INDUSTRY VOICES May 14, 2018

The Retirement Enhancement and Savings Act of 2018: What Would It Mean for MEPs?

In March, the Retirement Enhancement and Savings Act of 2018 (RESA) was introduced in the U.S. Senate. If passed, the bill would reintroduce the pooled employer plan (PEP)—also known as an "open MEP"—to the retirement plan industry conversation.

By Rich Rausser, Senior Vice President, Client Services, Pentegra Retirement Services

We have long touted the benefits of multiple employer plans, or MEPs, which can provide a cost-effective way to manage a retirement plan. As the name indicates, an MEP is formed by a number of employers—specifically, employers involved in a "commonality," or the same line of business. Combining into an MEP

can make it simpler for a given company or business owner to run a retirement plan as MEPs provide an appealing level of efficiency and governance.

MEPs currently cover about 4.5 million people—an impressive enough figure, although in February, there were approximately 126.4 million full-time employees in the U.S. There are various reasons why MEPs are not more widespread, but, for our purposes here, one of the most important is the commonality requirement.

However, that may soon change.

In March, the Retirement Enhancement and Savings Act of 2018 (RESA) was introduced in the U.S. Senate, co-sponsored by Senate Finance Committee Chairman Orrin Hatch, R-Utah, and Ranking Member Ron Wyden, D-Oregon. RESA contains a multitude of provisions, but one particular component caught my eye: If passed, the bill would reintroduce the pooled employer plan (PEP)—also known as an "open MEP"—to the retirement plan industry conversation.

A previous version of the bill was reported out of the Senate Finance Committee in September 2016 with an unprecedented unanimous vote of 26-0. However, in the wake of the 2016 Presidential election, legislative priorities effectively were reshuffled, and RESA ended up somewhere toward the bottom of the deck.

A House version of RESA was also introduced last month by Representatives Ron Kind, D-

Wisconsin, and Mike Kelly, R-Pennsylvania.

What does a PEP do that a MEP cannot? It removes the commonality provision so that any number of companies operating in a variety of sectors could come together to offer a retirement plan that would allow employers to share administrative costs and reduce some of their compliance burdens.

As currently structured, RESA would allow PEPs to operate with a single plan document, a single Form 5500 filing and a single plan audit. The Department of Labor (DOL) could also extend small-plan audit rules to PEPs with fewer than 1,000 participants if no employer had more than 100 participants.

Additional compliance requirements for a PEP would include:

- It must be run by a pooled plan provider (PPP)—i.e., a person or entity such as a third-party administrator (TPA) that would serve as the named fiduciary and act as the Employee Retirement Income Security Act of 1974 (ERISA) Section 3(16) plan administrator;
- One or more bank trustees who are *not* participating employers must be designated to ensure that contributions are properly collected and remitted, and that assets are duly held for safekeeping;
- Employers retain fiduciary responsibility for selecting and monitoring the PPP and other named fiduciaries; and
- There must be no unreasonable restrictions, fees or penalties.

RESA would also allow for electronic delivery of plan information to PEP participants—an option not available to standard MEPs or any other plan types. The PEP would be the only structure with a free statutory pass to reduce cost in this respect.

While it looks like closed MEPs would not be convertible to PEPs, retirement vehicles other than closed MEPs *are* if the plan administrator so decides.

Additional facts about what RESA, if passed, could mean for MEPs and PEPs can be found here.

RESA's other key provisions include:

- Allowing earnings on elective deferrals, qualified nonelective contributions and qualified matching contributions under a 401(k) plan to be distributed on account of hardship.
- Creating a new fiduciary safe harbor for employers that elect to include a lifetime-income investment option in their defined contribution (DC) plan.
- Permitting participants to make direct trustee-to-trustee transfers—i.e., to transfer annuity contracts—of lifetime income investments that are no longer authorized to be held as investment options under a qualified DC plan.
- Requiring employers to provide DC plan participants with an estimate of the amount of monthly income their accounts, if annuitized, would generate during retirement. The estimate would be included on participants' annual plan statements.

What are the chances of RESA being passed this time around, as opposed to when it first surfaced two years ago? Pretty good, based on what we hear from industry insiders. Such groups as the Insured Retirement Institute (IRI), the American Council of Life Insurers (ACLI) and the AARP have all expressed support for its passage.

We will see how it all unfolds.

Richard W. Rausser has over 25 years' experience in the retirement benefits industry. He is Senior Vice President of Client Services at Pentegra Retirement Services, a provider of retirement plan, fiduciary outsourcing and institutional investment services to organizations nationwide. He oversees product development, consulting, marketing and communications, nonqualified plan and Bank-Owned Life Insurance (BOLI) business development, and actuarial service practice groups at Pentegra. He is a frequent speaker on retirement benefit topics; a certified pension consultant (CPC); a qualified pension administrator (QPA); a qualified 401(k) administrator (QKA); and a member of the American Society of Pension Professionals and Actuaries (ASPPA). He holds an MBA in finance from Fairleigh Dickinson University and a BA in economics and business administration from Ursinus College.

This feature is to provide general information only, does not constitute legal or tax advice,

and cannot be used or substituted for legal or tax advice. Any opinions of the author do not necessarily reflect the stance of Strategic Insight or its affiliates.

Tagged: multiple employer plan, pooled employer plan, retirement plan litigation

UPCOMING EVENT

MORE >