TO: NAW Direct Members

FR: NAW Government Relations Team

RE: NAW Government Relations Update Number 2021-23 – October 5 at 10:00 AM

To receive the latest GR news, follow NAW on twitter @NAWorg or on our LinkedIn page HERE. Sign up for free to NAW SmartBrief, your daily resource for wholesale distribution industry insights, trends and news.

1. Latest on the Bipartisan Infrastructure Framework (BIF) and Reconciliation (Build Back Better/BBB)

The very narrow majorities the Democrats hold in Congress today – a tied Senate and only three votes to spare in the House – are on full display in Washington as their "transformational" agenda stalls. To quote a pithy *Punchbowl News* reporter: *It's tough to pass FDR-sized programs without FDR-sized majorities.*

Speaker of the House Nancy Pelosi said two weeks ago that before the House adjourned for their 2-week recess on October 1st, they would pass major economic legislation: the BIF, a Continuing Resolution (CR) to fund government, the reconciliation bill (BBB), and possibly a debt limit extension.

When the House adjourned after 8:00 PM Friday evening, they had passed only the CR to prevent a government shutdown. Earlier in the week, consideration of the BBB was taken off the table. And the vote on the BIF that the Speaker had promised would occur on Monday, September 27th? It was postponed a day at a time until President Biden, leaving his Friday afternoon meeting with the Democratic caucus, effectively postponed it indefinitely when he said "It doesn't matter whether it's in six minutes, six days or six weeks . . ."

As an aside: it did matter. The BIF includes language to reauthorize the Surface Transportation Act, which expired on September 30. Failure to pass the BIF meant that the House and Senate had to scramble to pass another last-minute extension of the Act to keep the Highway Fund operational through October.

So, what happens next?

The House has now left DC for a 2-week recess. The CR extends government funding through December 2nd. The Surface Transportation funding is extended to October 31st. And the Treasury Department says they will reach the current debt limit around October 18th. Since Congress seems able to act only when faced with a critical deadline, they are now focused on the debt limit – see more on that below – because they reach that deadline first.

All the moving parts and complicating factors that contributed to the current situation remain in play. And there are a lot of them –

House Moderate Democrats: They agreed to vote for the Budget Resolution that put in motion the consideration of the $3.5 trillion reconciliation bill, despite many of their qualms about the size of that proposal, in exchange for a firm commitment from Speaker Pelosi that she would bring up the BIF for a vote on September 27th and that she would work to ensure its passage. But the vote never happened and House sources say she did not encourage Democrats to vote for it and may have encouraged Progressives to oppose it. While two of the moderates released statements critical of that outcome, most have made no public comment. It remains to be seen whether they flex their muscle and threaten to oppose the reconciliation bill (Pelosi can only lose 3 votes and retain her majority) until she keeps her commitment to them on the BIF. If they do not, it's hard to imagine them having much influence on future policy outcomes.

House Progressive Caucus: Claiming 90 members, the Progressives clearly have enough votes to prevent enactment of any legislation they don't like. Some have indicated a willingness to consider a BBB smaller than $3.5 trillion, but others remain adamant that they will kill the BIF unless the full $3.5 trillion is enacted first. Given that the $3.5 trillion bill cannot pass in the Senate, it remains to be seen whether the Progressives will take half a loaf and accept a smaller BBB along with the BIF or let everything fail by refusing to accept a compromise. When the conservative Freedom Caucus/Tea Party held the same power in a GOP-controlled House, there were several occasions when they refused to compromise and scuttled the GOP legislation.

The President: The President negotiated the BIF with the bipartisan group in the Senate this past summer, then announced that he would not sign the BIF unless he got the BBB at the same time, then walked back that statement and reiterated his strong support for the BIF. Last Friday, in his meeting with the House Democrat Caucus, he was expected to rally them to vote for the BIF, but instead he reversed himself again, urging Democrats not to support the BIF until they have an agreement on BBB. The President put the Speaker in the position of either breaking her commitment to her moderates or defying her President. On Saturday morning *Politico* quoted an anonymous

House Democrat saying: “The fact that the president came to the Hill and whipped against his own bill is the strangest thing I’ve ever seen.”

