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# Support for EBSA nominee extends across industry

The White House's nomination of E. Preston Rutledge to head the Employee Benefits Security Administration, the arm of the Labor Department that oversees workplace retirement and health care policy, was met with wide ranging support among industry stakeholders.

By **Nick Thornton** | October 16, 2017 at 11:31 AM



Rutledge has served as a top congressional aid and tax and benefits specialist on the Senate Finance Committee since 2011. (Photo: LinkedIn)

The White House's nomination of **E. Preston Rutledge** to head the Employee Benefits Security Administration, the arm of the **Labor Department** that oversees workplace retirement and health care policy, was met with wide ranging support among industry stakeholders.

"We believe Mr. Rutledge will make an excellent EBSA Assistant Secretary," said Tim Rouse, executive director of the The Spark Institute, which advocates on behalf of defined contribution service providers.

"Preston has presented in the past at Spark conferences and has shown a deep understanding of retirement issues and a willingness to engage with our members to improve the financial security of Americans saving for retirement," added Rouse in an email.

Rutledge has served as a top congressional aid and **tax and benefits specialist** on the Senate Finance Committee since 2011.

He has operated at the highest level of crafting retirement and tax policy, and was a key architect of the Retirement Enhancement Savings Act and the Secure Annuities for Employee Retirement Act, both of which were proposed by Sen. Orin Hatch, chair of Finance Committee.

For as high as his profile has been behind closed doors crafting policy, Rutledge, like most staffers in that orbit, has little, if any, media footprint.

But he has had a considerable presence on the retirement industry conference circuit in recent years, according to Jeff Snyder, vice president of Cammack Retirement, a consultancy to employer sponsors of retirement plans.

“He knows the industry and can tap it to help shape policy,” Snyder told BenefitsPro.

Along with his retirement policy expertise, Rutledge would also bring a veteran’s insight to navigating Capitol Hill across party lines if he is ultimately confirmed to head EBSA.

“That type of experience can help bridge the gap on important issues,” said Snyder. “It will be important to get all points of view, across the aisle on the Hill, from the executive branch, and from industry,” said Snyder.

Support for Rutledge’s nomination extended to the Pension Rights Center, a prominent consumer rights advocacy.

“Preston is a really good choice,” said Karen Friedman, executive vice president and policy director at PRC.

“He is super smart, and wise,” said Friedman, who has experience working with Rutledge on pension issues. “We think he will bring a fair balance to participant interests and business interests.”

## **Fiduciary rule top of the list**

No issue under the EBSA’s regulatory domain looms as large as the fiduciary rule. The Labor Department is currently reviewing the regulatory impact of the rule, as ordered by the White House. Labor has proposed delaying full implementation of the rule, scheduled for January 1, 2018, by a year-and-a-half.

The only public record of Rutledge’s position on the fiduciary rule **came in an interview** he gave to Cammack Retirement’s Snyder.

Rutledge said he had “some discomfort” with the fact that the fiduciary rule broadened the Labor Department’s authority to regulate the IRA market. IRA’s are part of the tax code, not Labor law, he said in the interview.

Rutledge’s boss, Sen. Hatch, has been an outspoken critic of the fiduciary rule. His SAFE Act, which never made it to a vote on the Senate floor, would have relegated all regulation of the IRA market to the IRS.

## **“Speedy approval”**

In a statement, Sen. Hatch heralded Rutledge’s counsel on the Senate Finance Committee.

“Preston understands the importance of working across the aisle to advance policies,” said Hatch. “President Trump couldn’t have made a stronger pick to lead the EBSA. I look forward to working with my colleagues to ensure his fair and swift confirmation.”

As an Assistant Secretary of Labor, Rutledge will need to be confirmed by the Senate before taking over EBSA.

It is unclear whether he will go before the Senate Health, Education, Labor and Pension Committee, which oversees the EBSA, for a full hearing. When President Obama nominated Phyllis Borzi in 2009 to head the EBSA, she was confirmed by a voice vote on the floor of the Senate and was not required to testify before the HELP Committee.

But that was a different time. In 2009, Democrats controlled the White House and both chambers of Congress, just as the Republicans do today.

But the Trump Administration has been historically slow at nominating and placing presidential appointees.

By one estimate, the Senate has only confirmed 142 Trump political appointees, out of 602 jobs in the executive branch, according to the Partnership for Public Service.

In a news conference today, President Trump urged “speedy approval” of all his appointees. He did not specifically name his nominee to head EBSA.

By the ninth month of the President George W. Bush’s first term in office, the Senate had confirmed 358 nominees. President Obama had 341 nominees confirmed.

In the news conference today, President Trump blamed his inability to fill high-level administrative positions on Democrats’ intentional effort to obstruct the Administration’s agenda. “Total obstruction,” said President Trump.

But a group of prominent conservatives are taking issue with the argument that the slow appointment process is due to Democratic lawmakers willful obstruction.

Last week, about 100 leaders of conservative advocacy groups and former Republican lawmakers placed the blame for the low rate of confirmations squarely on the Republican leadership of the Senate.

“Personnel is policy. In delaying the confirmation of President Trump’s appointees, the Senate is directly limiting the President’s effectiveness,” according to a letter sent to leaders in the Congress. The Family Research Council and Freedom Works, both prominent conservative advocacies, were among the signatories.

The letter cautions that the vacancies of high-level administrative positions in the executive branch will leave the work of rulemaking and regulatory enforcement to unsupervised “career officials.”

“As has been documented in many instances, career officials that disagree with the President have taken measures to actively thwart his priorities,” the letter said.

The letter blames the slow rate of nominee confirmations of lawmaker apathy, and not obstructionism on the part of Democrats. The Senate is working no more than 2.5 days a week, claim the signatories, which are operating under the name The Conservative Movement.

“Previous Senates worked harder,” the letter said.

The Conservative Movement does not name agencies or reference career officials working in lieu of presidential appointees by name.

At the EBSA, both the Assistant Secretary and Deputy Secretary position remain vacant as the Labor Department continues its review of the fiduciary rule.

The requests for information Labor has published seeking industry feedback on delays of the rule were authored by Timothy Hauser, deputy Assistant Secretary for Program Operations.

Hauser has worked at Labor since 1991—under Republican and Democrat administrations—and was a chief architect of the fiduciary rule.

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## Nick Thornton

Nick Thornton is a financial writer covering retirement and health care issues for BenefitsPRO and ALM Media. He greatly enjoys learning from the vast minds in the legal, academic, advisory and money management communities when covering the retirement space. He's also written on international marketing trends, financial institution risk management, defense and energy issues, the restaurant industry in New York City, surfing, cigars, rum, travel, and fishing. When not writing, he's pushing into some land or water.

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