New law waives 10% penalty on early distributions by public safety workers.

On June 29, 2015, President Obama signed the Defending Public Safety Employees’ Retirement Act into law. The law had been introduced in Congress by Rep. Reichert (R-WA) at the end of April and received bipartisan support from the beginning.

The law amends the tax code to extend the exemption from the 10% penalty tax on early distributions (starting at age 50), currently available to certain qualified State and local public safety employees, to include specified federal law enforcement officers, customs and border protection officers, federal firefighters, and air traffic controllers who similarly have reached age 50. The law expands the exemption from defined benefit (traditional pension) plans to governmental defined contribution plans, including 457(b), 401(a), 403(b) and grandfathered 401(k) plans. The changes go into effect for distributions “after December 31, 2015.”

In addition, early distributions under this exemption will not be treated as a modification of substantially equal payments for purposes of application of the 10% additional tax on early distributions (although substantially equal payments meeting certain requirements are already an exception to the 10% additional tax, modifications for reasons other than death or disability can cause the tax to apply).

**Nationwide Comment:** Nationwide supports the passage of the Defending Public Safety Employees’ Retirement Act and will support any similar legislation which takes into account the unique retirement needs of public safety workers as they plan for and live in retirement.
**Senate Committee releases reports on tax reform.**

Last month, the Senate Finance (tax) Committee tax reform working groups released their reports. Formed in January, the goal of the groups was to jump-start tax reform and identify areas of consensus. Generally, that has not taken place and there remains little expectation of tax reform moving forward in 2015 or 2016.

Two of the groups dealt with retirement-specific issues: Savings & Investment and Business Income. Without consensus on fundamental questions like the top corporate tax rate, the Business Income working group was limited in what it could accomplish; its report consists mostly of broad options for business tax reform without specific recommendations. The Savings and Investment group achieved consensus on the subject of improving retirement plans.

**Nationwide Comment:** The Savings and Investment working group’s report favorably cites many proposals, including several Nationwide strongly supports. In particular, Nationwide has been a leading voice in favor of the changes to MEPs, expansion of the small employer start-up credit and Saver’s credit, as well as proposals to increase the use of guaranteed lifetime income products in retirement plans.

Because there is little chance for a comprehensive tax reform this year, some believe the retirement plan improvement suggestions could form the basis of a retirement-focused bill. While such a bill is also unlikely to be enacted into law this year, there is interest among the Senators who participated on the working group in exploring the idea.

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Various groups voice concerns over proposed fiduciary rule.

The ACLI, FSR, FINRA, and IRI, among other trade groups, submitted letters critical of the Department of Labor’s (DOL) proposal. At the state level, the Association of Ohio Life Insurance Companies (AOLIC), the Ohio Bankers League (OBL), and the Life Insurance Council of New York (LICONY) submitted letters in opposition to the rule.

On July 21, Nationwide submitted its comment letter. Nationwide’s comment letter focuses on its unique role as a service provider to small businesses as well as our important role as a provider of lifetime income products. Following that comment submission, Nationwide activated a grassroots alert urging common sense fixes to the proposal and asking that Members of Congress work with the DOL to fix the rule.

Several members of Congress also weighed in with the DOL. The majority of those congressional letters opposed the rule, while a small number of Democrats wrote in favor of the proposal.

Senate HELP subcommittee holds hearing on DOL proposal.

The Senate Committee on Health, Education, Labor, and Pensions (HELP) subcommittee on Employment and Workplace Safety held a hearing July 21 entitled “Restricting Advice and Education: DOL’s Unworkable Investment Proposal for American Families and Retirees.” The chief witness was DOL Secretary Perez followed by a second panel featuring witnesses from The Brookings Institution (against the rule), Primerica (against the rule), PERMAC Industries (for the rule), and Rebalance IRA (for the rule). Secretary Perez stated the DOL is looking forward to reviewing the comments it received during the comment period and will use them to improve the rule and make it workable.

While Sen. Warren (D-MA) shared her support for the rule, other Democrats highlighted their concerns with the proposal and urged the DOL to craft a rule that would not negatively impact workers and small businesses access to retirement savings products and affordable investment education and guidance. Of note, the supportive industry witness, Rebalance IRA, has a minimum account balance of $100,000, further illustrating that the rule could have the unintended consequence of limiting investment advice and options for low and moderate-income savers.

Chamber reports on rule’s effect on small business retirement savings.

