



Federal Legislative & Regulatory Report

December 2021

Inside this issue

Build Back Better Act stalls in the Senate	Below
Senate committee advances EBSA nominee	Below
White House releases fall regulatory unified agenda.....	Page 2
President signs debt limit increase, avoids default	Page 2
DOL issues statement on private equity in retirement plans	Page 2
DOL finalizes limited number of Form 5500 revisions	Page 3
References and source material used in this publication	Page 4

Build Back Better Act stalls in the Senate

After passing the House in November, the Build Back Better Act (BBBA) has stalled in the Senate. Despite self-imposed deadlines to pass BBBA by year-end, consideration will now last into the first calendar quarter of 2022. There will probably be a renewed push to finish BBBA before President Joe Biden's first State of the Union address, which is expected in early February.

Senators continue to disagree on nearly every major provision of BBBA, including the top-line cost and even the need for the bill at all. Before negotiations broke down in December there had been some progress. On December 11, the Senate released updated BBBA text:

- The tax title can be viewed [here](#).
- The labor provisions can be viewed [here](#).

The most notable change is an update to the Corporate Alternative Minimum Tax to exclude defined benefit pension assets from the calculation. The revised version of BBBA still includes a \$10 million cap on retirement accounts, the elimination of backdoor Roth conversions, and limits on Roth conversion for high-income individuals.

Senate committee advances EBSA nominee

On November 2, the Senate Health, Education, Labor and Pensions (HELP) Committee by a vote of 12-10 advanced the nomination of Lisa Gomez to be Assistant Secretary for the Employee Benefits

Security Administration (EBSA) at the Department of Labor. Sen. Lisa Murkowski (R-AK) joined all the Committee Democrats in voting to approve Gomez's nomination.

Because the nomination did not deadlock in the Committee, Gomez's nomination goes to the full Senate and could be advanced at any time in between other Senate business later this year or early next year.

White House releases fall regulatory unified agenda

On December 10, the Administration released its Fall 2021 Unified Agenda. For the start of 2022, the agenda indicates the Department of Labor (DOL) will be working to issue:

- Updates to the "definition of fiduciary"
- Final lifetime income illustration requirements
- Revisions to the "ESG Rule"

The Treasury Department also noted several retirement-related projects for the first part of 2022, including proposals to:

- Update the required minimum distribution (RMD) rules
- Provide relief from the one-bad-apple rule
- Provide additional guidance on how the SECURE Act impacts 401(k) plans

Where to find each agency's agenda online

- The DOL's agenda can be viewed [here](#).
- Treasury's agenda can be viewed [here](#).
- The Securities and Exchange Commission's agenda can be viewed [here](#)

President signs debt limit increase, avoids default

On December 16, President Biden signed S.J. Res. 33 to increase the federal debt limit by \$2.5 trillion. The Treasury Department had previously warned that the government could default on its debt as early as December 15, while others estimated a date later in December or even January. A point of political disagreement over the past several months, this latest increase in the debt limit is expected to last through early November 2022.

DOL issues statement on private equity in retirement plans

On December 21, the Department of Labor [released](#) a Supplemental Statement clarifying a June 2020 Information Letter on private equity investments as a component of a professionally managed asset allocation fund offered as an investment option in participant-directed retirement savings plans, such as 401(k) plans.

The statement cautions plan fiduciaries against the perception that private equity is generally appropriate as a component of a designated investment alternative in a typical 401(k) plan. It expresses the department's view that plan-level fiduciaries of small plans typically will not have the expertise necessary for the complex evaluation needed to determine the prudence of private equity investments in designated investment options of participant-directed plans.

DOL finalizes limited number of Form 5500 revisions

On December 29, the Department of Labor [released](#) final revisions to Form 5500. These final revisions to the instructions were included in a broader proposal of form and instruction changes published on September 15, 2021.

The limited number of instruction changes implement annual reporting changes for multiple-employer plans (including pooled employer plans) that result from statutory provisions in Section 101 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act).

The other changes to the Form 5500 Annual Return/Report included in the September 2021 proposal will be the subject of one or more separate and later final notices.

[\(Back to the Table of Contents\)](#)

References and source material used in this publication

Page 1

Text of the tax provisions of the Build Back Better Act

<https://www.finance.senate.gov/imo/media/doc/12.11.21%20Finance%20Text.pdf>

Text of the labor provisions of the Build Back Better Act

<https://www.help.senate.gov/imo/media/doc/KIN21845.pdf>

Page 2

DOL's Fall 2021 Regulatory Agenda

https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=1200&csrf_token=703AA093DB55CD659F0D9EEA4967BFE948D482615ED56EE00C0D9D965BFFE16C9CEF5F94CEDD525BD180C3EB6E4F9C2C4371

Treasury's Fall 2021 Regulatory Agenda

https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=1500&csrf_token=AB12B2E9E8267CB3E536107F843FC08FB3661C784F107FE26258A88655F6A1A0F082FF25A12BF0E08ACABFD49FF028808AE0

SEC's Fall 2021 Regulatory Agenda

https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=F93DDA75B0D952E153B7019FC53F68D720E4F59FC01A0970832F3257162E20C7F1A9A0711058A0E670BDD754797D30C59BC4

US Department of Labor releases supplemental statement on private equity investments in participant-directed retirement savings plans (press release)

<https://www.dol.gov/newsroom/releases/ebsa/ebsa20211221>

Page 3

Text of final revisions to Form 5500

<https://www.govinfo.gov/content/pkg/FR-2021-12-29/pdf/2021-27764.pdf>

[\(Back to the Table of Contents\)](#)

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.

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.

Nationwide, the Nationwide N and Eagle and Nationwide is on your side are service marks of Nationwide Mutual Insurance Company.
© 2022 Nationwide

NRM-19651AO (01/22)

