Bloomberg BNA

Pension & Benefits Daily ™

Reproduced with permission from Pension & Benefits Daily, 226 PBD, 11/24/2014. Copyright © 2014 by The Bureau of National Affairs, Inc. (800-372-1033) http://www.bna.com

As Fiduciary Rule Stalls, DOL Advances Amicus Brief Program, Targets Providers

Recent efforts in the courts to treat service providers as fiduciaries aren't a signal that providers should worry for the safety of their nonfiduciary status, but they could be a ''warning shot'' that the Department of Labor is hungry to expand fiduciary status as it continues to work on crafting its yet-to-be-released fiduciary rule.

Questions of who can become a functional fiduciary under sections 3(21)(A)(i) and 3(21)(A)(iii) of the Employee Retirement Income Security Act have received attention from appellate courts and the DOL in recent months, with the U.S. Courts of Appeals for the Third and Seventh Circuits issuing recent opinions to find that Section 401(k) service providers weren't ERISA fiduciaries under these sections (*Leimkuehler v. Am. United Life Ins. Co.*, 713 F.3d 905, 56 EBC 2407 (7th Cir. 2013)(74 PBD, 4/17/13); *Santomenno v. John Hancock Life Ins. Co.*, 2014 BL 267210, 3d Cir., No. 13-3467, 9/26/14 (188 PBD, 9/29/14) .

Meanwhile, in the regulatory realm, the DOL has found itself in a holding pattern after initially proposing to redefine the term ''fiduciary'' in October 2010 (203 PBD, 10/22/10), but withdrawing the proposed rule less than a year later, citing a need to do further economic analysis (182 PBD, 9/20/11).

Since then, there has been a flurry of speculation as to when, or whether, the rule, also called the ''conflict of interest rule,'' will see daylight.

In its fall regulatory agenda released Nov. 21, the department projected it would release the new proposal in January 2015 (see related article in this issue), but it has yet to be sent to the Office of Management and Budget for the requisite 90-day review.

However, many are questioning if it will make it out of the gate with time starting to run out on President Barack Obama's second term and a Republican-controlled Congress (200 PBD, 10/16/14)(41 BPR 2173, 10/21/14).

DOL's Amicus Brief Program

The DOL's stance on whether retirement plan service providers qualify as ERISA fiduciaries has evolved under the Obama administration. This evolution toward a more expansive fiduciary definition can be traced through the department's amicus brief program.

Although the Department of Labor hasn't disavowed its 2008 pronouncement that merely creating a list of plan investment options for a plan sponsor's consideration doesn't make a provider an ERISA fiduciary, it has consistently chipped away at this position in seeking to impose fiduciary status on service providers whose activities or authority go beyond the mere creation of an investment menu.

Although the department hasn't disavowed its 2008 pronouncement that merely creating a list of plan investment options for a plan sponsor's consideration doesn't make a provider an ERISA fiduciary, it has consistently chipped away at this position in seeking to impose fiduciary status on service providers whose activities or authority go beyond the mere creation of an investment menu.

In particular, the department has argued that the following activities cause a service provider to become an ERISA fiduciary: steering retirement plans toward investments in exclusive funds or opportunities; retaining unilateral authority over a plan's investment menu, regardless of whether such authority is ever exercised; retaining authority to direct plan assets into share classes that cause the provider to receive revenue-sharing payments; having ''final say'' over the funds in which a plan invests; retaining authority to delete or substitute funds from a plan's investment lineup; and setting one's own service provider fees.

The department's efforts have been largely unsuccessful with federal courts. In the past two years, both the U.S. courts of Appeals for the Third and Seventh circuits have dismissed the department's attempt to hold plan service providers to fiduciary status. The

COPYRIGHT © 2014 BY THE BUREAU OF NATIONAL AFFAIRS, INC. ISSN

Third Circuit even weighed in on the department's ongoing efforts to expand the fiduciary definition, saying that a proposed regulation like the one the department issued in 2010 can't supplant an existing regulation that represented an agency's ''considered interpretation.''

2008: Distinction Between Big Menu and Small Menu

In 2008, under George W. Bush administration Labor Secretary Elaine L. Chao, the department filed an amicus brief with the Seventh Circuit in the first Section 401(k) plan fee case to reach an appellate court (58 PBD, 3/26/08).

