

## Government Relations Update 2021-25 - October 22, 2021

### **1. Latest on Reconciliation/Build Back Better (BBB) and the Infrastructure Bill (BIF)**

On Wednesday evening, Democratic Leaders announced that they were close to a deal on the framework to pay for President Biden's social agenda, the Build Back Better (BBB) Plan, which will have to be passed through the partisan process known as budget reconciliation, with only Democratic votes. However, any progress Democratic leaders had made now seems to be receding. Not only are Democrats hitting roadblocks on how to fund the massive social spending bill, they have not yet even reached an agreement on the "top line number" – how large the final package will be. The tax and social spending package was initially proposed at \$3.5 trillion but there seems to be a growing consensus that it will be pared back to between \$1.75 - \$2 trillion – a number arrived at because of the opposition of Senator Joe Manchin (D-WV) to more spending and of Senator Kyrsten Sinema (D-AZ) to increased tax rates on companies and individuals. Other main sticking points include paid leave, expanded childcare, free community college, expanding Medicare, and significant climate provisions.

On the other side of the coin, Congresswoman Pramila Jayapal (D-WA), the chair of the House Progressive Caucus, has been urging her colleagues to pass the full \$3.5 trillion social spending bill and pay for it by raising taxes on corporations and the wealthy. She recently said that "It would be outrageous to not include something that so desperately needs to be done, that is the most popular part of this entire package, and that is something that all of us ran on." This puts the House Progressives and Senator Sinema in direct opposition to one another – and in the 50-50 Senate, Senator Sinema's vote is critical.

But Sinema is not the only Democratic centrist in the 50-50 divided Senate making demands with respect to the reconciliation bill. For example, Senator Joe Manchin (D-WV) has pushed back against the high price of the bill. As the Senator from West Virginia, an energy-producing state, he has said that he cannot support President Biden's signature clean energy provisions currently included in the bill. Because of Manchin's opposition to the energy program. Senator Jon Tester (D-MT) has staked out ground in opposition to repealing stepped-up basis. And other moderate Democrats running for re-election in competitive races are notably silent on the bill.

Despite all these late changes to appease the moderates in their party and remaining unanswered questions, Democratic leaders voiced confidence earlier this week that they would have an agreement or "framework" by week's end. Speaker Pelosi said that Democrats have "rounded the turn, now we're almost to the stretch and we're making great progress to our goal . . . it will pass soon . . . We've been on schedule every deadline, and we continue to be on schedule." Speaker Pelosi's second in command, House Majority Leader Steny Hoyer, echoed that Democrats are "trying to get a framework in the next 48 hours." On the other side of the Capitol, Senator Schumer said that Democrats have "to get it done and want to get it done this week."

But directly contradicting his Party Leadership, Senator Manchin bluntly stated that a deal "is not going to happen anytime soon... there is a lot of work to do."

And yesterday Senator Manchin and Senator Bernie Sanders (D-VT) got into a heated argument about the size of a package that ended with Senator Manchin reportedly saying, "We shouldn't do it at all" about the social spending reconciliation plan. And finally, President Biden, at his CNN town hall on Thursday, acknowledged to the audience that Senator Krysten Sinema is "very supportive of

the environmental agenda in my legislation [but] she will not raise a single penny on taxes for the corporate side and or on wealthy people.”

Given the contradictory statements from key players on the Democratic side, and unanimous opposition from the GOP, it does not appear that they are closer to a genuine agreement on their reconciliation plan than they were a month ago. Adding to the confusion, the Democrat-controlled House of Representatives still hasn't acted on the Bipartisan Infrastructure Framework (BIF), which they were trying to pass in September and which House moderate Democrats argue must be passed before the reconciliation bill is voted on.

According to conversations NAW has had with colleagues and contacts on Capitol Hill, House Republicans are giving the BIF only a 25% chance of passing by the October 31st deadline when Surface Transportation Act funding expires. They don't anticipate the reconciliation negotiations to be complete until at least December. Behind closed doors, it appears that Democratic leaders are also hedging their bets and have begun to quietly discuss extending the Highway Trust Fund through December 3<sup>rd</sup>.

If they do push the highway funding deadline into December, they will be setting up quite a year-end to-do list with December deadlines on the debt limit increase, infrastructure, the BBB, and funding the government to prevent a shutdown.

