Treasury nominees clear Finance Committee, but speedy confirmation not guaranteed

The Senate Finance Committee February 5 approved President Trump’s nomination of Michael Faulkender to be Treasury’s assistant secretary for economic policy and Michael Desmond to serve as chief counsel of the IRS and assistant general counsel at Treasury; but a senior Democrat on the panel expressed concerns that could prevent either from securing a quick confirmation by the full Senate.

This is the second swing at the Senate confirmation process for both nominees. President Trump tapped Faulkender and Desmond for the respective posts last year; but even though their nominations cleared the Finance Committee, they were never taken up on the Senate floor during in the 115th Congress and expired when that Congress adjourned early last month. The president renominated both men to the positions on January 16.

Faulkender’s nomination advanced by a simple voice vote, while Desmond’s nomination cleared the panel by a vote of 26-2.
Menendez: Salty over SALT deduction cap

Finance Committee Democrat Robert Menendez of New Jersey, who (along with Democrat Sheldon Whitehouse of Rhode Island) voted against advancing Desmond, has declared his intent to put a hold on Desmond’s nomination – for the second time in six months – when it is sent over to the Senate. Menendez is taking this action over a disagreement with IRS and Treasury guidance from last year that effectively shut down efforts in certain states to allow taxpayers to characterize certain state and local tax (SALT) payments as charitable contributions in order to circumvent the $10,000 annual cap on deductibility of state and local income and property taxes that was enacted in the 2017 tax cut law (P.L. 115-97).

The SALT deduction tends to be used more heavily in higher-taxed “blue” states such as New Jersey, New York, and California, and lawmakers in both parties who represent constituents in jurisdictions with expensive housing markets and steep property and income taxes have decried the cap as unfair to their constituents.

“I’ve made it very clear to the IRS that they have changed all of their positions that they previously held as it related to entities that have charitable contributions for public purposes and after upholding those for years in red states...all of a sudden when blue states do it it’s illegal,” Menendez told reporters after the committee hearing. Putting a hold on Desmond’s nomination “is our only tool to get them to move in a different direction,” he said.

The IRS’s policy on the SALT deduction also prompted Menendez to place a hold on Desmond’s nomination when it came before the full Senate last year, as well as on Charles Rettig’s nomination to serve as IRS commissioner, although Rettig was finally confirmed last September and sworn in in October. (For prior coverage, see Tax News & Views, Vol. 19, No. 27, Aug. 17, 2018; Tax News & Views, Vol. 19, No. 28, Aug. 31, 2018; and Tax News & Views, Vol. 19, No. 33, Oct. 5, 2018. For details on recent comments from President Trump about the possibility of changes to the SALT deduction cap, see separate coverage in this issue.)


Loosening holds?: Under current Senate rules, a hold, which can be placed by any senator, can be overcome with a successful majority vote; but this requires leadership to allot up to 30 hours of debate, which is a significant deterrent to floor action in many cases. To overcome this hurdle and allow quicker action on judicial and administrative nominations, Senate Rules Committee Chairman Roy Blunt, R-Mo., recently said his committee will likely take up a measure by the end of March to shorten the debate time for many, but not all, nominations. If Democrats do not support the change, Republicans could use a simple majority vote to change the rules – a move that has come to be known as “the nuclear option” because of its unilateral and extreme nature.

“We’re going to deal with this issue, I think,” Blunt told Politico January 28. “We’re going to try it [bipartisan] and I think our Republican members would want to see an effort...and we would want that to be a genuine effort. So, let’s see.”

Wyden: Wary over capital gains indexing

Also at the hearing, the Finance Committee’s ranking Democrat, Sen. Ron Wyden of Oregon, voted to approve Desmond but warned that he intends to fight any move by the administration to index capital gains to inflation – a change favored by some conservative economists, but which Wyden dubbed “a special break for the fortunate few.”

The Trump administration last year floated the idea of indexing capital gains through administrative action, and White House National Economic Council Director Larry Kudlow has revived that discussion in recent weeks. (For prior coverage, see Tax News & Views, Vol. 20, No. 5, Feb. 1, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190201_1.html

Wyden said he expects Desmond, if confirmed, would be involved in any such decision and warned that “[t]he administration can expect a fight if they go down this road.”

