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If you have questions, please contact your regular Groom attorney or one of the attorneys listed below:

Michael P. Kreps
mkreps@groom.com
(202) 861-5415

Rachel Leiser Levy
rlevy@groom.com
(202) 861-6613

Ryan C. Temme
rtemme@groom.com
(202) 861-6659

Brigen L. Winters
bwinters@groom.com
(202) 861-6618

House GOP Report on Poverty Issues Includes Retirement Policy Proposals

Earlier this year, Speaker of the House Paul Ryan (R-WI) announced the establishment of six task forces (poverty, taxes, healthcare, national security, regulations, and constitutional authority) charged with developing a comprehensive vision of domestic and foreign policy for Republicans in the next Congress. On June 7, 2016, the Task Force on Poverty, Opportunity, and Upward Mobility released its report (the "Poverty Report"), which includes several proposals related to the private retirement system. Specifically, the report calls for the following:

- Preventing a Pension Benefit Guaranty Corporation ("PBGC") Bailout. For many years, PBGC has projected long-run deficits. Although the single-employer program's fiscal trajectory has improved in recent years, the multiemployer program projects increasing deficits and a high likelihood of eventual insolvency. The Poverty Report calls for taking steps to shore up PBGC's finances to prevent a taxpayer funded bailout, including through the setting of premiums at "levels that reflect the PBGC's financial risk." Importantly, the Poverty Report also squarely rejects an Obama Administration proposal to allow "federal bureaucrats" at PBGC to set premium rates, arguing that such a move would only drive more employers out of the system. It is notable that Republican leadership has come out against ceding premium setting authority to PBGC, given that the idea was previously proposed by Republican President George W. Bush.

- Pension Funding. The Poverty Report calls for adopting pension funding policies to secure pension promises that have been "imperiled" by the recent recession and sluggish economy. The Poverty Report is light on specifics and does not explain how the funding rules should be reformed for either single-employer or multiemployer pension plans. However, it does say that "changes to pension policies should be in the best interest of workers, employers, and retirees, rather than funding Washington's spending priorities." The implication of that language is that Republican leadership is rejecting the recent practice of using revenue generated by pension law changes (*e.g.*, PBGC premium increases and pension funding stabilization) to pay for unrelated spending (*e.g.,* highways and student loans). That sentiment is consistent with recent bipartisan legislation introduced by Representatives Renacci (R-OH) and Pocan (D-WI) – the Pension and Budget Integrity Act (HR 4955) – which would take PBGC premiums off-budget for purposes of Congressional scoring, meaning legislation to increase premiums would no longer be viewed as raising revenue.

- Fiduciary Rule. The Poverty Report calls for unwinding the Department of Labor's rule to redefine who is a fiduciary by virtue of providing investment advice to

certain retirement and health plans (the "Fiduciary Rule"). Republicans have been uniformly opposed to the Fiduciary Rule since it was first proposed in 2010 and recently passed a resolution to overturn the recently issued final rule. (The resolution was vetoed by the President on June 8.) The House has also considered several different bills that would override the Fiduciary Rule, and Representative Jeb Hensarling (R-TX) – Chairman of the House Financial Services Committee – included one of those bills –the Retail Investor Protection Act (H.R. 1090) – in his recently-released proposal to replace the Dodd-Frank Act.

- Open Multiple Employer Plans ("MEPs"). The Poverty Report backs efforts to expand the use of open multiple employer plans (sometimes referred to as "pooled employer plans"). Many see the MEP model as potentially driving down plan-related costs and making it easier for small employers to offer a 401(k) plan. However, the Department of Labor takes the position that employers can only participate in a MEP if they have a "commonality of interests" in addition to the mere participation in a retirement plan. There are a number of bipartisan bills in Congress to eliminate the commonality requirement (among other things), and President Obama made a similar proposal in his most recent budget. Given the breadth of support for MEPs on both sides of the aisle, it seems likely that some version of MEP legislation will be enacted either in this Congress or the next.

- Eliminating Red Tape. The Poverty Report proposes to eliminate red-tape on a variety of issues affecting retirement plans. In particular, the report calls for making it easier for employers to provide disclosures electronically. It also criticizes the disclosure requirements in the Department of Labor's Best Interest Contract Exemption, a prohibited transaction class exemption issued in conjunction with the Fiduciary Rule.

The inclusion of these policy proposals in the Poverty Report is important because it identifies House Republican legislative priorities for the coming years. We expect the other task forces (including the health care task force) to release their reports in the next several weeks, and it is likely that the reports will include additional proposals affecting the private health and retirement systems.