Although the bulk of the DOL's brief concerned ERISA Section 404(c)'s safe harbor protections for participant-directed investments, the department also weighed in on whether certain Fidelity-related service providers qualified as ERISA fiduciaries through their involvement in the selection of 401(k) investment options.

On that point, the secretary distinguished between creating a large menu of investment options from which plan sponsors could choose and creating the small menu of investment options to be included in a particular plan. While the former activity didn't create fiduciary status in the secretary's eyes, the latter did.

In particular, the secretary specifically said she didn't think that Fidelity became a fiduciary ''merely by virtue of developing and presenting a list of investment options'' for the plan sponsor to consider. However, the department went on to say that if Fidelity ''in fact made the selection regarding investment options that would be available under the plan,'' that would be sufficient to demonstrate that it acted as an ERISA fiduciary.

Both the Seventh Circuit and the district court disagreed with the DOL's position. The Seventh Circuit reasoned that merely ''playing a role'' in the selection of plan investments or providing professional advice to an ERISA plan wasn't enough to saddle a plan service provider with fiduciary status (*Hecker v. Deere*, 556 F.3d 575, 45 EBC 2761 (7th Cir. 2009) (28 PBD, 2/13/09)).

September 2010: DOL Avoids Fiduciary Battle in *Renfro*

Under Hilda L. Solis, the Obama administration's first labor secretary, the department didn't immediately use its amicus brief program to urge fiduciary status on plan service providers that are involved in the selection of plan investment options.

In fact, the department specifically declined to take a position on the fiduciary status of several Fidelity entities involved in a plan fee dispute.

That case accused Unisys Corp. of including high-fee investments in its Section 401(k) plan. In the course of ruling for Unisys, the U.S. District Court for the Eastern District of Pennsylvania also dismissed claims against several Fidelity entities, which had served as investment providers to the plan (81 PBD, 4/29/10; 48 EBC 2870).

According to the district court, the Fidelity entities didn't qualify as ERISA fiduciaries, despite the plan participants' claims that Fidelity had ''veto power'' over the selection of plan investment options and that it exercised discretion over certain ''float interest'' that accrued to plan contributions.

Following the district court's ruling in favor of Unisys and Fidelity, the DOL filed a September 2010 amicus brief with the Third Circuit, urging that court to reverse the decision below. However, the brief focused heavily on the district court's allegedly flawed interpretation of ERISA Section 404(c)'s safe harbor provision, which absolves fiduciaries of liability for investment selections made by plan participants (194 PBD, 10/8/10).

The DOL amicus brief barely mentioned the district court's ruling on Fidelity's fiduciary status. In a footnote, the department noted that the district court ''dismissed the claims against the Fidelity Defendants, concluding that they were not shown to be Plan fiduciaries.'' It added, ''The Secretary's brief does not address this fact-bound issue.''

On appeal, the Third Circuit affirmed the ruling below, agreeing that the Fidelity entities weren't ERISA fiduciaries. While Fidelity had to consent to funds being added to the plan's investment lineup, this didn't give Fidelity control over the mix and range of investment options such that the company became an ERISA fiduciary, the Third Circuit said.

Fidelity also lacked authority to veto Unisys's investment selections or to constrain Unisys from adding to the plan investment options administered by another entity, the court said (*Renfro v. Unisys Corp.*, 671 F.3d 314, 51 EBC 1609 (3d Cir. 2011) (162 PBD, 8/22/11)).

October 2010: DOL Joins Fray in Madoff Suits

In October 2010, the DOL began using amicus briefs to argue the fiduciary status of entities with ties to Ponzi schemer Bernard L. Madoff.

In two actions seeking relief from Madoff-related plan losses, the department sought to file twin amicus briefs urging the U.S. District Court for the Southern District of New York to impose ERISA fiduciary status on Ivy Asset Management LLC for its role in steering pension funds toward Madoff-related investments (216 PBD, 11/10/10).

In October 2010, the DOL began using amicus briefs to argue the fiduciary status of entities with ties to Ponzi schemer Bernard L. Madoff.

According to the department, Ivy provided investment advice for a fee to a number of investment and hedge fund managers. In the course of these relationships, Ivy gave the funds access to alternative investment managers and strategies that weren't available to the general public, such as those provided by Madoff, the DOL contended.

