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Finance Committee proposes RMD changes; MAP-21 paired with UI — again

The Senate Finance Committee unveiled proposed changes this week to the required minimum distribution rules for IRAs and defined benefit and defined contribution retirement plans. The legislative proposal would also address plans with a service-based normal retirement age. Two senators also introduced legislation that would pair an extension of MAP-21 pension interest rate smoothing as a cost offset for unemployment benefits. A committee in the House of Representatives heard testimony this week on the NLRB, and Congress' official budget watchdog released a presentation on the coverage impact of changes to the tax rules for employer-provided health insurance.

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Pensions and funding

The Senate Finance Committee released a proposal this week that would provide cost offsets for federal transportation spending. Among the offsets is a provision that would modify the rules for required minimum distributions (RMDs) described in more detail below — estimated to raise $3.7 billion over ten years. The Senate Finance Committee will consider the proposal the week of July 7 after Congress returns from its Fourth of July recess.

The proposal would also permit a defined benefit plan to have a normal retirement age that is the earlier of an age otherwise permitted under the tax code or the age at which a participant completes at least 30 years of service. This rule only applies to a plan that currently provides for such a normal retirement age, and only for employees employed by the plan sponsor prior to

.

Extension of MAP-21 pension interest rate smoothing proposed — again

Senators Jack Reed (D-RI) and Dean Heller (R-NV) introduced a bill this week — S. 2532 — that would offset the cost of additional unemployment benefits with an extension of MAP-21 pension interest rate smoothing. (H.R. 4970 is the companion bill introduced in the House.) This extension had been paired as a cost offset with unemployment benefits earlier this year — as part of H.R. 3979, which passed the Senate and has not been taken up by the House to date. The extension in S. 2532 is the same as the extension in H.R. 3979, except that the 90-110% corridor would begin to increase in 2019 in S. 2532 instead of 2018 as in H.R. 3979 (see our March 28, 2014 and April 11, 2014 editions of *Legislate* for more information on H.R 3979 and its extension of pension interest rate smoothing). It remains to be seen whether S. 2532 faces a similar fate.

January 1, 2017. The normal retirement age rule would be prospectively and retroactively effective, and is estimated to have a negligible revenue effect.

The Finance Committee's proposal would make two changes to the RMD rules:

- Require some beneficiaries to take distributions from IRAs, defined contribution, and defined benefit plans within five years of the date of death of the participant or IRA owner. For example, payments to a beneficiary under a ten year certain and life annuity distribution would need to be accelerated if the participant died within five years of the annuity starting date. Exceptions are provided for surviving spouses, beneficiaries who are within ten years of age of the participant or IRA owner, individuals with disabilities, chronically ill individuals, and minor children (until they reach the age of majority).
- Provide that the section 436 funding based restrictions on benefit payments trump the required minimum distribution rules.

The first change would generally be effective for distributions to beneficiaries of plan participants and IRA owners who die after December 31, 2015. The proposal would generally not apply to annuities in pay status prior to the date of enactment. A delayed effective date would apply for governmental plans (December 31, 2017) and union plans (between December 31, 2015 and 2017, depending on when the last ratified collective bargaining agreement terminates). The second change coordinating the RMD rules and section 436 would be effective for plan years beginning after December 31, 2014.

The proposal as unveiled on Tuesday also would have required an individual who becomes a 5% owner after attaining age 70½ to take in-service minimum distributions. That provision was removed from the proposal on Thursday.

Health care

The Congressional Budget Office (CBO) released a presentation that includes estimates of the impact that various modifications to the income and payroll tax exclusions for employer-provided health coverage would have on where individuals would obtain health coverage in 2017:

- Eliminating the income and payroll tax exclusions — would result in 54 million more individuals enrolling in coverage through the public marketplaces and 73 million losing employment-based coverage, with an increase in the uninsured of 12 million.
- Eliminating the income tax exclusion only (retaining the payroll tax exclusion) — would result in 34 million more individuals enrolling through the public marketplaces and 49 million losing employer coverage, with an increase in the uninsured of 10 million.
- Capping the income and payroll tax exclusions at the median premium for employer-based coverage — would result in 3 million more individuals enrolling through the public marketplaces and 5 million losing employer coverage, with an increase in the uninsured of one million.

In a separate report issued late last year, CBO and the Joint Committee on Taxation estimate that the third option — with an effective date of 2015 and combined with a repeal of the Affordable Care Act's excise tax on high-value plans — would raise $537 billion over ten years. The median premiums for 2015 for this estimate are $6,420 for self-only coverage and $15,620 for family coverage.

Labor and employment

The House Education and the Workforce Committee held a hearing Tuesday entitled "What Should Workers and Employers Expect Next from the National Labor Relations Board?" The committee heard from several private sector witnesses — an employer in the restaurant industry, management labor lawyers, and a union attorney — but not the NLRB itself. Testimony generally focused on three areas, each of which the board is currently considering:

- Whether employers may limit the use of their email systems for union organizing or other section 7 activity. The witnesses expressed different views on the matter, but one witness observed that it would be helpful for the NLRB to provide clear guidance to workers and employers regarding the extent to which the National Labor Relations Act (NLRA) protects employee communications through work email.
- How to determine joint-employer status under the NLRA. One witness expressed concern that the NLRB might issue standards that would alter the basic franchisor/franchisee relationship, making franchisors joint employers with their franchisees and liable for their employment practices — even though the franchisors have no control over the practices. Another witness testified about requiring joint-employer bargaining when employers staff their operations with workers directly employed by a third party.
- The potential impact on the NLRB of the Supreme Court's decision in *NLRB v. Noel Canning* — a case questioning the legitimacy of President Barack Obama's "recess" appointments to the NLRB when the Senate was on a brief break. One witness projected that up to 4,000 reported and unreported NLRB decisions could be set aside if the "recess" appointments are not upheld, and numerous appointments within the agency may also come into question. On June 26 — two days after the committee hearing — the Court issued its decision, ruling that the NLRB appointments were beyond the president's authority and, thus, unconstitutional. As a result, the board's current backlog may grow.

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