## **2. Latest on the NAW-American Job Creators Ad Campaign**

In line with our mission to support pro-business legislators, NAW and America's Job Creators for a Strong Recovery plan to announce a six-figure media campaign in Arizona next week, both highlighting how Senator Sinema is standing strong against tax hikes, and detailing the harm of tax increases on America's businesses.

Given the timing of the negotiations, and the immense pressure on Senator Sinema, it is important for the coalition to be nimble and show our support. The coalition is already active in Phoenix with billboards in high traffic areas asking Senator Sinema and Senator Kelly to stand with Main Street. You can view the ad we are releasing next week [HERE](#).

## **3. Latest on Account Information Bank Reporting Proposal**

As you all know, President Biden's original tax proposal included a provision that would require banks to report to the IRS all information on financial transactions of more than \$600 – in the annualized aggregate – of their account holders. The Administration claimed that, while the banks would be required to report the transactions of all account holders, the IRS would not use the information provided on taxpayers earning less than \$400,000 per year.

The provision was, not surprisingly, very controversial. While the proposal has been around for months, it has gotten more attention recently, and the opposition to it has increased. The banking industry has uniformly opposed the reporting requirement, businesses were alarmed by it, individuals asked why their personal financial information should be reported to the IRS if the agency wouldn't use most of it, and attorneys began talking about legal challenges to it as an invasion of privacy and violation of the 4<sup>th</sup> Amendment's protections against unreasonable search and seizure.

Last week NAW helped circulate for signature a [letter](#) to Congressional leaders opposing the bank reporting proposal, which more than 100 national organizations signed.

This week, with little fanfare, the Administration changed the proposal, increasing the aggregate transaction amount that would require reporting by the banks from \$600 to \$10,000. And Senate Finance Chairman Ron Wyden (D-OR) released a “facts and myths” document saying it was a myth that there was a \$600 trigger even though the only proposal in writing includes that number.

Today we are helping circulate another letter, this one to the President, reiterating opposition to the bank reporting proposal, and pointing out that (1) an aggregate transaction amount of \$10,000 would still require the reporting on American individuals and small businesses earning well under \$400,000 a year; and (2) opposition to the proposal is based on principle, not the amount of the transactions:

*At its core, this program will collect financial “metadata” on nearly every American in the hope that the IRS will be able to discern patterns in aggregate numbers that do not correspond to tax liabilities and target audits only to those who are breaking the law. This is a substantial expansion of the IRS’s authority that, once established, is sure to expand rather than roll back. We strongly urge the Administration to withdraw this reporting regime and consider how the IRS can use its existing authorities to directly focus on those taxpayers suspected of evading their taxes instead of casting such a wide net.*

We are still collecting signatures on this [second letter](#), and we expect it to be sent to the White House this afternoon.

#### **4. Latest on Federal Vaccine Mandates**

**OSHA Emergency Temporary Standard:** On October 12<sup>th</sup>, OSHA sent the vaccine mandate rule over to the Office of Management and Budget’s (OMB) Office of Information and Regulatory Affairs (OIRA), a necessary step in the process of finalizing the rule. OIRA still has the rule under review, although there was a report a few days ago that they had completed that review. As of this writing, neither OSHA nor OIRA has released the language of the rule, so we do not have any more knowledge of its content or requirements.

We will join our partners in the Coalition for Workplace Safety in filing comments on the rule once it has been released. There is discussion among law firms and some business organizations about mounting a legal challenge to the ETS once it is finalized, but at this point we are unaware of any decision to take that action.

In the interim, the Senate has finally taken steps to confirm Douglas Parker, President Biden’s nominee to head OSHA. Once the ETS has been completed, and with a new head of the agency likely to be confirmed on Monday, we can anticipate more aggressive regulatory activity from the agency.

**Federal Contractor Vaccine Mandate:** We have heard from a significant number of NAW members with concerns about this mandate, and last week we reached out to all our member company CEOs seeking feedback on how the mandate will impact their companies and employees.