In so arguing, the DOL maintained that Ivy satisfied the five-factor regulatory test established in 1975 to determine when an entity renders investment advice for a fee. 29 C.F.R. § 2510.3-21(c)(1).

Although the department noted in the briefs that it had recently attempted to expand this regulation, its ar-

COPYRIGHT © 2014 BY THE BUREAU OF NATIONAL AFFAIRS, INC.

guments in favor of Ivy's fiduciary status were rooted in the 1975 regulation.

The Southern District of New York apparently agreed with the department's arguments and found Ivy to be an ERISA fiduciary. The court emphasized that Ivy's recommendations with respect to investment advisers qualified as investment advice, and this advice was individualized because it identified investment strategies and opportunities not available to the general investing public (*In re Beacon Assocs. Litig.*, 745 F.Supp.2d 386 (S.D.N.Y. 2010) (193 PBD, 10/7/10).

These lawsuits were consolidated with a number of Madoff-related disputes. In 2013, the suits settled for nearly $220 million (219 PBD, 11/14/12).

2012: DOL Strikes Out in *Leimkuehler*

Two years after its fight to pin down Ivy as an ERISA fiduciary, the department raised similar arguments in a lawsuit against Section 401(k) plan provider American United Life Insurance Co.

In that case, Section 401(k) plan participants argued that American United became an ERISA fiduciary by pre-selecting a universe of mutual funds and share classes for plan sponsors to choose from in populating their plans. The company also became a fiduciary through its receipt of revenue-sharing payments from funds included in that universe, the participants contended.

The U.S. District Court for the Southern District of Indiana found that these actions weren't sufficient to render American United an ERISA fiduciary. In particular, the district court said that creating a menu of funds for plan sponsors to choose from didn't qualify as exercising authority or control over plan assets (04 PBD, 1/9/12).

Brief With Seventh Circuit. Following this ruling, the DOL filed an amicus brief asking the U.S. Court of Appeals for the Seventh Circuit to reverse. In particular, the DOL focused on the fact that American United had the authority to direct plan investments into share classes that would provide it with revenue sharing payments, something that wasn't disclosed to the plan sponsor (131 PBD, 7/10/12).

In the brief, the DOL argued that American United had ''final say'' over the funds in which the plan invested through its management of the separate account that held plan assets. According to the DOL, American United's contract with the plan sponsor gave it ''unilateral authority to select and purchase the particular mutual fund shares in which the Plan's assets were invested.''

Specifically, the DOL took issue with the fact that American United had the undisclosed ability to–and sometimes did–invest plan assets in share classes that resulted in the payment of revenue sharing to American United, even though other, less costly share classes were available.

In so arguing, the department made a distinction between American United and the Fidelity entities at issue in the *Hecker* case. Unlike the Fidelity entities, which the DOL said ''merely'' presented investment options to a plan fiduciary for approval, American United ''retained unilateral authority over plan investments, and used that authority to receive undisclosed compensation'' in the form of revenue sharing, the department contended.

Despite arguing American United's fiduciary status, the department didn't back off of its earlier position that merely creating an investment lineup didn't implicate fiduciary status. According to the brief, ''While the Secretary agrees that a service provider does not become a fiduciary merely because it presents a limited range of investment options to plan fiduciaries who then decide whether the investments are appropriate, that principle has no application here.''

2013: Another Strike in *Leimkuehler*

The DOL's arguments struck out with the Seventh Circuit, which declined to hold American United to fiduciary status (74 PBD, 4/17/13)).

The Seventh Circuit's analysis focused on the second half of Section 3(21)(A)(i) of ERISA's fiduciary definition, which extends fiduciary status to anyone who ''exercises any authority or control respecting management or disposition'' of plan assets. None of American United's activities – including managing the separate account, creating an investment menu and retaining the authority to delete or substitute funds from that menu – caused it to satisfy this definition of a fiduciary, the Seventh Circuit said.

In particular, the Seventh Circuit disagreed with the DOL's contention that the unexercised authority to delete or substitute funds gave rise to fiduciary status under Section 3(21)(A)(i).

2014: Another Circuit Rejects DOL Theory

Following this loss at the Seventh Circuit, the department got another opportunity to refine its fiduciary arguments in the course of a plan fee lawsuit against John Hancock Life Insurance Co.

In that case, a class of Section 401(k) plan participants brought fiduciary breach claims against the provider, claiming that it charged excessive fees and wrongfully received revenue-sharing payments.

