FEATURE

Riding the Wave?

With both parties eyeing 2016, will Washington ‘work’?

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In physics, a wave is a traveling disturbance that travels through space and matter, transferring energy from one place to another, such as a sound wave, or even an ocean wave. In politics, a “wave” can serve much the same function, and the wave that was the 2014 election could serve as a catalyst for change for retirement plans. Certainly, having regained their Senate majority and deepened their hold on the House, the GOP — with a wary eye on the 2016 elections — may be ready to act on a range of issues affecting the retirement industry.

In a Nov. 6 members-only webcast, NAPA Executive Director/CEO Brian Graff and Political Director Jim Dornan discussed the shifts in power in the nation’s capital and what that might mean for legislative change generally, and retirement plan/tax reform proposals specifically. And while the dust hasn’t yet fully settled on those prospects, NAPA’s political insiders say there’s reason to think the dynamics have shifted sufficiently to create some opportunities — and potential threats — to retirement plan-related legislation.

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The House of Representatives

Dornan explained that in the House, the GOP now has its strongest majority in nearly a century — freeing Speaker John Boehner’s hand to pursue his agenda without necessarily having to rely on the support of Tea Party Republicans, and to perhaps even pick up some moderate Democrats on certain issues.

The current leadership — Kevin McCarthy (R-Calif.) as Majority Leader and Majority Whip Steve Scalise (R-La.), will remain in their positions. As for committee chairs, Paul Ryan (R-Wis.) will take over Ways & Means from the retiring Dave Camp (R-Mich.), while John Kline (R-Minn.) will remain as head of the Education and the Workforce Committee. Jeb Hensarling (R-Texas), the current chair of the House Financial Services committee, is likely to retain that post.

The Senate

In the Senate, the GOP wrested control of Senate seats from Democrats in Arkansas, Colorado, Iowa, Montana, North Carolina, South Dakota and West Virginia, and nearly two weeks after the polls closed, picked up Alaska as well. Meanwhile the GOP retained seats in Georgia and Kentucky, the latter held by soon-to-be Senate Majority Leader Mitch McConnell.

Virginia reelected incumbent Sen. Mark Warner (D), but his challenger, long-time po-

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litical operative Ed Gillespie, transformed what was expected to be a runaway into an election eve nail-biter that wasn't officially called until the weekend after Election Day. The contest in Louisiana will be decided in an early December runoff, since neither incumbent Mary Landrieu (D) nor GOP challenger Rep. Bill Cassidy got more than 50% of the vote.

No matter how the Louisiana race shakes out, the GOP will hold the majority. As a result, there will be a major reshuffling of power and legislative agendas, with current Democratic committee chairmen becoming ranking members and current Republican ranking members becoming chairmen.

By and large, the Senate follows seniority rules for chairmanships. In the Senate, that means that the Health, Education, Labor and Pensions (HELP) committee (which will have jurisdiction over the Department of Labor's fiduciary definition reproposal) will be chaired by Sen. Lamar Alexander (R-Tenn.), while the Senate Finance Committee will be headed by Sen. Orrin Hatch (R-Utah) and the Senate Banking Committee by Sen. Mike Crapo (R-Idaho), though there are rumblings that Sen. Richard Shelby (R-Ala.), who has previously chaired that committee, is interested in taking on that role again. Dornan noted that ASPPA would be keeping an eye on movements there.

What's Different Now

Those shifts notwithstanding, Graff explained that it's the next election, in 2016, that might provide the real impetus for change on Capitol Hill. While Democrats were forced to defend a number of seats in November in states that went for Mitt Romney in 2012, in 2016 the election map will be a mirror image — with Republicans forced to defend Senate seats in a number of states that voted for President Obama in 2012.

According to Graff, that dynamic will put a lot of pressure on the GOP to govern and show that it can accomplish things, and to do so in a short period of time. Of course, the Democrats (including the president) will be motivated to show that the Republicans can't get things done. But Graff explained that both McConnell and Boehner are what we might think of as "traditional" politicians who "know how to deal." One other difference from the past several years: The momentum for negotiating any bipartisan "grand bargain" will likely shift from the House to the Senate.

