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Lame Duck 115th Congress to Tackle Retirement Savings, Government Spending

Before the new 116th Congress takes over in January, the lame duck 115th Congress must fund a big chunk of the government by December 7. And, there is considerable anticipation for a lame duck tax bill designed, among other things, to encourage more retirement savings.

Current lawmakers—including the dozens who lost their reelection bids or who are retiring at the end of this year—returned to Washington November 13 to tackle an intense one-month lame duck session during which they must approve funding for about one third of the federal government. Another key lame duck session agenda item is a tax bill that is expected to include technical corrections, extenders and a retirement savings package.

The tax legislation, if it comes together, is expected to make technical (not policy or substantive) corrections to existing tax law, to extend a number of (unrelated to insurance and advisors interests) expiring tax rules, and to encourage more retirement savings.

The retirement savings package looks to blend at least some of the provisions in the NAIFA-supported Retirement Enhancement Savings Act (RESA) and the House-passed Family Savings Act (H.R.6757). Among the provisions that enjoy enough bipartisan, bicameral support that it appears possible they would be included in the blended package are:

- Open MEPs—Industry-supported provisions that would repeal the "one-bad-apple" rule that makes all multiple employer plan (MEP) sponsors subject to disqualification of the plan when one MEP employer/sponsor violates the rules, and expand the nexus (commonality of business interest) rules to allow less restrictive access to MEP participation

- Elimination of age restrictions on making contributions to IRAs

- Exempting aggregate retirement account balances of $50,000 (indexed) from minimum required distribution rules

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- Fiduciary protection for plan sponsors that offer a lifetime annuity option
- A new safe harbor plan design that would trade elimination of discrimination rule testing for more generous contributions on behalf of non-highly compensated employees—details of a new safe harbor are subject to negotiation, but there appears to be considerable support for the concept.

Other issues that will be negotiated as lawmakers put together a final package include whether to require employers to illustrate lifetime income amounts based on current account balances (a version of the industry supported Lifetime Income Disclosure Act, or LIDA); and a variety of streamlined notice and disclosure rules, including whether to allow plan sponsors to meet their disclosure obligations via electronic (website and/or email) means.

A set of provisions in the Family Savings Act—the Universal Savings Account (USA) rules—are also in play but may not get into the final package. The principal sponsor of the USA proposal Rep. David Brat (R-VA), lost his reelection bid. His USA proposal would allow up to $2500 annually in after-tax contributions to a special account with tax-free earnings and tax-free (for any reason at any time) withdrawals is controversial, especially in the Senate. His imminent departure from Congress could influence whether to accept or reject inclusion of the USA proposal in the final retirement savings package.

Prospects: It is possible that by the end of the lame duck session (currently projected to be December 13), lawmakers will add the tax bill that includes the retirement savings package to the must-pass spending bill. However, it is just as possible that the tax legislation will be deferred to 2019, when Democrats will control the House. It is simply too soon to predict the outcome, but we will, of course, keep you posted.

Lawmakers Begin to Identify 2019 Priorities

Leaders of the incoming 116th Congress are beginning to identify their legislative priorities for next year. Whether the Democratic-controlled House can compromise with the GOP-controlled Senate, or Congress with the President, remains to be seen. But action—even if it falls short of enactment—is expected on a plethora of issues of importance to NAIFA members and their clients. They range from tax to health insurance to financial services regulation.

Taxes: There is substantial bipartisan, bicameral interest among lawmakers and with the President on putting together a bill to provide tax relief for the middle class. But there is nowhere close to an agreement on how to do it. Generally, Democrats would like to pay for middle class tax relief by increasing the corporate tax rate—perhaps from the current 21 percent to 25 to 27 percent. And the President has said he would consider "an adjustment" in corporate rates if it resulted in middle class tax relief.

However, Republicans—who still control the Senate—are resistant to the idea. Whether a compromise is possible will depend on the extent and structure of the middle class tax cuts proposed. (Among the most-mentioned ideas is elimination of the limit on the state and local tax (SALT) deduction.) But Washington insiders are not optimistic about prospects for this type of tax bill.