In July 2013, the U.S. District Court for the District of New Jersey found that John Hancock didn't act as an ERISA fiduciary with respect to the allegedly excessive fees. Because the fees were negotiated through arms-length negotiations with the plan sponsor, John Hancock didn't exercise discretionary authority sufficient to qualify it as a plan fiduciary, the district court said.

The court adopted similar reasoning with respect to John Hancock's revenue-sharing payments, explaining that the fees were fully disclosed and that participants chose to invest in the funds in spite of those fees (144 PBD, 7/26/13).

Brief With Third Circuit. After this ruling, the DOL filed an amicus brief with the U.S. Court of Appeals for the Third Circuit urging reversal (30 PBD, 2/13/14).

In this brief, the department took pains to argue around the adverse ruling in *Leimkuehler*. In addition to arguing that John Hancock was an ERISA fiduciary under Section 3(21)(A)(i)—the provision under which American United escaped liability in *Leimkuehler*—the department also argued that the provider qualified as a fiduciary under Section 3(21)(A)(iii), which extends fiduciary status to those who have discretionary authority or responsibility in plan administration. In its brief,

the department specifically told the Third Circuit that it could ''find that John Hancock is a fiduciary under section 3(21)(A)(iii) without disagreeing with the holding in *Leimkuehler*.''

The department also distinguished this case from *Leimkuehler* by pointing out that the complaint against John Hancock alleged that the provider actually exercised its authority to substitute funds and share classes, while the *Leimkuehler* plaintiffs alleged only that American United retained such authority without exercising it.

The department advanced these arguments against John Hancock under both subsections of Section 3(21)(A)(i). In particular, the department focused on John Hancock's authority to ''unilaterally delete and substitute any or all funds'' from the plan and the fact that it allegedly exercised this authority.

In addition, the department parsed the language of Section 3(21)(A)(i)'s two subsections, saying that while ''discretionary'' authority over plan management was necessary for a finding of fiduciary status, ''*any*'' authority over plan assets—whether discretionary or not—can render an entity an ERISA fiduciary.

The Third Circuit declined to rely on the department's 2010 proposed regulation expanding the fiduciary definition, which the parties disputed the applicability of, given the department's September 2011 press release indicating its intention to ''re-propose'' the rule.

Finally, the DOL argued that John Hancock's ability to set its own fees established fiduciary status.

Third Circuit Rejects DOL. Despite this wide array of arguments, the Third Circuit rejected each one in its September 2014 opinion (*Santomenno v. John Hancock Life Ins. Co.*, 2014 BL 267210 (3d Cir. 9/26/14) (188 PBD, 9/29/14)).

Closely following the Seventh Circuit's reasoning in *Leimkuehler*, the Third Circuit said that John Hancock's status as a functional fiduciary depended on the specific claims being leveled against it. Because all of the participants' claims challenged the provider's allegedly excessive fees, the court said that the relevant inquiry was ''whether John Hancock acted as a fiduciary to the Plan with respect to the fees that it set.''

Having established that, the Third Circuit relied on its earlier decision in *Renfro* for the proposition that plan service providers owe no fiduciary duties with respect to the negotiation of their fees, because plan trustees have ultimate responsibility for ensuring that a prudent deal is struck.

The court also quickly disposed of any arguments that John Hancock became a fiduciary through its authority to add or remove funds from the plan, saying that this allegation ''lacks a nexus'' with the conduct challenged by the complaint – namely, the imposition of allegedly excessive fees.

In addition to rejecting these arguments against John Hancock, the Third Circuit also considered the participants' allegation that the provider became an ERISA fiduciary by rendering investment advice to the plan pursuant to ERISA Section 3(21)(A)(ii). Under that section, an entity that ''renders investment advice for a fee or other compensation'' is deemed to be an ERISA fiduciary.

In considering this question, the Third Circuit deferred to the DOL's 1975 regulation setting forth a five-factor test for determining whether an entity is an investment advice fiduciary.

The court declined to rely on the department's 2010 proposed regulation expanding the fiduciary definition, which the parties disputed the applicability of, given the department's September 2011 press release indicating its intention to ''re-propose'' the rule.