Based on your input, we sent a [letter](#) to President Biden yesterday, raising concerns about the impact on companies, workers, the supply chain and the economy. We have not received a direct response from the White House, but in a CNN story just released reporting on our letter, White House Coronavirus coordinator Jeff Zients disputed our claims about the disruptions the mandate will cause. Most surprisingly, he dodged the issue of mandatory terminations on December 8<sup>th</sup> by claiming that the first steps for employees refusing to get vaccinated are education and counseling, not terminations. He also seemed to suggest that contracting agencies will have discretion with respect to enforcement of the mandate:

*In response, the White House pointed to comments made this week by Jeff Zients, the administration's coronavirus response coordinator.*

*"Vaccination requirements work. They've increased vaccination rates by 20-plus percentage points to over 90% in most organizations," Zients told reporters this week.*

*Zients pointed out that the first step for employees who do not get vaccinated is a "period of education and counseling," not termination.*

*"The requirements for federal workers and contractors will not cause disruptions to government services that people depend on," Zients said. "Agencies have the flexibility necessary to enforce the mandate without impacting critical operations."*

You can read the entire CNN story [HERE](#).

The Washington Examiner also reported on our letter, and you can read that story [HERE](#)

Based on the White House response to date, and the Zients' comment in the CNN story, it would appear that the Administration is not yet reconsidering its mandate or considering modifying it. However, we are continuing the effort to persuade them otherwise.

We are continuing to raise awareness of this issue. We sent our letter to every member of Congress and have circulated it among business coalitions engaged in the vaccine mandate issue. We are working with trade association colleagues to encourage others to add their voices to the request that the White House modify or withdraw the mandate. And we will continue our outreach to the media to call attention to the many problems you have clearly demonstrated will result if this mandate is not modified. And we will of course keep you apprised of what we do and learn.

Many thanks to those who provided feedback and input to inform our letter, and if you have not done so and would like to, the questions we sought feedback on are pasted below, and we will continue to use NAW member feedback in our efforts here in DC.

#### **Questions:**

- What percentage of your workforce is vaccinated?
- What incentives have you offered to your workforce to persuade them to get vaccinated?
- What jobs do the unvaccinated generally perform?
- Are the unvaccinated disproportionately among the lower-level, lower-wage jobs?
- Are the unvaccinated disproportionately diverse/people of color?
- Would an extension of the December 8<sup>th</sup> deadline be helpful?
- Would you prefer to have a testing alternative to the vaccine, or would that add too much complication to the process?

#### **5. Latest on Other Issues Impacting NAW Members**

This week, the Senate Committee on Finance held a hearing entitled, *Health Insurance Coverage in America: Current and Future Role of Federal Programs*. The hearing is part of an ongoing series of Democratic efforts to build on Obamacare, through richer insurance subsidies and pursuing a public option.

On Wednesday, the Partnership for Employer-Sponsored Coverage Coalition, which NAW helps manage, submitted a statement for the record urging Congress to devote its attention and resources toward issues to improve our current health care system, such as increasing market competition, providing more coverage choices and access to providers for all Americans, and addressing systematic cost drivers and wasteful spending. NAW continues to fight to ensure that employer-sponsored coverage is strengthened and remains a viable, affordable option for millions of American workers and their families for decades to come.

To read the full statement, click [HERE](#).

## 6. 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 *McGuireWoods Law Firm*:** Mandatory Vaccination Coverage Expanded in Practice for All Federal Contractors and Subcontractors

As McGuireWoods noted in prior alerts, part of the Biden administration's COVID-19 vaccination mandates applies only to federal contractors and subcontractors. And, even then, the Sept. 9 Executive Order and Sept. 24 Safer Federal Workforce Task Force Guidance appear to limit coverage to only a subset of such employers.

However, events over the past few weeks have shown that the Federal Acquisition Regulatory (FAR) Council and federal agencies have taken an aggressive position in rolling out the vaccination mandate — “encouraging” contracting officers to include the EO clause in *all* federal contracts beginning Oct. 15, 2021. This includes contracts for goods and contracts below the FAR simplified acquisition threshold. To read more, click [HERE](#).

From ***McGuireWoods Law Firm***: Vaccine Mandates Need Liability Shields

Employers might expect that following vaccine mandates and other government workplace standards will protect them from COVID-19-related health claims and litigation. But recent court decisions highlight the risks of COVID-19 claims from workers, consumers and individuals who contract the virus through so-called “take home” exposure. In a column published by *Bloomberg Law*, McGuireWoods partners Samuel Tarry and Davis Walsh argue that governments should provide a liability shield for businesses that follow public health guidelines and implement vaccine mandates for their workers. To read more, click [HERE](#).

Many thanks—

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