RYAN'S HOPE?

Rep. Paul Ryan (R-Wisc.), the next Chairman of the House Ways and Means Committee (which has jurisdiction for federal tax reform) has already been preparing way for tax reform in 2015 with a focus on two things:

- Lowering the baseline for tax revenues.
- Implementing dynamic scoring for tax legislation, which would include the macroeconomic effects resulting from the new policies. For instance, a tax plan forecasted to increase economic growth would be scored as bringing in more revenue. The Congressional Budget Office does not use dynamic scoring.

"Typically tax reform in history has been led by presidents; 1986 is a perfect example," Ryan recently said, referring to the 1986 tax overhaul achieved by President Reagan and a Democrat-led House. "That won't be the case this time if we get it in the next two years. It will have to be led by Congress, and we'll see what we can get."

Prospects for Tax Reform

"The tax code is almost as popular as the U.S. Congress," quipped Graff, even as he noted that even if the House doesn't get comprehensive tax reform, they want to do what they think is right — and campaign on it, even if it isn't enacted into law. In contrast, he said the Senate wants to do something.

Graff explained that tax reform was high on the GOP congressional agenda, although there is a very limited window of time to pass reform — it would have to be done in early 2015, before presidential campaigning begins. He noted that many GOP legislators are calling for it, but cautioned that tax reform means different things to different people.

State Houses

There were also some significant shifts in executive power in three key states that have considered, or are considering, state-run retirement plans: Illinois, Maryland and Massachusetts. In Illinois, Republican Bruce Rauner ousted Democratic incumbent Gov. Pat Quinn and that this would likely deter the Illinois state house from considering a bill authored by State Sen. Daniel Biss (D-Evanston) — the Illinois Secure Choice Savings Program Act — in the current legislative session, which ends this year.

In Maryland, Republican challenger Larry Hogan upset Lt. Gov. Anthony Brown (D), the hand-picked successor of outgoing Gov. Martin O'Malley (D), who had signed an executive order that created a Maryland Retirement Security Task Force. That task force will now expire at the end of O'Malley's term early next year.

Massachusetts, where Republican Charlie Baker beat Attorney General Martha Coakley (D) to win the governor's race, had passed legislation in 2012 that created a state-run defined contribution plan for small non-profit employers. However, that plan is currently awaiting approval from the IRS and is not yet in operation.

Administrative Actions

As for the still-pending fiduciary regulation reproposal, last May the DOL updated its regulatory agenda to postpone the expected release of its fiduciary rule re-proposal from August 2014 to January 2015.

He also said that over the past few months, White House staff have led an outreach effort to meet with all the stakeholders the proposal would affect, as Obama administration officials try to figure out what to do in this area — if anything. He noted that during these meetings, officials have indicated that a rule is "not imminent" and that they are working to get more information from industry in order to develop appropriate prohibited transaction exemptions.

Concerns about IRA rollover advice loom large, and Graff noted that any re-proposal will likely focus on that issue. Should a regulation emerge that the industry opposes, he explained that there would be opportunities to prevent the implementation of the rule through the appropriations process in a Republican-controlled Congress.

What this means for retirement plans next year is still anybody's guess. But with the Congress in the hands of a motivated GOP, and the President, as second-term presidents often are at this juncture, thinking legacy, we'll almost certainly have something to talk about.

THE SENATE SPEAKS ON TAX REFORM

"We're going to want to see what kind of things we might be able to agree on with the President … I'll give you a couple of examples where there may be areas of agreement: comprehensive tax reform and trade agreements."

— Sen. Mitch McConnell, Nov. 3, 2014

"The president has indicated he's interested in doing tax reform — we all know that having the highest corporate tax rate in the industrialized world is a job killer. He's interested in that issue and we are too."

— Sen. Mitch McConnell, Nov. 5, 2014.

