Coming Changes to 401(k) Plans?

Take-Away: Some possible changes are afoot regarding 401(k) plans, including who is eligible to participate in the plan, and the prospect of opening 401(k) plans to private market investments.

Background: We are only just now struggling to learn all of the changes to the Tax Code under the OBBBA. Before we can catch our breath, we also now get to learn about a couple of proposed changes to the Employee Retirement Income Security Act of 1974. (ERISA.)

Employees Under Age 21: ERISA requires a 401(k) plan, or any defined contribution plan, to be made available to employees who are age 21 or older. Employers that sponsor qualified retirement plans may offer participation in a qualified plan at a younger age, but only at the employer-sponsor's discretion. According to the Plan Sponsor Council of America, in 2021 40% of 401(k) plans adopted the minimum age requirement of age 21 for an employee to become eligible to participate in the employer's 401(k) plan. Some in Congress feel that young employees should also be allowed to participate in qualified plans, especially in those qualified plan accounts that receive employer matching contributions.

On July 23, 2025, a bill was filed in the House, called the Helping Young Americans Save for Retirement Act (HR 4718.) (Apparently, it is way too early from some creative Congressional staffer to come up with a 'catchy' acronym for this bill. Only time will tell.) A companion bill has been filed in the Senate (S.1707.) These bills would require defined contribution plans, including 401(k) plans, to permit employees ages 18 through 20 to be eligible to participate in their employer's qualified retirement plan.

If these bills become law, in recognition of the new administrative burdens that would be placed on plan sponsors, any defined contribution plan that was 'forced' to add new participants ages 18 through 20 by virtue of the proposed ERISA amendment plan sponsors would be relieved from mandatory audits that are otherwise required by ERISA for five years.

Private Market Investments: Back in 2020, the Department of Labor issued an opinion letter to Pantheon/Partners Group regarding the possibility of offering private market investments in 401(k) plans. While that DOL letter was not a green light, it implied that such investments might be permissible. That was when Mr. Trump was President. Well, he's back, and so is this proposal.

Fast forward to our current Executive-Order-Happy-President, and there are rumors coming out of the White House that an Executive Order may soon be signed (not sure if an auto pen will be involved) to allow private market investments in all defined contribution plans. The actual specifics of the proposed Executive Order are still unknown, but the Chairman of the SEC has stated publicly that he strongly supports the change.

Called the ‘democratization of private markets’ this change in permissible qualified plan investment menus does come with some restrictions, however. Private market investments would be included as part of target date funds, or some other managed account solution allowed by the qualified plan, but direct access to such private market investment options by individual plan participants would be disallowed.

This proposed change to defined contribution plans to permit private market investments is a bit of a surprise, since apparently neither plan sponsors nor plan participants have been demanding private market exposure. Rather, the push to expand qualified plans into the private market world comes from, surprise!, asset managers.

Plan sponsor fiduciary risk would be heightened if private market investments become part of permissible plan investment strategies. With private market investments come questions/problems like cash-flow, liquidity buffers for any given investment strategy, and complex fee structures, not to mention double-digit expense ratios.

Conclusion: As noted, these are just pending bills in Congress and an expected Presidential Executive Order (why wait for Congress to get around to amending ERISA?) What their impact will be is anyone's guess. But with the prevalence of 401(k) plans around the country, many retirement plans will be affected.

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