
Annuity-Friendly Nominee at DOL

By Kerry Pechter Thu, Oct 12, 2017

Preston Rutledge (above) is reported to be the Trump administration's nominee to lead the DOL's Employee Benefits Security Administration, which handles the fiduciary rule, et cetera. He's currently the retirement policy wonk on the Senate Finance Committee.



Donald Trump's nominee for the top job at the Department of Labor's Employee Benefits Security Administration will be Preston Rutledge of the Senate Finance Committee staff, according to press reports yesterday. If nominated and approved, he'd replace Phyllis Borzi, who authored the Obama administration's fiduciary rule.

If the reports about the nomination in PoliticoPro are true, that would be good news to the retirement industry—particularly to asset managers who would like to see the creation of “open multi-employer retirement plans,” or MEPs, and to life insurers who would like to see a lowering of the barriers to annuities in 401(k) plans.

Rutledge is evidently well known, liked and respected in Washington. “It’s important to have a retirement policy expert in that position and he fills the bill,” said Brian Graff, CEO of the American Retirement Association. “He has relationships with the Hill and Labor. He won’t be in a position [to influence legislation] as a regulator. But if he were to get nominated there might get a chance to revisit the MEPs issue.”

“He’s terrific. He’s genuine. He really gets all the big issues. He has relationships with many different aspects of the retirement world,” said Cindy Hounsell, executive director of WiserWomen, a non-profit that provides financial education to women. “He listens to people. He understands the system.”

A former IRS lawyer who is in his early 60s, Rutledge has been senior tax and benefits counsel for the Senate Finance Committee under Chairman Sen. Orrin Hatch (R-UT) since 2011. He’s been instrumental in the writing of two ambitious and far-reaching recent pieces of retirement legislation.

Those were the SAFE (Secure Annuities for Employees) Retirement Act of 2013 and a 2016 reincarnation of SAFE called the Retirement Enhancement and Savings Act (RESA) of 2016. Hatch introduced both of them. [RESA](#) came out of the Senate Finance Committee with bipartisan support but didn’t reach the Senate floor before the 114th Congress ended last January.

In a [Benefits Brief](#) issued a year ago, lawyers from the Groom Law Group described RESA as having “the potential to alter the retirement landscape.” The legislation, if revived and passed, would:

- Permit unrelated employers (i.e., those without so-called “commonality”) to pool their resources by participating in a new type of multiple employer plan, provided certain conditions are met. This

would be a way to expand retirement plan coverage to millions of workers at small companies by letting the owners opt into a pooled employer plan. MEPs are also an industry-favored alternative to mandated state-sponsored workplace IRAs, like California's Secure Choice.

- Require employers to provide defined contribution plan participants with an estimate of the amount of monthly annuity income the participant's balance could produce in retirement (if benefits were received in a single or joint and survivor life annuity).
- Create a new fiduciary safe harbor for employers who opt to include a lifetime income investment option in their defined contribution plan. In 2008, DOL published a safe harbor for annuity selection in defined contribution plans, but many view it as unable to provide meaningful relief, particularly given the difficulty in evaluating the financial capability of the insurer.
- Make in-plan annuities more portable. RESA would permit participants to make direct trustee-to-trustee transfers (or transfer annuity contracts) of "lifetime income investments" that are no longer authorized to be held as investment options under a qualified defined contribution, 403(b) plan, or governmental 457(b) plan, without regard to any plan restrictions on in-service distributions.

MEPs have been promoted by asset manager State Street Global Advisors. The pooled plans are also championed by the Center for Retirement Initiatives at Georgetown University's McCourt School of Public Policy, which favors private-sector solutions to the problem that only about half of American workers can contribute to a retirement plan at work.

The Senate Finance Committee is a magnet for donations from many industries, but especially from the FIRE (finance, insurance and real estate) industries. FIRE has been the biggest source of contributions to committee members in the 115th Congress, with \$19.4 million from political action committees and \$43.6 million from individuals. Combined, that's about twice as much as the next most generous industry contributor to committee members.

In an [interview](#) videotaped in New York last April by Cammack Retirement at the Defined Contribution Institutional Investors Association public policy meeting, Rutledge was asked about a key concern of 401(k) providers: The possibility of reductions in the limits on tax-deferred contributions to retirement plans.

Rutledge all but dismissed that likelihood. "As a matter of policy, there's a lot of reluctance to revisit and maybe consider reducing, for instance, the 401(k) contribution limits," he said. "That would raise a lot of money, but there's a long-standing commitment to the contribution limits. Most folks don't want to lower those. But when they open up tax reform, everything is on the table."

He praised the concept of open MEPs. "The unsung advantage of the open MEP is that you've got a professional organization at the center that does all the paper work and deals with the DOL," he said. "[To incentivize participation by business owners], we added a tax credit of \$5,000 for startup costs.

"That bill has voted through the Finance Committee by 26 to nothing. It wasn't just bipartisan, it was unanimous. We were hopeful that we could attach that to the year-end [2016] funding bill, but didn't happen. That's ready to be pulled down and dusted off."

Regarding the fiduciary rule, Rutledge said, "There are so many other things to work on that there's not a lot of appetite at Finance to work on fiduciary rule."