"One of the major goals of comprehensive reform should be to fundamentally change this system and anything we do in the interim should move us further down that path."

— Sen. Orrin Hatch, September 2014.

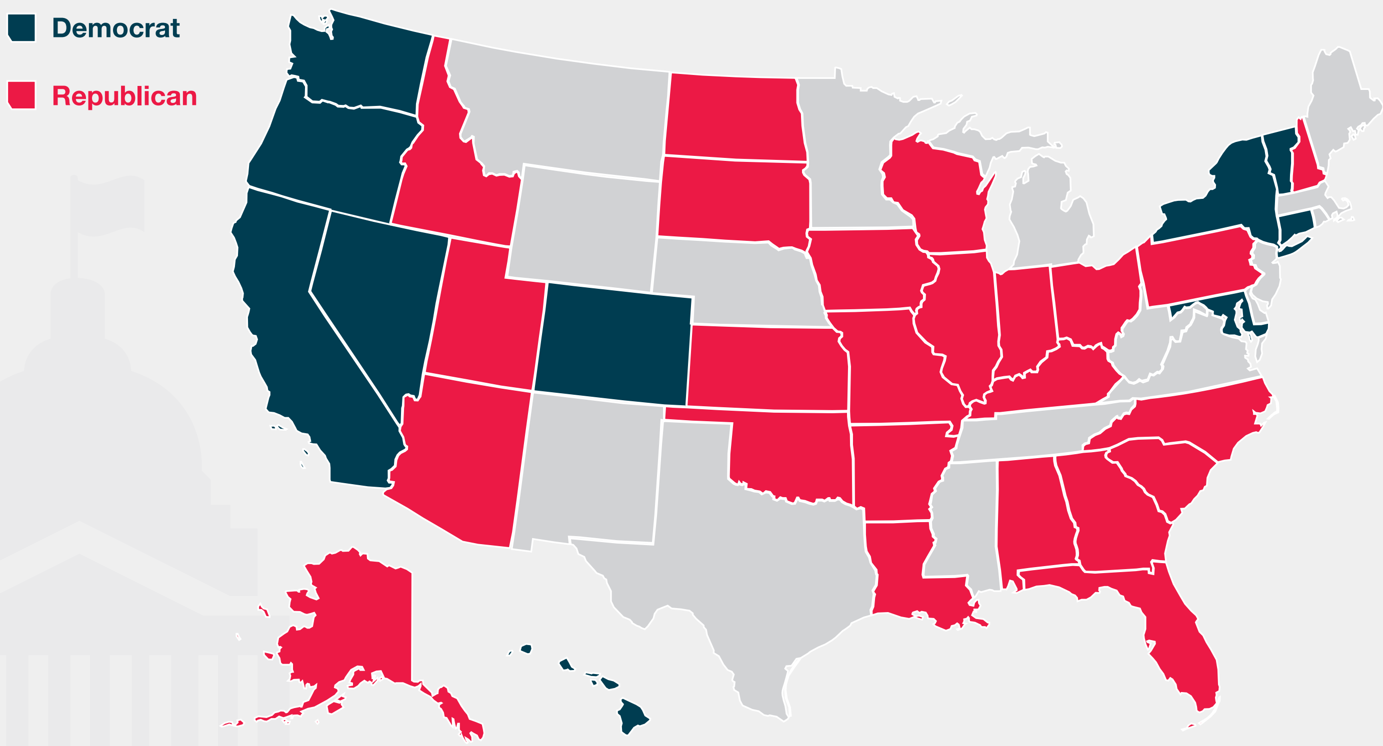
"We have this tax code that doesn't bring stability and certainty to the economy. Historically, Republicans have wanted efficiency. Democrats want fairness. I want both, and we're getting neither."

— Sen. Ron Wyden

"Our onerous and outdated tax code continues to force businesses to leave the U.S., taking American jobs with them. We can and must reform our tax code again so that we keep businesses and jobs here at home and provide relief to all Americans."

