

Tax Reform Blueprint Released; FMLA, Retirement Savings, Persuader Rule and H-2B Program in Focus

Both chambers are in session this week, following a long holiday weekend for the Senate and an extended recess for the House. Below we focus on the House GOP's recently released tax reform proposals, as well as legislation to create an online "lost and found" retirement account registry and modify the FMLA. We also bring you up to speed on developments on the persuader rule and the H-2B program.

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House GOP Tax Reform Policy Paper

Last month, the House GOP released its [sixth and final installment of "A Better Way"](#) (report), a blueprint with policy recommendations from Speaker Paul Ryan's (R-WI) Tax Reform Task Force that will be used by the House Committee on Ways and Means to draft legislation. (For information on prior installments of the report, see issues of *Legislate* from [June 13](#), [June 20](#) and [June 27](#).)

The report is replete with ideas to "dramatically reform our current tax code," including ones that would affect employer-sponsored health and retirement plans. Select highlights are as follows:

- Repeal the Affordable Care Act (ACA), as recommended in the [proposal of the Health Care Task Force](#), including the 0.9% additional Medicare payroll tax that applies to wages over \$200,000 for single filers, wages over \$250,000 for joint filers, and wages over \$125,000 for persons who are married but filing separately, and the additional 3.8% tax on net investment income.
- Reduce to three the number of individual income tax brackets and repeal the individual alternative minimum tax.



- Maintain the tax exclusion for employer-provided health insurance, health savings accounts and flexible spending arrangements, subject to a cap as described in the Health Care Task Force's section of the report. (See our [June 27 Legislate](#) for additional details.)
- Continue tax incentives for retirement savings, subject to change following a review of current rules and exploration of "the creation of more general savings vehicles," which could result in the consolidation of different types of retirement savings vehicles.

Tax Expenditures

Tax expenditures are revenue losses attributed to federal tax laws that allow a special exclusion, exemption or deduction from gross income or that provide a special credit, a preferential rate of tax or a deferral of tax liability. For additional information, including OBM's analysis of preferences for employer-sponsored plans, see our [Legislate](#) from [February 15](#).

Comment. The proposal would also reduce the taxation of interest and other investment gains outside the tax-favored qualified plan rules, thus changing the relative benefit of these plans.

Lost and Found Retirement Registry

Although lack of eligibility and access to employer-sponsored retirement savings vehicles, together with lackluster savings, is a significant focus of Congress, there is also a concern for "lost" savings. "Lost" in this instance is not referring to assets that leave the retirement savings system (leakage), such as from hardship or other in-service withdrawals, or distributions that are not rolled over to another tax-qualified plan or IRA. Rather, the concern here is with forgotten or hard to locate retirement savings.

Expecting that this problem is likely to grow as workers move from one employer to another over their working years, Sen. Elizabeth Warren (D-MA), together with Sen. Steve Daines (R-MT), introduced the Retirement Savings Lost and Found Act of 2016 ([S. 3078](#)). This bipartisan legislation would create a national online "lost and found" for retirement savings accounts. The registry would use the data employers are already required to report to the Treasury on Form 8955-SSA, and would expand reporting requirements to include mandatory reporting of distributions and transfers.

The bill would also increase the small cashout amount from \$5,000 to \$6,000 and permit accounts of less than \$1,000 (for which there is no participant election) to be transferred to the Director of the Retirement Savings Lost and Found and invested in U.S. Treasury securities, or to an IRA.

A [fact sheet](#) is available on Sen. Warren's website.

FMLA

The FMLA was a focus of several House members during the month of June. Described below are bills introduced to amend the law:

- Family Leave for Parental Involvement in Education Act ([H.R. 5535](#)), sponsored by Rep. Frederica Wilson (D-FL), would amend the FMLA to allow employees to take leave to participate in or attend their children's and grandchildren's educational and extracurricular activities.



