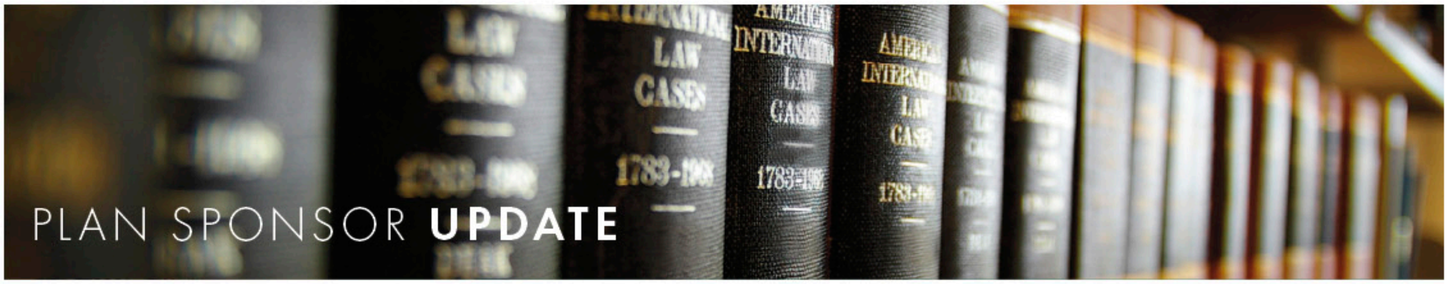

AN ANALYSIS OF LEGISLATIVE AND REGULATORY ISSUES AFFECTING PENSIONS

February 18, 2016

NEW IN THE 2017 BUDGET: NO SINGLE EMPLOYER PBGC PREMIUM INCREASE; OPEN MEPS

Northern Trust is dedicated to helping you succeed in today's fast-changing environment. We are pleased to offer you access to this publication by Plan Advisory Services, to share regulatory developments that may be of interest.

Summary of the Situation

On February 9, 2016, the Administration released its 2017 fiscal year budget. The new budget includes a number of proposals affecting retirement plans – most are carry-overs from prior years, but two are new: a change in the Administration's position on Pension Benefit Guaranty Corporation single employer premiums and an "open MEP" proposal.

Who is most impacted by this?

Sponsors of DB and DC plans.

Key takeaways for clients

- *No PBGC premium increase for the single employer program*: Unlike previous budgets, the 2017 budget does not call for increases in single employer PBGC premiums: "The Administration believes additional increases in single-employer premiums are unwise at this time and would unnecessarily create further disincentives to maintaining defined benefit pension plans."

    - DB plan sponsors will welcome this change in the Administration's position. Prior PBGC premium increases have been identified as one of several factors affecting de-risking and plan termination decisions. There remains a risk, however, that notwithstanding the Administration's concern about DB plan "disincentives" Congress will increase premiums again, to raise revenues for unrelated projects.

Key takeaways for clients (cont'd)

- *Open MEPs initiative*: A MEP is a plan for multiple, unrelated, non-union employers. Their use is currently limited by two rules. *First*, the Department of Labor currently imposes a "commonality" requirement: the unrelated employers in the multiple employer plan must share some sort of "common bond" (e.g., they are all in the same industry). *Second*, IRS imposes a "one bad apple" qualification standard. As the Department of the Treasury explains in the 2017 budget Green Book, "a qualification failure with respect to a portion of a MEP covering employees of one employer affects the qualification of the MEP as a whole."

- *Relaxing the commonality requirement*: The Administration is proposing to "amend ERISA" to eliminate the commonality requirement, provided certain conditions are met. Those conditions include:

  - The unaffiliated employers eligible to participate ... would be employers that had not maintained a qualified plan within the previous three years.

  - The provider would be required to be a regulated financial institution that agrees in writing to be both a named fiduciary ... and the ERISA plan administrator [responsible for] nondiscrimination testing and other duties necessary to maintain the plan as tax-qualified.

  - [T]he provider would be required to register with [DOL] ..., meet applicable bonding requirements, and provide required disclosures.

  - The plan ... provide[s] that an employer would not be subject to unreasonable fees or restrictions if it ceased participation.

- Participating employers would retain fiduciary responsibility for (1) selecting and monitoring the MEP provider and (2) investing plan assets, unless that responsibility is delegated, e.g., to the MEP provider.

- *"One bad apple" relief?* Under the Administration's proposal, DOL would, in consultation with Treasury, develop guidance identifying "circumstances in which a provider would be either permitted or required to spin off the portion of a plan attributable to a particular employer to address violations by that employer." Presumably this guidance would allow the MEP provider to address a "one bad apple" problem without disqualifying the entire MEP.

- *Relevance to plan sponsors*: Obviously the Administration proposal is designed for employers not currently maintaining a plan (hence the "no plan in the last three years" requirement). Why would the wider availability of MEPs matter to a sponsor that already maintains a qualified plan? If MEP providers can develop plans that are low cost and have a low administrative/fiduciary overhead, those plans may appeal to some sponsors currently maintaining "regular" single employer plans.

- *Other 2017 budget proposals include*:
    - Capping "accumulated amounts within the tax-favored retirement system" at $3.4 million.

Key takeaways for clients (cont'd)

- Capping the value of itemized deductions and other tax preferences at 28 percent. This cap would apply to employee contributions to DC plans; taxpayers would get basis to reflect the additional tax.
- Repealing the deduction for dividends paid with respect to employer stock held by a public company ESOP.
- Eliminating stretch-IRA treatment.
- Eliminating required minimum distributions (RMD) for balances of $100,000 or less. The rules for RMDs would also be simplified somewhat.
- Expanding penalty-free withdrawals for the long-term unemployed.
- Simplifying (and easing) rollover rules for non-spouse beneficiaries.
- Implementing Auto-IRAs for employers who do not maintain a qualified plan. This proposal would apply to employers with more than 10 employees that have been in business for at least two years. In connection with this proposal the Administration would increase the small employer plan start-up and Auto-IRA credits.
- Requiring inclusion in a plan of part-time employees who work at least 500 hours per year for 3 years. No employer contributions would be required and employers would "receive nondiscrimination testing relief" with respect to these employees.
- Setting aside $6.5 billion "to allow a few states to pilot and evaluate state-based 401(k)-type programs or automatic enrollment in individual retirement accounts."

What's next?

There is bipartisan support in Congress for open MEPs. In the current environment, however – general legislative gridlock, a Presidential election and a likely fight over a Supreme Court nomination – passing open MEP legislation may be difficult.

The budget proposals that are carryovers from prior years have not been adopted by prior Congresses and are unlikely to be adopted by this one. They do provide a template, however, for Democratic retirement policy and tax reform proposals, and some of them have been explicitly adopted by the two Democratic Presidential candidates.

We will continue to follow these issues.