The ongoing trade standoff with China, monetary policy moves by the Federal Reserve, and the inversion of the yield curve contributed to a volatile summer for the markets, raising anxiety among retirement plan participants and investors alike.

However, the last few weeks in Washington have been relatively calm. Congress just returned from a six-week break to some issues that investors and retirement plan participants should keep an eye on this fall.

### Retirement savings bill still in limbo

As happens with so many things these days, retirement savings legislation remains bogged down in the Senate. The House of Representatives approved the Setting Every Community Up for Retirement Enhancement (SECURE) Act in May by an overwhelming 417–3 vote. There was real optimism that the bill might pass the Senate easily, but it wasn't to be. Attempts were made in May and early June to have the Senate approve the House-passed bill and send it directly to President Trump for his signature. However, under Senate rules, any Senator may place a hold on a bill to prevent that from happening. Reportedly, at least three Senators placed holds on the retirement bill. Attempts have been made to resolve these Senators' specific concerns, but so far the bill remains tied up.

Among other provisions, the House-passed legislation would increase the age at which individuals must begin taking required minimum distributions from 70½ to 72; repeal the age limit that prevents individuals from continuing to make contributions to a traditional IRA after age 70½; make part-time workers who have worked at least 500 hours in three consecutive years eligible to participate in their employer's retirement savings plan; and require lifetime income disclosures to help individuals understand how their current savings would translate into a monthly income in retirement. The bill also contains a number of provisions designed to make it easier for small businesses to offer a retirement savings option to their employees.

In addition, the bill would change the rules for inherited retirement accounts, often known as "stretch IRAs." Under the legislation, inherited retirement account assets would have to be distributed within 10 years. Current law allows heirs to spread out those distributions over their lifetimes. This change was included in the bill because it raises revenue for the Treasury, offsetting the losses to the government from other provisions such as the change in the required minimum distribution age. If the provision is included in the final bill, it could have a significant impact on estate planning strategies.

There is no timeline for when the bill might be considered in the Senate, nor is it clear whether the Senate might amend the legislation. If the Senate does make changes, the differences between the two bills must be resolved in a conference with the House, after which both chambers would need to pass identical legislation before it
could be sent to the president. Proponents on Capitol Hill remain cautiously optimistic that the bill can be approved this fall, but the momentum that was present after the House vote has slowed considerably.

Administration divided on proposal to index capital gains

One Washington idea that continues to attract media attention – and the interest of investors – is the possibility of indexing of capital gains to inflation. This concept, which has been floating around Washington for years, exempts from taxation any capital gains that are attributable to inflation. For an individual who has held a stock position for a long time, this would have the effect of increasing the cost basis and thereby reducing the amount of the gain that is taxable. The president has mentioned this idea several times over the last year, most recently in August. The administration is reportedly considering whether such a change could be implemented by an executive order.

There is genuine uncertainty about whether such an order would be constitutional, since it would effectively be an end-run around the Congress’ responsibility for making tax law. Democrats on Capitol Hill have made it clear they will challenge the idea in court, with Oregon Senator Ron Wyden, the top Democrat on the Senate Finance Committee, stating in June that indexing capital gains via an executive order would be “plainly illegal.” Even the administration appears internally divided over whether such an action would survive a court challenge.

The on-again, off-again nature of this idea has been plain in recent days. President Donald Trump himself appeared to declare the idea dead in late August, only to rekindle interest with a cryptic August 30 tweet that again expressed his support for the idea. Then, on September 12, after a meeting with White House advisors, the president said he was not going to proceed with the idea “at this time.” It’s clear the president and many in the administration are eager to make this tax change, which would almost certainly trigger a court battle and tie up the initiative for many months.

The key question for the administration seems to be whether it feels it could prevail in a protracted legal fight. So far, the administration has declined to test the waters.

