Special bulletin: Legislative and regulatory update

October 2016

Senate Finance Committee unanimously passes retirement legislation

On September 21, the U.S. Senate Finance Committee passed the Retirement Enhancement and Savings Act (RESA) by a 26-0 vote. Several of the over two dozen provisions in RESA have been under consideration for years and have enjoyed wide support on both sides of the aisle.

Here is a summary of some of the provisions that, if passed, could have a significant impact on individuals' retirement savings and/or the retirement services industry:

Open multiple employer plans (MEPs)

The bill would eliminate the requirement of a nexus among employers that participate in a MEP (such as being members of the same trade organization) if the unrelated employers adopt a MEP sponsored by a "pooled plan provider." A pooled plan provider would be an entity that registers with the Department of Labor (DOL) and Internal Revenue Service (IRS) and serves as the named fiduciary and plan administrator, among other requirements. The bill would also fix the "one bad apple" rule so that one employer's failure to satisfy the tax qualification rules would not disqualify the entire MEP. This change would be effective in 2020.

Elimination of 10% cap on deferrals in safe harbor 401(k)s

Under current laws, a 401(k) plan is deemed to satisfy the non-discrimination rules if the plan sponsor automatically enrolls participants and automatically escalates their contributions at certain rates to a maximum of 10% of pay, and meets other requirements, such as making employer contributions. By eliminating the current cap, the bill would allow plan sponsors to automatically escalate participants' deferral rates to a level above 10% of pay. This change would be effective for plan years beginning after 2016.

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Fiduciary safe harbor for selecting lifetime income provider

The bill would provide fiduciaries that select an insurance company's lifetime income products for their plan with protection from liability—if they receive a written representation from the insurer that it is licensed and in compliance with the laws of its state of domicile. This change would be effective on the date of enactment.

Lifetime income disclosures on defined contribution (DC) participant statements

The bill would require plans to include a lifetime income disclosure on DC plan participant statements at least once per year. The disclosure must illustrate the amount of monthly payments the participant would receive as a single life and joint life annuity based on the participant's account balance. The bill would require the DOL to set forth assumptions to be used, along with a model disclosure. In general, this change would be effective 12 months after the DOL issues guidance.

Increase in small-employer plan start-up credit

Currently, employers with 100 or fewer employees who adopt a new qualified retirement plan are entitled to a credit equal to the lesser of 50% of start-up costs or $500 per year for the first three years. The bill would increase the maximum credit to $5,000. This change would be effective for taxable years after 2016.

Acceleration of required distributions to non-spouse beneficiaries

The bill would require that if an individual died with aggregate IRA and DC plan assets in excess of $450,000, amounts above that threshold would have to be paid out to non-spouse beneficiaries within five years of the decedent's death. The bill contains some exceptions. For example, the five-year payout rule would not apply to a disabled beneficiary. In general, this change would be effective with respect to individuals who die after 2016.

Repeal of maximum age for traditional IRA contributions

Under current law, an individual who reaches age 70½ during a given year is not permitted to make contributions to traditional IRAs in that year or any year thereafter. The bill would repeal the age 70½ prohibition, effective for taxable years beginning after 2016.

NEXT STEPS

Given the strong bipartisan support, there's a chance that Congress could pass RESA or portions of it during the lame duck session after the election or next year after the new Congress convenes.

We will monitor this and other proposed legislation and keep you apprised of any significant developments.

For more information, please refer to the Senate Finance Committee's website at the following link: http://www.finance.senate.gov/hearings/open-executive-session-to-consider-the-miners-protection-act-of-2016-and-the-retirement-enhancement-and-savings-act-of-2016

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