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View From Groom: Top Five Post-Election Retirement Policy Observations

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The historic 2018 mid-term elections are in the rearview mirror, and Democrats are poised to take control of the House in January while Republicans will expand their majority in the Senate. The new political landscape fundamentally changes the retirement policy dynamic in Washington and there is a very real possibility of significant reforms over the next two years. As stakeholders consider their policy priorities heading into the new Congress, there are five key issues to keep in mind.

1. Retirement policy may take center stage in the House Ways and Means Committee in 2019.

It is very likely that Rep. Richard Neal (D-Mass.) will be the Chairman of the House Ways and Means Committee in the next Congress. Mr. Neal is one of a handful of lawmakers who can be considered a true retirement policy wonk. His interest in the issue dates back to the beginning of his career, and all signs indicate that Mr. Neal will use his chairmanship to focus on retirement legislation. Mr. Neal is a longtime supporter of automatic IRA proposals and has sponsored similar legislation to ensure that every employee has access to an employer-provided retirement plan. He also has shown a willingness to work on bipartisan proposals, including supporting the Retirement Enhancement and Savings Act ("RESA," discussed below) and has been opposed to attempts to reduce the tax incentive for retirement savings, including through "Rothification" (*i.e.,* requiring employee plan contributions to be made on a post-tax "Roth" basis).

2. The prospects for bipartisan retirement legislation are good.

There is a broad, bipartisan support in Congress for the RESA, which would, among other things, expand the availability of multiple employer plans, facilitate in-plan lifetime income options and disclosures, and simplify plan administration. The bill was unanimously approved by the Senate Finance Committee in 2016, and the House companion bill sponsored by Reps. Mike Kelly (R-Pa.) and Ron Kind (D-Wis.) has 85 cosponsors. Unfortunately, RESA has been bogged down by procedural and policy disagreements this year, though the House did recently pass the Family Savings Act ("FSA").

The FSA shares some common components with RESA (*e.g.,* multiple employer plan expansion, in-plan lifetime income fiduciary safe harbor) but also has major differences. For example, the FSA included potentially controversial proposals like the creation of "universal savings accounts" (*i.e.,* tax-favored savings accounts with no withdrawal restrictions) and the expansion of 529 accounts to cover home schooling and other expenses, while omitting key provisions from RESA, such as new tax credits for small business plans, lifting the cap on auto-enrollment plans, and requiring lifetime income disclosure.

It is likely that Congress will eventually take up RESA, either as proposed or with some modifications to reflect member priorities. There is some hope that lawmakers, less constrained by election politics, will be able to reach a compromise during the "lame duck" session after the election. However, lame duck sessions are rarely as productive as members might wish, particularly where the balance of power has shifted, so consideration of RESA could slip until the next Congress. At that point, the prospects for passage of bipartisan retirement legislation like RESA are good, considering that there is continuing support in the Finance Committee and from the likely incoming Ways and Means Committee Chairman.

3. Congress will continue to grapple with the crisis facing the multiemployer pension system.

There is bipartisan recognition that there is a very real crisis facing some multiemployer pensions plans and the Pension Benefit Guaranty Corporation ("PBGC") multiemployer program. The Joint Select Committee on Multiemployer Plans—created by the Bipartisan Budget Act of 2018—was established to facilitate bipartisan consensus on potential solutions, and the Committee is facing a Nov. 30, 2018, deadline to produce legislative recommendations, if possible. There are, however, still significant policy disagreements between Republicans and Democrats, and it is unclear whether the Joint Select Committee will be able to produce bipartisan legislation. If lawmakers are unable to reach consensus in the lame duck, the looming multiemployer crisis will be front and center in the next Congress.

Newly empowered House Democrats may be eager to demonstrate to constituents—particularly those in Midwestern swing states that voted to elect President Trump—that they will protect retirees facing steep benefit cuts absent Congressional action. The leading Democratic reform proposal is the Butch Lewis Act, which was sponsored by likely Ways and Means Committee Chairman Richard Neal (D-Mass.) and freshly reelected Sen. Sherrod Brown (D-Ohio). That bill would create a government-backed, low interest loan program and provide additional PBGC financial assistance to aid struggling multiemployer plans. At this point, it appears likely that House Democrats would support the bill if it were to come up for a vote. However, Senate Republicans have been less receptive to the proposal, and it is unlikely that measure could muster enough votes to overcome a filibuster without material changes.

4. There is a growing momentum in the Democratic caucus for Social Security expansion.

Social Security is one of the most popular social programs, and the Democratic caucus has largely coalesced around a policy of increasing benefits and improving the program's fiscal solvency. In 2015, 42 out of 46 Senate Democrats voted in favor of a budget amendment supporting Social Security expansion, and in September, 150 Democratic members of Congress started the Expand Social Security caucus. It seems likely that House leadership will seriously consider Social Security expansion legislation in the next Congress.

Even if the House is able to pass legislation to expand Social Security, it is unlikely to gain traction in the Republican-controlled Senate. In the run-up to the elections, Senate Majority Leader Mitch McConnell (R-Ky.) signaled an interest in addressing budget deficits by trimming entitlement programs. President Trump's chief economic advisor—Larry Kudlow, Chairman of the National Economic Council—similarly stated that the Administration would begin to consider changes to the "large entitlements" next year, though the President has at times opposed entitlement cuts.

5. The Administration is poised to move retirement policy by regulation and guidance.

To date, retirement policy has largely taken a backseat to health-care issues and tax reform implementation in the list of Administration priorities. However, President Trump recently signed an executive order prioritizing several retirement policies. In response, the Department of Labor quickly proposed regulations intended to expand the use of multiple employer plans, and the agency is considering options to streamline disclosures, including potential new rules regarding electronic delivery. The Treasury Department and Internal Revenue Service are also considering guidance related to multiple employer plans and required minimum distributions.

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