Among the issues that Republicans and Democrats alike would like to address is infrastructure—federal spending for repair/rebuilding/new construction on roads, bridges, airports, ports and the like. An infrastructure package will also pull in taxes—as a way to pay for these projects. This will compete with the desire to do middle class tax relief, and with tax policy in general. Again, absent specifics about the size and nature of an infrastructure package, it's impossible to assess prospects for one. But it's one of a handful of areas where both parties in Congress and the Administration say they may be able to work together in 2019.

Also, there is growing pressure to fix technical problems with last year's Tax Cuts and Jobs Act (TCJA). Even if the 115th lame duck Congress succeeds in addressing some of the TCJA's technical issues, no one expects a lame duck tax bill to resolve all of them. So, expect a technical corrections bill early in 2019, after a series of hearings in the House on TCJA's problems (from the Democrats' perspective).

Retirement savings: Retirement savings is a top priority of incoming Ways & Means Committee Chairman Rep. Richard Neal (D-MA). It is likely to be among the first legislative initiatives the House tax-writing committee takes up. Issues not resolved in the lame duck retirement savings package (if one passes) will come up early. Look to the provisions in the Retirement Enhancement Savings Act (RESA) that remain unpassed as of 2019 – including, likely, an automatic enrollment package – as a centerpiece of a retirement savings bill.

Senate-side, there is considerable interest in retirement savings provisions, especially among Senate Democrats, Sen. Charles Grassley (R-IA) has accepted the Finance Committee's top spot replacing retiring Chairman Orrin Hatch (R-UT) in January. It is unclear what priority Sen. Grassley will assign to retirement savings issues, or the degree to which the prospective chairman will work closely with ranking member Sen. Ron Wyden (D-OR). So at this point it is difficult to assess Senate interest in going further than RESA on retirement savings legislation.

Health: Democratic control of the House of Representatives has changed the landscape for health-related legislation. Health will still be a top-tier issue, but the focus will shift. Senate Majority Leader Sen. Mitch McConnell (R-KY), who will keep his job next Congress, has already said efforts to repeal the Affordable Care Act (ACA) are "off the table" given Democrats' control of the House. But both parties are likely to try to move legislation to make it clear that insurance companies may not use preexisting conditions in considering whether to offer health insurance. This was a top-tier issue during the elections and Republicans are as interested in protecting people with preexisting conditions as Democrats are. But once again the “how” of addressing this issue will complicate action on it.

There is also some bipartisan support for changing the ACA’s definition of full-time work from 30 hours/week to 40 hours/week, and so that issue could get some traction as both House Democrats and Senate Republicans look at fixing problems with the ACA. But chances have dimmed for suspending the employer assessments for failure to offer qualified affordable health insurance to all full-time workers.

Further delay of the Cadillac tax (a tax on providers of health insurance that exceeds ACA-set maximum premium levels) is possible, but it is also possible that an expensive effort to bring down the cost of prescription drugs, or further tackle the opioid epidemic (which will likely have to be offset), will squash what has been bipartisan support for delaying imposition of that tax.

Labor: Democrats may wield some of their new power in the House by proposing labor-friendly agenda items like expanding overtime pay eligibility, raising the federal minimum wage, and or requiring employers to offer paid sick time. However, Republicans in control in the Senate, not to mention the President, are likely to block most if not all of these efforts.

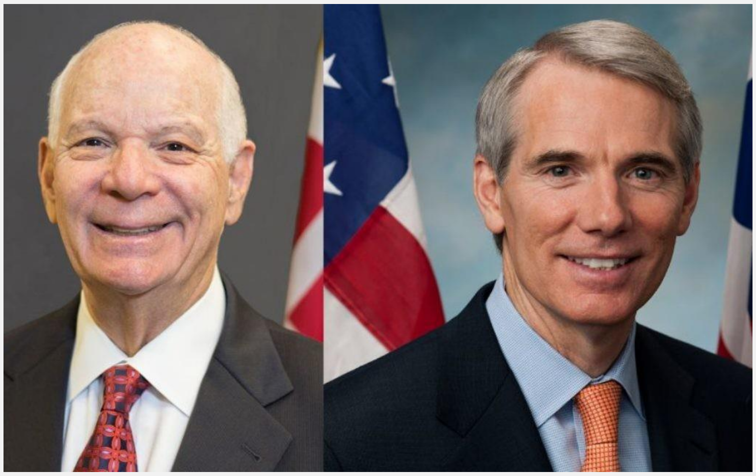
The House committee with jurisdiction over these issues is likely to be renamed the Education and Labor Committee (from the GOP’s preferred name, Education & the Workforce). It will be chaired by Rep. Bobby Scott (D-VA), while the Senate committee of jurisdiction (Health, Education, Labor and Pensions, or HELP) will be chaired by Sen. Lamar Alexander (R-TN). Both chairs are likely to be more focused on education than on labor issues, but Washington insiders do expect at least an attempt at action on some of these labor issues.

