

# Legislate<sup>®</sup>

## Key Legislative Developments Affecting Your Human Resources

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### Revised Form 5500 Extension Deadline Repealed; Congress Considers Church Plans, Fiduciary Advice, and Biking To Work

Last week Congress focused on drafting funding legislation that will garner enough votes to keep the government open after December 11. In this issue, we reflect on Congress' continued effort to improve retirement savings, ensure access to sound financial advice, delay or repeal the Cadillac tax and encourage the use of bicycles for commuting to work.

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#### Congress' Efforts May Not Be Enough to Avert a Shutdown

A government shutdown remains a possibility as Congress has been unable to reach consensus and pass legislation to fund many government programs after the stop-gap funding measure expires on December 11. (See our [September 28 Legislate](#) for information on the potential impacts of a government shutdown.) However, last week, Congress did reach agreement on highway and transportation funding that impacts the IRS Form 5500 extension deadline. Additionally, it is considering year-end legislation that could repeal the Cadillac tax, now set to become effective in 2018.

#### Highway/Transportation Funding Repeals Changes to Form 5500 Extension Deadline

Last week, President Obama signed the [Fixing America's Surface Transportation Act](#). In addition to providing federal highway and transportation funding for five years, it includes a repeal of the automatic 3½-month extension of the due date for filing Form 5500 provided for in the [Surface Transportation and Veterans Health Care Choice Improvement Act of 2015](#). (See our [August 20 For Your Information](#) for further information.) Thus, for Form 5500s due for taxable years beginning after December 31, 2015, the extension due date will be determined under existing rules — which provide for a 2½-month extension.



**Comment.** Unlike the [Highway and Transportation Funding Act of 2014](#) and the [Bipartisan Budget Act of 2015](#), an extension of the pension smoothing rule — which permits employers to delay contributions to single-employer defined benefit pension plans — will not be used as a source of funding. (See our [November 2 and August 1, 2014](#) issues of *FYI Alert* for further information.)

## Reconciliation Bill — Will the Cadillac tax be repealed or delayed?

Last week Congress made strides towards relieving employers from the dreaded Cadillac tax — the 40% excise tax on “high cost” health care plans that is scheduled to be effective in 2018. Specifically, the Senate passed (with significant changes) the House [reconciliation bill](#) that includes a provision to repeal the Cadillac tax. It also includes provisions to repeal the medical device tax and to bring the individual and employer mandate penalties to \$0. However, as the president is expected to veto the legislation (pending agreement by the House to the Senate bill), we understand that a two-year delay in the Cadillac tax until 2020 is being discussed, perhaps as a compromise or an intermediate step along the path to a total repeal.

**Comment.** As you develop their health care strategies for 2017 and beyond — with an eye to avoiding the Cadillac tax — you may want to consider an alternative strategy that reflects a possible delay or total repeal.

## Fixing Fiduciary Rules and Church Pension Plans — Necessary to Improve Savings?

Congress continues to evaluate the legal landscape — current and proposed — to fix provisions that potentially interfere, impede or deter companies from offering valuable retirement savings plans. As such, a hearing was held to consider principles designed to encourage retirement security and preserve access to financial advice, as well as to evaluate the need for new fiduciary and conflicts-of-interest legislation. In addition, church pension plan legislation was revived and re-introduced.

### Fiduciary Legislation on the Horizon

As the latest step in congressional responses to the DOL’s proposed fiduciary (conflict-of-interest) guidance (see our [April 21 For Your Information](#)), Reps. Michelle Lujan Grisham (D-NM), Richard Neal (D-MA), Phil Roe (R-TN) and Peter Roskam (R-IL) [outlined](#) a set of “principles” to serve as a framework for bipartisan legislation designed to strengthen employees’ retirement security, ensure access to financial advice for retirement, and make certain that retirement advisors act in their clients’ best interests. Specifically, these principles reflect the philosophy that:

- Families and individuals should be encouraged to save for a financially secure retirement.
- Retirement advisors must act in their clients’ best interests and provide them with clear disclosure of material conflicts of interest, compensation earned and investment fees charged.
- Individuals should have access to investment advice and education, as well as to other financial information necessary to make informed decisions.
- Investors and consumers should have fair access to various investment services and products (such as proprietary products, commission-based sales and guaranteed lifetime income).
- Small employers should have access to the financial advice and products that support the establishment of retirement savings plans.

On December 2, the House Education and the Workforce subcommittee on Health, Employment, Labor, and Pensions held a [hearing](#) to consider these principles. At the hearing, witnesses discussed the possible impact of the proposed rule on employees’ access to reasonably priced financial advice for retirement savings, and whether the proposed rule would result in fewer employers offering retirement savings plans. The committee and the witnesses also explored whether:

- The DOL has authority to issue a rule that extends to decisions on IRA rollovers.
- The DOL should issue a new proposed rule, followed by another comment period, before it issues a final rule.
- Congress' efforts to introduce a legislative solution are premature, as the DOL rule is not yet finalized and the DOL has stated that the final rule will reflect input received during the extended comment period.

