

# THE ASPPA Journal

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WASHINGTON UPDATE

## Retirement Policy and the 2010 Election Results

by Brian H. Graff, Esq., APM

It was a long night (especially for Democrats) with Republicans making gains in all sectors throughout the country. In fact, the Republicans gaining more than 60 seats in the House was an increase the size of which has not occurred for more than 60 years. Ultimately, as predicted, the House flipped and the Senate remains in Democratic control, but with a much smaller majority.

**A**s for the impact on retirement policy and the prospect for legislation, it will really depend on the willingness of both sides to work together. John Boehner has a long history of deal making. For example, he reached across the aisle to work with the late Senator Kennedy to create the No Child Left Behind Act when he was Chairman of the House Education and Labor Committee when Republicans were previously in control of the House. His speech on election night would suggest that he believes that House Republicans cannot simply stand still for the next two years. Of course, that won't get very far unless the President demonstrates a willingness to compromise as well.

Retirement issues have traditionally been handled in a bipartisan manner. PPA passed the Senate with more than 90 votes, so it's very conceivable those issues could be used as a bridge by both sides to demonstrate the capacity to compromise.

The need to address some critical issues certainly exists. Retirement plan coverage rates are stuck at approximately 50 percent, where they have hovered for decades, and the Auto-IRA proposal would jump that number up significantly. The proposal was originally a joint project between the Heritage Foundation and the Brookings Institution, conservative and liberal think-tanks, respectively; so the proposal clearly has bi-partisan roots. But, since the proposal was included in the President's budget and was introduced by only Democrats in the last Congress, it is currently perceived as a Democratic proposal in some circles.

That perception will have to change if it is to go anywhere, and that will likely require some creativity around the perceived "mandate" issue, something on which we are currently working. For example, in contrast with a mandate, incentives may be added, such as enhanced tax credits, to strongly encourage small employers to adopt the program.

In addition to Auto-IRAs, there will be special focus on the promotion of small business plans, which could be a good thing. For example, a proposal to provide top-heavy relief to deferral-only plans could be revived. On the other hand, proposals to create super-IRAs with much higher limits, perhaps equal to the 401(k) limit, will likely resurface. Obviously, if adopted, such a proposal would devastate small business retirement plan coverage by effectively removing all of the incentives for a small business owner to adopt a plan.

Of course, there is a revenue cost associated with such proposals. Many of the new Republicans ran on a platform of fiscal discipline. Consequently, any new proposals with added cost will face an even higher hurdle than before. Further, the deficit commission report due out by the end of 2010 may question the effectiveness of the tax expenditures associated with retirement savings. The report may lead to some proposals to cut back contribution limits as opposed to increasing them.

Unfortunately, policymakers who make these proposals are ignoring the simple fact that the current tax expenditure analysis, as it applies to incentives for retirement savings, is completely wrong. The analysis done by the Treasury Department and the Joint Committee on Taxation ignores the fact that these incentives are deferrals, not exclusions like the mortgage interest deduction, by comparison. ASPPA has commissioned a study to evaluate the real cost of retirement savings incentives, which we expect to be substantially less than what the government reports. We will report those results in a future issue.

Funding relief for DB plans, yet again, could be a possible driver for retirement legislation. Larger companies are already raising concerns about the funding pressure they will face as the PPA funding rules become fully effective in 2012. The situation for many multiemployer plans remains woeful, and they will certainly be asking for special relief.

In order to make retirement policy soup, there will need to be ingredients that attract both Democrats and Republicans. There certainly seem to be enough issues floating around that would be of interest to both sides. The key will be whether the right ingredients can be cobbled together.

An interesting aside is the possible effect that the return of Portman-Cardin could have. With Rob Portman's election to the Senate, the Portman-Cardin band is back together. Given the pressing need to demonstrate some bipartisanship, you could see them playing an active role, given their history, regardless of whether they are on the relevant committees of jurisdiction.

Finally, one unfortunate note needs to be made. Earl Pomeroy lost his reelection bid. Regardless of how you felt about his views on other issues, he was a stalwart supporter of the private retirement plan system. He was especially a great defender of cross-tested plans, and his willingness to fight that battle will be sorely missed.

Needless to say, it's never boring in DC. 



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