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Key Legislative Developments Affecting Your Human Resources

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Tax-writing panels OK different extensions of pension interest smoothing

On Thursday, two Congressional panels approved differing extensions of MAP-21 pension interest rate smoothing as a cost offset for federal transportation spending. The legislation will likely head to the floor of the House of Representatives and Senate in the coming weeks. Democratic members of Congress introduced legislation on Wednesday in response to the Supreme Court's *Hobby Lobby* decision. The outlook for that legislation is doubtful. Also, the GAO released a report this week on recommended improvements to Form 5500, and several Republican members of Congress filed an amicus brief late last week with the NLRB on the issue of "employee" status of scholarship student athletes.

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Pensions and retirement

The two tax-writing committees for Congress — the Committee on Ways and Means in the House of Representatives (House) and the Senate Finance Committee — approved legislation on Thursday that would extend MAP-21 pension interest rate smoothing as a cost offset for transportation spending. However, the extensions of pension interest rate smoothing (and other cost offsets unrelated to employee benefits) approved by each committee are different (described below). This sets up the possibility of a conference between the two chambers to sort out the differences (see "[Next steps](#)" below).

Neither committee's legislation includes a PBGC premium increase. Additionally, neither committee's legislation includes the "stretch IRA" provision that would modify the required minimum distribution (RMD) rules for IRAs, defined contribution, and defined benefit retirement plans. The Finance Committee's legislation does include a provision on service-based normal retirement ages. (See our [June 27, 2014 Legislate](#) for the Senate Finance Committee proposal to partially offset the cost of transportation spending with changes to the RMD rules and the provision on service-based retirement ages.)

Committee on Ways and Means

MAP-21 provides for 25-year averaging of the interest rates that employers use for determining pension plan liabilities for minimum funding purposes. The 25-year average rates are further constrained to a specified percentage corridor. Under current law, the corridor started at 90 to 110% for 2012 and began gradual 5% expansions starting in 2013.

Under the legislation ([H.R. 5021](#)) approved by the Committee on Ways and Means on [Thursday](#), the 90 to 110% corridor would be extended through 2017, with the 5% adjustments beginning in 2018 (see comparison chart below).

Employers would be permitted to delay using the new rates for funding and Code section 436 benefit restrictions to 2014 plan years to avoid revising valuation work and plan operations during 2013. As with the original MAP-21 choices, employers would be permitted to limit the delay to only section 436 benefit restrictions.

H.R. 5021 would also prohibit the use of the 25-year averaged rates for determining whether a plan is subject to the funding based restrictions on lump-sum and other accelerated forms of benefit payments while the plan sponsor is in bankruptcy. The prohibition would be effective for plan years beginning after December 31, 2014 in the case of non-collectively bargained plans and after December 31, 2015 for collectively bargained plans. The Joint Committee on Taxation has prepared a [summary](#) of H.R. 5021.

Senate Finance Committee

The Finance Committee also [approved](#) legislation on Thursday similar to H.R. 5021's proposed changes to MAP-21 pension interest rate smoothing, but it differs as to the length of time that the 90 to 110% corridor would be used. The Joint Committee on Taxation has also prepared a [summary](#) of the Finance Committee's proposal. Under that legislation, the 90 to 110% corridor would be extended through 2015; with the 5% adjustments beginning in 2016.

Comparison chart

The following chart compares the MAP-21 corridors under current law, under the Ways and Means proposal, and under the Senate Finance Committee proposal:

Plan year beginning in	Current law corridor range	Corridor range under HR 5021 (Committee on Ways and Means)	Corridor range as proposed by Senate Finance Committee
2012	90 to 110%	90 to 110%	90 to 110%
2013	85 to 115%		
2014	80 to 120%		
2015	75 to 125%		
2016	70 to 130%	85 to 115%	85 to 115%
2017			80 to 120%
2018			75 to 125%
2019			70 to 130%
2020			
2021 and later			

Next steps

The committee meetings on Thursday were a preliminary step before the legislation may be considered for an up-or-down vote on the floors of the House and Senate. Both chambers are likely to consider the legislation approved by their respective committees in the weeks ahead — perhaps as soon as next week. The prospects for passage in each chamber are good given the support in each committee for their respective proposals.

If each chamber passes what their tax-writing committees have approved, a conference between the chambers may be necessary to work out the differences in the legislation. Alternatively, it's possible that either chamber might amend the legislation that the other chamber approves, and send it back for reconsideration.

