CONDUENT

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Key Legislative Developments Affecting Your Human Resources US

Volume 8 | Issue 15 | April 17, 2017

Trump Nixes DOL Rule; ACA Subsidies Threaten Gov't Shutdown; Lifetime Income Disclosure and Student Debt in Focus

President Trump wiped off the books a DOL rule that made way for cities and counties to require employer participation in payroll deduction savings programs. ACA cost-sharing reduction payments pose a challenge for Congress as it aims to solve the looming threat of a government shutdown. Congress gave a nod to other topics of interest, introducing legislation that addresses the challenges employees face in not outliving their retirement savings and making contributions when saddled with student loan debt.

DOL Savings Plan Rule Nixed

Last week President Trump signed legislation disapproving a DOL rule that would have explicitly permitted qualified cities and counties to require certain private employers to participate in an ERISA-exempt, government-run payroll deduction savings program. Pending bills disapproving a similar DOL rule for states have passed the House and been introduced in the Senate. (For additional background on both DOL rules, please see our January 5, 2017 and August 29, 2016 issues of *For Your Information*).

> **Comment.** Notwithstanding the possibility of an ERISA challenge, some cities and counties may unveil IRA programs that would have complied with the now defunct DOL rule. New York City, Philadelphia and Seattle have already started down this road. Additionally, it is unclear whether the DOL rule for the states will advance. Although Democrats want to increase access to workplace savings plans, they may support a resolution to disallow it because of a preference to solve the gap in access issue on a federal level with the strong protections and administrative uniformity that comes with ERISA. In any event, should all Republicans vote in favor of disallowing the rule, support from Democrats would not be needed.

Funding: Government Operations and ACA CSRs

The 2017 fiscal year started on October 1, 2016, but the short-term measure Congress passed in December 2016 – known as a continuing resolution or CR – provides funding for government operations through April 28, 2017. To avoid a government shutdown on April 29, Congress must pass a bill approving additional funding. (For background, see our December 12, 2016 *Legislate*.)

Under current congressional rules, funding legislation can advance only with a supermajority of lawmakers voting in its favor. As such, bipartisan support will be needed to achieve the two-thirds threshold to pass another CR. If lawmakers from either caucus try to attach additional provisions disagreeable to those in the other party, the chance of a government shutdown will increase.

The use of federal funds to reimburse insurers for cost-sharing reduction payments (CSR payments) through the Affordable Care Act (ACA) marketplaces is the sticking point threatening the success of passing a CR before April 29. Congressional Democrats want the CR to provide specifically for such funding to resolve litigation – brought by House Republicans – challenging the federal funding of CSR payments as unconstitutional and without congressional approval. In the event that the court agrees with House Republicans, the CSR payments to insurers would cease and the ACA marketplace would be in jeopardy of collapse. (Please see our May 16, 2016 *Legislate* for additional information on the lawsuit.)

Cost-Sharing Reduction Payments

As required under the ACA, these amounts are paid by the federal government to compensate insurers that reduce cost-sharing (e.g., deductibles, copayments, coinsurance) for qualified lower income individuals who enroll in ACA marketplace plans. These payments are not the same as the "premium tax credit" subsidies.

> **Comment.** Notwithstanding Republicans' likely reluctance to agree to adding a CSR payment provision to a CR, should they do so – in an effort to avert a government shutdown – the bill may be vetoed by the president. Indeed, President Trump has indicated that it might be better for the ACA to implode, explode or collapse, and stopping the CSR payments may lead to such a result as insurers would still be required to provide the enhanced cost-sharing. Additionally, he has indicated that the controversy involving CSR payments may encourage Democrats to come to the table to discuss health care reform.

Lifetime Income Disclosure

Earlier this month, House and Senate lawmakers introduced bipartisan bills – the Lifetime Income Disclosure Act (S. 868 and H.R. 2055). Specifically, Senators Johnny Isakson, R-Ga., Chris Murphy, D-Conn., Congressmen Luke Messer, R-Ind., and Mark Pocan, D-Wis. – along with others – re-introduced legislation from last year that would require plan sponsors to provide defined contribution plan participants with the projected monthly income they might receive from their plan. The projections, to be provided on a plan statement one time during any 12-month period, would show how a participant's account balance might convert to a "life only" or joint and survivor income at retirement. The legislation would also require DOL to issue model disclosures and safe harbor assumptions for use in making the calculation. Plan sponsors and service providers would be protected from liability to the extent the statements are based on the DOL guidance. (Please see Senator Isakson's press release and Rep. Messer's press release for additional information.)

Comment. To help defined contribution plan participants understand the longer-term value of their account balances, employers may wish to consider deploying other tools to complement the required annual statements if this legislation is enacted. For example, in addition to standard calculators that can be used to explore "what if" scenarios based on the input of various factors (such as interest rates, contribution rates, etc.), employers might want to explore dynamic total financial wellbeing platforms that leverage a holistic perspective and consider the intersection of health and wealth.

Student Loan Debt

Employers and legislators recognize that student loan debt might impact the ability of businesses to attract and retain employees and employees' efforts to save for retirement. Numerous bills, including the ones noted below, seek to address this challenging issue.

- The Employer Participation in Repayment Act (S. 796), introduced by several senators, including Sens. Mark Warner, D-Va., and John Thune, R-S.D., and companion legislation, the Employer Participation in Student Loan Assistance Act (H.R. 795), introduced by numerous congressmen including Reps. Rodney Davis, R-Ill., and Scott Peters, D-Calif., would extend the tax exclusion for employer-provided education assistance to employer payments of student loans. The legislation would allow employers to contribute up to $5,250 annually on a before-tax basis to their employees' student loans. (For additional background, please see this summary.)
- The Student Loan Repayment Assistance Act (H.R. 108), introduced by Rep. Julia Brownley, D-Calif., would allow a business-related tax credit for an employer's payments of up to $500 a month for employees under a student loan repayment program. The credit would be 10 percent of the amounts that an employer pays on behalf of any employee (i.e., $50 per month) under such a program and would be refundable for certain small businesses and tax-exempt organizations.
- The Student Loan Repayment Act (H.R. 615), introduced by Rep. Dennis Ross, R-Fla., would allow a work opportunity tax credit for employers who hire an individual who has at least an associate's degree and outstanding education loans of at least $10,000. The bill would also allow a business tax credit (for up to three years) equal to 50 percent of the employer's student loan program startup costs (subject to a cap of $500 per participating employee). (For additional information, please see this press release.)

Looking Ahead

When Congress returns next week, they will place a high priority on passing funding legislation to keep the government from shutting down, temporarily sidelining efforts to advance health care and tax reform.

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