Fiduciary/Securities: Whether Congress tackles the fiduciary issue—the appropriate standard of care to impose on financial planners—will depend, to a significant degree, on what the agencies propose on the issue. Currently, the Securities and Exchange Commission (SEC) is working—in cooperation with the Department of Labor (DOL)—on a standard of care rule. DOL may also revive its rulemaking on the fiduciary issue, although they will not be permitted to propose something that is no more than a modification of its now-dead (killed by the courts) fiduciary rule. So, while the fiduciary issue remains primarily a regulatory initiative, Congress may get involved, especially if House Democrats don’t like what the SEC (or the DOL) proposes.

Other issues will surely pop up as the 116th Congress gets underway. Of particular concern is the potential for tax proposals aimed at offsetting the cost of other new proposals (or to reduce a burgeoning deficit). It is definitely a time to stay tuned and watch closely.

Prospects: President Trump talks regularly about his ability to make a deal, and his willingness to do so—even with the Democrats. Lawmakers are talking about working together. Still, the political atmosphere on Capitol Hill did not improve with the November election results, nor has the President suggested anything that will likely move House Democrats to reach out to him on legislative issues. Thus, while it is certain that legislation will pass (the government will need to be funded and other priorities will emerge), most insiders are betting on more gridlock on most legislative initiatives. This will only increase if, as expected, House Democrats launch investigations into the President’s business dealings and/or into the Trump Administration and its policies.

Two Key Senators Float New Retirement Savings Plan Proposal



On October 23, a bipartisan pair of Senators steeped in retirement savings history floated a new retirement savings plan. The “Portman-Cardin” plan – named for its sponsors, Sens. Rob Portman (R-OH) and Ben Cardin (D-MD) – includes many NAIFA-supported Retirement Enhancement Savings Act (RESA) and House-passed Family Savings Plan (H.R.6757) provisions, as well as new proposals.

Among the 54 provisions contained in the draft Portman-Cardin plan are:

- An increased (from 50 percent to 75 percent of the initial cost) start-up tax credit for employers with fewer than 25 employees that establish a new retirement plan
- A tax credit for plans with fewer than 100 participants where employers make matching contributions for non-highly compensated employees automatically enrolled in the company-sponsored plan
- A provision making refundable the existing $2,000/year tax credit for contributions to qualified retirement plans
- A phased-in increase in the age at which distributions from qualified plans must be taken from 70 ½ to 73, and then pegging it to life expectancy after 2030
- A new three-year $500 tax credit for plans that automatically re-enroll participants at least every three years
- Authority for employers to make matching contributions to employees paying off certain student loans
- Permission to plan sponsors to offer “minor” incentives (e.g., a $25 gift card) to encourage employee participation in retirement plans
- Authority for plan participants to move lifetime income streams generated by an annuity to an IRA if their plan sponsor drops the annuity
- A reduction of the penalty for failure to comply with minimum required distribution (MRD) rules from 50 percent to 25 percent
- Suspension of the MRD rules for aggregate retirement savings account balances of $100,000 or less

Sens. Portman and Cardin say they will introduce their new retirement savings plan during the lame duck session of the 115th Congress. They also promise to work to have its provisions included in the negotiations on a lame duck tax bill that would include a retirement savings package (RESA and the Family Savings Act).

Prospects: It is unlikely Congress will act on the Portman-Cardin bill during this lame duck session of the 115th Congress. But it is probable it will be re-introduced early in the 116th Congress and will be in play during retirement savings plan debates then.

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