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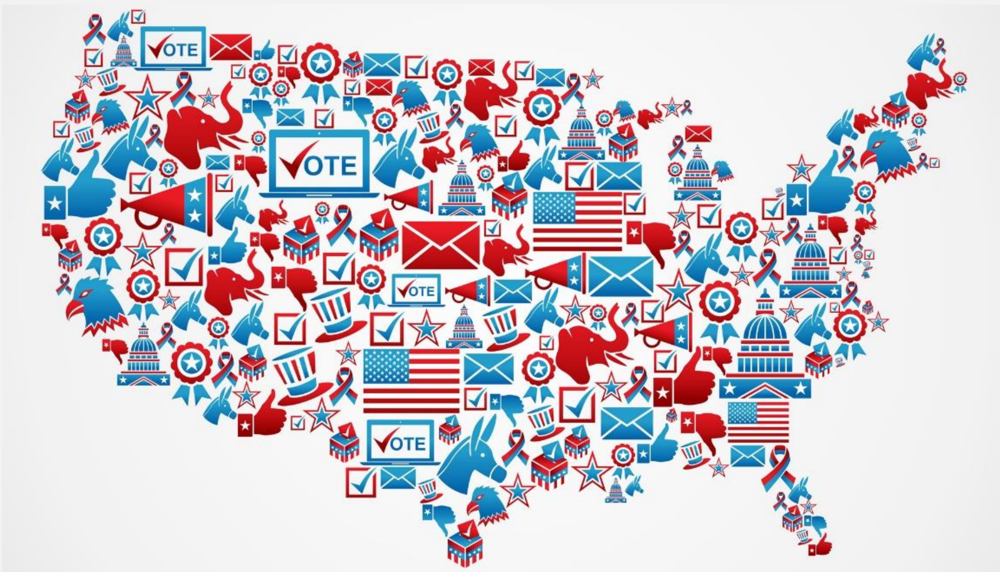
House Members Hit Campaign Trail, Leaving Much to Do in November



The House of Representatives left Washington September 28, freeing its members to head home to campaign ahead of the November 6 elections. House lawmakers finished a number of important initiatives—including government funding until at least December 7. But the House also left a number of high-profile issues, including three tax reform/cuts bills (see story below), for the lame duck session that starts November 13. The Senate left on October 12.

Both the House and Senate approved government spending legislation that funds more than 2/3 of the federal government for all of fiscal year (FY) 2019, and the rest through December 7, 2018. For the first time in years, Congress agreed on funding for the Departments of Health & Human Services (HHS), Labor (DOL), Education and Defense. The agreement resulted in part from lawmakers' decision to leave out of the funding bill contentious policy riders—provisions that trigger partisan struggle on such high-profile issues as abortion and Affordable Care Act (ACA) regulation. Also contributing to the successful compromise was the decision to combine HHS/DOL and Defense funding in just one bill.

Where policy disagreements could not be resolved (or ignored), Congress deferred the dispute resolution until after the mid-term elections by approving temporary funding (at current year levels until December 7) for the parts of government that were not covered by full FY 2019 appropriations legislation. Between November 13 and December 7, the lame-duck 115th Congress will debate the most high-profile of these issues – funding of the southern border wall – in the Department of Homeland Security (DHS) bill.

Prospects: It will be the current Congress (not the Members who will be elected November 6) that deals with the lame duck session issues. Those issues are expected to be contentious, with some key lawmakers suggesting there may be a pre-Christmas partial government shut-down over issues (like funding the southern border wall) that have so far resisted successful resolution. As a result, the November 13-December 7 lame duck session will likely be busy, with the potential for unanticipated issues popping up throughout the session.

House Passes Three Tax Reform Bills

On September 27 and 28, the House of Representatives passed three tax reform bills. The bills make permanent current individual tax rates, the pass-through business income deduction, and the doubled estate tax exemption; expand open multiple employer plans (MEPs) and make other retirement and non-retirement savings tax rule changes; and permit investors in start-up businesses to qualify for more tax incentives.

The three bills now await Senate action. They include:

- The House passed the Protecting Family and Small Business Tax Cuts Act (H.R.6760) on September 28 by a vote of 220 to 191. It eliminates the Tax Cuts and Jobs Act's (TCJA's) expiration dates for individual income tax rates. It also makes permanent, by eliminating the TCJA expiration dates, the section 199A pass-through business income deduction and the doubled estate tax exemption. Also made permanent in H.R.6760 is the increase in the standard deduction, the child tax credit, and the repeal of the individual minimum tax.

  H.R.6760 also extends to 2021 the TCJA rule that makes unreimbursed medical expenses deductible to the extent they exceed 7.5 percent of adjusted gross income (AGI). Unless extended again, as of 2022 unreimbursed medical expenses will be deductible to the extent they exceed 10 percent of AGI.

  The House-passed bill also makes permanent many of the TCJA's revenue-offsetting/rules-reforming provisions that trigger a loss of tax incentives—including

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the repeal of the personal exemption, the reduction in deductible mortgage interest to $750,000, the new $10,000 limit on the deductibility of state and local taxes (SALT), and others.

- The Family Savings Act (H.R.6757) passed the House on September 27 by a vote of 240 to 177. The bill changes both retirement and non-retirement savings rules. It includes 11 of the 33 provisions contained in the NAIFA-supported Retirement Enhancement and Savings Act (RESA). Among the RESA provisions in H.R.6757 is an expansion of multiple employer pension (MEP) plans, including repeal of the "one-bad apple" rule. (The one bad apple rule would disqualify the plan for all employers if one employer had a disqualifying event; repeal of it would mean only the employer responsible for the disqualification would be impacted.) It also would expand the rules for participating in a MEP (the nexus rules) so that even employers with no common business connection could adopt into a multiple employer plan.

