Legislative and regulatory bulletin

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Will Congress change retirement plan laws this year?

While many state legislatures have recently passed laws to create retirement plans for private sector employers, it's been quite a while since we've seen any substantial changes to defined contribution (DC) retirement plans from Congress. It's true that federal agencies have been busy adopting regulations that impact plans: the 408(b)(2) service provider disclosure, 404a-5 participant disclosure and the Department of Labor's fiduciary rule,* among others. But it's been more than 10 years since the most recent significant legislative changes came out of Washington, with the passage of the Pension Protection Act of 2006 (PPA). The PPA ushered in improvements to the defined contribution system by encouraging automatic enrollment and providing plan sponsors with fiduciary protection for default investing, among other changes. Is 2017 the year when Congress will act?

It's a new year, with a new Congress and a new president. And while it is difficult to predict what may happen, interest appears to be growing for tax reform, especially corporate tax reform, which President Trump has indicated is a priority. Historically, retirement legislation often has been attached to a larger tax reform bill. Since Republicans control both Congress and the White House, the chances for passage of a tax reform measure are greater than they have been in years. But what sorts of changes might we see? Will they adversely affect retirement plans or, like the PPA, help improve the chances that workers will enjoy a comfortable retirement?

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Under Congress' own rules, any changes made to the tax code generally must be revenue neutral. This means that tax cuts must be offset by reducing federal spending or increasing taxes elsewhere. According to the U.S. Treasury Department, tax breaks for retirement plans represent the second largest "tax expenditure" in the federal budget.[1] So will the retirement plan system be tapped to pay for tax cuts in other areas? The $25 trillion in U.S. retirement assets[2] could prove a tempting target. And while there does not appear to be a cry for cutting the tax benefits for retirement plans, there is precedent for such a move. In the last major overhaul of the Internal Revenue Code—the Tax Reform Act of 1986—Congress reduced the annual amount a participant could defer into a 401(k) plan from $30,000 to $7,000.

*As of this writing, it is believed that the Department of Labor fiduciary rule may be delayed.

House Republican 2016 tax reform blueprint

Last June, Speaker of the House Paul Ryan released a high-level overview of a Republican tax reform proposal. The 35-page document outlined tax code changes that would affect individuals and businesses. Regarding retirement plans, the proposal indicated that the tax writing committee would "work to consolidate and reform the multiple different retirement savings provisions in the current tax code." The committee would also consider a Roth-like individual savings vehicle that would permit savers to make after-tax contributions and take tax-free withdrawals of contributions and earnings at any time for any reason. A universal savings account like that could potentially impact contributions to IRAs and employer plans, in which withdrawals are restricted and/or subject to early withdrawal penalties.

Senate Finance Committee gives bipartisan support to several changes

Last September, the Senate Finance Committee unanimously passed (by a vote of 26-0) the Retirement Enhancement and Savings Act (RESA)—a bill that included a number of retirement plan changes that had been under consideration for several years. It's possible that RESA, or portions of it, could be enacted this year.

One of RESA's most significant provisions would permit unrelated employers to participate in multiple employer plans (MEPs). A MEP is a single plan in which several employers participate. Because a MEP is a single plan, individual adopting employers can reap cost savings through economies of scale.

RESA's provisions also would:

- provide a fiduciary safe harbor for plan sponsors that select insurance companies to provide lifetime income in defined contribution plans
- require DC participant statements to include a disclosure of the monthly amount a participant would receive as a single or joint life annuity, based on current balance
- eliminate the 10% cap on automatic escalation of 401(k) participant contribution rates in safe harbor 401(k)s
- increase the plan start-up credit for employers with fewer than 100 employees to a maximum of $5,000 per year for the first three years
- allow individuals who are still working after reaching age 70½ to continue contributing to traditional IRAs
- effectively eliminate the "stretch IRA" for some by requiring payouts to non-spouse beneficiaries within five years, to the extent the decedent's IRA and DC plan assets exceed $450,000

A year of possibilities

At this time, we do not know if Congress will enact retirement plan legislation this year or, if it does, whether any of the proposals described above will become law. Regardless, 2017 looks like it could be an interesting year for defined contribution plan sponsors and the professionals who serve them. We will continue to monitor all retirement plan-related legislative activity in Congress and keep you informed of any significant developments.

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[1] U.S. Department of the Treasury Office of Tax Analysis. "Tax Expenditures." November 11, 2015. https://www.treasury.gov/resource-center/tax-policy/Documents/Tax-Expenditures-FY2017.pdf

[2] Investment Company Institute statistics as of September 30, 2016.

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