NAIFA GovTalk

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Ways & Means Chairman Introduces New Tax Bill

House Ways & Means Committee Chairman Rep. Kevin Brady (R-TX) introduced a new tax bill (H.R.88) just after Thanksgiving. The bill includes a retirement savings package that represents a significant win for NAIFA. It is currently pending House and then Senate action.

Introduced on November 26, the bill includes what Rep. Brady believes is agreement between House and Senate GOP negotiators who are reconciling the differences between the Retirement Enhancement Savings Act (RESA) and the House-passed Family Savings Act. The package contains the provisions NAIFA supports and excludes the one that NAIFA disliked. Here's what is in the retirement savings section of H.R.88.

- LIDA: H.R.88 includes the RESA provision that would require employer plan sponsors to provide annual projections illustrating how much monthly retirement income, payable for life, would result from a plan participant's current account balance. This "lifetime income disclosure act" proposal—one strongly supported by the industry—provides that the Department of Labor (DOL) would issue regulations detailing the assumptions needed for employer plan sponsors to calculate the monthly income projections. It also includes protection for plan sponsors against future claims of fiduciary duty violation in case the projections turn out to differ from actual monthly income available at retirement. DOL would be required to issue a model disclosure form.

- Open MEPs: Also, in the package are the industry-supported multiple employer plan (MEP) changes that would eliminate the "one bad apple" rule (the rule that would disqualify the entire plan if one employer's actions or inactions would be disqualifying) and removes the nexus rules (employer commonality) so that allow more employers would be interested in adopting into a multiple employer plan.

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- Safe Harbor: The Brady proposal would create a new plan safe harbor that would allow an employer to escape discrimination rule testing if it provides an automatically escalating contribution for non-highly compensated employees (the safe harbor would start with a four percent of compensation contribution).

- RMDs: A provision in H.R.88 would eliminate the need to pay required minimum distributions (RMDs) on aggregate retirement savings account balances of $50,000 (indexed) or less.

- IRAs: H.R.88 would eliminate the age restriction on making contributions to traditional IRAs.

- Stretch IRAs: Excluded from the bill is the RESA provision that would have required most heirs of IRAs and 401(k) plans to pay tax on their inherited retirement savings plan amounts in excess of $450,000 within five years of inheriting.

- Annuities: The bill would make it easier for plan sponsors to offer lifetime annuities as a plan option—relevant provisions would relieve plan sponsors from attesting to the long-term financial viability of the insurer when they offer an annuity, if certain requirements for making the choice of an annuity are met and would allow portability of a lifetime annuity.

- Tax Credits: The bill would increase—to $500 for three years—the tax credit available to plan sponsors if the plan includes an automatic escalation clause.

- Auto Enrollment Cap: H.R.88 increases the cap on automatic enrollment safe harbor plans from 10 percent to 15 percent.

Other provisions in H.R.88 would provide relief from discrimination testing for partially frozen defined benefit plans; allow plan amendments made prior to the plan's filing date to take effect in the year in which the amendment was made; and allow use of retirement plan money (penalty tax-free) for birth or adoption expenses. Also included is an increase in the Pension Benefit Guaranty Corporation (PBGC) variable premium rate.

In addition to the retirement savings provisions, H.R.88 includes a handful of technical tax law corrections, extensions of certain (largely energy-related) expired or expiring tax provisions, Internal Revenue Service (IRS) reforms, and Tax Court rules changes.

Prospects: It appears unlikely at this point that H.R.88 will pass both the House and Senate prior to the 115th Congress' *sine die* (for good) adjournment (currently expected on or around December 21). However, supporters are trying hard to persuade Congressional leadership to include the ***retirement provisions*** in the must-pass appropriations (spending) bill that will likely mark the last legislation passed by the 115th Congress.

As 115th Congress Ends, 116th Congress Takes Shape

The incoming 116th Congress, which convenes January 3, 2019, will be a very different body from the outgoing 115th Congress. Here's what we know about who will be leading on our issues next year.

Senate: All the November Senate elections are now final, and the GOP has grown its majority from the current 51 seats to 53 seats. Sen. Mitch McConnell (R-KY) looks sure to be re-elected majority leader. Leading the tax-writing Finance Committee will be Sen. Charles Grassley (R-IA). In charge at the Banking Committee will be Sen. Mike Crapo (R-ID).

On the Democratic side, it will be Minority Leader Sen. Chuck Schumer (D-NY). Continuing as the ranking member on the Finance Committee will be Sen. Ron Wyden (D-OR). At Banking, the returning ranking member will be Sen. Sherrod Brown (D-OH).

Committee memberships are still fluid. Because the Republicans gained seats after the November elections, the balance of Republicans vs Democrats on each committee will change. Plus, committee members retired or lost their elections, So, we know there will be new members on these committees, but we don't yet know how many from each party, or who the new members will be.

House: Democrats netted 40 additional seats in the House of Representatives, thereby wresting control of that chamber from the GOP. That means more Democratic seats on each committee (although the exact number and identity of new committee members won't be known until January). It also means that Rep. Nancy Pelosi (D-CA), the current Minority Leader, is likely to become

Speaker of the House. Rep. Pelosi does face a challenge in winning that post, but as yet no individual Democrat has emerged to contest her election. Washington insiders believe she will be the Speaker in the 116th Congress.

The likely chairman of the tax-writing Ways & Means Committee will be Rep. Richard Neal (D-MA), while the ranking member will almost certainly be Rep. Kevin Brady (R-TX). At the Financial Services Committee, Rep. Maxine Waters (D-CA) is poised to take the gavel. Ranking member will likely be Rep. Patrick McHenry (R-NC).

Prospects: NAIFA has strong relationships, at both the grassroots and the Washington levels, with all of these key lawmakers. Those relationships will help us pursue our legislative agenda when the 116th Congress gets going next month. Of course, there may well be issues on which we disagree and will have to fight—but we know we are in an excellent position to make sure our concerns are heard.

NAIFA-New Jersey Testifies in Opposition to Fiduciary Rule Proposal

The state of New Jersey is considering a rule to impose fiduciary duty on all financial planners in the state. NAIFA trustee and NAIFA-New Jersey Past President Dennis Cuccinelli testified against the proposal at one of two conferences on the issue held by the state last month.

Cuccinelli told the New Jersey Division of Consumer Affairs personnel that the proposed fiduciary regulation would hurt middle income investors. A uniform fiduciary standard would result in a system where to get advice an investor would almost certainly have to pay a fee. Many middle-income savers—those who most need advice—simply cannot afford to pay these fees, Cuccinelli said. He also pointed out that the state acting prior to federal action—expected from the Securities and Exchange Commission (SEC) in 2019—would create a crisis. "What are advisors to do when federal and state requirements conflict with each other and they are placed in the difficult, if not impossible, position of deciding how to comply with the differing and conflicting requirements," he said.

The New Jersey proposal would impose a best interest of the client fiduciary standard on all investment professionals in the state. The New Jersey Division of Consumer Affairs Notice of its intention to offer a fiduciary rule proposal stated, "It would make it a dishonest or unethical business practice for failing to act in accordance with a fiduciary duty when recommending to a customer an investment strategy, or the purchase, sale, or exchange of any security or securities, or providing investment advisory services to a customer."

***Prospects*:** The fiduciary issue will be hard-fought in a number of states as well as before the SEC and possibly the Department of Labor (DOL) next year. The SEC and DOL are already working collaboratively on a new fiduciary standard. It is as yet too soon to predict what the new standard will look like, although it appears highly likely that there will be a new standard.