  The bill also eliminates the age restriction on making contributions to IRAs, eliminates the minimum required distributions rule for aggregated account balances of less than $50,000 (indexed), and provides fiduciary liability protection for plan sponsors that offer a lifetime annuity option in their plans' menu of investment choices.

  H.R.6757 does not include the lifetime income disclosure (LIDA) rules supported by NAIFA—i.e., the provisions that would require employers to show their plan participants how much monthly lifetime income could be generated by the amount they have in their retirement plan accounts. Nor does the contain the "stretch IRA" provision that would require distribution (and tax paid) within five years on most inherited 401(k) and IRA amounts over $450,000. A variety of other RESA rules, including new discrimination rule safe harbors, are also excluded from H.R.6757. And, the bill does not include a provision authorizing provision of required plan participant notices and disclosures by electronic means.

  This bill also includes provisions creating the new Universal Savings Account (USA) plan. These rules would permit individuals to contribute up to $2,500/year, after tax, into a USA. USA earnings would not be subject to tax. Withdrawals from a USA could be made tax-free for any reason at any time.

- The American Innovation Act (H.R.6756) passed the House on September 27 by a 260 to 156 vote. H.R.6756 changes the rules for start-up businesses to make it easier for them to raise capital and for their investors to qualify for more tax benefits.

H.R.6756, H.R.6757 and H.R.6760 together make up what House GOP tax writers are calling "Tax Reform 2.0." The bills are expensive—according to official government revenue estimates, the bills—which are not offset—would reduce federal revenues (add to the federal deficit) by $623.4 billion over 10 years. The bulk of the lost revenue comes from the permanence bill ($597 billion). The savings bill would lose $21 billion over 10 years, the Joint Committee on Tax (JCT) estimated, while the small business innovation bill would cost $5.4 billion over 10 years.

Prospects: Generally, it is widely expected that the Senate will simply ignore this legislation—it would take 60 votes to pass any of these bills, and those votes do not appear to be there. While there are varying substantive concerns with the legislation, much of the opposition to it is due to its impact on the federal deficit. Most Senators (in both parties) do not see any value in voting later this year on another round of tax reform/cuts, especially in light of its budget-busting cost.

However, there may be some potential for a compromise retirement savings bill during the November-December lame duck session. There is considerable bipartisan support for most of RESA, and there is some thought that a compromise between RESA and the Family Savings Act could move, along with tax technical corrections and extenders, prior to year-end.

NAIFA, in collaboration with other retirement savings industry partners, will continue to lobby for enactment of as much of RESA as possible—including the LIDA (lifetime income disclosure act) provisions. Whether that effort will succeed is unclear. Certainly, the outcome of the November 6 elections will impact lawmakers' decisions on the effort, and it is simply too early to tell what that outcome, or its impact, will be.

JCT Releases New Tax Expenditures

On October 6, the Joint Committee on Tax (JCT) released its latest tax expenditure report—a list of federal tax rules that result in tax not being levied on specific transactions/programs. The list includes many items of clear importance to agents, advisors and their clients that total almost $4 trillion over five years in foregone tax revenue.

The tax expenditure report typically offers tax writers a rich source of possibilities when they look for offsetting revenue proposals. Offsetting revenue proposals will be coming in the near future—the Congressional Budget Office (CBO) reported on October 7 that the federal deficit in 2018 is $782 billion—up 17 percent from last year—hitting 3.9 percent (up from 2.4 percent last year) of gross domestic product (GDP).

Below is a list of some of the tax expenditures that impact agents, advisors and their clients, and their value (the amount of tax revenue not collected) over the five-year period between 2018 and 2022.

The total is just shy of $4 trillion over only five years (and revenue raisers are generally calculated as 10-year estimates). All of these tax rules are entirely appropriate—NAIFA can and will defend them. But the sheer volume of them, and the foregone tax revenue they represent, makes clear the challenge the industry will face when (not if) Congress turns its attention to addressing the ballooning federal deficit.

Type of Tax Expenditure	Estimated Value between 2018 and 2022
Death benefits	$120.3 billion: ($8.7 to corporations; $111.6 to individuals)
Employer-provided health insurance	$869.5 billion (includes long-term care insurance)
Self-employed health insurance	$40.6 billion (includes long-term care insurance)
Health Savings Accounts:	$29.5 billion
Defined contribution plans	$648.0 billion
Keogh plans	$81.1 billion
Traditional IRAs	$96.5 billion
Roth IRAs	$42.9 billion
Cafeteria plans	$221.1 billion
Life insurance company reserves	$10.3 billion
Group term life insurance	$18.5 billion
Accident and disability income insurance	$22.5 billion
Capital gains	$655.7 billion
Exclusion of capital gains at death	$204.4 billion (step-up in basis)
Section 179 expensing	$67.8 billion
Pass-through business income deduction	$259.0 billion
Section 213 health expense deduction	$43.4 billion
ESOPs	$10.5 billion
VEBAs	$7.5 billion
Total	$3967.7 billion

Prospects: For the moment—at least until the end of 2018—there is little risk from this list. But the time is coming when Congress will have to confront the exploding federal deficit and at that point this list will become—as it has frequently done in the past—a place to look for new revenue. Agents and advisors will be well-served by staying alert, ready to defend the tax rules that are so important to the long-term security of policyholders.