

## TRUMP NOMINEES TAKE AIM AT TAX REFORM AND THE FIDUCIARY RULE

As a new administration takes office, the retirement plan community scratches their collective heads about what to expect. Donald Trump assumes the presidency with no prior public service, presenting very few tea leaves for us to read. The future lies largely in the hands of the nominee for Secretary of Labor, Andrew Puzder, and the Treasury Secretary nominee, Steven Mnuchin.



*Secretary of Labor nominee Andrew Puzder prefers market solutions to government intervention.*

The appointment of Puzder to head the Department of Labor (DOL) clearly signals the Trump administration's plans to deregulate the private

sector. Puzder is a successful labor attorney and the CEO of the restaurant group that owns Hardees and Carl's Jr. He has been outspoken against a raise in the minimum wage, the Affordable Care Act, and the DOL's overtime regulations. He is a strong critic of government regulation, preferring market solutions to government intervention. While the Obama administration pushed a decidedly pro-labor agenda, we expect the Trump administration to roll back as much of that agenda as possible without overdrawing its political capital amongst members of Congress. We expect employers to find themselves in a much friendlier business environment.

For the retirement plan industry, the highly controversial DOL fiduciary regulation could be derailed. The rule was pushed directly by President Obama and heavily resisted by the financial services industry for five years before it was finally enacted. Trump hasn't specifically referred to the regulation, but he and Puzder have clearly indicated intentions to unwind the Obama administration's voluminous regulations. If confirmed as head of the DOL, Puzder will have a lot of influence on the fiduciary rule, but the direction in which he will take its enforcement—set to go into effect in April 2017—is yet unknown.

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### IN SHORT

Though the fiduciary rule is the major retirement regulation under scrutiny, most financial institutions have already prepared for the original April 2017 implementation date. While the deadline is almost certainly going to be delayed, the basic premise of expanding fiduciary advice and removing conflicted payments will likely remain.

Tax reform will probably be the more significant concern for the retirement industry. If individual and corporate income tax rates drop, Congress will look for other revenue sources, and retirement plans are a target.

A lot comes down to priorities. There are many things that the Trump administration and the DOL want to accomplish in a relatively short amount of time. Many financial institutions, particularly those with more problematic business models under the new rule, have already spent millions of dollars and untold hours getting ready for this standard, and it will be very difficult for those institutions to backtrack. The new administration, through executive action or congressional action, could defund or delay the rule, replace it with something else, or materially change it. However, many necessary industry changes have been accelerated by this rule and will continue regardless of what happens. More advisors are taking on fiduciary responsibility, and the trend toward fee-based, rather than commission-based, compensation has already been set in motion.

## Tax Reform Looms

The US Senate looks to pass a comprehensive tax overhaul next year using the budget reconciliation process. This means that tax reforms would be rolled into a bill to reconcile the tax code with the budget. Handling it this way allows the measure to pass the Senate with a simple majority and insulates it from the need for 60 votes to break a potential filibuster. Senate Majority Leader Mitch McConnell (R-Ky.) said at a December 12 press conference that the plan to enact changes to Obamacare and implement comprehensive tax reform will utilize budget reconciliation. Ironically enough, the same process was used by Democrats to pass Obamacare in 2010.

The first budget measure would include the Obamacare changes, and the second budget resolution for fiscal year 2018 would largely be dedicated to reducing the deficit via the tax code. It is important to note that the reforms would not be permanent, as initiatives protected under the budget reconciliation process with impact beyond a decade must “sunset” after 10 years.

Tax reform could be a problem for workplace retirement savings. Trump’s Treasury Secretary nominee, Steven Mnuchin, a former Goldman Sachs partner and hedge fund investor, has already stated that the administration’s number one priority is tax reform and that “this will be the largest tax change since Reagan.” He was referring to the Tax Reform Act of 1986, which significantly simplified and streamlined income tax rates. It also tightened the nondiscrimination rules, reduced employees’ maximum annual 401(k) before-tax salary deferrals by 70 percent, and required all after-tax contributions to defined contribution (DC) plans to be included under Code Section 415 limits.

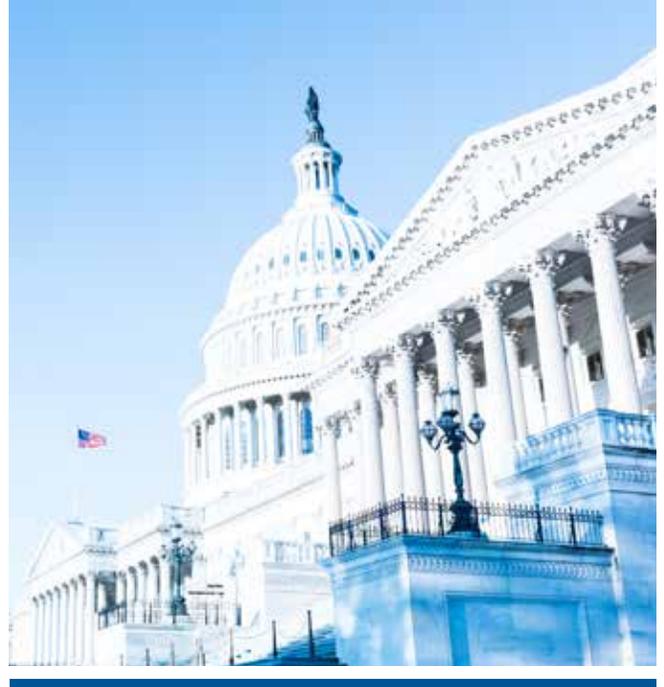


*Treasury Secretary nominee Steven Mnuchin has said his top priority is the largest tax change since 1986.*

In its simplest terms, tax reform is about reducing the amount of revenue the government takes in, but with a \$20 trillion debt, it must find some way to offset the loss in revenue. That’s where the tax incentives to establish, fund, and contribute to a workplace retirement plan inevitably find themselves in the budgetary crosshairs. Those who understand our retirement system realize that taxes will be paid on those pretax contributions and the earnings when withdrawn. The problem lies with how the government accounts for revenues and expenditures within a 10-year window. Since the payment of most retirement benefits occurs outside that window, postponed taxes look, from a budgetary standpoint, like taxes permanently foregone.

This issue alone is why tax deferred retirement plans, different from other tax deductions, are a target. Look no further than in 2014 when then-Chairman of the House Committee on Ways and Means, Rep. Dave Camp (R-Mich.), put forth a proposal that would pay for tax reform by freezing defined contribution plan cost-of-living adjustments for a decade and limiting annual elective deferrals so that only half could be made on a pretax basis.

While the new administration's policy direction, and the impact of that on retirement, is not yet clear, the potential for significant impact certainly exists. Turn to your Lockton service team with questions, and follow Lockton Retirement Services on Twitter and LinkedIn for our most up-to-date insights.



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