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Executive Order Seeks to Reduce Retirement Plan Burdens and Costs

On August 31, 2018, President Trump issued an Executive Order on "Strengthening Retirement Security in America." The Executive Order is intended to set the policy for the Department of Labor (DOL) and the IRS in three areas:

- Multiple Employer Plans (MEPs). The Executive Order directs the DOL to issue guidance, which may be in the form of proposed regulations, within 180 days that reconsiders when employers may participate in a MEP. A MEP is a single retirement plan that covers multiple employers that are not within the same controlled group. Expanding the availability of MEPs potentially reduces costs and burdens of small and mid-size companies by allowing them to sign on to a plan that includes common recordkeeping, administration and investment arrangements. The Executive Order also directs the IRS to consult with the DOL in issuing guidance that addresses any tax qualification obstacles to establishing MEPs. Under the DOL's current guidance, employers must have some degree of relationship with each other, such as a degree of common ownership or historical associations, to participate in a common MEP. While the Executive Order reflects a policy of expanding the availability of MEPs, the DOL and IRS may not have leeway to allow "open MEPs" for unrelated employers under the applicable statutory language. However, Congress is also considering bipartisan bills that could allow for open MEPs under some conditions.
- Simplification of Notice Requirements. The IRS and DOL are both directed to review their participant notice requirements to find ways that they may be less burdensome. One of the potential changes would be to liberalize the rules for providing notices electronically to participants, which generally limit email or other electronic disclosures to those employees who can access the disclosure materials electronically at work or who have specifically opted in to electronic disclosures.
- Minimum Distributions. Under the minimum distribution rules, participants who are age 70-1/2 or older and have separated from service must take distributions of their accounts under a formula intended to result in distributions of their account over their life expectancy. The Executive Order directs the IRS to update its mortality tables. Mortality tables based on longer lifespans would reduce the amount of minimum distributions participants are required to take.