Benefits Planning and the Executive Orders of August 8, 2020

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Checking for Updates

August 27, 2020—We may update this document frequently. To check for the most recent version, visit COVID-19 Resources from YTI at www.yti.cornell.edu/coronavirus#covid-benefits.

Introduction

The executive orders from President Trump earlier this month have raised a lot of questions among Benefits Planners—my email Inbox is flooded with them! What you’ll find here is written through the lens of benefits planning. I’ve provided a summary of each order, plus comments on how to apply it to your clients.
Continued Student Loan Payment Relief

Student loan payments will continue to be deferred and interest will remain at 0% until December 31, 2020. Voluntary current payments can be made, and all such payments will reduce the principle of the loan balance.

Comments: This provides welcome continued relief to students with outstanding loans. We should take steps to explain that any loan payments made during this period will significantly speed up the full payment of a student loan. This is due to the 0% interest rate accrual. All funds paid during the emergency will reduce the principle amount owed. A great financial literacy tip!

Providing Assistance to Renters and Homeowners

Renters Protections

The CARES Act rental moratorium has expired.

The secretaries of the Treasury and HUD shall consider whether temporary measures halting residential evictions for failure to pay rent are reasonably necessary to prevent further spread of COVID-19 from one state or possession to any other state or possession.

HUD will take action to avoid evictions resulting from financial hardships related to COVID-19. Such actions may include encouraging and providing assistance to Public Housing Authorities, affordable housing owners, landlords, and recipients of federal grant funds to minimize evictions and foreclosures.

Comments: At this time, we have no information from any state concerning evictions filed during the time after the moratorium expired on July 31, 2020, and before the executive order went into effect.

Mortgage Protections

HUD foreclosures for FHA mortgages were in place until July 31, 2020.

Under the auspices of the CARES Act, HUD had instructed the Federal Housing Finance Authority (FHFA) to order the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation to suspend foreclosures for at least 60 days until July 31, 2020.

FHFA, FNMA, and FHLMC will now extend foreclosure protection until at least August 31, 2020.

Comments: This is welcome relief to homeowners, renters, and landlords. We have received no information about the impact of any foreclosures filed during the time after the moratorium expired on July 31, 2020, and before the executive order went into effect.

Deferring Payroll Taxes

This memorandum directs the Secretary of the Treasury to defer certain payroll tax obligations with respect to American workers most in need. The action will defer the withholding, deposit, and payment of taxes imposed on wages or compensation during the period of September 1, 2020, through December 31, 2020, subject to the following conditions:

- The deferral shall be made available to any employee whose wages or compensation payable during any bi-weekly pay period is less than $4,000 calculated on a pre-tax basis, or the equivalent amount with respect to other pay periods.
• Amounts deferred shall be deferred without penalties, interest, additional amount, or addition to the tax.

The Secretary of the Treasury shall explore avenues, including legislation, to eliminate the obligation to pay the taxes deferred.

Comments: Deferrals of taxes are not elimination of taxes. Payroll taxes on income paid to the worker during the pendency of the emergency (amounting to 7.65%) will be due from the worker at tax filing time beginning in 2021. There is no language that requires the employer to pay their 7.65% when their tax year ends. These funds are used to directly fund Social Security and Medicare insurance-based programs. This order is questionably unconstitutional as “only Congress” can impose and collect taxes and there is a significant legal question as to whether the president has authority to enforce this order.

On Friday, August 21, 2020, we learned that the payroll “vacation” was to begin in 2 weeks’ time. News reports indicate that many employers and payroll services may not be ready for the required changes. Our consumers may experience a large “raise” in any paycheck received as early as the week of August 26. Please understand that the “raise” is only temporary tax relief and that every penny will be owed to the IRS next April 15 when taxes are due. This could cause a significant issue for our consumers, so this is a great time to add a good dose of financial literacy information to your consumer correspondence.

Authorizing the Other Needs Assistance Program for Major Disaster Declarations

From the memorandum: “Because many of the relief programs created by Congress have expired or will shortly expire, my Administration and the Republican leadership in the United States Senate have provided multiple options to continue to provide needed relief to Americans. But Democratic Members of Congress have twice blocked temporary extensions of supplemental unemployment benefits. Political games that harm American lives are unacceptable, especially during a global pandemic, and therefore I am taking action to provide financial security to Americans.”

This memorandum orders FEMA to use Disaster Relief Funds (DRF) and calls upon the states to use Coronavirus Relief Funds (CRF) to bring continued financial relief to Americans who are suffering from unemployment due to the COVID-19 outbreak. It calls for a $400 weekly unemployment insurance supplement (75% federal cost and 25% state cost) to be paid from August 1, 2020 through December 27, 2020.

$44 billion from the DRF to provide 75% of the cost of this unemployment compensation supplement. It calls upon states to use CRF funds to meet the additional 25%. Regular state unemployment funds can be used to pay a portion of the 25% cost share.

In each state, the supplement is dependent upon the state’s request for grant assistance and the Governor’s cooperation in utilizing the state unemployment system to distribute the funds. Each state must also provide 25% of the cost of the unemployment supplement.

Eligible individuals mean claimants who receive at least $100 per week of any of the following benefits:

• Unemployment compensation, including federal and ex-service member benefits;
• Pandemic Emergency Unemployment Compensation under the CARES Act;
• Pandemic Unemployment Assistance under the CARES Act;
• Short-Time Compensation;
• Trade Readjustment Allowance;
• Payments under the Self-Employment Assistant program; and
• Provide self-certification that the claimant is unemployed or partially unemployed due to disruptions caused by COVID-19.

The lost wages assistance program described in this order shall be available to individuals “until the balance of the DRF reaches $25 billion or for weeks of unemployment ending not later than December 6, 2020, whichever occurs first” [comment: language and dates inconsistent with earlier sections of the executive order]. Lost wages assistance will terminate according to the executive order or when legislation is passed that includes lost wages assistance.

Comments: The unemployment supplement depends on the cooperation of financially strapped state governments to provide 25% of the funding. Poorer states will simply not be able to agree to spend money they don’t have, and other states have already emptied their treasuries with prior expenses for COVID relief. Here, too, it is questionable whether this provision will withstand court review as it also subrogates Congress’ authority as the sole body that may impose and collect taxes.

It has become apparent that regular state UI can make up the required state 25% of the federal $400 bump. As a result, any state whose minimum UI weekly benefit is over $100 will be able to participate. To date, over 30 states have been approved to participate (these states include California, New York State, and Texas) and several more have applied for approval or announced that they plan to apply. On the other hand, one state, South Dakota, has declined the assistance to provide extra funds to unemployed consumers, and a few other states have not yet taken action.

States with weekly minimum payments below $100 must add additional funds to the UI fund in order to participate. This could result in one million workers being ineligible for the federal bump.

Payments, where available, will be retroactive to August 1, 2020. Lastly, approved states will receive funding sufficient to meet only 3 weeks of the federal bump.

Most of the details concerning the application of the executive order vary by state, so please be aware of what is posted on your state’s UI home page.

Conclusion

At this time, for the most part, benefits planners should only explain the provisions to their workers. Planners should also provide a strong statement that nothing is likely to happen until state governors take steps to cooperate, the Supreme Court issues a decision concerning the Constitutional issues involved, or Congress acts by passing a bill for the president’s signature.

One more thing...did you notice that some of the executive orders from August 8 are actually memorandum? This PBS article does a nice job explaining the difference between these two executive actions (https://www.pbs.org/newshour/politics/cheat-sheet-executive-orders-memorandums-proclamations).
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