CIBC PRIVATE WEALTH MANAGEMENT

Washington Marches Towards Retirement Reform

President Trump signed an executive order on August 31, 2018, that states: “It shall be the policy of the Federal Government to expand access to workplace retirement plans for American workers.”

According to the 2017 report by the Pew Charitable Trust, 35% of private sector workers do not have access to a workplace retirement plan. That translates to tens of millions of workers in the U.S. who cannot save for retirement at work. The executive order contains a provision that would help small employers who currently believe they cannot afford to sponsor a retirement plan to participate in a group-type plan that gives them access to lower-cost programs.

The executive order includes three specific directives, which call for the Departments of Labor and the Treasury to look into:

1. **Raising the age** at which people with traditional Individual Retirement Accounts (IRAs) and retirement plans such as 401(k) plans must start receiving Required Minimum Distributions (RMDs). Currently, distributions must be begin by April 1 following the year an individual turns age 70 ½. This is true for IRA accounts and 401(k) accounts of company owners.

   The age 70 ½ requirement is based on Internal Revenue Service (IRS) life expectancy tables. The IRS has been given six months to consider increasing the age requirement because Americans are living longer than in the past. The objective is to spread out retirement payments for a longer period in order to accommodate financial needs due to increased longevity.

   The executive order gives the Department of the Treasury six months to determine whether the RMD age should be updated to reflect current life expectancy trends and whether a review should be performed annually thereafter.

2. **Approving the use of “open” Multiple Employer Plans (MEPs)** that allow small- and mid-size employers access to retirement options for their employees that they may not provide due to the cost and/or the complexity of administration.

   Under an “open MEP,” companies can jointly establish a retirement plan that covers all companies. There would be no requirement for the participating companies to have a form of commonality in order to join an MEP — as is the law currently — hence the term “open MEP.” The idea is to transfer responsibility for the administration of the plan to the sponsor of the MEP, along with significant fiduciary responsibilities. This lessens the burden and responsibilities of the individual companies participating in the MEP.

   The executive order gives the Department of Labor six months to consider whether to issue a notice of proposed rulemaking or guidance that would clarify if an open MEP meets certain rules under the Employee Retirement Income Security Act of 1974 (*ERISA*) and the Internal Revenue Code.

3. **Reducing the number and complexity of employee benefit plan notices and disclosures**. As noted in the executive order, the costs and potential liabilities for employers and plan fiduciaries to comply with existing disclosure requirements may discourage companies from forming or continuing to maintain a retirement plan.

   The Department of Labor is directed to complete its review of current rules under ERISA and the Internal Revenue Code within a year of the date of the order (August 31, 2019) and provide its recommendations. The objective is to reduce the burdens and costs associated with current disclosure requirements.

Unrelated to the executive order, yet creating significant buzz, is the recent IRS Private Letter Ruling (201833012) that ties 401(k) benefits to student loan repayments. The ruling allows employers to make a 5 percent profit-sharing contribution to an employee's 401(k) plan, provided that the employee uses at least 2 percent of his or her paycheck (per pay period) to pay down student loan debt, and is still employed at the end of the plan year. If the employee also made a contribution to a 401(k) plan, the employer can match such contributions pursuant to the plan's matching formula.

Under what is known as the "contingent benefit rule," an employer cannot condition an employee's other benefits on the employee's election to make contributions to the 401(k) plan. In the Private Letter Ruling, the IRS stated that an employer's student loan program does not violate this contingent benefit rule because the employer's profit-sharing contribution is contingent on the employee making loan payments — not on the employee making contributions to the plan.

As previously noted, this is a private letter ruling and therefore can only be relied upon by the company to which the ruling was issued. However, the ruling does give clarity on the IRS' position if similar student loan repayment programs are adopted by employers. These programs have become more attractive as companies try to lure more degreed individuals to their companies and differentiate themselves from their competitors in this very tight labor market.

The CIBC Corporate Retirement Services team will continue to monitor and advise you of proposed or new legislation that may impact the future of your company's retirement programs. If you have any questions, please feel free to call any member of the team at 312-564-3806.

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