

# Legislate<sup>®</sup>

## Key Legislative Developments Affecting Your Human Resources US

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### Government Funding in Focus; Health Care and Retirement Reform in the Wings

A government shutdown was averted as President Trump reached his 100<sup>th</sup> day in office. In the nick of time, he signed legislation passed by both chambers that provides funding for government operations and certain retired coal miners' health benefits through May 5. A deal reached over the weekend is expected to gain approval and extend financing for government operations through September 30, as well as permanent funding for the coal miners' health benefits.

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#### Government Funding

On Friday, Congress passed a one-week funding [measure](#) averting a government shutdown that would otherwise have occurred at midnight on April 28 when funding from a prior continuing resolution (CR) expired. Congress negotiated an [omnibus funding bill](#) over the weekend that – if enacted by the end of this week – will prevent a shutdown on May 6 and fund government operations through September 30 (the last day of its 2017 fiscal year). An overview of the bill can be found [here](#) and details of the Departments of Labor, Health and Human Services, and Education portion (Division H) can be found in this [summary](#).

**Comment.** Efforts to use riders on a long-term funding bill to resolve other controversial issues led to use of a one-week CR. Specifically, (1) Democrats sought a commitment to continue funding the cost-sharing reduction (CSR) payments under the Affordable Care Act (ACA), and (2) a bipartisan group of lawmakers sought to secure permanent funding for retired coal miners' multiemployer health benefits. (Additional information on these topics follows.)



## Health Care Reform

Health care reform efforts threatened to derail funding negotiations last week. Although they are not expected to jeopardize funding for fiscal year 2017, they remain an issue.

### Cost-Sharing Reduction Payments

As discussed in our [April 17](#) *Legislate*, the use of federal funds to reimburse insurers for CSR payments is a controversial issue – currently being litigated – with House Republicans maintaining that the administration cannot make them without specific authorization from Congress. Although these payments (often referred to as subsidies) are expected to continue, at least for the near term, Democrats unsuccessfully sought to secure a commitment for continuation of such subsidies in the one-week CR, or the funding deal struck over the weekend.

**Comment.** Absent specific congressional appropriation providing funding for such subsidies, concerns remain that insurance companies will not participate during 2018 in the ACA marketplaces and destabilize the health care ecosystem.

### American Health Care Act

Republicans' continued efforts to repeal and replace the ACA might create challenges to passing the omnibus funding bill this week. Specifically, if Speaker Paul Ryan, R-Wis., puts up the American Health Care Act (AHCA) ([H.R. 1628](#)), as amended, for a House vote this week, Democrats may be less inclined to support the omnibus funding deal struck over the weekend. The AHCA, which did not garner enough votes last month to pass the House, might have enough with the most recent amendment that would allow states to opt out of certain ACA requirements and to establish their own rules for essential health benefits. (For background on the AHCA, please see our [April 10](#) and [March 27](#) issues of *Legislate* and our [March 8](#) *FYI Alert*.)

### Retired Coal Miners' Health and Pension Benefits

In December 2016, Congress agreed to provide funding to maintain coal miners' retiree health benefits under the United Mine Workers of America's multiemployer plan through April 28, the same date in the December CR for government operations funding. (See our [December 12, 2016](#) *Legislate*.) Earlier this year, in an effort to provide a long-term solution for both their retiree health and pension benefits, the Miners Protection Act of 2017 ([H.R. 179](#)) was introduced, as reported in our [January 9](#) *Legislate*. Under the bill, excess funds from the Abandoned Mine Reclamation Fund – not the PBGC – would be used to subsidize these retiree benefits. Because the bill has not advanced independently, lawmakers secured funding for the retiree health benefits for one additional week – through May 5 – the same duration as the one-week CR.

The deal to wrap up government funding through September 30 includes permanent health care relief for the miners, but not pension relief. Details can be found in Division M of the omnibus funding bill.

## Retirement

Despite the focus last week on averting a government shutdown, retirement reform remains on the horizon.

### DOL Fiduciary Rule

Although the rule became effective in April 2016, it's not yet applicable and its long-term viability is threatened by ongoing litigation, a DOL review as directed by President Trump and legislation seeking to block it. Most recently,

the House Financial Services Committee held a [hearing](#) on the Financial CHOICE Act ([H.R. 10, Section 841](#)), legislation introduced by Rep. Jeb Hensarling, R-Texas, with seven Republican co-sponsors. The CHOICE Act would repeal the DOL fiduciary rule, allow the SEC to take the lead on issuing one, and require DOL guidance to align with the SEC.

**Comment.** Alex Acosta was confirmed last week as the secretary of Labor. He will lead DOL's re-examination of the rule to determine if it (1) hinders access to certain retirement savings offerings and information; (2) adversely affects investors or retirees by disrupting the retirement services industry; and/or (3) is likely to cause an increase in litigation and prices investors and retirees must pay for retirement services. (For background on the status of the rule, please see our [April 5 FYI Alert](#) and our [April 10 Legislate](#).)

## Leakage

Last week, both chambers introduced legislation to address retirement savings challenges that arise from participant elections to tap tax-qualified plan savings before retirement through hardship distributions or plan loans that are not repaid. The two similar, though not identical, bills are:

- Shrinking Emergency Account Losses (SEAL) Act ([S. 940](#)): sponsored by Sen. Michael Enzi, R-Wyo., and Sen. Bill Nelson, D-Fla.
- Savings Enhancement by Alleviating Leakage in 401(k) Savings (SEAL) Act ([H.R. 2030](#)): sponsored by Rep. Sam Johnson, R-Texas, and Rep. Richard Neal, D-Mass.

If either SEAL Act is enacted, plans could permit participants to both:

- Have more time to repay plan loans, providing them with greater opportunity to avoid a default and the corresponding adverse tax consequences – as well as to save the repaid loan amounts for retirement. The loan repayment period would be extended to the due date (including extensions) for filing the federal income tax return for the taxable year in which the plan loan offset occurs
- Make elective contributions to the plan during the six-month period following a hardship withdrawal

The Senate version of the SEAL Act would also bar credit card and similar loan arrangements.

**Comment.** This legislation has a good chance of gaining traction in the current Congress given that it had been included in the [Retirement Enhancement and Savings Act](#) (RESA) – comprehensive bipartisan legislation introduced in the prior session and unanimously approved by the Senate Finance Committee. Neither SEAL Act includes the RESA provision that eliminated the requirement to take available plan loans before seeking a hardship withdrawal.

## Week Ahead

We'll be looking to see whether this past weekend's deal will be approved and will extend financing for government operations through September 30 as well as provide permanent funding for the coal miners' health benefits.

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