According to the Third Circuit, a proposed regulation doesn't represent an agency's ''considered interpretation of its statute.'' Therefore, such a proposed regulation ''does not supplant a prior regulation that was the result of the agency's considered interpretation,'' the Third Circuit concluded.

Because John Hancock's agreement with the plans expressly disclaimed fiduciary status, the Third Circuit found that the company didn't qualify as an investment advice fiduciary under the 1975 regulation.

Adding 'Fuel to the Fire'

Fred Reish, a partner in Drinker Biddle & Reath LLP's Los Angeles office, said he thinks ''the DOL is of a mind to expand the definition of fiduciary'' regardless of the recent rulings, and ''they may very well add fuel to the fire.'' While the decisions aren't ''game changers,'' they could give the DOL further incentive to expand the definition of fiduciary, he said.

Others concurred with Reish's take, including Eric S. Mattson, a partner at Sidley Austin LLP in Chicago, who said the rulings confirmed what many service providers have thought for a while.

''Service providers in general have not thought of themselves as being fiduciaries. They tend to provide important, but ministerial services for 401(k) plans and except in very narrow circumstances weren't thinking of themselves as fiduciaries in the first place, so for them, these cases are good developments because their worlds would have been turned upside down if it had come out the other way,'' Mattson said.

Reservation of Rights. Reish said when a provider like American United or John Hancock offers an investment lineup, they have what the *Santomenno* court called a ''big menu and a small menu.''

COPYRIGHT © 2014 BY THE BUREAU OF NATIONAL AFFAIRS, INC.
ISSN

Fred Reish, a partner in Drinker Biddle & Reath LLP's Los Angeles office, said he thinks "the DOL is of a mind to expand the definition of fiduciary" regardless of the recent rulings, and "they may very well add fuel to the fire." While the decisions aren't "game changers," they could give the DOL further incentive to expand the definition of fiduciary, he said.

"A big menu means for example they might offer a potential lineup of 160 or 200 funds that plan sponsors can pick from. The plan sponsor narrows it down to the probably 20 or 30 they want to have in their plan for the participants," he said.

In these instances, a provider will need to refresh the menu offerings from time to time and remove funds that haven't been performing well and replacing them with funds that have been performing well, Reish said. The provider then has to notify the plan sponsor that they intend to make a change and the sponsor can either accept or reject it, he said.

The DOL sanctioned this process in Advisory Opinion 97-16A, saying a platform provider can reserve the right to substitute funds in the investment menu without assuming the mantle of a fiduciary.

"The DOL said back in 1997 that that's considered to be a decision by the plan sponsor because the plan sponsor has a right to reject it," Reish said. "The provider doesn't usually become a fiduciary because they were putting investments in and taking investments out of what the *Santomenno* court called the big menu."

In spite of the fact that the department took the plaintiff's side in the *Santomenno* case in the form of an amicus brief, Reish said the decision validated the position the DOL took in the 1997 guidance.

The affirmation of the DOL's prior guidance is the "biggest single message" out of the decision, which is "great relief for providers because they don't want to leave bad investments in their products. It just doesn't make any sense."

Jonathan M. Cerrito, a partner at Blitman & King LLP in New York, also agreed, saying the decisions signal "business as usual" for many service providers, because most of them already have a "reservation of rights provision in their contracts."

"Right now it's a warning shot essentially that if they exercise that authority then arguably they'll be held as fiduciaries by these two courts. That was the linchpin for those two courts in terms of rejecting the DOL's argument," Cerrito said.

Exercising Discretion. The plaintiffs in the *Santomenno* case took a unique angle because they not only tried to say John Hancock had discretion over the investments, they also tried to hold the provider as an investment adviser under ERISA, said Thomas E. Clark Jr., a member of the employee benefits and executive compensation group at the Lowenbaum Partnership LLC in Clayton, Mo.

"That didn't really go anywhere, the court rejected that," he said. Most cases try to say that the service provider had some sort of discretion over the investments, Clark said.

"That's really the way these cases are going, is they are trying to find that they exercised discretion," he said.

Clark said there is a debate brewing in the law about whether providers need to exercise their discretion "or whether simply if you're performing plan administration or you have the ability to perform plan administration, even if you don't do anything, you're still considered a fiduciary."

A lot of these fiduciary cases have been brought against insurance companies because they don't have an ERISA exemption that is afforded to others, including mutual fund companies, Clark said.

