

Ways & Means Holds Hearing on Retirement Savings



On February 6, the House Ways & Means Committee held a hearing on retirement savings, focusing on whether Americans are saving enough during their working years and on ways to overcome barriers to adequate saving for retirement.

Among those testifying was Massachusetts Mutual CEO Roger Crandall. Other witnesses included spokespeople from big and small employers, think tanks, and interest groups focused on retirement issues. Crandall testified in support of the

Retirement Enhancement Savings Act (RESA), and also noted the need to help retired (or near retirement) individuals manage their retirement savings, including with lifetime income streams.

All the witnesses agreed that more can and should be done to help Americans prepare for retirement. Social Security, testified the president of Social Security Works, is the best retirement plan available—it is not a savings program, she said, but rather an insurance program with benefits that are earned by its beneficiaries. But it is not enough to provide a comfortable retirement.

Employer and retirement group witnesses lauded the employer-based retirement system, noting that it provides benefits to more than half of American workers. But gaps remain, especially among smaller businesses. More should be done to help workers at these businesses save for retirement, they said. And more can be done to lower the cost of retirement savings plans, something that poses a significant barrier to small businesses' decision to sponsor a retirement savings plan for their workers.

Among the proposals these people support are the NAIFA-supported Retirement Enhancement Savings Act (RESA), automatic enrollment-escalation plans, and multiple employer pension plans. One witness, a small business owner from Oregon, a participant in the pilot program of his state's automatic IRA retirement savings program, said it had made a huge difference in the ability of the 24 who did not opt out (of his 40 employees) to save for retirement. He encouraged Congress to both implement a similar program on the federal level, and to permit states to keep their retirement plan programs in place.

Prospects: Ways & Means Committee Chairman Rep. Richard Neal (D-MA) says that retirement savings is among his top priorities. Ways & Means Democrats support Rep. Neal’s efforts in this issue area. Committee Republicans also commented on the bipartisan support they offer for improving retirement savings rules. Thus, retirement savings appears to be among the issue areas on which Democrats and Republicans can find common ground—if such bipartisan effort is not killed by overarching (and bitter) partisan divides (fueled, at least in part, by investigations into President Trump’s business, campaign and Administration dealings).

House and Senate lawmakers say they want to find a way to pass it as soon as an opportunity arises.

Pass-Through Business Income Tax Deduction Rules Are Finalized

The Treasury Department has finalized its proposed regulations governing the new Internal Revenue Code (IRC) section 199A pass-through business income tax deduction. The regs were finalized on January 18.

Of key importance to NAIFA members who have organized their businesses as pass-through (Subchapter S, partnership, LLC or sole proprietorship) businesses, the final regs make clear that insurance sales businesses are not “specified

service trade or businesses” (SSTBs) and therefore may be eligible for the new 20 percent deduction. This was a key win for our industry. Section 199A specifies that businesses in the field of “financial services” are SSTBs and not eligible for the new deduction, and so the regulatory exclusion of insurance-sales-only businesses is an important clarification that will make clear that those who only sell insurance—i.e., they do minimal or no financial advising—will qualify for the 199A deduction.

Owners of businesses that do financial advising (investment advice, financial planning) as well as insurance sales could still qualify for the deduction if their incomes fall below certain levels. Under the rule, those with income (including income not from the SSTB (e.g., spouse’s income, investment income) of less than \$315,000/joint (\$157,500/single) can qualify for the full 20 percent deduction. The deduction is subject to a phase-out for incomes below \$415,000/joint (\$207,500/single) and disappears entirely if income exceeds \$415,000/\$207,500.

Adding to the complexity, there are “de minimus” rules that allow a pass-through business taxpayer to qualify for the deduction if only a “de minimus” amount of their income derives from an SSTB. Thus, an advisor who earns less than 10 percent of his/her income from an SSTB (financial



advising) with gross receipts of \$25 million or less (five percent for gross receipts above \$25 million) can still qualify for the section 199A deduction.

It is important to note that the 199A deduction is not available to employees of corporations. Thus, any advisor who is an employee of his/her carrier(s) will not qualify for the new pass-through business income deduction.

In addition, the final regulations flesh out the rules that those who qualify must follow in order to claim the deduction. They define terms like “net capital gain” (the deduction applies to the excess of net long-term capital gain over net short-term capital gain and qualified dividend income) and what constitutes a “trade or business” (generally, where there is an intent to make a profit, and there is “considerable, regular and continuous activity” in operating the business). The final regulations also specify that determination of whether the business activity is a “trade or business” will be a facts-and-circumstances determination—i.e., it will depend on the specifics of the taxpayer’s situation.

The final regulations also provide “computational” rules—i.e., guidance on how to calculate both qualified business income and the allowable deduction. While the deduction is, in general terms, 20 percent of qualified business income, it is subject to a calculation based on the relation of W-2 wage income to business income, and is capped at 20 percent. So, it could be less, depending on the amount of wages the business pays relative to the amount of income the business earns.

Also included in the final regulation are rules to apply when the taxpayer is aggregating more than one pass-through business. Thus, an insurance professional who owns more than one business must consult the final rule’s aggregation rules to calculate how and when to aggregate multiple business income in calculating the 199A deduction. Reasonable compensation rules are also provided.

The regulations state that taxpayers can rely on the proposed version of the rules for the 2018 tax year. These final rules take effect for the 2019 tax year.

Prospects: These rules are final and can be relied upon. However, more guidance is likely. And, there is already talk among Democratic lawmakers that the tax writers may revisit new section 199A. There is concern about whether it is drafted appropriately (and sufficiently safeguarded from “abuse”), and about how it would work should the corporate tax rate be increased. There are also revenue issues, and concerns about whether the deduction will provide an incentive to reorganize as a pass-through business and thus act as a tax shelter. We will keep you informed of developments in this area.

NAIFA Invites Their Industry Partners to the Congressional Conference



**NAIFA CONGRESSIONAL
CONFERENCE**

**WASHINGTON, DC
MAY 14-15, 2019**

NAIFA's Congressional Conference will bring together hundreds of agents and advisors to Washington, DC to learn about the legislative issues that matter to people in our industry and how these issues impact our business and our clients' financial well-being. As a Conference participant, you will be educating your Members of Congress on issues of concern and helping to shape national public policy. Your attendance is particularly critical as we attempt to expand the diversity of our group to adequately match the diverse demographics represented in Congress. The 116th Congress is the most diverse Congress in the nation's history. Not only does the 116th Congress have the largest number of women ever serving in Congress (127), this Congress has the largest number of African Americans (55), Hispanic/Latin Americans (44), Asian/Pacific Islanders (15), and Native Americans (4) in history.

NAIFA asks you to lead the way for your industry and attend the 2019 Congressional Conference. Our goal is to ensure that laws and regulations enhance, not restrict, the ability of middle market families to have access to the products and services our industry offers. NAIFA will provide Conference participants with issues education and advocacy training so we can effectively convey the legislative message.

For more information, go to <https://www.naifa.org/events/congressional-conference> and contact Maggie Buneo – Program Manager, Government Relations, at mbuneo@naifa.org to register.

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