

WILLIAM J. FLYNN  
RICHARD K. GROSBOLL  
BENJAMIN K. LUNCH  
LOIS H. CHANG  
TANISHA M. ARATA  
  
OF COUNSEL  
MARK H. LIPTON

**NEYHART, ANDERSON, FLYNN & GROSBOLL**  
A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW  
369 PINE STREET, SUITE 800  
SAN FRANCISCO, CALIFORNIA 94104-3323  
  
(415) 677-9440  
FAX: (415) 677-9445

STANLEY H. NEYHART  
(1918 - 1990)  
FRANK J. REILLY  
(1940 - 1991)  
MAXINE AUERBACH  
(1940 - 1995)  
JOSEPH FREITAS, JR.  
(1939 - 2006)

September 10, 2018

TO: Board of Trustees  
U.A. Local 467 Pension Trust

FROM: Dick Grosboll and Lois Chang, Trust Counsel

RE: President Issued Executive Order on Retirement Plans/Required Distributions

Trustees: On the Friday of Labor Day weekend, President Trump signed an Executive Order having the purported goal of improving retirement security for non-union small businesses as the Order would expand access to multiple employer plans, simplify the qualification requirements for multiple employer plans and hopefully reduce the cost of providing required notices and disclosures. (Plans in the Union world (Taft-Hartley Plans) are known as “multiemployer plans”, not multiple employer plans.) The Executive Order directs the Labor and Treasury Departments to consider regulatory changes that would make it easier for small businesses to pool resources to offer employees workplace retirement accounts, among other provisions.

Although the Order references “retirement plans”, the primary discussion during the press conference announcing the new Order was to 401k Plans. As one commentator noted, the proposed changes are not sweeping, but they are targeted,

The Order also request that the IRS determine whether the IRS’s life expectancy and distribution period tables should be updated for purposes of required minimum distributions to reflect current mortality data and that such updates should be made on an annual or periodic basis.

In support of the President’s directive, the Executive Order stated that 23% of private sector, full-time workers lack access to a workplace retirement plan (including a 401k Plan), and that that percentage increases to 34% when part-time workers are considered. Small businesses are less likely to offer retirement benefits. In 2017, approximately 80% of workers at private-sector establishments with 500 or more workers were offered a retirement plan compared to only 53% for workers at private-sector establishment with fewer than 100 workers. (One article indicated that these statistics were from the Bureau of Labor Statistics.)

The Executive Order did cite a Pew Charitable Trust survey that found that 71% of small-and medium-sized business that do not offer retirement plan were deterred from doing so by high

costs. The Executive Order stated that federal agencies should revise or eliminate rules and regulations that impose unnecessary costs and burdens on businesses, especially small businesses, and that hinder formation of workplace retirement plans. If such changes are adopted and they apply to all retirement plans, this could also reduce the costs for the Pension and Defined Contribution Plans. We are skeptical that there is that much potential savings in the disclosure requirements but possibly the agencies will permit the combining of notices, provide more flexibility on such notices, and/or more use of websites for notices, rather than sending by mail.

The Executive Order states that expanding access to multiple employer plans, under which employees of different private sector employers may participate in a single retirement plan, is an efficient way to reduce administrative costs of retirement plan establishment and maintenance and would encourage more plan formation and broader availability of workplace retirement plans, especially among small employers. The President also stated that reducing the number and complexity of employee benefit plan notices and disclosures would ease regulatory burdens and reduce the costs of providing retirement benefits. The Departments of Labor and Treasury are to implement the President's Executive Order with proposed regulations within six months. (Related to this issue, HR Bill 854 has been introduced in the House of Representatives to achieve some of the same results. It is also noteworthy that the DOL recently issued final regulations on Association Health Plans, which offered guidance on the ability of multiple employers to join together under a single health plan. It is possible that those guidelines may be used in the retirement plan area too.)

Regarding the Required Minimum Distribution rules (a person who is no longer working who reaches age 70-1/2 must commence receiving his or her pension benefits), under the Executive Order, the Treasury Secretary is to examine the life expectancy and distribution period tables in the current required minimum distributions ("RMD") regulations and determine whether they should be updated to reflect current mortality data. This is not particularly controversial, and many retirees would like to have the amount of their RMD reduced. But, the IRS may not like this change because such a change would result in reduced taxes for the government (smaller RMD amounts would reduce the amount of taxable income).

We should know more about the government's proposals by March 1, 2019.

Please contact us if you have any questions.

cc: Fund Advisors