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Renewed Focus on Access to Workplace Retirement Savings Programs; PBGC Premiums

Despite a heavy emphasis during the first seven months of the year on health care, lawmakers in both chambers continued to introduce a wide range of legislation including two bills for retirement plans. One would impose new requirements on certain employers to facilitate IRA contributions from payroll deductions. The other would set new rules for establishing rates for PBGC premiums.

In this issue: Closing the Gap | MyRAs | State and Muni Programs | Federal Program – Take Two | PBGC Premiums | Setting Premiums | Premiums and the Budget | Looking Ahead

Closing the Gap

Evaluating the adequacy of access to employment-based retirement plans can be seen through different lenses. On the one hand it may seem robust, with over 640,000 U.S. employer-sponsored defined contribution plans, most of which are 401(k) plans, covering almost 100 million participants, three-quarters of whom are active participants. On the other hand it may seem paltry, with almost 40 million U.S. employees without access to a workplace retirement savings plan -- more than one-third of private sector workers age 22 and older work for a company that doesn't offer a defined benefit or defined contribution plan. To round out the retirement savings picture, IRA assets total nearly $8 trillion, much reflecting rollover funds from employer-sponsored plans.

Varied approaches have been taken, or considered, to close the gap for those without access.

MyRAs

In 2015, the U.S. Treasury launched the myRA program. Among other things, it provided individuals without access to a workplace retirement savings plan an easy way to start saving via automatic contributions from payroll deductions. However, the take-up rate was dismal and earlier this month Treasury announced it would close the program.

State and Muni Programs

In 2016, the DOL finalized rules for states, as well as certain counties and cities, that run retirement savings programs requiring private-sector employers to enroll employees without access to a workplace plan. However, with the Republicans holding the majority in both chambers, President Trump signed legislation that wiped these Obama-era rules off the books. Notwithstanding, a handful of states and municipalities (including California, Illinois, Maryland and Oregon, as well as New York City and Philadelphia) remain steadfast with their plans to roll out such programs. (For more background, please see our May 22 *Legislate* and June 16 *For Your Information*.)

Federal Program – Take Two

In 2017, Rep. Richard Neal, D-Mass., re-introduced legislation to expand personal saving and retirement. His bill – the Automatic IRA Act of 2017 (H.R. 3499) – would permit employees not covered by workplace retirement plans to save through automatic payroll deposit Individual Retirement Accounts, or Auto IRAs. It also directs the Treasury and DOL to provide regulatory guidance to foster and cultivate multiple employer plans by addressing the "one bad apple" rule (where all the employers in a multiple employer plan are adversely affected if one employer fails to comply with applicable tax-qualification rules) and paving the way for simplified reporting (a consolidated Form 5500).

The bill would require most non-governmental, non-church employers that do not maintain a tax-qualified retirement savings plan to automatically enroll most of their workers in an IRA at a default percentage of 3%. Employees would be able to opt out, and the default percentage would be subject to adjustment in regulations. No employer (matching or otherwise) contributions would be permitted. To ease the burden on employers, the automatic enrollment provisions would not apply to employees under age 18 or with less than three months of service, or who are under the minimum age and service requirements of the employer's qualified plan. Additionally, for small employers (generally those with no more than 100 employees), tax credits would be available to offset administrative set-up costs. For more background on Rep. Neal's bill, please see his 2015 press release.

> **Comment.** Although the earlier automatic IRA bills were not enacted, the stars may be aligned for lawmakers to shepherd H.R. 3499 through the legislative process and across the finish line. And, although most employers would loath a new mandate, private sector employers – particularly those (both small or large) with a footprint in, or employees from, more than one state, city or county – may view a federal government-run automatic IRA, with a single set of rules, as better than an array of state and local government- run programs that have varied, and possibly conflicting, rules.

PBGC Premiums

Collectively, the PBGC's single employer and multiemployer insurance programs seek to protect the retirement incomes of approximately 40 million workers and retirees in more than 23,000 pension plans. According to PBGC's latest Projection Report, although the program for single employer plans is in fairly good financial condition with its deficit likely to be eliminated in the near future, the multiemployer program is likely to be insolvent by the end of 2025.

Before Congress adjourned earlier this summer, Rep. Mike Kelly, R-Pa., and Rep. Ron Kind, D-Wis., introduced bipartisan legislation – Rightsizing Pension Premiums Act (H.R. 3596). This bill would provide new rules for setting PBGC premium rates and take PBGC premiums off-budget.

Setting PBGC Premium Rates

Congress determines the employer-paid premiums . Although the rate is different for single and multiemployer plans, both are a flat rate based on the number of participants. For underfunded single employer plans, there's an additional variable-rate premium. For information on the current, past and future rates, see this **table**.

Setting Premiums

The bill would change the rate for some single employer and multiple employer (but not multiemployer) plans. Specifically, it would adjust the premiums to pre-2006 levels for small employer plans – generally those with not more than 500 employees – and multiple employer plans maintained by charities or cooperatives. For other plans, the bill would set premiums based on the funded status of the single employer insurance program.

Premiums and the Budget

Like the Pension Budget Integrity Act (H.R. 761; S. 270) – bipartisan, bicameral legislation introduced earlier this year – the Rightsizing Pension Premiums Act would change the rules so that PBGC premiums (which can only be used for paying pension benefits and costs for administering the insurance programs) cannot be allocated for budget purposes to offset other non-pension-related government spending. This in turn would deter lawmakers from raising the premiums for reasons unrelated to the financial health of the insurance programs and when not needed to pay pension benefits for participants in terminated plans. They've done this numerous times in the past, most recently with the Bipartisan Budget Act of 2015. (See our November 2, 2015 *FYI Alert*.)

> **Comment.** Employers would not be insulated from future PBGC premium increases if the bill is enacted. However, the bill might remove one incentive to backing out of defined benefit pension plans.

Looking Ahead

Both chambers will return to the Hill after Labor Day, if not sooner, to address urgent matters.

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