Biden Proposals Could Alter Retirement Plan Landscape

Campaign called for an overhaul of 401(k) tax breaks

By Stephen Miller, CEBS
November 16, 2020

An incoming administration headed by President-elect Joe Biden is expected to differ from President Donald Trump's approach to regulating employer-sponsored retirement plans.

Under the Trump administration, "we saw a walk back of a lot of the Obama-era government regulations," said Sam Henson, senior vice president of legislative and regulatory affairs for Lockton Retirement Services, an employee benefits advisory and brokerage firm. "A Biden administration will look significantly different," with a heavier regulatory hand.

Serena Simons, senior vice president in HR consultancy Segal's Washington, D.C., office, said "the Democratic platform for retirement focuses on improving and increasing savings opportunities, particularly for low-income workers." She added that "there will be a lot of activity in that area, including the possibility of a mandated savings vehicle that employers would have to adopt so that every employee has some opportunity for tax-favored savings."

The Society for Human Resource Management (SHRM) stands "ready to work with the new administration, the new Congress and other key stakeholders on policies and programs that promote better workplaces and employment opportunities for all," said Johnny C. Taylor, Jr., SHRM-SCP, SHRM president and chief executive officer.

"SHRM believes that every American worker should be afforded the opportunity to save for his or her own retirement," said Chatrane Birbal, vice president of public policy at SHRM. "Retirement reform proposals should facilitate and encourage voluntary employer-sponsored plans, as well as individual savings, through consistent tax incentives and simplified regulations."

Equalizing 401(k) Tax Benefits

Biden supports ending upfront tax breaks for contributing to traditional 401(k) plans and replacing them with flat-tax credits.

Current tax benefits for retirement savings provide "upper-income families with a much stronger tax break for saving and a limited benefit for middle-class and other workers with lower earnings," according to Biden's campaign website. "The Biden plan will equalize benefits across the income scale, so that low- and middle-income workers will also get a tax break when they put money away for retirement."

Roll Call reported that Biden's plan would "equalize" the incentive system by replacing tax-deductible contributions with flat-tax credits for each dollar saved (https://www.rollcall.com/2020/08/24/biden-retirement-proposal-would-upend-traditional-401k-plans/). "The campaign hasn't said what that percentage would be, but the Urban-Brookings Tax Policy Center has estimated a 26 percent credit would be roughly revenue-neutral over the first 20 years and beyond, which the Biden campaign is aiming for," *Roll Call* reported. "Under this plan, someone earning $600,000 would get the same tax break as someone making $60,000—an identical $260 tax credit for their $1,000 retirement contribution."

The credit would also be refundable, so employees earning too little for the credit to offset their income tax liability would still receive the full value.

"By and large, it would help lower- and middle-income people save more (https://www.forbes.com/sites/advisor/2020/09/03/joe-biden-will-not-kill-your-401k/#3413ab511989)," said Eric Toder, co-director of the liberal Tax Policy Center, a joint venture of the Urban Institute and Brookings Institution, *Forbes* reported.

However, Katharine Finley, senior compliance counsel at Hall Benefits Law in Atlanta, and Anne Tyler Hall, principal at the firm, wrote that "The promise of a credit at the end of a taxable year may not be enough to incentivize lower income-tax bracket individuals to contribute (https://hallbenefitslaw.com/looming-large-what-a-biden-presidency-could-mean-to-the-retirement-plan-landscape/)." They added, "At the same time, higher income-tax bracket individuals may change the way they contribute by moving to Roth accounts instead of making pretax contributions."

"Traditional 401(k) plans will become less valuable for high earners and more valuable for low earners (http://www.octoberthree.com/election-2020-8-things-to-know-about-joe-bidens-tax-plans-potential-impact-corporate-pension-and-savings-plans/)," said John Lowell, an Atlanta-based partner and actuary with October Three Consulting, a retirement plan advisory firm. "Higher earners will seek other means of retirement saving including, for example, Roth plans and other non-401(k) plans."

Brian Graff, CEO of the American Retirement Association, which represents plan services providers, wondered "how reduced tax incentives for small-business owners would impact their willingness to make matching and other contributions (https://www.napa-net.org/news-info/daily-news/biden-backing-plan-clip-your-401k) or, even more worrisome, to have a plan in the first place."

Other Positions

Biden's campaign website also addressed the following retirement plan issues:

AUTOMATIC ENROLLMENT 401(K)S

According to the Biden campaign website, "Under Biden's plan, almost all workers without a pension or 401(k)-type plan will have access to an 'automatic 401(k),' which provides the opportunity to easily save for retirement at work." Although details aren't provided, this could involve a mandate for employers to provide auto-enrollment plans with subsidies for small businesses to set them up, or possibly a government-provided defined contribution plan option, building on state-run auto-enrollment savings programs (www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/state-run-auto-iras-are-spreading-while-critics-note-shortcomings.aspx).

"Under Biden's plan, almost all workers without a pension or 401(k)-type plan will have access to an 'automatic 401(k),' which "provides the opportunity to easily save for retirement at work," Lowell commented.