Senator Manchin: West Virginia Senator Joe Manchin has consistently said he will not support a $3.5 trillion dollar spending bill, but he added a bit of intrigue to the debate last week when he released a signed statement he had given to Senator Majority Leader Chuck Schumer – ***in JULY*** – stating that he will support only $1.5 trillion in new spending. Amazingly, Chuck Schumer had also signed the document, and no one seems to know why Senator Schumer signed it or why and how the statement had been kept secret for months. You can access the document and a story about it **HERE**.

More – and more important – on Manchin: While Senator Manchin is very vocal about his opposition to new spending, ***he is not opposed to tax increases***. He has said that the $1.5 trillion in new spending he would support would have to be fully paid for with $1.5 trillion in tax increases. He told a reporter last week that since no Democrat had voted for the 2017 Tax Cuts and Jobs Act, that’s where he’d start – and that would mean repealing the reduced tax rates, just for openers. And last week a group of kayakers approached the houseboat on which he lives and engaged in a conversation with him about BBB. When the kayakers said that we need to tax the rich, Manchin said: “Well, I agree with that. I definitely agree. That's the number one thing we should be doing is fixing the tax code. Everybody should everybody pays [sic] their fair share. I agree with you 1000%. We're on the same page, gang, we really are. Let us fix and repair that first . . . I agree we're gonna make the rich and the famous pay.” You can see his exchange with the kayakers **HERE**.

Kyrsten Sinema: Arizona has a history of electing mavericks to the US Senate, John McCain being the epitome of that. When maverick Republican John McCain was a serious thorn in the side of the GOP Leadership, he was widely praised by Democrats and the media for his courage and principle. Senator Sinema is carrying on that Arizona tradition today, telling the Democratic Leadership that she will not support their $3.5 trillion BBB. Most significantly, she has also said she does not support the Democrats’ crippling tax increases on employers. Instead of being praised for her courage and principles, she is being pilloried by liberal commentators, by a constant stream of on-line tweets, and by many of her fellow Democrats. She has been summoned to multiple meetings at the White House, and so far does not appear to be caving to the intense pressure. But as negotiations on the BBB proceed, for the business community, Sinema is the most important senator to watch.

Smoke & mirrors alert: It’s certain that the size of the BBB is going to have to come down, but HOW MUCH it comes down isn’t the only question, it’s also about HOW it comes down. This is really convoluted Congressional procedure, so bear with me here: The cost of a program in a reconciliation bill is based on how many years the program is expected to last – ten years at most under reconciliation. For example, an expanded childcare credit that is supposed to last for 10 years will cost a whole lot more than the same program if it is expected to last for only 5 years. But it is assumed that once new programs take effect, they will inevitably become permanent – Democrats are openly confident that Congress will not repeal these new benefit programs once people become accustomed to them. So the cost of the BBB can be significantly reduced by simply shortening the statutory life of a new program in the bill. Alexandria Ocasio-Cortez described this shell game succinctly in a Sunday interview: "One of the ideas that's out there is: fully fund what we can fully fund, but maybe instead of doing it for 10 years, we fully fund it for five years."

2. Latest on the Debt Limit Process

With the country fast approaching the current debt limit, Congress must pass an increase to that limit or risk lapsing into default. Even with her slim majority in the House of Representatives, Speaker Nancy Pelosi has the votes to pass a debt ceiling increase quickly; however, the 50-50 split in the Senate poses a more significant challenge for Majority Leader Schumer. Under the rules of the Senate, most legislation can be filibustered and therefore requires 60 votes to pass. Since Republican Leader McConnell has made it clear that no Republican senator will help pass the debt limit extension (you can read his letter to the President explaining his position on the debt limit **HERE**), Senator Schumer has two paths available to him to get a debt ceiling extension passed. The first path, which Minority Leader McConnell has already rejected, would be to bring to the floor a stand-alone debt ceiling increase and hope that there is sufficient public pressure on Senate Republicans that they decline to filibuster the bill and let it pass by a simple majority vote.

