401kWire.com
The insiders' edge for defined contribution executives!
an InvestmentWires' Publication

Friday, February 06, 2015

What Should You Be Afraid Of In Obama's Budget?

The leader of the free world has some ideas that could affect business. How worried should you be?

On Monday U.S. President Barack Obama unveiled his proposed fiscal 2016 budget for the country. That budget includes a number of ideas for boosting retirement plan access, as well as other tidbits that, if implemented, could affect the defined contribution retirement plan industry. Here's a deeper dive into industry insiders' reactions to the different proposals, as well as some thoughts on the likelihood of passage.

1) *Cutting off retirement plan contributions for savers who have already passed a balance limit (currently $3.4 million) that translates into about $210,000 in annual income*. This idea, on page 55 in the tax code section of the President's 150-page budget, was first proposed by the President two years ago.

Brad Campbell, a former EBSA chief now at **Drinker Biddle**, still doesn't like the cap. **Tony Verheyen**, executive director of the **PSCA**, accuses Obama of starting down a "slippery slope" and worries that the cap would hurt even more if inflation spikes.

Judy Miller, director of retirement policy for **ASPPA**, calls out the proposal as "double taxation."

"This amounts to a penalty for saving through a 401(k) plan," Miller writes. "If a small business owner is going to be penalized for saving in a plan, or not allowed to make additional contributions to that plan, what's their incentive for continuing to participate in, and ultimately even offer these plans?"

Annette Guarisco Fildes, **ERIC**'s new president and CEO, says the proposal "misses the mark and should be rejected."

"The proposal would create a disincentive for retirement savings as well as a compliance nightmare for plan sponsors and retirement savers alike," Guarisco Fildes states.

2) *Capping "the value of all itemized deductions and other tax preferences," including 401(k) contributions, at 28 percent for couples who make more than $250,000 per year*. This second proposal, found on page 56, is similarly controversial to 1).

"These proposals do not close any loopholes, nor curb any abuse," ASPPA's Miller writes.

Paul Schott Stevens, chief of the **ICI**, says that the mutual fund industry trade group "opposes further limits on the amount Americans can save for retirement and reductions in retirement tax incentives."

"Policy changes of this kind are simply wrongheaded," Stevens states. "The Administration's proposals would penalize workers trying to set aside a nest egg for retirement, discourage employers from offering retirement plans, and add unnecessary complexity to retirement savings. Retirement tax incentives are key to the successes and strengths of the U.S. retirement system, a system that is working for millions of Americans."

Yet it's important to note that the controversial nature of proposals 1) and 2) probably significantly reduces the likelihood that they will get anywhere. Indeed, Obama didn't push these through last year, or in 2013 when he first proposed them.

3) *Payroll-deduction automatic IRAs for plan-less employers with at least 10 employees*. The administration expects this proposal, on page 53, to expand retirement plan access to 30 million more workers.

ERISA legal eagle **Marcia Wagner** of the **Wagner Law Group** notes that the auto-IRA proposal includes no details on what types of investment options (mutual funds? U.S. treasury-backed investments? something cheap and indexed a la the TSP?) would be available.

"I've seen proposals all over the place on investments," Wagner tells **401kWire**.

Verheyen of the PSCA confirms that the plan sponsor trade group favors voluntary ideas over mandates. And Stevens of the ICI agrees

People on both sides of the aisle have talked about the auto-IRA for years, and it's gone nowhere. Obama has included the idea in each of his budget proposals since he took office in 2009, all to no avail so far. Why would 2015 be any different?

4) *Expanding the tax credit for small businesses that start plans and adding a tax credit for small biz that add auto-enroll*. The idea, found on page 53 of the budget, would triple the tax credit for new small business retirement plans to up $4,500, offer a $3,000 credit for setting up an auto-IRA, and add a brand new, $1,500 tax credit for small businesses who add automatic enrollment to their existing plans.

Miller of ASPPA calls these proposals "all good ideas," and Campbell of Drinker Biddle agrees.

"Encouraging automatic enrollment is great," Campbell tells **401kWire**.

Both sides of the aisle like to help out small businesses, and the industry is likely supportive, so perhaps these ideas have a shot at passing.

5) *Allowing automatic enrollment for Defense personnel and military service members*.. This proposal, found in the "Strengthening Retirement Security" section on page 38, seems like another uncontroversial one that could gather bipartisan support and become law.

6) *Expanding automatic eligibility to long-term part-time workers*. More specifically, this proposal (also on page 38), would extend automatic 401(k) eligibility to all part-time workers with at least three years at their current employers who work at least 500 hours per year. **Michael Barry** of **Plan Advisory Services** clarifies that "employers would 'receive nondiscrimination testing relief.'"