New nominee for Secretary of Labor

On the regulatory front, President Trump announced in July that he would nominate Eugene Scalia as his Secretary of Labor, with jurisdiction over a variety of retirement-related issues. He would replace Alexander Acosta, who resigned the post in July. Scalia, the son of the late Supreme Court Justice Antonin Scalia, will begin the confirmation process with a hearing in the Senate on September 19, with a full Senate vote expected later this fall. He is a well-known labor attorney who is perhaps best known for leading the legal challenge that overturned the Labor Department’s so-called “fiduciary rule” last year.

The rule redefined who is a fiduciary and cracked down on conflicts of interest in the retirement savings space. After a seven-year fight over the specifics of the rule, it went into effect in 2017 before it was thrown out by the courts in 2018. Now, if he is confirmed, Scalia would be overseeing the very department that is reportedly deep into the process of rewriting the fiduciary rule that could be proposed later this year or in
2020. Scalia’s role in the 2017 fiduciary fight is expected to be a major point of contention during his confirmation hearing. Scalia has said that he would recuse himself from department issues that conflict with his time in the private sector, but has not addressed specifically whether that includes the fiduciary rule.

**Deal on budget, debt ceiling gives markets some certainty**

Moments of bipartisanship have been fleeting during this session of Congress, but an important one took place over the summer when Congress agreed to a two-year budget deal that suspends the debt ceiling. President Trump signed the package into law on August 2. The new deal sets federal spending limits for FY 2020, which begins October 1, 2019, and FY 2021.

That doesn’t rule out the possibility of a government shutdown at the end of September, however. Congress is struggling to pass the 12 appropriations bills that divide those dollars among every federal program and agency for each of the two years. By mid-September, it was becoming clear that Congress would not complete this year’s appropriations process before the September 30 deadline. A shutdown seems unlikely, however, as Congress was working to pass a temporary extension of the funding to late November or early December in order to avoid the second partial shutdown of the year.

Importantly for the markets, the August bill also suspended the debt ceiling through July 31, 2021. As has happened frequently in recent years, once the debt ceiling returns, the Treasury Department can employ “extraordinary measures” to ensure that the United States does not default on its debts for several months. This means that the next Congress is likely to have until late 2021 before having to address the debt ceiling again. The action provided some needed clarity to the markets after Treasury Secretary Steven Mnuchin said in July that the Treasury might run out of cash to pay its bills by early September unless Congress acted to raise or suspend the debt limit.

For investors and savers, it’s important to remember that debt ceiling fights tend to increase market volatility, but markets have historically been relatively sanguine about government shutdowns. In fact, during the 35-day partial government shutdown that began just before last Christmas and lasted into late January 2019, the S&P 500 actually increased by more than 10%, though that move had little to do with the shutdown itself. With the debt ceiling fight now kicked more than two years down the road, that won’t be a concern for the markets.
As Vice President in the Office of Legislative and Regulatory Affairs, Townsend is Charles Schwab's Washington-based political analyst. Townsend brings more than 25 years of Washington experience as he analyzes legislative and regulatory proposals to determine how they would affect individual investors, retirement plan participants and investment advisers. As an advocate for individual investors, he then develops and executes strategies to communicate their interests to lawmakers, the media, employees and clients. He speaks regularly at events around the country on how policy and politics affect investors and is the host of Schwab's newest podcast, “WashingtonWise Investor.” Follow Mike on Twitter: @MikeTownsendCS

The comments, views, and opinions expressed herein are those of the author and are intended for informational purposes only. The information is not intended to provide tax, legal, or investment advice. Certain information presented herein may be subject to change. Any information or material contained herein may not be copied, assigned, transferred, disclosed, or utilized without the express written approval of Schwab Retirement Plan Services, Inc.

Schwab Retirement Plan Services, Inc. created this communication for retirement plan sponsors and retirement plan consultants, advisors and other retirement plan service providers and fiduciaries only. Schwab Retirement Plan Services, Inc. is not a fiduciary to retirement plans or participants and only provides recordkeeping and related services.

©2019 Schwab Retirement Plan Services, Inc. All rights reserved. (0919-9G49) ELC84191-15 (09/19)