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Legislate®
Key Legislative Developments Affecting Your Human Resources

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Congress, GAO, CBO and GPO: Employer's Guide to the Legislative Branch

The U.S. federal government has three branches: executive, judicial and legislative. In this issue, we explore the legislative framework within which employer-sponsored plans exist, including legislative agencies such as GAO, CBO and GPO.

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Framework and Overview

Most of us learned in school about the balance of powers among the federal government's executive, judicial and legislative branches. A more in-depth understanding of how the legislative branch functions may help employers understand Congress' challenges, obstacles and opportunities when considering policy and tax decisions that affect employer-sponsored benefit plans.

The U.S. Constitution and Congress

The Constitution — in Article 1, Section 1 — vests all legislative powers in the Congress, and provides that it consists of a Senate and a House of Representatives (House). The founding fathers determined that this "bicameral" structure was of utmost importance for governing our country.

Revenue and Taxation. The Constitution grants different powers to the House and Senate. For example, only the House has the power to introduce a bill to raise revenue via taxation.

> **Comment.** Should the House introduce a new tax on employee benefit plans, or change the tax treatment of contributions or benefits, employers would, in all likelihood, reconsider compensation and benefits strategies.

Congress: Bicameral and Bipartisan

Bicameral means two houses or chambers and bipartisan means two parties. A bill has bicameral and bipartisan support if it is supported by congressmen from both the Democrat and Republican parties in both the House and the Senate.

House and Senate Rules — Filibuster Rights

Although the Constitution sets forth Congress' bicameral framework, each chamber establishes its own rules and has the right to change such rules. The House rules for debate differ from the Senate rules and are among the characteristics that set the two chambers apart.

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The Senate's rules permit a Senator, once recognized on the floor, to talk endlessly (a form of filibuster). To stop a filibuster, three-fifths of the Senate must take action, pursuant to a procedure known as cloture. A filibuster cannot occur in the House, in contrast, as its rules provide time limits for discussion and debate.

The Power of the Right to Filibuster. Can a speech of less than 30 minutes be a filibuster and a 21-hour speech not be a filibuster? Yes, as explained below. Moreover, the threat of a filibuster can in some circumstances create as much disruption as an actual filibuster.

Consider, for example, Sen. Ted Cruz's (R-TX) 21-hour speech in 2013, which included a recitation of Dr. Seuss' children's book *Green Eggs and Ham.* Cruz, as part of his opposition to the funding of the Affordable Care Act (ACA), declared that he would speak until he was "no longer able to stand." Although not a technical filibuster, as Cruz agreed to end his speech before the Senate took action, in the words of Sen. Harry Reid (D-NV), Cruz's 21 hours on the floor was "a big waste of time."

On the other hand, on October 29, 2015, Sen. Rand Paul (R-KY) voiced his opposition to the Bipartisan Budget Act of 2015 (Act) by engaging in a filibuster. His speech lasted less than 30 minutes but caused a delay in the Senate vote on and the president's signing of the bill. The timing of Rand's "short" filibuster threatened Congress' ability to avert a crisis. Had the Act not been passed and signed by the president before November 3, the expected date of reaching the debt ceiling, the U.S. would have had insufficient cash and borrowing power to pay its debts. (See our *Legislate* dated October 12 for more information about the debt ceiling.)

Filibuster Explained

The term filibuster "includes any use of dilatory or obstructive tactics to block a measure by preventing it from coming to a vote." For additional information, see Filibusters and Cloture in the Senate.

The Future of the Filibuster. The right to filibuster is not absolute. It depends on Senate rules that can be changed.

Some believe that it is a valuable right. As explained by Sen. Orrin Hatch (R-UT), a filibuster "gives opponents of a particular piece of legislation additional time to explain why the legislation is misguided or how it could be improved" and provides "proponents of the legislation additional time to explain why the objections are unfounded." Others, such as Senator Chuck Grassley (R-IA), believe that the rules should be changed. As he stated, the "recent series of filibusters on legislation of enormous consequence" demonstrates the need for change to the filibuster rules.

In response to diverging opinions, Senate Majority Leader Mitch McConnell (R-KY) has appointed five Republican senators to a special task force to review the Senate's rules.

Agencies Supporting Congress

In addition to the House and Senate, the legislative branch includes agencies, in particular, as relevant to employer-sponsored plans, the GAO, CBO and GPO. Each agency was established by Congress to provide a specific public service.

GAO

GAO, the U.S. Government Accountability Office, exists to deliver nonpartisan information mandated and requested by Congress. Its duties include providing policy analyses to assess needed actions and the implications of proposed actions.

Examples of recent GAO reports related to employer-sponsored plans include:

- Retirement Security: Federal Action Could Help State Efforts to Expand Private Sector Coverage (Published: Sep 10, 2015. Publicly released: Sept. 29, 2015)
- 401(K) Plans: Improvements Can Be Made to Better Protect Participants in Managed Accounts (Published: Jun 25, 2014. Publicly released: July 29, 2014)

CBO

CBO, the Congressional Budget Office, estimates the costs of bills approved by congressional committees (other than the appropriation committees). CBO publishes the estimates on its website with a description of the legislation, a statement about its estimated budgetary impact, and an explanation of the basis for that estimate.

Two recent CBO reports relating to employer-sponsored benefit plans are:

- Legislation Providing for Reconciliation, House Committee on the Budget (Dated Oct. 8, 2015 — includes proposals to repeal the ACA provisions concerning the individual mandate, the employer shared responsibility mandate and the Cadillac tax)
- Estimate of Budgetary Effects on the Bipartisan Budget Act of 2015 (Dated Oct. 27, 2015 — includes, among other things, data specific to the projected revenue to be raised by increased PBGC premiums and the accelerated 2025 premium payment)

> **Comment.** The Bipartisan Budget Act of 2015 accelerated the 2025 PBGC premium by one month solely for purposes of CBO scoring. By having the 2025 premium paid in September 2025, rather than October 2025, CBO can consider it revenue in the 2025 fiscal year ending on September 30, 2025. For more information on this Act, please see our November 2, 2015 *Legislate*.

Cost Estimates; Dynamic Scoring

CBO's estimates show how a bill would affect spending or revenues over a five or 10 year period. Generally, CBO is required to incorporate macroeconomic effects into its 10-year cost estimates and to include a qualitative assessment of the budgetary effects for the following 20 years. Incorporating such macroeconomic feedback into cost estimates is often called "dynamic scoring."

GPO

GPO, the United States Government Publishing Office, prints documents produced for Congress, as well as the executive and judicial branches. For example, GPO prepares bills for the president's signature. The process is called "enrollment," and requires the bill to be printed on parchment or other special paper in accordance with federal law.

> **Comment.** President Obama couldn't sign the Bipartisan Budget Act of 2015 until Monday, November 2 — days after Congress voted and passed it — as it needed to be enrolled.

In Closing

Changing the law for employee benefit plans is complex. Not only must a bill be introduced in the correct chamber and navigate its way through many procedural hurdles, Congress must coordinate with the legislative agencies created for specific purposes within the legislative process.

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