

TO: NAW Direct Members

FR: NAW Government Relations Team

RE: NAW Government Relations Update Number 2021-19 – July 28 at 5:45 PM

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1. Latest on the Bipartisan Infrastructure Framework

The Senate Bipartisan Infrastructure Framework (BIF) seems to have gotten over a significant sticking point and may potentially have enough momentum to pass the Senate. Late last night the Senate Group of 22 (G22) announced that they have agreed to the \$579 billion infrastructure plan. Even though the negotiation missed several deadlines, the G22 continued to work forward. Majority Leader Chuck Schumer (D-NY) has said that he will bring the BIF up for a procedural vote as early as tonight (Wednesday, July 28th). If this procedural vote can muster the required 60-vote threshold then it would open the bill up for debate in the full Senate and increases its chance of passage. As many as 12 Republicans at one point or another have been involved in negotiations of the BIF. To meet the 60-vote threshold Majority Leader Schumer (D-NY) will need to count on all their support to counteract any defections from Democrats in his party.

On the other side of the Capitol, things are even less certain. Currently, Speaker of the House Nancy Pelosi (D-CA) only has a four-vote majority and the Chairman of the House Transportation and Infrastructure Committee Peter Defazio (D-OR) has demanded that the House amend the BIF to include climate provisions and earmarked projects that were in the more partisan House infrastructure bill. Further, progressives in the House have threatened to vote against the BIF unless Pelosi links the BIF and the larger \$3.5 trillion reconciliation package that would include many of President Biden's other priorities. While on the Republican side of the House, many in the Republican conference are expected to vote against any bill that would give President Biden and House Democrats a victory before the midterm election.

So, while this agreement is a significant first step, there are still many stars that must align for this, or any infrastructure package, to be signed into law. NAW will continue to

work with members of the Senate and House of Representatives to urge the passage of an infrastructure package. Additionally, please see the statement NAW put out in support of the BIF [HERE](#).

2. Latest on Overtime Issue, Revisited:

When the Obama Administration proposed its rule modifying the Fair Labor Standards Act's "white collar exemption" from the required payment of overtime, NAW and our allies in the business community vigorously opposed the new rule. That rule, which would have raised the minimum salary for exempt status from \$23,600 to more than \$47,000 (among many other controversial provisions), was challenged in court in a case in which NAW was a plaintiff. After the court overturned the Obama rule, the Trump Wage and Hour Division promulgated a new rule, which raised the threshold salary to about \$35,000 and made other reasonable changes to the rule. The Trump Administration's rule is in effect today.

However, that could well change, soon. The Administrator of the Wage and Hour Division in the Obama Labor Department, David Weil, has been nominated by President Biden to assume that position again. His nomination has been very controversial for several reasons, including his having been the architect of the Obama-era FLSA rule, and NAW joined colleagues in the business community in signing a letter to the Senate Health, Education, Labor and Pensions Committee opposing his nomination. You can read that letter [HERE](#).

Mr. Weil, who has mentioned revisiting the overtime rule as one of his priorities, is likely to be confirmed by the Senate despite opposition from most Republican Senators as well as the business community.

If the new Wage and Hour Division does in fact propose a new overtime rule, we will again reach out to NAW members seeking your feedback on how the new rule would impact your businesses and help organize opposition to the rule if warranted.

3. Latest on Proposal to Require Banks to Report Account Holders' Financial Transactions to the IRS:

As we have reported before, one of the provisions in President Biden's tax proposals would require banks to report to the IRS all the transactions of their account holders of more than \$600. This very controversial proposal was initially included in the Bipartisan

Infrastructure Framework, but opposition to it was so strong and vocal that it was subsequently deleted from that proposal.

However, several senators, reportedly including Mark Warner of Virginia, continue to support that banking reporting requirement in some form, and we are told they plan to include it in an upcoming reconciliation/“human infrastructure” bill.

The banking community is, unsurprisingly, concerned about this reporting requirement. Working with our allies in that community, we circulated for signature a letter to Congress to be signed by trade associations opposing the IRS reporting requirement. We will continue to monitor this and keep you informed as the issue develops. You can read our letter opposing the provision [HERE](#).

4. Latest on NAW’s Effort to Defeat Amazon’s Monopoly Power

Last week, we sent a letter to Lina Khan, Chair of the Federal Trade Commission (FTC), to urge scrutiny and action addressing Amazon Business’ mistreatment of third-party sellers. The Commission’s investigation of Amazon’s conduct addresses several areas, including the Business to Consumer (B2C) market. Paramount to NAW and its members is Amazon’s exploitative conduct in Business-to-Business (B2B) commerce. Amazon Business’ anticompetitive tactics replicate those it pursues to dominate the B2C market. Like its B2C business, Amazon plays “both sides” of B2B by selling its own products in direct competition against third-party sellers who use Amazon’s B2B marketplace.

To read NAW’s letter to Chair Khan, click [HERE](#).

Also last week, we sent a letter to GSA Administrator Robin Carnahan to ask that she review GSA’s implementation of Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, the e-commerce marketplace platform program. Section 846 of the 2018 NDAA requires GSA to establish and manage a pilot program using e-commerce marketplace platforms to enable Federal agencies to purchase commercial off-the-shelf (COTS) products. Congress directed GSA to include multiple commercial e-commerce portal providers in pilot tests to validate their appropriateness as procurement vehicles, not to focus only on a single marketplace model or a single provider.

Although GSA identified three credible e-commerce purchasing channels, its June 2020 award tests only one model, the Amazon e-marketplace platform. GSA should not designate Amazon as the gatekeeper and by doing so reduce competition for the federal

customer and foreclose access to the federal market. GSA should change course so alternative e-commerce models have meaningful opportunity to compete.

To read NAW's letter to Administrator Carnahan, click [HERE](#).

5. Latest on the Economic Recovery and Re-Opening the Workplace

As the Coronavirus Pandemic continues to impact the United States economy and businesses across the nation, it can be hard to decipher how new regulations and laws may impact your business. To help you manage these issues NAW is providing information about reports, webinars, and seminars that you may find useful:

Webinar from *Little Law Firm*: COVID-19 in the Workplace: Recent Developments and Compliance Challenges - Session 17

Friday, August 6, 2021 | 8:30 am-9:30 am PDT

It has become apparent that COVID-19 is going to dominate employment and labor law issues for the foreseeable future. In response to the many questions that business leaders, human resources professionals, and in-house counsel have about facing these new legal challenges, Littler created the "First Friday" webinar series. Every month since April 2020, on the first Friday of every month, we gather (1,500 attendees tuned in last month) to talk about what has happened in COVID employment law in the last 30 days.

To register, click [HERE](#).

Stateside Associates publishes a daily report about State and Local Government responses to the evolving situation. To read their latest report, click [HERE](#).

We are also providing a link to a spreadsheet that includes state and local COVID-19 response information provided by **MultiState Associates**. To view their spreadsheet, click [HERE](#).

[Click here](#) for links to **UPDATES** sent previously.

Many thanks—

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