



Congress and Employee Benefits Activity

Update and Outlook

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Today's Discussion

1 Legislative environment and agenda

2 Health care

3 Retirement security

4 Executive compensation

5 Other activity

6 Looking ahead

Legislative Environment and Agenda

Multiple factors affect legislative agenda

Calendar

Few legislative days remain this year; fewer when House and Senate are in session at the same time

Agenda

Must-pass items drive priorities; also serve as potential legislative vehicles for benefits-related issues

Budget

Fiscal 2016 begins October 1; appropriations or budget reconciliation could include benefits provisions

2016 Elections

Campaigns may affect lawmaker priorities, issue positions

(Lack of) Consensus

Disputes within or between chambers may affect outcomes

Benefits POV

Lawmakers have differing opinions about benefits issues

Revenue

Cost may drive or hinder benefits legislation

Overview of Congress' benefits activity in 2015

Enacted	Surface Transportation and Veterans Health Care Choice Act Trade Preferences Extension Act Medicare Access and CHIP Reauthorization Act
Voted	Save American Workers Act Protect Medical Innovation Act Protecting Seniors' Access to Medicare Act Repeal Affordable Care Act
Discussed	ACA Wellness programs Tax reform Budget reconciliation Fiduciary regulation

Key issues remaining on 2015 agenda

Opportunities? Obstacles?