Wagner of the Wagner Law Group worries "that could also be confusing" for administration and recordkeeping and worries about unintended consequences and enforcement.

"What happens if you don't do it right?" Wagner wonders.

Campbell of Drinker Biddle wants to see more details before reaching any conclusions. And **Lew Minsky**, executive director of **DCIIA**, says he's "heartened by the interest" and argues that "encouraging coverage of part-time workers is a noble goal."

7) *Support to the states for their own retirement savings crisis*

solutions. On page 38, Obama offers a plan to allocate $6.5MM to the DoL to help the states set up requirements or state-powered plans for small businesses. Of all the proposals in the budget, this seems to be the one that has thrown defined contribution industry insiders for the biggest loop.

Wagner of the Wagner Law Group calls this proposal "frankly scary, potentially confusing, and not cost-effective for multi-state businesses." The idea is tantamount, she says, saying, "States, go forth, go forth and experiment!"

Campbell of Drinker Biddle finds this proposal troubling. He worries that it "leads to the Balkanization of retirement regulation, the same way we already see it in healthcare." He calls it "a step further than the administration's ever gone before."

"It's an ill-advised proposal to encourage the states to go down this path," Campbell says.

Derek Dorn, a key **Spark** ally and an attorney at **Davis & Harman**, says he "thought ERISA's federal preemption would be held up as a barrier to state-level developments." He expects that the proposal would require an act of Congress to implement but that Obama might be able to take some steps in the meantime.

Minsky of DCIIA calls state efforts "part of a noble goal."

"I personally would love to see an effort made to identify solutions ... that might get to similar ends ... but maybe through expansion of private system, whether it be loosening up rules on multiple employer plans," Minsky tells **401kWire**.

8) *Adding a requirement to report employer DC contributions on W-2*. The idea is listed in a chart on page 122. W-2s already are required to show employee contributions.

This particular suggestion didn't rile up any response from industry insiders, and **401kWire** has little sense of how likely it is to pass.

9) *A seven-basis-point fee on large financial services firms for issuing debt*. This proposal, on page 55, would apply to "large, highly-leveraged financial institutions" with worldwide assets over $50 billion that issue debt.

Some mutual fund firms (like J.P. Morgan and Goldman Sachs) and recordkeepers are part of larger financial services firms that might feel the direct pain of this proposal. Yet the bigger threat here may be what happens when large financial services firms find the price of leverage on the rise. If they cut down their leverage, that's fewer dollars for them to lend out or otherwise use. This fee might slow down the economy, or even shrink it. And the 401(k) system would feel that.

10) *Increasing civil penalties imposed by the DoL.* On page 36, in the "Strengthens Penalties Against Employers Who Jeopardize Workers' Health, Safety, Wages, and Retirement Security", Obama "proposes to strengthen several of the civil monetary penalties that DOL collects," without providing any specifics.

Wagner of the Wagner Law Group warns that this could be "a big deal" that gives the DoL "more teeth."

11) *Extra budget money for the DoL, SEC and Treasury*. On page 33 Obama proposed a budget of $1.7B, an increase of 15 percent. And later in the budget Obama proposes a $13.9B DoL budget, up 10.9 percent, and a $12.8B Treasury budget, up 4.92 percent.

More specifically, page 35, Obama proposes allocating nearly $1.9 billion for the DoL's worker protection agencies to put "them on sound footing to meet their responsibilities to defend the health, safety, wages, working conditions, and retirement security of American workers."

Overall, Dorn of Davis and Harman, offers a reminder that "the budget hasn't had tremendous influence over Congress' decisions in recent years," and that was before the Republicans took over the Senate in addition to the House. Yet he also wonders if some of Obama's proposals could be implemented, at least partly, through regulation in lieu of legislation. And he says that, if Congress does take up tax reform this year, Obama's budget proposals would be his starting position in that debate.

Verheyen of the PSCA praises Obama's efforts "to help Americans reach their retirement dreams," but warns against rules that "add layers of complexity."

Minsky of DCIIA wants to "work with the administration to ensure greater coverage in the system," and welcomes "the administration's interest in expanding access to retirement savings and broadening coverage to retirement system.

Guarisco Fildes of ERIC says she "supports the Admininstration's underlying goals to expand access to and the portability of retirement savings, but we encourage policymakers to first do no harm."

"Unnecessary administrative burdens undermine the ability of large employers to provide robust and tailored retirement benefits to their workers," Guarisco Fildes states.

To dig deeper into the President's proposals, read his budget message, the full budget proposal, and the OMB's budget page.

Sophia Solivio *also contributed to this article.*

Printed from: http://www.I-Wires.com/story.asp?s=50796

Back to Top