— Sen. Rob Portman, October 2014

Senate Seats
up in 2016



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South Carolina
Georgia
Florida
Alabama
Alaska

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The Tax Reform Act of 2014, a proposal put forth by retiring House Ways & Means Chairman Dave Camp (R-Ohio) earlier this year, purported to reform the current tax structure, but it contained a number of provisions that would be detrimental to retirement plan formation.

For example, under the bill, small business owners could pay a new 10% surtax on all contributions made to a qualified retirement plan now, and then would have to pay tax again at the full ordinary income tax rate when they retire.

The proposal also would have frozen contribution limits at the current rate (not even allowing indexing for inflation) until 2023.

Those concerns notwithstanding, Camp’s tax reform proposals is now something of a “marker” for future tax or spending proposals, having been scored by the Joint Committee on Taxation as giving back more than $63 billion to the Treasury if enacted.

As for some specific alternative legislative windows that could open, Graff noted that in the absence of a comprehensive tax reform bill, there will be legislative vehicles that could be used to enact pension reform, adding that the expiration of the multi-employer pension funding rules could provide an opportunity to enact broader pension reforms.

Finally, he explained that the process of renewing more than 100 expired provisions in the tax code, dubbed “tax extenders,” could be another opportunity to enact retirement policy changes.

While the 113th Congress may leave office without much in the way of legislative accomplishments, several retirement-related proposals could provide a good foundation for the work of the next Congress. In addition to Sen. Hatch’s SAFE Retirement Act (see “SAFE How’s” sidebar), similar “spread-match” safe harbor proposals, as well as “open” MEP proposals, were included in legislation proposed by Rep. Richard Neal (D-Mass.) in the House (HR. 2117) and Sens. Susan Collins (R-Maine) and Bill Nelson (D-Fla.) in the Senate (S. 1970). Expect retirement savings legislation in the new Congress from all three.

Sen. Tom Harkin (D-Iowa), the current chair of the HELP committee, is retiring, so he will not be reintroducing his USA Retirement Funds Act (S. 1979), although someone else could take it on. One possibility: Sen. Sherrod Brown (D-Ohio) who was a co-sponsor of Harkin’s bill.

SAFE HOW'S

While much of the “buzz” is around the notion (if not the reality) of comprehensive tax reform, Sen. Orrin Hatch (R-UT), the next Chair of the Senate Finance Committee, has already offered a strong blueprint for building on the successes of the employer-based retirement system in the form of the SAFE Retirement Act. Judy Miller, ASPPA’s Director of Retirement Policy, offers insights on what that could mean for retirement plans and advisors.

Should we wake up in a world where the SAFE Retirement Act had become law, top-heavy rules would be eliminated. Employers with nothing else in common could be part of a multiple employer defined contribution plan and, if the plan has a designated service provider, would not have to worry about the one-bad-apple rule. Mandatory interim amendments could be adopted retroactively at the end of the plan’s regular review cycle, and safe harbor 401(k) plans could be amended mid-year as long as there is no reduction in the amount of matching contributions for the year. There would also be clarification that forfeitures can be used to fund safe harbor contributions.

For employers who don’t already offer a plan, Title II of the Act opens with the Starter 401(k), a deferral-only safe harbor for those situations. The Starter 401(k) would provide automatic enrollment and auto-escalation, an $8,000 elective deferral limit (plus catch-up) with no non-discrimination testing (or top-heavy contributions). When the business grows to the point that the owner can afford to make higher contributions, it can be easily amended to a full-blown 401(k) program. Another common sense change to encourage adoption of new plans would allow employers to adopt a new qualified plan up to the due date of tax filings.

Also included in the Act is a new 401(k) safe harbor that would allow sponsors to spread the match over up to 10% of pay, rather than the current 6%, provided participants are automatically enrolled with auto-escalation – and with a tax credit to help small business owners defray the cost of the match.

— Judy Miller, ASPPA’s Director of Retirement Policy