**Comment.** There are multiple legislative efforts to derail finalization of the DOL's fiduciary rule before the end of the Obama administration. In addition to the potential legislative solution to be introduced following this Committee's hearing, Rep. Ann Wagner (R-MO) introduced [H.R. 1090](#), the Retail Investor Protection Act, which would mandate that DOL not finalize its rule until the SEC issues its rule. (See our [November 2 Legislate](#))

## Revamping Church Plan Rules Considered, Again

Last month, the Church Plan Clarification Act of 2015 ([S. 2308](#) and [H.R. 4085](#)) was introduced, having been introduced once before in 2013, by Senators Ben Cardin (D-OH) and Rob Portman (R-OH) and Reps. Pat Tiberi (R-OH) and Richard Neal (D-MA). This legislation, intended to bring certainty to key legal issues impacting church pension plans, would reflect that:

- Multiple church-affiliated employers could be treated as separate employers (for various rules including nondiscrimination testing) if one organization provides less than 80% of the operating funds of, and/or is not directly involved in the day-to-day operations of, the other organization.
- Defined benefit (DB) limits (rather than defined contribution limits) would apply to church pension plans with 403(b) grandfathered DB plan status.
- Church pension plans would be exempt from state laws that prohibit or restrict the ability to include an automatic contribution arrangement.
- Transfer and merger of church pension plan assets among plans maintained by the same church or convention or association of churches could be accomplished without triggering the rules for taxation upon distribution.
- Inclusion of church plan assets together with non-plan assets in a collective investment vehicle would not impact tax-exempt status.

### Church Plans – ERISA and Code Exemptions

In general, church pension plans may be established and maintained by a church or other organizations, such as tax-exempt universities and hospitals, controlled by or associated with a church. (See our *For Your Information* dated [May 4](#) for more information.) Many are exempt from the mandates set forth in ERISA and the Code, including rules on participation, funding, vesting, reporting, disclosure and fiduciary standards.

**Comment.** The provision that addresses automatic enrollment is consistent with efforts to expand retirement coverage to American workers, including President Obama's [directive](#) to the Department of Treasury to create [myRA](#) and the DOL's recent guidance for state-run retirement savings programs. (See our [January 31, 2014 Legislate](#) for more information on myRA and see our [December 4 For Your Information](#) on the DOL guidance.) However, this legislation does not seek to bring church pension plans under the ambit of ERISA or to pre-empt state and local laws related to church pension plans, other than those state and local laws that would interfere with inclusion of an automatic enrollment feature.

## Bike Sharing Systems – Efforts to Broaden Scope of Transportation Benefits

In November, Rep. Joseph Crowley (D-NY) re-introduced legislation to encourage the use of bicycles to commute to work. This legislation, [H.R. 4014](#) — Bike to Work Act of 2015, which is identical to [legislation](#) introduced in the prior Congress — would treat bike sharing systems as public transportation systems (such as buses and trains) eligible for tax-favored treatment. Should this legislation be enacted, employers could either reimburse employees for amounts spent using a bike sharing system, or permit them to pay for it on a pretax basis, up to \$130 per month (subject to indexing). (See our [October 21 For Your Information](#) for the 2016 limits for qualified transportation fringe benefits.)

**Comment.** Since 2009, federal law has permitted employers to reimburse employees on a tax-favored basis for use of a bicycle to commute to work. (See our [October 24, 2008 For Your Information](#).) However, this benefit is limited to \$20 a month for reasonable expenses reimbursed by an employer for the purchase of a bicycle and bicycle improvements, repair and storage. The Bike to Work Act of 2015 would expand the fringe benefit to include bike sharing programs, such as Citi Bike in New York City, Capital Bikeshare in Washington, D.C. and Pronto Cycle Share in Seattle.

### Commuter Parity Act of 2015 ([H.R. 990](#))

Earlier this year, Rep. Peter King introduced this bill. In addition to providing a tax-favored benefit of \$35/month (adjusted for inflation after 2016) for the purchase of a bicycle and bicycle improvements, repair and storage, or bicycle sharing program costs incurred for commuting to work, this bill would restore parity between costs incurred for parking and public transportation. However, at this time, there is no major legislation on the table to permanently extend the transit parity for 2015 or future years.

## This Week

This week Congress must sprint to the finish line — to avoid a government shutdown. It remains to be seen whether it will fall short and resort to another short-term stop-gap funding measure to avert a government shutdown after Friday.

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