- Family and Medical Leave Enhancement Act of 2016 ([H.R. 5518](#)), sponsored by Rep. Carolyn Maloney (D-NY), would amend the FMLA to apply to employers with at least 15 employees within 75 miles of the worksite, rather than the current threshold of 50 employees. This bill would also amend the FMLA to allow employees to take additional leave to participate in or attend their children's and grandchildren's educational and extracurricular activities, to meet routine family medical care needs, or to assist elderly relatives.
- Family and Medical Leave Inclusion Act ([H.R. 5519](#)), sponsored by Rep. Maloney, would amend the FMLA to permit leave to care for a domestic partner, his or her child, a same-sex spouse, parent-in-law, adult child, sibling, grandparent, grandchild or other person with a close association with the employee with a serious health condition.
- Family and Medical Leave Act Protections for Part-time Workers Act of 2016 ([H.R. 5496](#)), sponsored by Rep. Janice Schakowsky (D-IL), would extend FMLA protections to part-time workers by eliminating the hours of service requirement, while retaining the 12-month prior service requirement.

Comment. With very few legislative days left in this congressional session, and no Republican co-sponsors for any of these bills, they are unlikely to gain traction and advance.

Persuader Rule

In March, the DOL's Office of Labor-Management Standards released its new [persuader rule](#), which would substantially expand certain public reporting and disclosure requirements for employers and their labor relations advisors. Shortly thereafter, Republicans in both chambers introduced joint resolutions ([H.J. Res. 87](#) and [S.J. Res. 35](#)) to block implementation of the rule. (For background on the rule, see our [March 28 Legislate](#).) Although neither resolution has yet advanced to a floor vote, it may prove unnecessary. Last week, a Texas federal court issued a preliminary injunction, blocking the DOL on a nationwide basis from implementing or enforcing the rule. The expanded disclosure requirement was scheduled to apply to agreements, arrangements and payments made on and after July 1. Although the injunction is not permanent and may be appealed by the DOL, it is noteworthy that the court determined that the rule is likely to be found to be "defective to its core because it entirely eliminates the LMRDA's advice exemption." (For additional information on the impact of this court decision, see our [June 29 FYI Alert](#).)

Congressional Review Act – Joint Resolutions

The CRA creates a 60-day period during which Congress can use expedited procedures to overturn a final regulation. Resolutions of disapproval introduced under the CRA can be passed with a simple majority vote. However, such efforts are unlikely to be effective when the president is from a different party than the one that controls Congress. In such case, the president is likely to veto any such disapproval, and Congress is unlikely to marshal a 2/3 majority vote to override it.

H-2B Program

The [Consolidated Appropriations Act, 2016](#), enacted in December 2015, included provisions that permit workers — who have previously worked in the US under the H-2B program and already counted against the cap during any of the three preceding years — to return to work in the US without being counted again toward the 2016 fiscal year cap. The House Appropriations Committee [approved](#) an amendment to the fiscal year 2017 Homeland Security Bill to exempt "non-agriculture temporary returning workers" (H-2B workers) from counting toward the 2017 fiscal year cap. The Senate has not included a similar provision in its Department of Homeland Security Appropriations Bill, 2017.

Whether the exemption will make it into the final bill is up in the air. There is resistance to including it, as made clear by Sen. Chuck Grassley (R-IA) during a June [hearing](#) held by the Senate Judiciary Subcommittee on Immigration and the National Interest. In his [opening remarks](#) as chairman of the full Committee, Sen. Grassley “express[ed] concern about pressure” to include the H-2B “returning workers” exemption provisions in the fiscal year 2017 appropriations bill. According to the senator, it can be harmful as it “puts downward pressure on the wages and working conditions of American workers who are employed or seeking work in the main H-2B occupations.” (For additional information on the “returning workers” exemption, see the Department of Homeland Security [website](#).)

Comment. The Senate Appropriations Committee did approve provisions relating to the H2-B program in its Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2017 ([S. 3040](#)). However, the provisions in this bill did not address the “returning worker” issue. Rather, they addressed controversial portions of the program that could interfere with businesses in certain industries seeking to “expand during temporary periods of peak seasonal demand.”

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