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Trump signals openness to revisiting SALT deduction cap

President Trump this week hinted that he could be “open to talking about” making changes to a provision in the 2017 tax cut law that capped the deduction for state and local taxes (SALT) paid by individual taxpayers at $10,000 per household.

Under prior law, taxpayers who itemized could deduct all their state and local income taxes (or sales taxes) as well as their property taxes paid against their federal tax liability. The new cap on that deduction, which was enacted as part of what is informally known as the Tax Cuts and Jobs Act (P.L. 115-97), became effective for taxable years beginning after January 1, 2018. The SALT deduction tends to be used more heavily in higher-taxed “blue” states such as California, New York, and New Jersey, and the limitation has raised concerns among lawmakers in both parties who represent constituents in jurisdictions with expensive housing markets and steep property and income taxes.

Trump told a group of Washington-based reporters for various regional newspapers February 6 that “[t]here are some people from New York who have been speaking to me about doing something about [the cap], about changing things. It’s been severe on them.” (His comments were reported in newspapers such as the Sacramento Bee and Stamford Advocate, and were also picked up by national outlets such as Politico and The Hill.)

A proposal in the House?

The president offered no details on the types of modifications he might consider. The Stamford Advocate reported that Trump noted that any legislative changes “would have to be started by Democrats in the House.”

According to the Sacramento Bee, a proposal from House Ways and Means Committee Democrat Bill Pascrell of New Jersey to address to the SALT deduction cap is currently in the works.

“The SALT cap is hurting middle-class families in New Jersey, hurting the housing market, and imperiling local communities’ finances,” Pascrell said in a statement provided to the Bee in response to the president’s comments. “If Trump is truly interested in fixing SALT, he can start by supporting a bipartisan bill I’ll be introducing with my colleagues very shortly.”

No love in the Senate

But any such legislation that clears the House appears likely to get a frostier reception in the Republican-controlled Senate. A spokesperson for Senate Finance Committee Chairman Charles Grassley, R-Iowa, said in a statement issued February 7 that Senate taxwriters “won’t be revisiting the SALT deduction reforms made in the Tax Cuts and Jobs Act under Chairman Grassley’s leadership.”

“It’s ironic that the same Democrats who criticized the Tax Cuts and Jobs Act for supposedly benefiting only the wealthy are now advocating for a change to the law that would primarily benefit the wealthy,” the statement said.

Pascrell challenged that assertion, telling reporters that “[t]he average person makes $200,000 who applies for this deduction” – an income level that he said applies to 30 percent of homeowners in New Jersey.

(The SALT deduction cap also was a topic of discussion this week at a Finance Committee hearing to consider the president’s nominees to fill two long-vacant posts at the IRS and Treasury Department. See separate coverage in this issue for details.)

Limited tax discussion in State of the Union message

The president’s comments on the SALT deduction came just one day after he delivered a State of the Union address in which he extolled in general terms the economic impact of some of the provisions in the 2017 tax cut law – notably, the reduction in income tax rates for businesses and individuals, expansion of the child tax credit, and new limits on the estate tax. But he surprised many observers by not rolling out any new tax proposals.

URL: https://www.whitehouse.gov/briefings-statements/remarks-president-trump-state-union-address-2/
Ways and Means Committee examines retirement security crisis

In its first tax-focused hearing of the 116th Congress, the House Ways and Means Committee on February 6 examined methods of boosting private retirement savings and shoring up Social Security – a top priority for Chairman Richard Neal, D-Mass., and, at least with respect to private savings, one some observers view as potentially ripe for bipartisan action this year.

Neal opened the hearing by describing some of the factors at play – ones generally acknowledged and appreciated by members on both sides of the aisle – that together are contributing to low retirement savings rates in the US. Those factors include the diminishing role of so-called “defined benefit” plans (that is, private pensions) among employer benefit offerings; relatively low employee participation rates in “defined contribution” plans such as section 401(k) accounts, particularly among lower-income workers; concerns about financial costs and regulatory complexity that can deter some smaller businesses from establishing retirement savings plans; increased longevity, which means retirees have to stretch out their savings over longer retirement spans; and the projected insolvency of the Social Security trust fund within the next 15 years.

“These facts underscore that the retirement crisis in America is real and will only worsen unless we strengthen Social Security, make saving easier, and do more to encourage employers to offer retirement plans,” Neal said.

