Wednesday, December 20, 2017

Tax Reform Leaves 401k Battles Unfinished

By *Neil Anderson*

Tax reform is almost done, yet other retirement plan industry fights are coming soon.

The *Tax Cut and Jobs Act of 2017*, which passed the Senate yesterday and the House today and now awaits the President's signature, is "generally a non-event for the defined contribution industry," argues **Lew Minsky**, president and CEO of the Defined Contribution Institutional Investment Association (**DCIIA**). That means no forced Rothification or other scary provisions DC insiders had feared, but it also leaves a variety of retirement plan proposals supported by many of those in the industry.

"There are other bills and other things that we are pushing," **Tim Rouse**, executive director of **Spark**, tells **401kWire**.

Some industry-supported DC proposals that didn't make it into the final bill include provisions around open MEPs (multiple employer plans), retirement income solutions (and illustrations), expansion of the auto-enrollment and auto-escalation safe harbors, electronic delivery of statements, and more.

"A lot of the retirement stuff is gone," **David Levine**, principal at **Groom Law Group**, tells **401kWire**. "It's pretty light on retirement at this point."

Jason Hammersla, vice president of communications, says the fact those provisions are missing from the final tax bill may not be too worrisome.

"The final bill didn't include some of the helpful provisions that were initially included in the House [version]," Hammersla tells **401kWire**. "But we believe those were mostly dropped for procedural reasons, so we're going to be working hard in the new year to advance those as soon as we can."

"In the new year, there's going to be a push for more comprehensive retirement plan legislation" across multiple proposals, Hammersla adds. "There are a lot of retirement plan measures out there with bipartisan support. We'll be rallying additional support for those in 2018."

"There's hope that we can move some broad-based legislation," Minsky agrees.

Steve Saxon, another principal at Groom, describes 2018 as the time to push for improvements to 401(k)s and other benefits programs, to strike while the iron is hot.

"The fact that there was a recognition that benefits programs are needed is a positive thing," Saxon says. "We ought to take that as an opportunity over the next couple of years."

Yet the threats 401(k) insiders feared from tax reform may not be over yet. Rouse warns that Representative **Kevin Brady** (R-Texas), Chairman of the House Ways and Means Committee and of the joint House-Senate Committee that modified the tax reform bill, cryptically says that many tax reform provisions got left on the cutting room floor, including provisions related to retirement.

"We certainly want to work with Chairman Brady," Rouse says. "We'll certainly engage in conversations with him and try to understand that better."

Washington watchers also expect Congress to work on a followup bill to tax reform early next year, to address unintended consequences of the bill and make tweaks.

"A technical corrections act might be one of the first major acts [of Congress] of 2018," **Marcia Wagner**, managing director of the **Wagner Law Group**, tells **401kWire**, pointing as an example to some interesting possibilities around the changes in pass-through entity taxation. "For those financial advisors who are independent as opposed to employees, there might be some tax arbitrage that they might want to do."

A Washington, D.C.-based mutual fund industry insider agrees that there are pieces of the bill that "probably require a fix."

"They were just on such a fast track, there were things they were made aware of that they chose not to do anything about," that insider tells **401kWire**.

Wagner recalls watching the passage of another big tax reform bill in 1986 as a law student, digging into the econometric studies and policy analysis.

"It was a very exciting time to be a tax law student," Wagner says. "It was a robust, intense, intelligent process."

Wagner sees many differences with the 2017 tax reform process.

"I'm astounded by the lack of bipartisanship, debate, policy analysis, or even valid estimations of what this is going to do," Wagner says. "The process itself has just been diminished to a very significant degree."

Meanwhile, outside of Congress, there will be other 401(k) rule changes brewing in 2018. **Brad Campbell**, partner at **Drinker Biddle** (and former EBSA chief and Congressional staffer) points to the DoL and the SEC both working on the fiduciary standard next year.

"We're going to be in a very interesting place in 2018," Campbell tells **401kWire**. "I'm optimistic that we're going to use 2018 to come good advantage and try and get a comprehensive set of rules that make sense."

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