Budget and debt

- Fiscal 2016 appropriations
- Budget reconciliation?
- Debt ceiling increase

Highway Trust Fund

- Extension needed by Oct 29
- Revenue needed

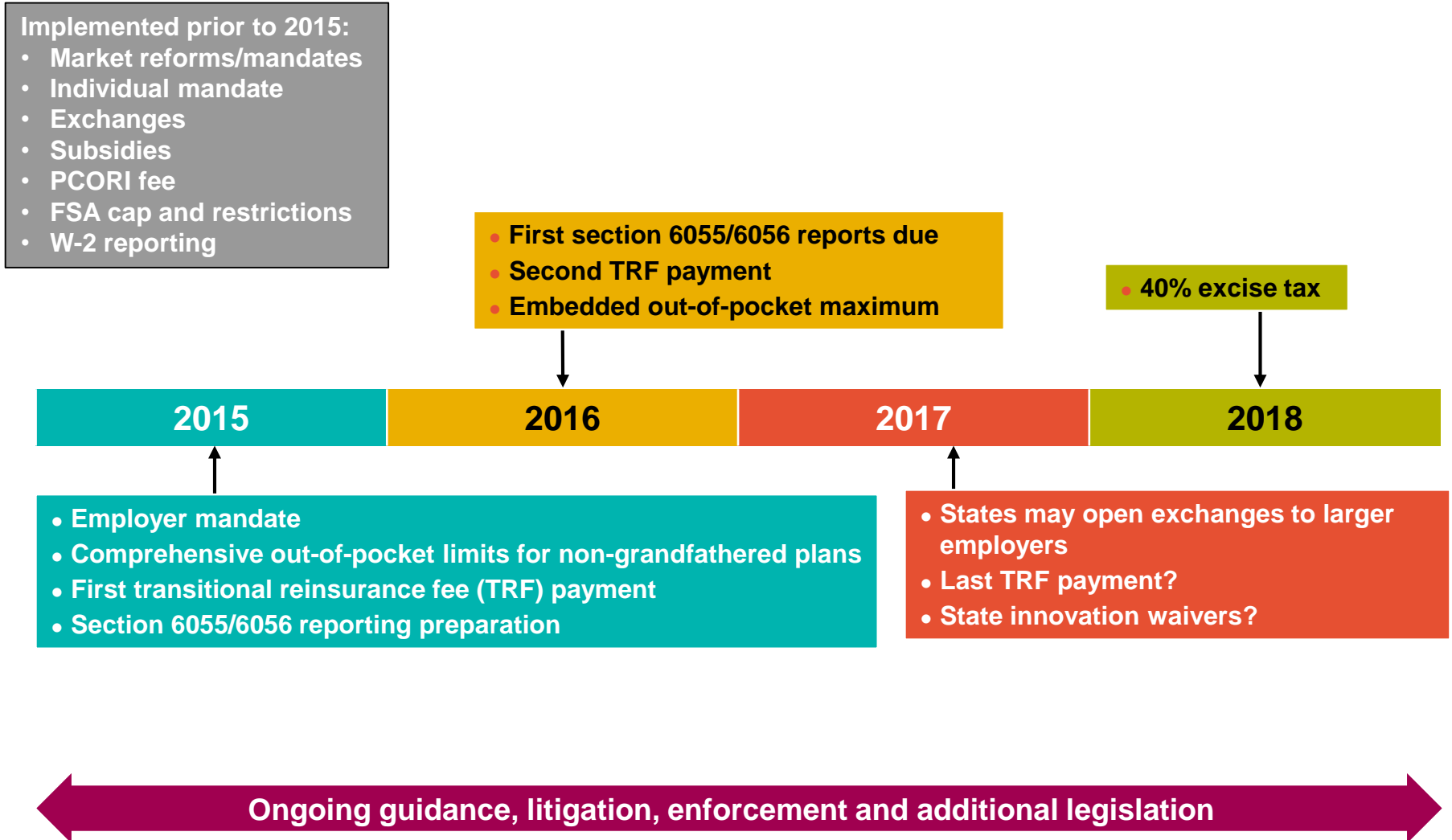
Iran nuclear deal

- Timing, negotiations and trade-offs

Revenue considerations are a key factor

Health Care

ACA implementation: where we are...what's next



ACA items to note for 2015 and 2016

Employer mandate

- In effect 2015; threshold to “play” increases for 2016
- Awaiting process for assessing, appealing, paying penalties

6055/6056 reporting

- First reports due 2016; relate to 2015 coverage
- Employer preparations should be underway
- Awaiting final forms and additional information

Transitional reinsurance fee

- Pay remaining 2014 fee if applicable
- Prepare to count, file and submit for 2015

Embedded out-of-pocket maximum

ACA legislative debate focused on full or targeted repeal

Full repeal

- Approved by House
- Defeated in Senate
- Provided for in budget resolution
- Growing focus on replacing, not simply repealing
- 2016 campaign attention

Targeted repeal

- Individual and employer mandates
- Medical device excise tax
- Independent Payment Advisory Board
- 40% excise tax

Other ACA issues getting attention; outcomes uncertain

30-hour rule/full-time (FT) employee definition

- ACA FT = 30 hr/week; Save American Workers Act = 40 hrs/week
- Approved by House, some bipartisan support

Embedded out-of-pocket maximum (OOPM)

- HHS guidance requires embedded individual OOPM for 2016
- Employers, insurers raised concerns with lawmakers

40% excise tax

- Repeal legislation introduced, some bipartisan support
- Other changes under discussion behind-the-scenes

Appropriations

- House, Senate committees voted to defund ACA
- Faces veto if approved by Congress

ACA legislative outlook

**Discussion likely;
Action possible**

Repeal medical device excise tax

Limit appropriations

IPAB? 30 hour rule? Others?

**Discussion likely;
Action unlikely**

Full repeal

Repeal 40% excise tax

Repeal employer, individual mandates

**Related topics and
possible vehicles**

Budget reconciliation

Appropriations or continuing resolution

Tax extenders

Wellness programs: guidance and legislation

EEOC proposed regulations: key issues

1. Some coordination with other wellness rules
2. Definition of voluntary program
3. Permission for financial incentives
4. Prohibition against other adverse actions
5. Need to ensure compliance with other EEO laws
6. Desire for transparency

Key takeaways

- Inconsistencies with HIPAA/PPACA rules
- 30% incentive based on self-only coverage
- Notice required

Wellness litigation and legislation

- *Preserving Employee Wellness Programs Act* (S.620/H.R.1189)
 - No ADA violation of awards comply with PPACA wellness limits
 - No GINA violation to collect information about family member's manifested disease or disorder
 - 180-day deadline to requesting, completing reasonable alternative standard or waiver permitted
- Sponsored by Sen. Lamar Alexander (R-TN) and Rep. John Kline (R-MN)
- Congress letting EEOC take lead – for now

Retirement Security

Retirement security discussions center on key questions

Are employees saving enough?

- Encourage more employers to offer plans – pooled arrangements, starter plans
- Encourage more employee participation – auto-enroll, PT coverage, non-employer plans
- Keep more money in plans – increase financial education, reduce leakage

Can employees make savings last through retirement?

