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Digest

Wealth Management

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New administration may affect retirement landscape

In the first months of the Trump administration's second term, the headlines out of Washington, D.C., have been a continuation of partisan politics entrenched in the federal government. To date, retirement plan legislation has not been a high priority for the new administration, but it may be a topic where both sides can find some common ground as retirement plan reform continues to enjoy broad bipartisan support. Of course, not all proposed changes are universally supported. But in the 50 years since the Employee Retirement Income Security Act (ERISA) became law, legislators, regulators, employers and participants have largely embraced its ever-evolving provisions.

Employers usually welcome any guidance that clarifies their roles and responsibilities but not always. For example, the retirement plan industry may appreciate guidance on implementing automatic enrollment features but may be less enthusiastic about the fiduciary rule, which faces an uncertain future under the new administration. While certain noncontroversial guidance may be allowed to trickle out, when retirement plan priorities are released it seems that this administration may impose considerable constraints on departments and agencies releasing directives that do not clearly align with its policies.

Other legislative possibilities

Without speculating too much, it is still possible to make some observations—if not predictions—about what types of retirement plan provisions the current administration and, therefore, Republicans in both the House of Representatives and the Senate would tend to favor. Based on other legislative priorities, we may not see a bold follow-up to the SECURE 2.0 Act this session, but we could still see some meaningful bills make their way toward enactment into law.

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Tax credit incentives are in — For decades, tax credits have been a powerful force in nudging taxpayer behavior. The SECURE 2.0 Act expanded credits for employers who incur start-up costs to establish workplace retirement plans. What's more, new plans may qualify for an additional credit for making certain employer contributions (not employee deferrals). Although we do not yet have firm data on how effective these credits have been, it seems likely that because employers can establish and fund a plan with nearly no out-of-pocket costs for several years, these credits may encourage reluctant employers to start a retirement plan.

Federal mandates are out — Within the past 10 years, many states have created "state-facilitated retirement programs" that require certain employers to enroll their employees in a state's IRA program if the employees are not covered by a qualifying workplace plan. Usually there are exceptions for new businesses or for smaller businesses. These plans have provided workers with a retirement savings option that didn't exist for them previously. In that regard, there has been a good reception for these programs, but each state's program is a bit different from the others. So, there has been some movement to create a federal program that is similar to the state programs. This would create some uniformity while also covering many more workers who do not now have a plan. But requiring employers to establish a retirement plan or, alternatively, to enroll their employees in a federal program would seem to clash with the current administration's stated commitment to lessen legislative and regulatory mandates. Most state-facilitated retirement programs have been implemented in Democratically controlled states. So, unless we experience a radical shift in Republican philosophy, a federally facilitated retirement program seems like a long shot.

DOL releases guidance on escheating missing participants' assets

The Department of Labor issued Field Assistance Bulletin (FAB) 2025-01 on January 14, 2025. This FAB applies to plan sponsors who decide to pay over to a state unclaimed property fund small balances that are owed to missing participants or beneficiaries. Current rules allow plans to distribute missing or nonresponsive participants' assets without consent if the amount does not exceed $7,000. If this amount exceeds $1,000, the assets cannot simply be paid out but must generally be paid to an IRA established for the benefit of the participant. But amounts of $1,000 or less may also be sent to an IRA. For these smaller accounts, the DOL recognizes that paying the assets to a state unclaimed property fund may be more prudent, both because no fees are deducted (as they often are with IRAs) and because there may be a greater likelihood that such assets will be returned to the participant.

ERISA Sec. 404(a) requires plan fiduciaries—including plan sponsors/employers—to act solely in the interests of participants and beneficiaries as prudent experts. As a temporary enforcement policy, the DOL will not pursue violations under ERISA Sec. 404(a) if plan sponsors meet certain conditions.

- The plan sponsor determines that the transfer to a state unclaimed property fund is a prudent destination for the assets.
- The plan sponsor has implemented a prudent program for finding missing participants but is unable to locate the participant or beneficiary.
- The plan sponsor selects the state unclaimed property fund offered by the state of the last known address of the participant or beneficiary.
- The plan's summary plan description explains that missing participants' assets may be paid to an eligible state fund and tells how to get more information.
- The state unclaimed property fund qualifies as an eligible state fund.

This DOL guidance dovetails nicely with the recent activation of the DOL's Retirement Savings Lost and Found Database. Although employer participation is now voluntary, having a centralized database will certainly improve the chances that plan assets will find their way back to missing participants.

DOL updates Voluntary Fiduciary Correction Program

The Department of Labor (DOL) published an update to its Voluntary Fiduciary Correction Program (VFCP) on January 15, 2025. Published just a few days before the new administration took office, this update is not subject to the regulatory "pause" discussed above. The most significant change to the VFCP is that plan sponsors may now be able to "self-correct" two of the most common plan compliance errors: late deposits of participant contributions and participant loan failures. The new rules become effective on March 17, 2025, and provide welcome relief for plans that have run afoul of ERISA's requirements. So, it also seems unlikely that the DOL will delay this effective date.

Although both the DOL and the IRS have plan correction programs, the DOL enforces ERISA provisions and the IRS enforces the Internal Revenue Code. While the two corrections programs also have similar objectives—to restore plans and participants to the conditions they would have been in had the failure not occurred—they are not identical. For example, the DOL's new Self-Correction Component (SCC) still requires that the plan sponsor file an electronic notice giving the DOL basic information about the correction. The IRS self-correction program has no such requirement. This notice triggers an acknowledgement from the DOL, and possible follow-up, but the DOL does not send a "no-action letter," which it typically would do when approving corrections under its other programs.

Proposed regulations on automatic enrollment released

Also in mid-January, the IRS published the proposed rule on automatic enrollment requirements under Internal Revenue Code (IRC) Sec. 414A. This new SECURE 2.0 Act provision requires certain plans that are established after December 28, 2022, to have an automatic enrollment feature in place for plan years beginning on or after January 1, 2025. These rules will be effective after the final regulations are published. Before this time, plans are treated as having complied with IRC Sec. 414A if they use a reasonable, good faith interpretation of this statute.

Some plans are exempt from the automatic enrollment requirements.

- Plans established before December 29, 2022
- New businesses (those in existence for fewer than three years)
- Small businesses (those that normally employ no more than 10 employees)
- Governmental plans and church plans

Fortunately, there are no surprises lurking in these proposed regulations. They are mostly a recitation of the guidance provided in IRS Notice 2024-2, as well as some additional clarifications. For example, the new rule contains multiple examples of when a plan would be subject to the automatic enrollment provision in various merger, acquisition and spin-off situations.

Looking ahead

Even considering the broad support that both parties give to retirement plan improvement—the current administration's stated priorities may reduce the urgency for federal agencies to complete important retirement plan initiatives. All this may require plan administrators, service providers and participants to implement good faith responses to any lack of clear guidance. It will be important for plan sponsors to continue to monitor the proceedings in Washington to keep up to date on changes and operate their plans effectively.

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