Most of the discussion in the hearing focused on policies included in a handful of bills that are highlighted here.

Retirement Enhancement and Savings Act

During the hearing, many bipartisan accolades were showered on the Retirement Enhancement and Savings Act of 2019 (RESA, H.R.1007), which was reintroduced that same day by Ways and Means members Ron Kind, D-Wis., and Mike Kelly, R-Pa.

Perhaps the two components of RESA that received the most attention from taxwriters and witnesses were provisions that would relax the multiple employer plan (MEP) rules and a separate provision that would grant safe harbor protection to an employer with respect to its selection of an insurer to guarantee benefits under a lifetime income option offered within its retirement plan.

Changes to multiple employer plan rules: RESA would ease administrative burdens for employers participating in MEPS by eliminating the so-called "one bad apple" rule under which a MEP defined contribution plan can become disqualified or lose other tax-favored status because one or more participating employers fails to take certain required administrative actions with respect to the plan. The measure also would encourage more businesses to participate in MEPS by making it easier for employers that are not in a common industry or do not share some other employment-based nexus to form “pooled” retirement plans that would be considered qualified MEPS under the Employee Retirement Income Security Act of 1974 (ERISA) rules. This concept of allowing so-called "open" MEPS is broadly supported as a way to encourage smaller businesses to offer retirement plans by cutting back on the cost and complexity of doing so.

(Neal also touted his recently introduced Rehabilitation for Multiemployer Pensions Act (H.R. 397), which is designed to provide loan funding to troubled multiemployer defined benefit plans through a new “Pension Rehabilitation Administration” housed within the Treasury Department.)

Other provisions: RESA also would make a number of changes in the area of retirement plan administration (for example, modifying nondiscrimination rules to protect older, longer-serving participants and clarifying the retirement income account rules relating to church-controlled organizations) that are also found in the GOP-sponsored Family Savings Act (more on that below). The bill would also increase the credit limit under section 45E(b) for small employer pension plan start-up costs and create a new tax credit (to be included as a general business credit) for employers who include an automatic contribution arrangement within their qualified retirement plan.
Senate counterpart: During the 115th Congress, then-Senate Finance Committee Chairman Orrin Hatch, R-Utah, and ranking Democrat Ron Wyden of Oregon reintroduced companion RESA legislation in the Senate that was largely identical to a bill that was passed unanimously by the Finance Committee a year earlier but never taken up by the full Senate. (The reintroduced bill was never taken up in the Finance Committee in the 115th Congress.)

A Senate companion bill has not yet been introduced in the 116th Congress.

Family Savings Act

Several GOP members of the committee also plugged the Family Savings Act (H.R.6757), which they passed as part of their “Tax Cuts 2.0” effort during 2018 when Republicans still controlled the House of Representatives. (For prior coverage, see Tax News & Views, Vol. 19, No. 30, September 14, 2018.).


Among other changes, that bill would have allowed open MEPs, relaxed required minimum distribution requirements for low-balance retirement accounts, eliminated the maximum age for traditional IRA contributions, expanded section 529 accounts to allow distributions to pay for home schooling expenses and student loans, and created a new form of savings vehicle called a “Universal Savings Account” that would have granted tax-deferred earnings on nondeductible contributions up to $2,500 a year with the flexibility to withdraw amounts at any time for any purpose.

Although it is in many ways similar to current and past RESA legislation, several of the proposals in the Family Savings Act – including those aimed at allowing section 529 plan funds to be used for home schooling expenses and creating Universal Savings Accounts – are generally opposed by Democrats. (Specifically, Democrats have argued that these provisions, at least as structured under last year’s GOP bill, do not include an income cap for those eligible to contribute and thus would mainly benefit upper-income taxpayers.)

Social Security 2100 Act

Social Security – and its impending insolvency – was also a major focus of the hearing. According the most recent annual report of the program’s trustees, the combined Old-Age and Survivors and Disability Insurance (OASDI) trust fund will be unable to pay full benefits in 2034. (The retirement and disability components of Social Security are technically separate entities. In recent years, lawmakers have transferred amounts from the retirement and survivors trust fund to the disability trust fund to stave off cuts to disability insurance beneficiaries). By 2034, absent action by lawmakers to shore up its finances, the program’s trustees project that benefits would have to be cut by roughly 21 percent. At that time, with the trust fund depleted, the program would only be able to pay benefits commensurate with payroll tax revenue and income taxes assessed on certain Social Security benefits.