"Mutual fund companies got an amazing exemption in ERISA that said money in a mutual fund is not plan assets. But the insurance companies didn't. They didn't get that benefit for their separate account and so any money inside a separate account is plan assets. So insurance companies basically have to play by a different set of rules," Clark said.

Industry Issues

Potential shady dealings in the investment industry has given the DOL a huge incentive to make the definition of fiduciary as broad as it can, he said.

"They don't like the fact that there were years of vagary and puffery when it came to what actual services and fees you were getting. There were certainly some substantiated allegations of abuse in the industry just in the way money was being paid and money was being hidden. In the '90s it was perfectly normal for a provider, or whoever was selling the provider's services, to walk into a plan sponsor and claim the 401(k) plan was free," Clark said.

"There are other providers in the industry who are taking full disclosure and taking that route in their business model. Some day, regardless of lawsuits and the DOL, that business model will win out over business models that decide to obscure fees and obscure services and are not total disclosure."

—Thomas E. Clark Jr., Lowenbaum Partnership LLC

Over the past 15 years, the landscape has changed, he said. With virtually all services and fees under a microscope, providers need to revisit their business model if it isn't built around total transparency and disclosure, Clark said.

"There are other providers in the industry who are taking full disclosure and taking that route in their busi-

ness model. Some day, regardless of lawsuits and the DOL, that business model will win out over business models that decide to obscure fees and obscure services and are not total disclosure,'' Clark said.

Two Pronged Offensive

The DOL's amicus briefs in these two cases show the agency's interest in broadening the definition of fiduciary, but it is unlikely that the agency is trying to find a back door way of supporting its fiduciary rule.

Reish said the amicus brief in *Santomenno* (30 PBD, 2/13/14), is very specific to the facts of the case, but it does illustrate the department's deep interest that ''people who exercise any influence over plans become fiduciaries.''

Clark said while it might be easy to try to connect the work the DOL does in the courts to the work it does on the regulatory side, the people writing the amicus briefs are under the DOL's Office of the Solicitor, while those involved in the regulatory writing are in the rulemaking group, Clark said.

But there is one link between the two groups: Assistant Secretary of Labor for the DOL's Employee Benefits Security Administration, Phyllis C. Borzi.

''She is obviously the linchpin in all that,'' Clark said.

''I'm sure all these people are talking, and if they could get expansive decisions in the court, then that might help their fiduciary rule, but here's the bottom line, they're writing amicus briefs instead of bringing their own suits because they don't have the budget to bring their own suits,'' Clark said.

Like other federal agencies, the DOL is operating under a budget and cases involving big plans can cost millions to litigate, he said.

''The DOL simply doesn't have that budget. So they're not doing amicus briefs to help their fiduciary rule, they're doing amicus briefs because it's the only way they can affect the litigation because they can't afford to do their own,'' Clark said.

Mattson agreed, saying that the rule and the amicus briefs are totally different mechanisms involving the same issues.

''The Department of Labor clearly thinks that more people should be deemed to be fiduciaries and they've been very aggressive in taking that position in amicus briefs in cases like *Leimkuehler* and *Santomenno* and for the most part they have not been successful, but they're fighting on two fronts,'' Mattson said.

''What they share in common, in both situations they're trying to expand the universe of people who are deemed to be fiduciary, but in terms of one affecting the other, I'd be surprised if that were the case,'' Mattson said.

While the DOL has had limited success in the courts, it has more control on the regulatory side, Mattson said.

''The concern I have is one that I think a lot of people have, first, any regulations need to be very clear and second, you want to make sure that they don't do more harm than good. That's just sort of something inherent to the nature of regulation, you can try to solve one problem and create three more that you didn't intend,'' he said.

It is here where Mattson thinks the DOL has been seeing most of the pushback on their looming reproposal.

''It's a big deal to make somebody a fiduciary and it's an especially big deal to do that if they didn't really think of themselves as a fiduciary,'' he said.

By Jacklyn Wille and Kristen Ricaurte Knebel

To contact the reporter on this story: Jacklyn Wille in Washington at jwille@bna.com and Kristen Ricaurte Knebel in Washington at kknebel@bna.com

To contact the editor responsible for this story: Jo-el J. Meyer at jmeyer@bna.com

 COPYRIGHT © 2014 BY THE BUREAU OF NATIONAL AFFAIRS, INC.