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Trump Executive Order on Retirement

On Friday, August 31, President Trump signed an [Executive Order](#) on retirement policy (the “Executive Order”). The Executive Order directs the Department of Labor (“DOL”) and the Treasury Department (“Treasury”) to consider regulations or guidance expanding the availability of multiple employer retirement plans (“MEPs”), loosening the required minimum distribution (“RMD”) rules that apply to individuals over age 70½, and improving notice requirements to reduce the paperwork and administrative burdens for plan sponsors. The agencies have a considerable amount of flexibility in implementing the Executive Order, and we expect them to move quickly to develop proposed rules and other guidance.

MEPs / Association Retirement Plans

Bipartisan consensus to liberalize existing ERISA rules to allow unrelated employers to participate in MEPs has existed for several years. However, these legislative initiatives have continued to move slowly. The often-stated goal of MEPs is to reduce costs and expand coverage by allowing employers to achieve economies of scale, but the current DOL position is that unrelated employers can only participate in a MEP if they share an economic nexus and commonality of interests unrelated to the retirement plan. In other words, the employers generally must have a connection to each other than mere participation in the plan. There are currently a number of bipartisan legislative proposals, including the Retirement Enhancement and Savings Act ([S. 2526](#); [H.R. 5282](#), “RESA”), that would eliminate the commonality requirement and permit the use of open MEPs (called Pooled Employer Plans in RESA).

The Executive Order directs DOL to consider issuing regulations or other guidance to make it easier for businesses to participate in Association Retirement Plans, the term the Executive Order uses to refer to MEPs. The Executive Order further directs DOL to consider policies to expand access to retirement plans for part-time workers, sole proprietors, working owners, and other “entrepreneurial workers with non-traditional employer-employee relationships,” including potentially allowing them to participate in MEPs. Presumably, any guidance from DOL will be in the form of a regulation that eliminates or narrows the commonality requirement, similar to the final regulation DOL recently issued to create [Association Health Plans](#). At this point, it is still unclear what guardrails DOL will create and whether the regulation will apply only to defined contribution plans or to defined benefit plans as well. The Executive Order requires DOL to decide within 180 days whether or not to issue guidance.

The Executive Order also directs Treasury to consider within 180 days whether to issue regulations and guidance related to MEPs. Such guidance could address the “one bad apple” rule under which one employer can put an entire MEP’s tax qualification at risk by, for example, failing nondiscrimination testing. There is currently no guidance explicitly creating a roadmap for MEP sponsors to deal with such qualification problems, though some providers have developed and implemented procedures to address the issue. Most legislation (including RESA) expanding MEPs includes a provision intended to fix the one bad apple rule.

Required Minimum Distributions

The Executive Order further calls on Treasury within 180 days to review the RMD rules to see if changes can be made to help retirees keep their savings in 401(k)s and IRAs longer. The Internal Revenue Code generally requires that plan participants begin drawing on their retirement account balances at age 70 ½. The pace at which RMDs must be paid is set forth in life expectancy tables contained in regulations finalized in 2002. The Executive Order directs Treasury to consider updating these life expectancy tables to reflect current mortality data and further stretch out the period over which RMDs are paid.

Reducing Paperwork and Administrative Burdens

Finally, the Executive Order directs DOL, in consultation with Treasury, to review actions that could be taken to make retirement plan disclosures more understandable and useful to plan participants while easing paperwork and administrative burdens on plan sponsors and fiduciaries. DOL is further directed to specifically review whether to modernize its electronic delivery (commonly called “e-delivery”) rules. The rules have not been comprehensively updated in many years and have been criticized for not reflecting changes in the ways people communicate through email and smartphones. Notably, there is also bipartisan legislation in Congress – the RETIRE Act ([H.R. 4610](#)) – that would facilitate e-delivery to plan participants. DOL must complete its review within one year and decide whether or not to issue regulations or other guidance.

Impact on Retirement Legislation

As noted above, there are a number of legislative proposals to expand access to MEPs and modernize e-delivery, and it is unclear at this time how the President’s issuance of the Executive Order will affect the politics of RESA, the RETIRE Act and other bills. However, on a briefing call prior to the release of the Executive Order, Preston Rutledge, Assistant Secretary for the Employee Benefits Security Administration, noted that the Executive Order was not a comment on any of the legislation pending before Congress. He emphasized that the Administration is doing what it can within its purview to further retirement initiatives. Mr. Rutledge said this rulemaking did not rule out further coordination between Congress and the Departments on these issues.

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