Ask The Expert

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The Different MEP Initiatives in DC and CA

Bills from Congress, the Recent Presidential Executive Order, and CalSavers

Federal and state governments have created MEP (multiple employer plan) initiatives to try to encourage more employers to start retirement plans, and make sure that more employees have access to a retirement plan. There are three major initiatives that may affect California employers – legislation in Congress such as RESA (Retirement Enhancement and Savings Act of 2018), the Presidential Executive Order from August 2018, and the state-mandated CalSavers Retirement Savings Program.

Retirement Enhancement and Savings Act (RESA) – November 2016

Currently, employers have to share some type of close relation or commonality to able to band together to form a MEP and only have one 5500, audit, and bonding requirements for the whole plan. The idea is that more companies will want to offer a retirement plan to employees if joining a MEP means lower costs through economies of scale, and less fiduciary and administrative burdens. RESA would effectively tear down the requirement for there to be any type of relation of companies to band together to form a MEP and make adoption relatively wide open.

Only 4% of bills ever become law, and they often go through many changes before becoming law. That said, RESA has strong bipartisan support which greatly increases its odds. A version of the bill was reported out of the Finance Committee in September of 2016 with an unprecedented vote of 26-0.

RESA creates MEPs called PEPs. The MEP must have a Pooled Plan Provider (PPP) and a bank trustee. The PPP must be the named fiduciary in the document, and also the 3(16) administrator (responsible for making sure that the plan meets qualification requirements). Each participating employer retains the responsibility for selection and monitoring of the PEP. The sponsor would be an employer, association, or board. Many assume that a service provider could be the sponsor but there is no evidence to that effect in the Bill, but it is possible for the Bill to be amended to include that.

Provisions:

- MEPs – employers can band together without a connection
- Eliminates the “bad apple” rule (discussed below)
- Notices - electronic delivery as the default

Continued from page 4

Ask The Expert

- Annuities – lawsuit protection, retirement income in statement, portability
- No audit until the plan hits 1,000 participants, if each adopter is a small filer
- 403(b)'s and 457's not included yet
- Tax credits for starting a retirement plan
- Grad student stipend contributions
- Contributions over age 70.5
- Universal Savings Account (USA) like a rainy day Roth with no penalties
- Infant savings option – access funds upon a birth. Not clear if it is for medical expenses only (ex: clothes)

There have been multiple bills proposed in the Senate and House that each adopt a form of RESA's main MEP provisions including the Family Savings Act (September 2018), Retirement Security and Savings Act (December 2018), and Retirement, Savings, and Other Tax Relief (December 2018).

Presidential Executive Order on Strengthening Retirement Security in America - August 2018

In August of 2018, President Trump directed the DOL to examine restrictions on open MEPs to expand access to retirement plans to the employees of small businesses. In October of 2018, the DOL issued their proposal to ease restrictions.

The proposed regulations clarified that a bona fide group or association of employers may sponsor a MEP. A group would qualify the commonality of interest requirement if they are in the same trade, industry, line of business or profession, or have a place of business in the same region such as a single state or metropolitan area. The plan must be controlled by participating employers and not a service provider.

A bona fide PEO (professional employer organization) could be considered a MEP sponsor candidate, or plans that are sponsored by associations of employers can be considered a single plan under DOL rules. PEOs are organizations that provide the employment or HR-related framework for other companies. Associations can be considered if they promote common business interests or provide continuing education.

The Executive Order also directs the Treasury to consider guidance that would add relief to the "one bad apple" rule where if one adopter violates IRS rules it could disqualify the plan. Other direction was to consider updating RMD tables to take into account longer lifespans, and consider ways to make notice delivery less costly (like electronic delivery default).

Public comments were being accepted through December 24, 2018, and no effective date has been proposed.

CalSavers Retirement Savings Program

The CalSavers Retirement Savings Program is a Roth IRA that will be mandated for California employers if no other workplace retirement plan is offered based on the following company sizes beginning in 2020:

* 100+ employees by June 2020
* 50+ by June 2021
* 5+ by June 2022

Continued from page 5

Ask The Expert

Employer involvement:

- No fees and no fiduciary responsibility for employers
- Employees are responsible for their own investment choices
- Employers cannot make contributions
- Employers serve in a limited role – facilitate the program and submit contributions:
  1. Employers will be notified when it's time to register
  2. Once the company registers, employees need to be added
  3. Submit contributions and add new employees

- Once an employee is registered, they will receive a notice and have three choices:
  1. Do nothing – auto-enrolled after 30 days
     - The default rate is 5% and employees can change their rate at any time
     - Automatic savings increase of 1% to 8%
     - First $1,000 goes into a money market account
  2. Choose to customize your rate and investments, and add beneficiaries
     - State Street Target Retirement Funds (0.09% expense)
     - State Street Money Market (0.12% expense)
     - State Street Aggregate Bond Index (0.03%)
     - State Street Global Equity Ex-US Index (0.07%)
     - State Street Equity 500 Index (0.02%)
  3. Opt out
- Asset-based fee of 0.83% to 0.92%, depending on investment choices
- Can opt out at any time
- Contributions occur automatically from each paycheck
- Age 18 or older are eligible
- Income restrictions apply to contributions

Summary

MEPs and forms of multiple employer plans are a major topic that will affect the retirement plan industry. States and the Federal Government have multiple initiatives that focus on decreasing the coverage gap, ensuring that more employees have access to a retirement plan. Bills like RESA in Congress have some likelihood of becoming law, but are still being refined and are not yet law. The Presidential Executive Order on Strengthening Retirement Security in America is in the commentary period and its final form does not have an effective date yet. Beginning in 2020, the CalSavers Retirement Savings is in effect for employers that do not yet offer a retirement plan.

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