hates the state plans: State Street Global Advisors has signed up to run Oregon's auto-IRA money in its target date funds. SSgA is, however, on the record as preferring a national DC solution to a patchwork of state-run plans.

If you look at where state-run plans have gotten traction, it's been in blue states with strong union voices. Service workers unions, which get a sympathetic ear from legislatures in those states, have been trying to get workplace savings plans in the small businesses where their members work. No coincidence that they don't get their way in Washington today.

The retirement industry is wary of the state Secure Choice automatic IRA plans, which most businesses without retirement plans would be required to offer their employees. These plans were an answer to the fact that at any given time, around half of U.S. workers don't have a salary-deferral tax-deferred savings plan at work.

While some, like Brian Graff, CEO of the American Retirement Association, have said that a mandate for retirement plan coverage would create new demand for his private-sector 401(k) plan advisor members, many others, like the plan advisors who sell plans to small business owners and the mutual fund companies who distribute their funds through those advisors, are alarmed. They feel that state IRAs will lead to state 401(k)s and a serious crowd-out of private industry in the retirement plan space. Most of the nation's 600,000 401(k) plans are small, but together they add up to a big industry.

Finally, the idea of "auto-portability," a process for automatically moving 401(k) accounts to an employee's new plan and recordkeeper if and when he or she changes jobs and gets auto-enrolled into a new plan, seems to have survived the transition from Obama to Trump.

Auto-portability has support from the Bipartisan Policy Center and former Sen. Kent Conrad (D-ND, 1992-2012), as well as from the Employee Benefits Research Institute. Auto-portability is a private for-profit venture by Retirement Clearinghouse (RCH). RCH calls it a way to solve the 401(k) "leakage" problem and, ultimately, the undersaving problem and the retirement income shortfall problem.

But auto-portability needs federal blessing before it can become a default feature in plans. Auto-portability also needs the willing cooperation of the big 401(k) recordkeepers, like

Vanguard and Fidelity. Billionaire Robert L. Johnson, the founder of BET (Black Entertainment Television), owns RCH.

Conrad, Jack VanDerhei of EBRI, Spencer Williams of RCH, and Steve Saxon of Groom Law Firm, the attorney for recordkeepers, all sat on a panel last Thursday in DC to speak about (and in favor of) RCH's idea. That's an influential coalition. [RIJ has published several stories about RCH and auto-portability.]

Never a dull second in D.C. these days... but not much getting done. The DOL, as noted, still lacks an EBSA chief, which means career staff (aka "the deep state"), who doesn't make big decisions, are still going through familiar motions. With attention in Washington now turning to tax reform—where the preservation of tax-deferral for long-term savings is the big issue for the retirement industry—it's hard to imagine that Congress or the Trump administration will have much bandwidth or appetite for the thorny fiduciary rule.

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