

## OT Rule, Tax Reform Proposals and Healthcare 2.0 – A Full Plate for Congress

Despite being on the verge of summer, members of Congress must have felt they were in the throes of a Nor'easter last week. The release of numerous high-profile DOL and EEOC regulations, as well as congressional hearings focused on tax reform proposals, kept Capitol Hill hopping. In this issue of *Legislate*, we focus on the DOL's overtime rule, tax reform proposals that would affect employer-sponsored health and retirement programs, and a new healthcare bill.

**In this issue:** [Overtime Rule – the Aftershocks](#) | [Retirement Plans and Tax Reform](#) | [Healthcare Hearing](#) | [ACA 2.0 – Looking Ahead](#)

### Overtime Rule – the Aftershocks

As noted in our [May 18 FYI Alert](#), last week the DOL issued a new rule that will dramatically expand overtime eligibility to millions of workers, requiring employers to take a close look at their pay practices and consider necessary changes to ensure compliance. Although the new rule's expansion of overtime eligibility did not go quite as far as the proposed rule, it is being criticized by Republicans and applauded by Democrats. Supporters of the rule, like Rep. Nancy Pelosi (D-CA), enthusiastically welcomed and [called](#) it “a monumental victory” and “a big step toward ensuring that wages honor the long hard hours Americans dedicate to their jobs.” Lawmakers opposing it, including Speaker Paul Ryan (R-WI), [said](#) that it will hurt “the very people it alleges to help ... [s]tudents, non-profit employees, and people starting a new career.” Shortly after the rule was unveiled, Sens. [Lamar Alexander](#) (R-TN) and [Johnny Isakson](#) (R-GA) announced they would introduce a Congressional Review Act resolution to block implementation.



**Comment.** In an effort to stop the DOL from implementing a final rule, earlier this year House and Senate Republicans introduced the Protecting Workplace Advancement and Opportunity Act ([H.R. 4773](#) and [S. 2707](#)). (For additional background on this legislation, see our [March 28 Legislate](#).) Neither this legislation, nor a CRA resolution that is subject to presidential veto, is likely to be successful. However, congressional efforts to stop or delay the regulation through the appropriations process may gain traction.

## Retirement Plans and Tax Reform

Tax-qualified retirement plans were a hot topic at last week's [Senate Finance Committee hearing](#) titled "Integrating the Corporate and Individual Tax Systems: The Dividends Paid Deduction Considered." As a general matter, "corporate integration" is primarily about reducing taxes by eliminating the double taxation that occurs under our current U.S. tax system — with corporate earnings paid out in dividends subject to both corporate income tax and individual income tax. However, corporate integration could have a significant adverse impact on tax-qualified retirement plans — depending on how it's implemented.

During his [opening remarks](#), Chairman Orrin Hatch (R-UT) acknowledged that implementing integration through changes to the taxation of dividends could have unintended negative consequences for tax-qualified retirement plans. Nevertheless, Sen. Hatch believes that "significant reforms to the corporate tax system" are necessary and that we can craft a system where retirement plans will be treated in a manner comparable to current law. This view was supported by one witness who [stated](#) that "a dividend deduction with withholding system of integration could improve our nation's tax system either as a stand-alone measure or as a part of a more comprehensive business tax reform."

### What is corporate integration?

It is a form of tax reform that seeks to harmonize the separate corporate and shareholder tax levels — considered by some necessary to level the corporate playing field for our U.S. domestic companies in a global economy.

Ranking member Ron Wyden (D-OR), who does not seem to share Sen. Hatch's optimism, noted in his [opening remarks](#) that corporate integration could result in "double taxing retirement plans." His concern was reinforced by one witness, a former senior pension advisor to the committee, who [explained](#) how corporate integration would reduce the incentives to save through a qualified retirement plan. She explained that corporate integration implemented through a proposal to withhold tax at the corporate level but allow no refundable credit to tax-exempt shareholders would result in "taxation of dividends and interest earned by the plan's investments while held in the plan, with the contributions and remaining investment earnings taxed again when the amounts are withdrawn from the plan." In her view, corporate integration in this manner could erase "the tax incentive to save through a qualified retirement plan relative to current law" and, in turn, would result in fewer small employer-sponsored retirement savings plans.

**Comment.** Tax reform by corporate integration, implemented with or without dividend relief at the corporate or shareholder level, is complex, with the outcome dependent upon numerous variables. Before agreeing to any change, Congress will need to consider the benefits of fixing the double taxation of corporate income problem relative to any negative impact, perhaps dramatic and devastating, on the voluntary employer-sponsored, tax-qualified retirement savings plan system and other stakeholders. For additional information on corporate integration, see the [report](#) issued last week by the Joint Committee on Taxation and the [Business Income Tax Bipartisan Tax Working Group Report](#) issued last July.

## Healthcare Hearing

Health savings accounts (HSAs), health flexible spending arrangements (FSAs) and health reimbursement arrangements (HRAs) were featured prominently during last week's [hearing](#) held by the Health Subcommittee of the House Ways and Means Committee. (For more information on these types of accounts, see our [January 5, 2015](#)

*FYI In-Depth* and our [chart](#) comparing HSAs, FSAs and HRAs.) Also highlighted were possible modifications to the employer shared responsibility provisions under the Affordable Care Act (ACA).

