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Tax Reform Still Mostly Leaves 401ks Alone

By *Neil Anderson*

The defined contribution industry is one step closer to dodging scary direct tax reform changes. Yet the industry's not out of the woods just yet. Industry insiders are cautiously optimistic for now.

On Saturday the U.S. Senate passed its version of H.R.1, the *Tax Cuts and Jobs Act*, one month after the House passed its version. The big news for 401(k) insiders is that, like the House, the Senate did not follow through on prior threats of forced Rothification for 401(k) and IRA contributions. Yet the bill still has to go through reconciliation and then re-pass both houses, so it's a safe bet that the final version will look different than what we've seen so far — especially given some complaints already emerging about the just-passed Senate version.

"The **Spark Institute** is very happy to see both houses of Congress pass major tax legislation and not include any major changes to the existing retirement incentives that could have been harmful to America's savings system," **Tim Rouse**, executive director of the Spark Institute, tells **401kWire**.

"Generally the council is pretty pleased with the way things have gone so far on the retirement side," **Jason Hammersla**, vice president of communications for the American Benefits Council (**ABC**), tells **401kWire**. "We have some concerns on the health side ... We're very, very happy that Congress avoided making changes to the tax deferral on retirement plans, so-called 'Rothification.'"

"We dodged a few bullets," **Marcia Wagner** of the **Wagner Law Group** tells **401kWire**. "There's no Rothification, which is pretty amazing. The 402(g) limits don't seem to be affected. The 415 limits don't seem to be affected."

Steve Niehoff, chief operating officer of the **Pension Resource Institute**, agrees that it's "a good sign" that neither the House nor Senate versions of the bill included Rothification. Yet who knows what might happen in reconciliation.

"You don't really know until you actually see it happen," Niehoff tells **401kWire**.

"Neither the House nor the Senate bill has Rothification, which should be good news but when you go into conference anything in theory is possible," an industry insider in Washington warns.

Defined contribution industry insiders are also keeping an eye on some other potentially relevant pieces of tax reform.

"There are a bunch of retirement provisions that are in the House bill that aren't in the Senate bill, provisions we would be very supportive of being in the final measure," ABC's Hammersla says.

One such change in the House bill but not in the Senate one, Hammersla notes, would lower the age for in-service distributions (i.e. the ability of participants to start taking 401(k) withdrawals while still working) to 59.5, from 62.

Hammersla and Spark's Rouse also point to several provisions (in both versions of the bill) that would give participants more time to repay 401(k) loans and make it easier for participants to take hardship withdrawals.

Another potentially big question mark, though, is how corporate income tax rate changes and pass-through tax rate provision will end up being changed. Some 401(k) -friendly Washington watchers worry that, if small businesses see their effective tax rates meaningfully drop, they may see 401(k)s and other retirement plans as less worth the cost and risk.

"If you have a corporate rate at 20 percent, why in the world have a tax-qualified plan if you're a small business and you're the owner," wonders Wagner of Wagner Law Group, a sentiment echoed by PRI's Niehoff.

"The issue of pass-through income on certain small employers, and the effect this may have on coverage, remains a concern that we continue to follow," Spark's Rouse says.

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