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A New 401(k) Option for Small Businesses

President Trump issued an Executive Order on August 31, 2018 that directed regulators to “Strengthen Retirement Security in America” by creating new options for small businesses to offer retirement plans. See Michael Best’s benefits’ teams prior alert available [here](#). On October 22, 2018, the Department of Labor responded to the Executive Order and issued a proposal for a program to allow small businesses to form associations (or to join a professional employer organization (PEO)) to offer their employees the opportunity to participate in a 401(k) retirement plan. See 29 CFR 53534. Most large employers offer 401(k) retirement or similar plans to employees; the cost of creating and administering these plans may be prohibitive for small employers and most sole proprietors.

Under the plan announced by DOL, employer associations within a city, county, state or multi state-metropolitan area, or in a particular industry nationwide, will be allowed to join together and create “association retirement plans.” Importantly, sole proprietors will also be permitted to participate in such arrangements. Significantly, many of the burdens and obligations typically placed on retirement plan sponsors (including reporting, disclosure, and fiduciary obligations) would be shifted to the sponsor of the plan rather than being maintained by the sponsoring 401(k) plan employer.

A 401(k) plan affords participants a retirement savings account that generally grows tax-free. The employee funds the account with pre-tax dollars, or after-tax dollars in the case of a Roth 401(k), and then many employers match the employee’s contribution (often up to 6% of compensation) or provide a flat “profit share” (which may or not be tied to profits). Contributions to non-Roth 401(k) plans and any gains are taxed at retirement when the monies are withdrawn.

The vast majority of large and medium sized companies – 89% of employers with more than 500 employees – offer 401(k) plans to their workforces. Plans are sponsored by the employer and administered by a financial services company such as a brokerage firm, bank, insurance company or

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benefit administrator. Employers pay the cost of setting up and administering a 401(k) plan (unless the cost is borne by the plan or participants, which is allowed in certain instances). This new streamlined 401(k) plan option for small businesses to become part of an association plan allows them to offer “large company” type benefits and better compete for employees in a tight labor market.

The new small business 401(k) association retirement plans are expected to become available for implementation in 2019. When planning and budgeting for 2019, this new benefit vehicle should be reviewed with your employee benefits counsel or financial advisor. For more information, contact John D. Finerty, Jr. or Carrie E. Byrnes at Michael Best.

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