Multiemployer pension plans

During Thursday's Finance Committee meeting, Chairman Ron Wyden (D-OR) and Ranking Member Orrin Hatch (R-UT) mentioned future work on underfunded multiemployer pension plans, with Senator Wyden focusing on plans benefitting mineworkers. Few details were outlined, but Senator Wyden did note that an extension of the MAP-21 corridors beyond 2015 might be used as a cost offset to assist underfunded mineworker plans.

Enactment of a transportation funding bill is likely before Congress' August recess. And given the committee approvals this week, an extension of MAP-21 pension interest rate smoothing is likely to be included as a cost offset — although the length of that extension is uncertain.

Health care

On Wednesday, Senators Patty Murray (D-WA) and Mike Udall (D-CO) [introduced](#) legislation ([S. 2578](#)) in response to last week's *Hobby Lobby* decision by the Supreme Court (see our [June 30, 2014 FYI](#)

Alert for more information on the decision). The bill was co-sponsored by 37 other Democrats. A similar bill ([H.R. 5051](#)) was introduced in the House.

The bill would prohibit an employer that establishes a group health plan from denying coverage of a specific health care item or service where federal law (statute or regulations) requires coverage — such as coverage of contraceptives required by the Affordable Care Act. The bill expressly provides that it would supersede any other federal law, including the Religious Freedom and Restoration Act of 1993 — the law that was the basis for the Supreme Court's decision in *Hobby Lobby*. Senator Murray has released a [summary](#) of the legislation.

Form 5500

The Government Accountability Office (GAO) publicly released a [report](#) this week on stakeholder concerns with Form 5500 plan investment and fee information. Stakeholders surveyed by GAO included plan sponsors, service providers, researchers, and representatives of plan participants.

GAO's recommendations to Treasury, DOL, and PBGC included the following:

- Revising asset disclosure categories on Schedule H to better reflect current investment vehicles and provide more transparency about a plan's investments
- Clarifying Schedule C instructions for direct, eligible indirect, and reportable indirect compensation so plan fees are reported more consistently and align with section 408(b)(2) disclosures to plan sponsors

S. 2578's prospects for enactment are poor. The bill is unlikely to gain enough support to clear procedural hurdles for an up-or-down vote on the Senate floor. Even if the bill could pass the Senate, the House would likely ignore the legislation.

Labor and employment

On May 8, the House Education and Workforce Committee held a full committee hearing to examine the consequences of unionizing student athletes. (See our [May 9, 2014](#) *Legislate* for further details on the hearing.) Late last week, six Congressional committee members [filed](#) a bicameral [amicus brief](#) with the NLRB on whether college athletes are employees under the National Labor Relations Act (NLRA). (See our [May 13, 2014](#) *For Your Information* for background on the recent decision by a Regional Director of the NLRB that Northwestern University's scholarship football players are university employees under the NLRA and can form a union for collective bargaining.) Among those members are Rep. John Kline (R-MN), Chairman of the House Education and the Workforce Committee and Senator Lamar Alexander (R-TN), Ranking Member of the Senate Health, Education, Labor, and Pensions Committee. These committees have jurisdiction over legislation and oversight related to both the NLRA and institutions of higher education.

The brief argues that the university-student athlete model does not apply to the NLRA's employer-employee framework and treating scholarship student athletes as employees is unworkable in the college environment. The brief raises a number of issues surrounding the treatment of college athletes as employees, including, for example, whether: collective bargaining rights could extend to academic matters; bargaining units could be created that do not cover an entire sports team since some players may not be scholarship athletes; and competitive imbalances could arise between private and public schools since only private schools are subject to the NLRA. The brief also argues that the Regional Director fundamentally misapplied the law in equating scholarships with payment for services and reaching the conclusion that Northwestern's scholarship football players are employees.

Worker classification

During Thursday's Senate Finance Committee meeting on federal transportation funding, Senator Sherrod Brown (D-OH) offered and then withdrew an amendment that would partially pay for transportation spending by changing IRS rules relating to worker classification and employment taxes. (See our [July 2, 2014](#) *Legislate* for more information on Senator Brown's proposal.) Several senators voiced support for looking into the worker classification rules — including committee Chairman Ron Wyden (D-OR) — so proposals like Senator Brown's may come up again in the future when there's a need for spending offsets.

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