"Retirement plans represent an important aspect of the total compensation package used by employers to recruit and retain employees," Birbal said. "As a result, many employers are already proactively enrolling employees into employer-sponsored retirement plans."

MULTIEMPLOYER PENSION PLAN RELIEF

Forthcoming Biden proposals, according to his website, will include "issues related to pensions, starting with passing the Butch Lewis Act," which would provide federally backed loans to underfunded multiemployer defined benefit pension plans.

The Butch Lewis Act passed the Democratic-led House last year (www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/house-passes-multiemployer-pension-bill-with-dim-senate-prospects.aspx) but has not been brought up for a vote in the Republican-led Senate.

SOCIAL SECURITY PAYROLL TAXES

Biden has proposed requiring high-wage earners to pay Social Security taxes on a higher percentage of their income. Currently, employees and employers each pay 6.2 percent from wages to fund Social Security, for a combined rate of 12.4 percent, but the tax only applies on earned income up to a set amount per year, which will be $142,800 for 2021 (www.shrm.org/resourcesandtools/hr-topics/compensation/pages/2021-wage-cap-rises-modestly-for-social-security-payroll-taxes.aspx).

According to analysts at the University of Pennsylvania's Wharton School, the Biden plan increases Social Security taxes by creating a "doughnut hole" in the payroll tax structure (https://budgetmodel.wharton.upenn.edu/issues/2020/3/6/biden-social-security). While earnings immediately above the current tax cap would continue to be exempt from Social Security taxes, earnings above $400,000 would be taxed at the 12.4 percent rate.

The new taxes on earnings above $400,000 would not trigger additional benefits.

"This is intended to make up some of the current gap between Social Security inflow and outflow while not punishing what might be referred to as the upper middle class," Lowell said.

If the proposal were enacted, however, employers could face pressure to raise or "make whole" the pay of executives and other high earners, to compensate for a larger payroll tax bite, compensation specialists suggested.

FINANCIAL TRANSACTION TAXES

Biden supports creating new financial transaction taxes, "where every time someone buys or sells a security, it would trigger a tax to pay for new government programs," Henson said. "The biggest purchasers, by volume of securities, are retirement plans, so if you start to build in additional taxes, unless there's a carve-out for retirement plans," 401(k) participants would be subject to the tax.

TOP INCOME TAX RATES

The Biden plan proposes to raise the individual income tax rate on incomes higher than $400,000 to 39.6 percent from 37 percent. "This change may cause some companies with high earners to rethink their total rewards strategy," Lowell said. "Income deferral opportunities will likely become more attractive to higher wage earners. We expect this will create greater interest in nonqualified deferral opportunities. And for companies with defined benefit plans, we expect this will increase interest in finding ways to creatively move nonqualified benefits into their defined benefit plans."

FIDUCIARY RULES

In July, the U.S. Department of Labor (DOL) proposed guidance that would change requirements for advisors (www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/dol-proposes-less-restrictive-fiduciary-standard-for-retirement-plan-investment-advisors.aspx) who recommend investments to retirement plan participants. The proposed fiduciary standard would still require advisors to act in participants' best interests and to avoid conflicts of interest when recommending specific investments, but it is less restrictive regarding how advisors are compensated than a 2016 rule by the Obama administration, which was struck down in 2018 by the 5th U.S. Circuit Court of Appeals.

The Democratic party platform says Democrats will "take immediate action to reverse the Trump administration's regulations (https://democrats.org/where-we-stand/party-platform/building-a-stronger-fairer-economy/) allowing financial advisers to prioritize their self-interest over their clients' financial well-being."

In October, the U.S. Department of Labor (DOL) released a final rule (www.shrm.org/resourcesandtools/hr-topics/benefits/pages/final-rule-limits-401ks-from-picking-funds-based-on-nonfinancial-factors.aspx) requiring fiduciaries to select investments for employer-sponsored plans based on financial risk and return factors, rather than nonfinancial factors such as environmental, social and governance (ESG)

criteria. A related DOL proposal (www.shrm.org/resourcesandtools/hr-topics/benefits/pages/dol-proposes-limits-on-proxy-voting-by-plan-fiduciaries.aspx), issued in September and not yet finalized, would stop retirement plan fiduciaries from casting corporate-shareholder proxy votes in favor of social or political positions that don't advance the financial interests of retirement plan participants.

Aron Szapiro, director of policy research at investment data firm Morningstar, said of the finalized rule that "a Biden administration would probably want to revisit this; (https://www.wealthmanagement.com/regulation-compliance/dol-finalizes-rule-esg-investing-retirement-plans) it's just not the consensus in the Democratic party," reported wealthmanagement.com.

Related SHRM Articles:

What's Ahead for Health Care Under Biden? (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/whats-ahead-for-health-care-under-biden.aspx), *SHRM Online*, November 2020

For 2021, 401(k) Contribution Limit Unchanged for Employees, Up for Employers (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/2021-irs-401k-contribution-limits.aspx), *SHRM Online*, October 2020