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DOL issues final open MEP regulation, seeks additional information

On July 29, the Labor Department published a [final rule](#) allowing small businesses to band together to offer retirement plans for workers. The rule establishes a system through which small employers could offer workers 401(k)s sponsored by a larger association, such as a local Chamber of Commerce.

The rule is similar in structure to DOL’s 2018 rule on Association Health Plans (AHP), which sought to expand the availability of cheaper, skinnier plans for small businesses. Importantly, the rule does not remove the common bond requirement. Moreover, the rule also does not remove the prohibition preventing financial services firms from sponsoring a plan. This is consistent with the AHP rule, which prohibits health insurance companies from being treated as a bona fide group or association. In Congress, the SECURE Act would permit truly open MEPs by removing the nexus requirement.

Relatedly, on July 31, the Employee Benefits Security Administration (EBSA) at the DOL issued a [request for information](#) regarding the ability of financial institutions to sponsor MEPs. Specifically, EBSA wants to know whether the DOL should expressly permit financial institutions or other persons to maintain a single defined contribution retirement plan on behalf of an open MEP. The request is in response to comments submitted during the recent MEP rulemaking noted above.

Comments are due 90 days after the official notice publication date.

Senators introduce nondiscrimination plan relief, auto-IRA legislation

On July 31, Sens. Rob Portman (R-OH) and Ben Cardin (D-MD) introduced [S. 2352](#), the Retirement Security Preservation Act of 2019, to address nondiscrimination and minimum participation issues that can arise when a defined benefit plan is closed to new hires or completely frozen.

The bill is included as a provision in [H.R. 1994](#), the SECURE Act, which is awaiting Senate action. The introduction of the provision as a stand-alone bill raises the profile of the issue and could help encourage passage of SECURE, as the timing of the issue is urgent. If the provision is not passed by the end of September, at least 450,000 employees could lose future benefits as of the beginning of 2020.

Also, on July 31, Sen. Sheldon Whitehouse (D-RI) introduced [S. 2370](#), the Automatic IRA Act of 2019. The bill would require employers who do not provide another qualified retirement plan and who have more than 10 employees to enroll workers automatically in an Auto-IRA unless the employee opts out. Employers would receive tax credits to defray the costs of setting up the accounts.

Meanwhile, House Ways and Means Committee Chairman Richard Neal (D-MA) has been working to revise his own retirement plan requirement. Some form of mandatory retirement plan program may be part of the next phase of the retirement policy debate that will follow if the SECURE Act passes.

IRS issues ruling on uncashed check distributions

On August 14, the IRS released [Rev. Rul. 2019-19](#) regarding the reporting, withholding, and income tax implications of a qualified plan participant receiving a distribution check in the mail, being able to cash it, but failing to do so.

The ruling holds that the participant's failure to cash the check does not permit her to exclude the amount of the distribution from her gross income for the year received and does not alter the employer's reporting or withholding obligations under Sections 6047(d) or Section 3405 with respect to the required distribution amount.

The ruling addresses only a simplified set of facts and does not address more common scenarios, such as when a check is returned as undeliverable or the individual is unable to cash the check.

DOL advances e-delivery regulation

On August 16, the Department of Labor (DOL) sent to the Office of Management and Budget (OMB) a proposed regulation aiming to expand the use of electronic delivery (e-delivery). The proposed rule, titled [Improving Effectiveness of and Reducing the Cost of Furnishing Required Notices and Disclosures](#), was drafted in response to Executive Order (EO) 13847, Strengthening Retirement Security in America, from 2018.

Although it would be helpful and necessary for the Treasury department to offer guidance as well, the order directed only the DOL to act, and as a result, only the DOL sent a proposal to the OMB.

The OMB will now review the proposal before the rule is officially published.

Illinois amends Secure Choice savings program

On August 9, 2019, the Illinois Legislature passed a law (SB 1784) amending the Secure Choice state-sponsored retirement program for the private sector in a few significant ways. The new law allows the Illinois Secure Choice Savings Board to enter into agreements with other governmental entities to enable residents of other states to participate in the Secure Choice Savings Program.

The program offers Illinois businesses that have at least 25 employees, have been in business for two or more years and don't currently provide a qualified savings plan the option to either offer a private market savings vehicle or automatically enroll their employees in Secure Choice.

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References and source material used in this publication

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Definition of “Employer” Under Section 3(5) of ERISA — Association Retirement Plans and Other Multiple-Employer Plans

<https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-16074.pdf>

EBSA Request for Information: “Open MEPs” and Other Issues Under Section 3(5) of the ERISA

<https://www.federalregister.gov/documents/2019/07/31/2019-16072/open-meps-and-other-issues-under-section-35-of-the-employee-retirement-income-security-act>

Summary and Text of S. 2352 - Retirement Security Preservation Act of 2019

<https://www.congress.gov/bill/116th-congress/senate-bill/2352/text>

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Summary and Text of H.R. 1994, Setting Every Community Up for Retirement Enhancement Act of 2019

<https://www.congress.gov/116/bills/hr1994/BILLS-116hr1994eh.pdf>

Summary and Text of S. 2370, the Automatic IRA Act of 2019

<https://www.congress.gov/bill/116th-congress/senate-bill/2370>

Text of IRS Revenue Ruling 2019-19

<https://www.irs.gov/pub/irs-drop/rr-19-19.pdf>

Proposed Rulemaking Notice: Improving Effectiveness of and Reducing the Cost of Furnishing Required Notices and Disclosures

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=1210-AB90>

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Keeping watch

You can find the most recent information on issues affecting governmental defined contribution plans, plan sponsors and plan participants on the Employer page of our plan website, NRSforu.com/plansponsor.

About this report

BOB BEASLEY, CRC, Communications Consultant, edits this report. Beasley brings more than 30 years of financial services communications experience to your plan. He has contributed to past editions of the *Governmental 457(b) Guidebook*, edits countless newsletters and plan sponsor communications, and in 2001 authored “What you should know about the Economic Growth and Tax Relief Reconciliation Act of 2001.” He often voices Nationwide’s online presentations.

Beasley has served on the Education and Communication Committee for the Plan Sponsor Council of America and as a member of the National Association of Government Defined Contribution Administrators.

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