TAKING ON THE RETIREMENT GAP: BIPARTISAN INTEREST GROWS IN OPEN MEPS

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As the U.S. continues to grapple with the retirement preparedness gap, policymakers on both sides of the aisle are increasingly focused on facilitating access to retirement plans. In the last few years, policy proposals ranging from small business retirement pooling arrangements to auto-enrollment Individual Retirement Accounts and universal retirement accounts have proliferated.

One proposal that could gain momentum is “open” multiple employer plans (MEPs). Both the Senate Finance and the Senate Health, Education, Labor, and Pensions (HELP) Committees have highlighted the broad policymaker, industry, and stakeholder interest in the concept, which was included in the Finance Committee's Savings and Investment Working Group Report and the President's FY 2017 budget request. Moreover, industry and stakeholder support for open MEPs will likely continue to grow in the wake of recent guidance from the Department of Labor (DOL) endorsing state MEPs.

MEPS: AN OPPORTUNITY TO INCREASE RETIREMENT PLAN ACCESS THROUGH SMALL BUSINESS EMPLOYERS

There is growing interest in enhancing and broadening access to MEPs as a means of increasing participation in employer-sponsored retirement plans and helping employees save for retirement. Multiple employer plans are single plans maintained by two or more unrelated employers. They are considered a promising means for increasing retirement coverage because they can allow small businesses to share administrative and other responsibilities associated with providing a retirement plan and, as a result, benefit from economies of scale, administrative simplicity, and limited fiduciary responsibility.

However, current law imposes barriers to their formation and discourages employers from participating in them. Importantly, the Employee Retirement Income Security Act of 1974 (ERISA) requires that the participating employers share a common economic or representational interest unrelated to the provision of benefits. In addition, under the Internal Revenue Code, the failure of one employer to satisfy tax qualification requirements can disqualify the entire plan, discouraging some employers from participating because of the liabilities they could incur due to other employers over which they have no control.

LEGISLATION

Bipartisan bills have been introduced in both chambers of Congress to increase access to MEPs. Senate Special Committee on Aging Chairwoman Susan Collins (R-ME) and Senator Bill Nelson (D-FL) have reintroduced the

Retirement Security Act of 2015 (S. 266); Representatives Vern Buchanan (R-FL) and Ron Kind (D-WI) introduced companion legislation (H.R. 557) in the House. In addition, Representatives Kind and Dave Reichert (R-WA) have reintroduced the Small Businesses Add Value for Employees Act of 2015 (H.R. 4067). Although the specifics of the proposals differ in some respects, there is bipartisan support for removing the “commonality of interest” requirement and allowing unaffiliated employers to join “open” MEPs, as well as for minimizing tax liabilities for participating employers.

INCREASING POLICYMAKER INTEREST

As noted, both the Finance Committee's Savings and Investment Working Group and the Administration have endorsed these proposals and touted the benefits of open MEPs. In July 2015, the Savings and Investment Working Group released a report recommending that the Senate Finance Committee consider proposals to allow unaffiliated employers to join open MEPs. The report noted that these plans can limit the administrative burden associated with running a retirement plan and promote competition among providers of small business retirement plans. In addition, for the first time the Administration proposed to allow unaffiliated employers to join open MEPs as part of the President's FY 2017 budget request. The Administration recommended removing the “commonality of interest” requirement to make it easier and less costly for small businesses to offer tax-qualified retirement benefits to their employees.

The Senate Finance Committee and Senate HELP Primary Health and Retirement Security Subcommittee recently held hearings on open MEPs. The objective has been to examine the issues surrounding increased access to MEPs to help develop a bipartisan solution. The policy discussion currently centers on how to remove unnecessary barriers to MEPs while keeping sufficient safeguards for the employers and plan participants. Given the ongoing negotiations on Senate legislation and the strong foundation of the Buchanan-Kind bill, the issue is poised to garner additional support in the House. Notably, the House Republican Task Force on Poverty, Opportunity, and Upward Mobility recently included open MEPs as one of their recommendations for building retirement security through the private retirement system.

Furthermore, industry and stakeholder support will likely continue to grow in the wake of recent DOL guidance on state MEPs impacting private sector providers of retirement plans. In November 2015, the DOL issued Interpretive Bulletin 2015-02 clarifying that a state can sponsor and administer a MEP for private sector employers. The guidance explains that a state can sponsor a MEP under ERISA because it is tied to the employers and their employees by “a special representational interest in the health and welfare of its citizens.” According to the DOL, this nexus distinguishes state MEPs from private sector open MEPs. Industry groups argue that the guidance gives states a competitive advantage as retirement plan providers and are actively looking into open MEPs legislation as a means to level the playing field.

CONCLUSION

Given the bipartisan policymaker interest in open MEPs, there is a chance to get open MEPs legislation over the finish line in the Senate and House. Consequently, there is an opportunity for the industry and stakeholder community to engage with policymakers to help shape the debate over open MEPs proposals and urge their advancement.

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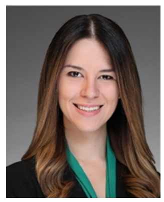

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