URL: https://www.ssa.gov/OACT/TR/2018/

As was discussed at the hearing, Social Security’s imbalances are primarily a function of demographics. At the program’s inception, there were roughly 16 workers paying into the system for every person drawing benefits, but today there are only about 2.8 workers per beneficiary. Within roughly 30 years, it is projected there will be only two workers per beneficiary.

With an eye toward closing this funding gap, Ways and Means Democrat John Larson of Connecticut recently introduced the Social Security 2100 Act (H.R. 860) – legislation that Larson says would make the program solvent for the next 75 years (a metric often cited by the trustees) and beyond.

Among other provisions, Larson’s bill would:

- Increase retirement benefits for all recipients by roughly 2 percent.
- Revise the annual inflation index for benefits to one that more heavily weights health care and other expenses more commonly incurred by seniors.
- Increase the thresholds for non-Social Security income above which beneficiaries are subject to income tax on their Social Security benefits.
- Phase-in an increase in the payroll tax rate such that by 2043 employees and employers would each pay 7.4 percent on taxable wages, up from 6.2 percent today.
• Apply the payroll tax to wages above $400,000. (This would be in addition to the current tax on an indexed wage base that, in 2019, maxes out at $132,900. As a result, the provision would create a so-called “doughnut hole” within which wages would not be subject to payroll tax).

• Combine the retirement and survivors (OAS) and disability insurance (DI) trust funds into a single trust fund, thereby eliminating the potential need for transfers between the two.

**No changes in retirement age:** One proposal that Rep. Larson’s bill does not include is an increase in either the full or early retirement age. Under present law, reduced retirement benefits may be claimed early, at age 62. The full retirement age is subject to an increase that is being gradually phased in until it reaches 67 for those born in 1960 or later.

This issue is sure to be a sticking point in any future effort to reform Social Security.

During the hearing, Republicans generally argued that a further phased increase in the retirement age is warranted to better reflect increases in longevity.

"Life expectancy has dramatically increased so perhaps we should consider raising the retirement age," said Rep. Tom Rice, R-S.C.

Democrats, however, generally argue that increasing the retirement age would disproportionately impact lower-income workers who tend to have shorter life spans on average, as well as workers in high-risk or physically demanding jobs (for example, law enforcement and construction) who may not be able to work into their 70s.

**Payroll tax hike v. benefit reduction:** Not surprisingly, another sticking point revolves around the payroll tax – with GOP members generally opposed to raising the rate or the wage base on which it is applied, particularly if it is not paired with some combination of limiting benefits and raising the retirement age.

"Mr. Larson’s bill…is simply a tax increase," noted Rep. Rice, after enumerating a handful of ways in which benefits could be reduced, such as slowing the annual inflation index or basing initial benefit amounts on the average of a greater number of years’ earnings.

**Action ahead?**

Late last year, during the post-election “lame duck” session of the 115th Congress, there was some hope and speculation that a retirement-related package could move as part of a broader year-end tax bill (that may have also included, for example, all or some of the “tax extender” provisions that lapsed at the end of 2017 and, potentially, certain technical corrections to the 2017 tax reform bill) or in conjunction with appropriations legislation that was due by December 21. Around that time, then-Ways and Means Committee Chairman Kevin Brady, R-Texas, floated several iterations of year-end tax legislation, all of which included changes in retirement policy.

While never a sure bet for enactment late last year, supporters of retirement reform saw their hopes officially dashed when an appropriations deal never materialized and the government went into partial shutdown on December 22. At that point, nearly all legislative activity ground to a halt.

However, with the tax extenders still unresolved for tax year 2018, some lawmakers remain optimistic that a tax vehicle may still emerge this year that can carry some retirement policy changes over the finish line – particularly those with longstanding bipartisan support. (This would likely not include Social Security reform, which seems out of reach given the highly partisan nature of the current congress.)

"Pensions have had a long history of being a bipartisan issue. Now more than ever, it’s time to put politics aside and really work together to address this crisis,” Chairman Neal noted at the hearing.

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