- Encourage savings
- Provide lifetime income disclosure
- Encourage annuity and longevity options
- Improve financial education
- Address required minimum distributions

Savings, lifetime income legislation

Secure Annuities For Everyone (SAFE) Retirement Act

Sen. Orrin Hatch (R-UT)

- Open multiple employer plans; starter 401(k) plans
- Encourage automatic enrollment
- Simplify plan administration
- Longevity reforms for minimum distribution rules, lifetime income portability

Retirement Security Act

Sens. Susan Collins (R-ME), Bill Nelson (D-FL)

- Open multiple employer plans
- Encourage automatic enrollment
- Simplify plan administration
- Expand SAVER credit

Savings, lifetime income legislation on the table

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Lifetime Income Disclosure Act

Sens. Johnny Isakson (R-GA), Chris Murphy (D-CT); Rep. Luke Messer (R-IN)

- Annual statement to describe lifetime income stream from benefits accrued
- Secretary of Labor to issue model notice, prescribe assumptions

Targeted issues on table

Nondiscrimination for closed defined benefit plans

- Ongoing priority for plan sponsor community
- Unresolved concerns in Treasury Department guidance
- Continued push for legislative solution

Electronic disclosure

- Strong plan sponsor support for policy easing electronic communications
- Receiving Electronic Statements to Improve Retiree Earnings (RETIRE) Act would facilitate electronic disclosure of required plan communications
- Bipartisan support

DOL fiduciary rule

- Ongoing lawmaker attention to rulemaking content, process
- Committee-approved appropriations bill would defund rulemaking efforts

Retirement as revenue raiser possibilities

- **PBGC premiums**
- **Defined benefit funding rules**
- **Tax treatment of inherited IRA and retirement plan benefits**
- **Plan limits and tax incentives**

Executive Compensation

Compensation deduction limit, NQDC receiving attention

§162(m) \$1 million deduction limit

- Expand individuals, compensation, companies subject to limit
 - Former covered employees and family members
 - Commissions and performance-based compensation
 - Additional companies
- Proposals raised in multiple forms, legislative vehicles
- Could be attractive as revenue raiser for other legislation

Nonqualified deferred compensation

- Sen. Ron Wyden (D-OR) report about tax avoidance strategies
- Report contends NQDC unfair because benefit aimed at higher-income employees who have some control over timing of income inclusion
- Proposes
 - Including NQDC in income in year it vests
 - Imposing dollar cap on total NQDC
 - Imposing \$1 million limit on NQDC of former employees

Executive compensation areas of possible political attention

CEO pay ratio disclosure

- Burdensome Data Collection Relief Act (H.R.414) would repeal requirement
- SEC rulemaking activity could drive attention
 - Rule released as Congress was entering August recess
 - Opportunity for hearings, oversight, comment during fall legislative session

CEO/employee pay disparities legislation

- CEO-Employee Paycheck Fairness Act (H.R.620)
- Must meet pay fairness requirement to deduct performance-based compensation above \$1m for current or former officers and directors
- Pay fairness requirement – (1) average compensation for US employees exceeds inflation and productivity growth adjusted average for taxable year (\$118,450 in 2015) and (2) aggregate compensation not less than previous year
- Not likely to move forward; but possible campaign theme

Other activity

Tax reform and benefits interaction

Key Federal Tax Expenditures

Joint Committee on Taxation, August 5, 2014

Employer health plans	\$785
Health savings accounts (HSAs)	\$11.5
Defined benefit plans	\$248
Defined contribution plans	\$399
Saver's credit	\$6
Transportation benefits	\$26.3

Health, retirement top tax expenditures

- Tax expenditures affect tax rates
- Could raise revenue for other bills
- “Fancy loopholes”?

With reformed tax code

Implications

- **Competition for revenue**
- **Reduced incentives**
- **New benefits, compensation landscape**

Without reformed tax code

- **Attention to cost benefits tax preferences**
- **Drafting, scoring legislation to affect benefits**

Growing state and local attention to benefits

- **Health care**
 - Continued decisions related to PPACA
 - State-based fees and assessments on group-health plans
 - Medicaid and CHIP reform
- **Retirement**
 - Growing attention
 - Available (required?) for private-sector employees without plan
 - Details vary
 - Support from Obama administration
- **Paid leave**
 - Growing attention across states and localities
 - Support from Obama administration

Outlook

Legislative forecast evolving – and varies by issue



ACA

Ongoing attention will continue. Some action possible. Candidates starting to position for 2016.



Retirement legislation

Interest, but lack of time and consensus. Legislative vehicle needed. Revenue raisers may gain momentum.



Executive compensation

Possible discussion of SEC pay-ratio disclosure rule. Revenue raiser provisions could find legislative vehicle.



Tax reform and state/local

Tax reform decline could release action on other issues. State/local trend likely to grow. Additional issues could gain momentum.