Defined Contribution Plan Legislative Update

While 2018 saw bipartisan support for retirement savings enhancements, the proposed legislation highlighted in our previous Legislative Update did not progress during the lame duck session. However, many are hopeful that 2019 will be the year for major legislative reform surrounding these issues.

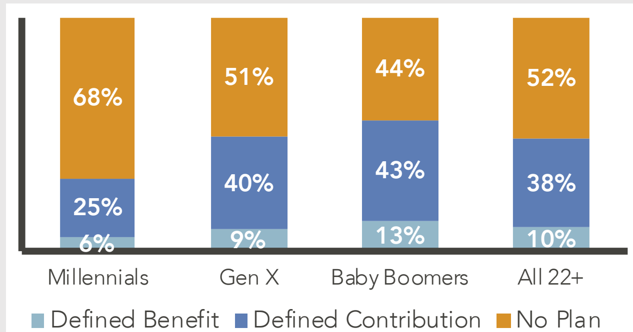
Leadership Change for the House Ways and Means Committee

Notably contributing to this year's optimism surrounding retirement savings legislation is the newly-appointed House Ways and Means Committee Chairman, Representative Richard Neal (D-MA). Chairman Neal has been a longtime supporter of retirement initiatives; his past proposals have been aimed at requiring employers to maintain automatic enrollment and escalation features, encouraging plan access by providing tax credits for small employers, and preventing plan leakage. Because this Committee, which oversees tax policy, is essentially the starting ground for all retirement-related legislation, we will likely see an agenda focused on expanding retirement savings access to participants and enhancing plan design to better prepare participants for retirement.

Expanding Retirement Savings Access

As retirement readiness continues to plague many Americans (52% of Americans over the age of 22 do not have a retirement savings plan), several states will be implementing programs to improve access. For example, Illinois' Secure Choice plan is slated to begin this year and Maryland is in the process of finalizing a similar program. These programs will automatically enroll workers who don't already have access to these plans through their employers into a tax-advantaged retirement savings plan. A similar automatic retirement plan is being considered at the federal level; a provision in the Retirement Plan Act, sponsored by Chairman Neal, requires all but the smallest employers to offer a retirement plan (governments and churches are also exempt). Meanwhile, the House introduced a retirement reform package called the Setting Every Community up for Retirement Enhancement Act (SECURE) which includes the core provisions of Senate's retirement reform bill, the Retirement Enhancement and Savings Act (RESA). Both bills include reform around multi-employer plans (MEPs), aiming to increase access to retirement plans for small businesses by permitting unrelated employers to band together to offer a single plan where a pooled provider serves as the primary fiduciary. The bills should make MEPs more employer-friendly by ensuring that one participating employer's wrongdoings cannot disqualify the entire plan. Plan consolidation through MEPs generally results in lower plan costs and simplifies some of the administrative burdens that often dissuade employers from offering retirement savings plans. SECURE was quickly and unanimously approved by the House Ways and Means committee and is now pending a full House vote.

Participation in employer-sponsored retirement plans rises with age



Source: Pew Trust 2017 Study

UPDATE: Student Loan Repayment Programs

In our previous Legislative Update, we noted the IRS private letter ruling in support of a company — later identified as Abbott Laboratories — hoping to address student loans through their benefits program by providing 401(k) matches to employees contributing a certain percentage of their pay towards student loan repayment. Since the private letter ruling, several companies have implemented similar programs; however, many are hesitant given the additional administrative legwork associated with tracking student loan repayment. While some benefit providers have started offering such services to address these concerns, as the number of providers in this space grows, we imagine that more and more companies will adopt similar benefit programs to attract talent in a tight labor market (with many employees willing to trade student loan assistance for traditional benefits, such as paid-time-off). Legislators are also pushing for reform that explicitly permits student loan repayment matching programs in 401(k) and 403(b) plans.

OTHER TOPICS AND TRENDS

Fiduciary Duty and Fees

Late last year, the Ninth Circuit Court of Appeals affirmed a lower court decision surrounding investment fees paid by plan participants. The plaintiffs in the original case argued that the plan sponsor breached its fiduciary duty by, in part, investing in mutual funds when it could have selected less expensive vehicles, like commingled investment trusts. The district court's ruling, which was upheld, dismissed the claim, stating, "Fiduciaries have latitude to value investment features other than price (and indeed are required to do so)." While fees are important, fiduciaries must also consider an array of variables when adding an investment option to their lineup, including the potential for returns, level of risk, services offered and management flexibility. *See White v. Chevron Corp., 2016 WL 4502808 (N.D. Cal. Aug. 29, 2016), referencing Tibble v. Edison Int'l, 729 F. 3d 1110 (9th Cir. 2013); Memorandum Opinion, 9th Cir. November 13, 2018.*

Retirement Income Strategies

Over the next decade, baby boomers will enter retirement, putting pressure on defined contribution plans where assets being contributed through payroll may not meet the withdrawal demands from retirees; as a result, plan sponsors have begun to shift their focus to retirement income and the decumulation of plan assets. For example, the Thrift Savings Plan, the defined contribution plan for U.S. civil service and uniformed employees (and the largest defined contribution plan in the country), will add new drawdown options, allowing participants to start, stop or change regularly scheduled drawdown payments and make withdrawals on an as-needed basis. The goal of this change is to encourage participants to leave their assets in the plan upon retirement.

In terms of retirement income products, annuities can provide participants a steady income stream in retirement; however, these products have failed to garner wide support amongst plan sponsors due in part to their complex and opaque nature. For plans that do provide participants access to annuities (both within and outside of the plan), these products have not gained much traction from participants. Some plan sponsors support the use of "auto-retiring" by placing participants in a decumulation investment option upon retirement (synonymous with auto-enrolling participants upon employment). Use of income options within target-date funds is another strategy that may gain support from plan sponsors in the future. As the challenges associated with retirement income and an aging population continue to be parsed out by the industry, we will provide updates on how plan sponsors are addressing these issues.

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