

## New Bedfellows: Richard Neal and the 401(k) Industry

By Kerry Pechter      Thu, Nov 8, 2018

*As the next Ways & Means chairman, the liberal Massachusetts congressman won't just be the gatekeeper of retirement legislation. He's also the only legislator who can ask for President Trump's tax returns. Bills that could release a wave of 401(k) innovation are pending, so the stakes for the retirement industry are high.*



Sixteen-term Congressman Richard Neal of Massachusetts is now a key figure for those who follow retirement-related legislation. As of Tuesday's election, he's the next chair of the House Ways & Means Committee, through which all tax-related legislation passes.

"Richard Neal has said that retirement will be his number one focus," said Chris Gaston, government policy director at Davis & Harman, speaking at the SPARK Forum in Palm Beach this week. The SPARK Institute represents 401(k) recordkeepers.

In recent years, Neal introduced H.R. 3499, H.R. 4523, H.R. 4524, and H.R. 4444, all retirement-related. A proponent of requiring employers to help workers save for retirement at work, he backed the auto-enrolled workplace IRA at the heart of the MyRA program, which the Trump administration cancelled in 2017.

In 2017, Neal and then-Ways and Means chairman Kevin Brady (R-TX), helped preserve the carried interest tax loophole lobbied for by Wall Street firms. In 2007, he helped lead an unsuccessful movement to reform the [Alternative Minimum Tax](#).

Ex-representatives must vacate their offices by Thanksgiving. Then the holiday season arrives. Republicans may, however, may use their majority to pass another tax cut before the 115<sup>th</sup> Congress ends on January 3.

Given the broad appeal of retirement reform, some are optimistic of the passage of a bipartisan bill sooner or later. "There is the rare occurrence of bipartisan support for retirement improvement," said Beth Glotzbach, head of DCIO (defined contribution-investment only), Franklin Templeton Investments, at the conference.

As Ways & Means chairman, Neal isn't just the gatekeeper of retirement legislation. He's also the only legislator who can ask for President Trump's tax returns. Neal said Wednesday

that he will do so. But the President threatened after the election to retaliate against Democrats if they try to force disclosure of those documents.

### **Open MEPs and PEPs**

Shortly before the election, the Republican-led House passed the Family Savings Act (H.R. 6757), a response to the Retirement Enhancement and Savings Act or RESA (S. 2526) that came out of the Senate Finance Committee last spring. Both have bipartisan support, but there may not be time for them to be reconciled and passed before the 116<sup>th</sup> Congress begins on January 4.

“I wouldn’t put the chances of a Family Savings/RESA Act resolution during the lame duck session at 50/50. I’d put it at 33%,” Mike Hadley, an attorney at the Washington firm of Davis & Harman, said at the SPARK Forum. “But if it doesn’t happen this year, it’s likely that Neal will propose it in the next Congress.”

Both bills would change current pension law to allow the formation of open multiple employer plans (open MEPs) or pooled employer plans (PEPs). Plan providers, such as recordkeepers, advisory firms, independent fiduciaries and payroll firms could sponsor 401(k) plans and invite dozens or hundreds of small or mid-sized unrelated employers to join them.

MEPs and PEPs could revolutionize the 401(k) industry. A massive land rush could occur, as dozens of provider-firms stake claims by establish PEPs. Consolidation is anticipated, as PEP-sponsors try to aggregate existing small and mid-sized plans. Expansion of 401(k) coverage is also expected, as employers without plans decide to join PEPs.

There will be winners and losers. “Let’s say that everybody still gets a slice in the new MEP world,” said David Levine of Groom Law Group during a panel discussion at the SPARK Forum. “But do some people get a bigger slice than they have now, and others get a smaller slice? I would challenge any assumption that everyone will win with MEPs. It could dramatically consolidate the market. Or it might be no big deal.”

One view is that a large registered investment advisor (RIA) like CAPTRUST or SageView that specializes in selling and advising retirement plans will be best-positioned to dominate a MEPs/PEPs world. “An advisory firm or two will figure out how to sell multiple-employer plans and will monetize this space,” said Rob Barnett, an administrative vice president at Wilmington Trust in Boston, which advises plan sponsors and custodies plan assets. “At first, MEPs will have to be ‘sold.’ But eventually they will be bought because the process will

become pretty easy.”

Another view is that firms will cooperate on and compete for PEP business at the same time. “One of my favorite words is ‘frenemy,’” said Levine. “There are so many different scenarios. Historically, everyone stayed in his or her own lane. But in the future there’s going to be increasing overlap,” he said.

Levine described a potential “competitive free-for-all” where various types of plan providers cooperate but also compete. A recordkeeper might create a MEP and market it with its own sales forces or through plan advisors. Advisors might help recordkeepers sell MEPs, but also start their own MEPs and try to take away small employers from recordkeepers.

“This will fundamentally change the TPA [third-party administrator] marketplace,” said Kelly Michel, chief marketing officer at [Envestnet Retirement Solutions](#), which can support RIA firms that decide to sponsor MEPs. She participated on a panel at the conference with Fred Barstein, founder of [TRAU](#), The Retirement Advisor University.

“The vanilla kinds of small plans will be delivered through MEPs, and they won’t need more than one TPA each,” Michel said. “As plan sponsors, the recordkeepers will be most at risk [for fiduciary liability] and they may decide not to outsource the role of 3(16) fiduciary to a TPA at all. So this might dis-intermediate a lot of TPAs.” [A 3(16) fiduciary can administer 401(k) plans and act as their “named fiduciary” under pension law, with responsibility for ensuring that plans act in the best interests of their participants.)

Barstein sees MEPs as a way to modernize small plans. “One reason that MEPs will be so disruptive,” he said, “is that the MEP sponsor, whether it’s an advisory firm, a broker-dealer, an independent fiduciary, or a recordkeeper, will have an incentive to be innovative. Small plan sponsors have no incentive to be innovative. They don’t want to be out in front of the herd. They want to be in the middle of the herd.”

Given the uncertainty of the future, observers at the conference could let their imaginations run fairly wild. They spoke of Amazon or Google buying a plan recordkeeper and using their immense platforms to get into the retirement business. They spoke of “fly-by-night” self-described fiduciaries who might tempt small employers into too-good-to-be-true MEPs.

### **What will Neal do?**

No one claims to know exactly where Neal wants to take the retirement system, or whether he will have the power to do so, given that the Senate and the White House can block any

Democratic initiative. There is also some question if he will have time and energy to devote to defined contribution system reform.

“Historically he favored the auto-enrolled workplace IRA, but for last two years he has been behind a mandate that all employers offer a retirement plan,” Gaston said. “This has gotten support from a number of financial services firms, who are more inclined to support a federal mandate to preempt state mandates. He wants to modernize the retirement system.”

This year, much of Neal’s time and attention has gone into trying to save “closed multiple employer plans,” which are distinct from open MEPs. Closed MEPs are defined benefit plans for companies in the same industry or that employ members of the same union.

“He’s on the joint committee on the future of closed MEPs,” Gaston said. “He’s trying to keep the PBGC [Pension Benefit Guaranty Corporation] from running out of money, and to make sure workers get the benefits they’ve been promised. This is really sucking away oxygen from him and his staff. He’s about to get the keys to the castle, but he has headwinds elsewhere.”

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