PSCA
Plan Sponsor Council of America

Retirement, Health Policy Outlook After the Midterms

After the midterm elections, the Democrats will control majorities of both houses of Congress. With divided government, major reforms will likely require bipartisan buy-in. Happily, many important retirement and health issues have exactly that.



After the midterm elections, the Democrats will control majorities of both houses of Congress. With divided government, major reforms will likely require bipartisan buy-in. Happily, many important retirement and health issues have exactly that.

403(b) CIT Legislation

On Monday, the House Rules Committee met to consider the Retirement Fairness for Charities and Educational Institutions Act, which would permit 403(b) plans to invest in collective investment trusts (CITs).

A floor vote on the bill is expected sometime this week. If it is enacted into law, 403(b) plans would finally be able to access CITs like other defined contribution plans.

Other Lame Duck Legislation

Before the new Congress is sworn in on Jan. 3, 2027, most experts don't expect anything significant to pass in the ERISA space. Josh Oppenheimer, the senior director of federal legislative affairs, says that you have to look at "what has to get done by the end of the year," such as the budget and the NDAA.

Brigen Winters, the policy practice leader with the Groom Law Group, agrees, and says that just passing a budget on time could be a challenge, and therefore doesn't anticipate any major ERISA-related policy changes. The government is currently funded through Dec. 11.

Oppenheimer says that bills introduced in this Congress will have to be reintroduced in the next. However, "we didn't lose critical members who back them, and this allows ARA to start off the new Congress on very strong footing."

Agency Funding

Democratic leaders, such as Rep. Bobby Scott (D-Va.), have expressed concern about EBSA funding and staffing levels. Scott is expected to become the Chair of the House Committee on Education and the Workforce in the new Congress. Scott noted in October that EBSA funding has been static, and enforcement staff has seen dramatic cuts.

Oppenheimer expects EBSA funding cuts and enforcement priorities to be more contested with Democrats controlling Congress.

Health Policy

Both Winters and Oppenheimer agree that important health policy issues can benefit from bipartisan interest, and both cite pharmacy benefit manager (PBM) reform and the No Surprises Act (NSA) as examples.

"Health will be more front and center," Winters says, in part because it relates more directly with an affordability agenda.

Employer groups have been advocating for Congress to reform the NSA's arbitration process between healthcare providers and payers, which employer groups argue systematically favors higher payouts to providers.

PBM reform has also proven to be a bipartisan issue. However, a new statute and a new final rule from EBSA make it less clear what else Congress might do next.

Oversight

Both Winters and Oppenheimer also agree that new Democrat committee chairs are likely to exercise their oversight and subpoena powers aggressively in the new Congress. Both expect Congressional Review Act resolutions against the administration's regulatory actions to become more common, though President Trump can veto them.

Oppenheimer notes that Senators Elizabeth Warren (D-Mass.) and Bernie Sanders (I-Vt.), among others, have announced their opposition to the Investment Selection Rule.

Speaking of the next Congress, Winters says that "my biggest hope is that they don't make things worse." He says a major risk in the next Congress is that policymakers will use Rothification or other scoring "offsets" in the retirement system to "pay for" other priorities, and cites the Roth catch-up provision as being one unfortunate example of this.