The second, and most likely, path that Majority Leader Schumer could take would be to use once again the budgetary process known as reconciliation. The Senate parliamentarian has ruled that the Fiscal Year 2022 budget, which produced the reconciliation bill/BBB now being debated/negotiated, can be amended by the Budget Committee, with that amendment then voted on by the full Senate. To put that into “non-wonk” language – to raise the debt limit Senate Democrats would need to write a simple amendment to the current budget. Then it gets complicated again.

That debt limit amendment would be considered by the Senate Budget Committee, where it would likely stall on a tied vote. The Senate would then formally discharge the amended budget from the Committee – likely requiring the votes of all 50 Democratic Senators with the Vice President breaking the tie – bringing it to the floor for further action. There is limited debate permitted on budget measures, so the bill could not be filibustered, but it would trigger a process called a “vote-a-rama,” which allows for a potentially unlimited number of amendments, most of which would be “messaging” amendments offered to score political points. Once the vote-a-rama concludes, the Senate will be able to pass the debt limit extension with a simple vote – again likely requiring the vote of the Vice President to break a tie.

The President and Democratic leaders do not want to pursue this path to a debt limit extension and are very critical of the GOP for refusing to provide the votes to pass it without using reconciliation. But as Senator McConnell noted in his letter to the President, this is actually pretty standard practice:

“As you and I know from shared Senate experience, this is not unusual. The debt limit is often a partisan vote during times of unified government. In 2003, 2004, and 2006, Mr. President, you joined Senate Democrats in opposing debt limit increases and made Republicans do it ourselves. You explained on the Senate floor that your ‘no’ votes did not mean you wanted the majority to let the country default, but rather that the President’s party had to take responsibility for a policy agenda which you opposed. Your view then is our view now.

Extending the debt limit through the reconciliation process will take at least a week from start to finish. With the Treasury Department estimating that the country will fully exhaust its current budget limit by mid-October, Majority Leader Schumer must quickly decide how the Senate Democrats will proceed on this game of chicken.

3. 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:

From *Littler Law Firm*: Guide to Federal Contractor Obligations under Recent COVID-19 Executive Orders

The federal government’s complicated multi-pronged approach to implementing COVID-19 safeguards related to federal contractors has left many confused. To read more, click **HERE**.

Webinar from *Littler Law Firm*: Clearing the Way to Compliance: Hindsight is So 2020

October 7, 2021 | 1:30 p.m. ET

In this webinar, we will discuss looking back at how COVID-related employment decisions made since 2020 may be setting up challenges to future compliance success. During the pandemic, employers have made decisions with an eye toward public safety, not employment law compliance. As employers make decisions on what their future workplace will look like, including return to office, ramping up staffing, and safety-related issues, a variety of legal issues may surface posing compliance challenges. In this 60-minute webinar you will hear from a panel of Littler attorneys with deep knowledge and experience on the following hot pre- and post-pandemic topics, including:

- Workplace safety
- Leaves of absence and accommodation
- Business restructuring
- Wage & hour

To register, click **HERE**.

Webinar from *Litter Law Firm*: Compensation in Financial Services: An International Perspective on Bonuses, Long-term Incentive Arrangements, and Rights on Termination

November 2, 2021 | 11:00 a.m. ET

Compensation is a dynamic and important issue in financial services. It is, of course, a key tool for employee retention. It is also subject to numerous legal and regulatory requirements, and unfortunately often a primary subject of disputes between employers and employees.

This roundtable discussion with highly experienced lawyers from Europe and the United States will present an international perspective on this topic, and provide attendees a chance to ask questions about their current issues of concern. To register, click **HERE**.

From *Reed Smith Law Firm*: Federal contractors and subcontractors receive guidance on President Biden’s vaccine mandate, including December 8, 2021 compliance date

On September 24, 2021, the Safer Federal Workforce Task Force issued guidance for federal contractors and subcontractors concerning various safety protocols (the Guidance) as required by President Biden’s Path Out of the Pandemic and Executive Order 14042 (the Order). The stated purpose of the safeguards set forth in the Guidance are to decrease the spread...… Continue Reading

Click here *for links to UPDATES sent previously.*

Many thanks—

Jade West, Chief Government Relations Officer
Blake Adami, Vice President-Government Relations
Seth Waugh, Associate Vice President-Government Relations
National Association of Wholesaler-Distributors