The U.S. Chamber of Commerce recently released “Locked out of Retirement: The Threat to Small Business Retirement Savings,” which found the DOL’s recently re-proposed fiduciary rule would threaten $472 billion in small business retirement savings.

The report, which focuses on those small businesses/employees that use Simplified Employee Pension IRAs (SEP IRA’s) and Savings Incentive Match Plan for Employees IRAs (SIMPLE IRAs),
found that nine million small business-supported households will either completely lose access to employer-sponsored retirement plans or face dramatically higher fees under the new rule.

**Nationwide Comment:** As a leader in providing retirement solutions to small businesses, Nationwide applauds the Chamber’s effort to bring the rule’s unintended effects to the public’s attention. Nationwide continues to encourage its trade groups to weigh in with the DOL, Congress, and the public to voice their opposition to the overly broad nature of the DOL’s proposal.

**DOL says fixes are coming.**

On July 16, at the Securities and Exchange Commission’s (SEC) Investor Advisor Committee’s meeting (held in part to discuss the rule), a Department of Labor (DOL) deputy assistant secretary stated, “The fear of complying with the various disclosure provisions is what’s motivating people to say they might not use the best interest-contract exemption” and that “we’ve [the DOL] indicated an enormous amount of flexibility to those things.”

While DOL officials did not discuss specific changes they would consider, the officials did indicate their hope that written comments in response to the rule (due July 21) will be “very specific about what words are causing confusion so we can write different words.”

**Nationwide Comment:** The DOL has made similar assurances in the past, yet consistently fail to provide workable solutions. Nationwide is finalizing its comment letter to the DOL, which will focus on the need for a workable best interest standard which protects Americans’ ability to plan for and live in retirement without upending existing business models.
Administration announces new retirement initiatives.

The Obama Administration held the White House Conference on Aging on July 13, 2015, which was used as an opportunity for President Obama to personally promote the Department of Labor’s (DOL) fiduciary rule and to announce several new retirement-related initiatives.

Of note were announcements related to state-run retirement plans for private sector workers ("state(k) plans") and annuities. Specific details of the plan to facilitate state(k) plans were not made public. However, at the event, it was announced that the DOL will release “a regulation to clarify how state initiatives that promote and protect retirement savings can proceed consistent with that federal law [ERISA], without sacrificing the important protections that federal law provides for workplace retirement savings.” With respect to the selection and monitoring of a plan annuity provider, the DOL made public a Field Assistance Bulletin (FAB) on the subject.

Last Spring, 26 Democratic Senators (lead by the Ranking Members of the HELP and Finance Committees) sent a letter to President Obama urging him to ask the DOL and Treasury to issue guidance clarifying that state-sponsored retirement savings initiatives are not preempted by ERISA. The Senators encouraged the Obama Administration to clarify that ERISA does not apply or limit the “state-k” arrangements that have been enacted in various forms in California, Illinois, and Washington (state) and to push for the creation of these programs in other states.

Nationwide Comment: Nationwide has actively opposed the programs in California, Illinois, Washington, and others as the private sector has an abundance of offerings to address this market, making state-created offerings unnecessary, and that state-run plans would not address the underlying causes of Americans’ lack of access to plans. Nationwide supports efforts to encourage annuitization in qualified retirement plans and to bring more clarity about annuitization to the general public.

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Statement of Thomas E. Perez, Secretary U.S. Department of Labor
www.help.senate.gov/imo/media/doc/Perez8.pdf

Testimony of Robert Litan
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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 in the Employer page of our plan website, NRSforu.com. In addition, we report guidance on legislative and regulatory activity relevant to government sector plans through:

- **Federal Legislative and Regulatory Report** – distributed monthly and posted in the Plan Sponsor section of NRSforu.com. It’s available online and for download.
- **Plan Sponsor Alerts** – published as needed to announce breaking news.
- **457 Guidebook** – which has been revised to include information about the American Taxpayer Relief Act of 2012, Pension Protection Act of 2006; The Heroes Earnings Assistance and Relief Tax Act of 2008; Worker, Retiree & Employer Recovery Act of 2008; and The Small Business Jobs Act of 2010.

About this report

**BOB BEASLEY**, CRC, Communications Consultant, edits this report. Beasley brings 25 years of financial services communications experience to your plan. He helped prepare the four most recent editions of the 457 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 and telephone greetings.

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.