In his [opening remarks](#), subcommittee Chairman Pat Tiberi (R-OH) noted that the hearing would allow members “to discuss recent bills that modify the way healthcare is treated in our tax code.” Moreover, full committee Chairman Kevin Brady (R-TX) [stated](#) that we need “to take a hard look at the tax code, build on what’s effective, and fix what’s not delivering results.” Furthermore, Chairman Brady recommended seeking “forward-thinking solutions to ensure our tax code promotes the high-quality, patient-centered healthcare options Americans want and need.”

A sampling of legislation discussed during the hearing appears in the table below. Additional information about some of these bills can be found in prior issues of *Legislate*, including the one from [February 8](#).

Legislation	Sponsor(s)	Potential Impact
Restoring Access to Medication Act of 2015 ( <a href="#">H.R. 1270</a> )	Rep. Lynn Jenkins (R-KS), sponsor, with 39 bipartisan co-sponsors Identical Senate bill ( <a href="#">S. 709</a> )	Would permit over-the-counter (OTC) medications without a prescription to be reimbursable from HSAs and health FSAs as qualified medical expenses (QME)
Health Savings Act of 2016 ( <a href="#">H.R. 4469</a> )	Rep. Erik Paulsen (R-MN), sponsor, with 8 Rep. co-sponsors Identical Senate bill ( <a href="#">S. 2499</a> )	Would “remove barriers” for individuals, including Medicare Part A enrollees, to contribute to HSAs and would “expand” use of HSAs
Health Savings Protection Act ( <a href="#">H.R. 4832</a> )	Rep. Charles Boustany (R-LA) and Rep. Ami Bera (D-CA), co-sponsors	Would remove HSA contributions from the so-called Cadillac tax calculation
Veterans TRICARE Choice Act ( <a href="#">H.R. 868</a> )	Rep. Chris Stewart (R-UT), sponsor, with 92 bipartisan co-sponsors	Would permit veterans to opt in and opt out of HSAs without causing them to permanently lose eligibility for Tricare benefits
Small Business Healthcare Relief Act ( <a href="#">H.R. 2911</a> )	Rep. Mike Thompson (D-CA) and Rep. Charles Boustany (R-LA), sponsors, with 85 bipartisan co-sponsors Related Senate bill ( <a href="#">S. 1697</a> )	Would permit small businesses to offer HRAs to buy and pay premiums for healthcare insurance
FEM Products Act of 2015 ( <a href="#">H.R. 3117</a> )	Rep. Grace Meng (D-NY), with 7 Dem. co-sponsors	Would define feminine hygiene products as qualified medical expenses reimbursable from health FSAs
Tribal Employment and Jobs Protection Act ( <a href="#">H.R. 3080</a> )	Rep. Kristi Noem (R-SD) and , with 26 bipartisan co-sponsors Related Senate bill ( <a href="#">S. 1771</a> )	Would exempt tribes from the employer mandate under the ACA
Safeguarding Classrooms Hurt by ObamaCare’s Obligatory Levies ( <a href="#">H.R. 769</a> )	Rep. Luke Messer (R-IN), with 22 Rep. co-sponsors Related Senate bill ( <a href="#">S. 470</a> )	Would exempt schools, colleges and local education agencies from the ACA’s employer mandate
Student Worker Exemption Act of 2015 ( <a href="#">H.R. 210</a> )	Rep. Mark Meadows (R-NC), with 32 bipartisan co-sponsors	Would exempt student workers from the ACA’s employer mandate calculation

## ACA 2.0 – Looking Ahead

Republicans are ramping up efforts to counter the ACA. Last week, Rep. Pete Sessions (R-TX) and Sen. Bill Cassidy (R-LA), [announced](#) legislation — The World’s Greatest Healthcare Plan ([H.R. 5284](#)) — that would be an alternative to the ACA. Specifically, the bill takes a defined contribution approach for coverage provided in accordance with the “World’s Greatest Healthcare Plan” and offers employers the choice to avoid certain aspects of the ACA paradigm, such as the employer shared responsibility and Cadillac tax provisions. Notably, to satisfy the bill’s requirements, the coverage would need to include many of the ACA’s consumer protection provisions — such as dependent coverage up to age 26, no pre-existing condition exclusions, and no lifetime or annual limits (except that the legislation would bring back limited benefit insurance). The bill provides a “Universal Health Insurance Tax Benefit,” which generally is an annual tax credit for individuals purchasing coverage for themselves and dependents (up to \$2,500 per individual; \$1,500 per dependent minor).

Under the legislation, only employers that choose to remain under the ACA construct would retain the tax exclusion for providing health coverage. However, employees purchasing employer coverage under the legislation could assign their tax benefit (obtained under the Universal Health Insurance provision) to the employer. Other key provisions in the bill would impact HSAs and HRAs and would allow employers to pay or reimburse premiums for individual health insurance coverage.

**Comment.** The [Republican healthcare reform task force](#) is expected to release a recommendation for an ACA “repeal and replacement” bill. Please see our [May 9 Legislate](#) for background on Speaker Ryan’s views on a future ACA replacement framework.

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