

TO: NAW Direct Members

FR: NAW Government Relations Team

RE: NAW Government Relations Update Number 2021-22 – September 24 at 4:15 PM

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PLEASE NOTE: We apologize for the length of this GR update – it's much longer than our normal updates, but there is a lot going on in Washington that we wanted to report on.

1. Latest on the Bipartisan Infrastructure Framework (BIF)

As we have previously reported, the Senate-passed Bipartisan Infrastructure Framework (BIF) was sent to the House of Representatives, where it is still sitting in limbo. You may remember that Speaker Pelosi interrupted the Congressional break in August to bring the House back to DC to work on their reconciliation bill – the \$3.5 trillion tax and spending bill – that was being "dual-tracked" with the BIF. However, after the attempted uprising by the Democratic moderates, Speaker Pelosi promised that there would be a vote on the BIF by September 27th, whether the reconciliation bill was ready for floor action or not.

As of this writing, Speaker Pelosi is sticking with her promise to bring the BIF forward early next week. But the nearly 90-member Progressive Caucus within the Democratic party has threatened to vote against the BIF unless it is coupled with the larger reconciliation package, which is not yet entirely written. And the moderate Democrats have told the Speaker they will not vote for the reconciliation bill until and unless the BIF is passed. This standoff remains unresolved.

The Progressive Caucus believes that if the BIF is passed on its own, the reconciliation bill (which contains many of their policy priorities) could well be defeated because the moderate Democrats will be free to oppose the more expensive social agenda once the BIF has passed. According to reports, at least 50 members of the Progressive Caucus have committed to voting against the BIF.

On the opposite side of the coin, moderates are standing by their demand for a vote on the BIF prior to consideration of reconciliation and are angered by the Progressives' vow

to defeat the infrastructure bill. There is a genuine possibility that Speaker Pelosi will not be able to stop her moderates from voting against reconciliation. (And remember the Speaker can only lose three votes and maintain a majority vote to pass legislation.)

During "normal times," an actual infrastructure bill such as the BIF would likely garner a fair number of bipartisan votes, as shown when 19 Republican Senators voted for the BIF nearly two months ago. However, Speaker Pelosi's decision to tie the BIF to the reconciliation bill alienated many Republicans who would otherwise support the infrastructure legislation, and they see support for the BIF as leading to inevitable passage of the massive reconciliation bill. As of a recent count, fewer than a dozen Republicans are leaning towards voting for the BIF. This number could very well shrink even further now that the Republican leadership team has announced it would be urging the Republican caucus to vote no.

According to some sources, should the BIF fail next week, Democrats in the House and Senate may try to fold many parts of that legislation (if not the entire bill) into the reconciliation package as a sweetener for the spurned moderates to persuade them to vote for reconciliation. Although a lot can change between now and the tentative vote on Monday, as of this moment, it appears that the likelihood of the BIF passing the House of Representatives is getting slimmer by the minute.

2. Latest on the Reconciliation Tax-and-Spend Bills

There's little substantive progress to report since our update last week. In the House of Representatives, all 13 committees have reported their pieces of what is now being combined into the massive \$3.5-3.9 trillion bill. Having the most direct impact on business, the Ways and Means Committee reported a bill that would raise about \$2.1 trillion in new taxes, the overwhelming majority of which would come from employers.

The substance has not changed, and neither has the political stand-off that has dominated the conversation in Washington for weeks. As we report above, the success or failure of the massive reconciliation bill is inextricably entwined with the \$1.2 trillion infrastructure bill.

On Wednesday the President met – in separate meetings – with Congressional Democratic leaders, members of the Progressive Caucus, and moderate Democratic Representatives and Senators, all to find a path forward on the reconciliation bill. Based on reports on the meetings, no decisions were made, and no compromises reached.

But in the world of spin for which Washington is noted, Thursday the Democratic leaders announced that they had agreed to a “framework” of options to pay for their spending proposals – although none of them would provide any information on what that “framework” contained.

The *Politico* story covering the meeting ran with a headline that read “*Democrats hatch secret pay-for-it plan in bid for unity on spending dreams*” and led the story with this:

Democratic leaders are racing to project momentum on turbulent negotiations over President Joe Biden's social spending plans as Congress hurtles toward critical deadlines next week. So far, though, those last-ditch efforts to tout unity are only fueling more confusion.

Congressional Leaders seemed to confirm that conclusion. As reported by *Roll Call*: Senate Majority Leader Chuck Schumer said, “*It's a menu of options and it will pay for whatever' the agreed-to price tag ends up being.*” And Speaker “Pelosi described it as ‘an array of agreements that we have depending on what the need is.’”

The House Budget Committee will consider – “mark-up” – the reconciliation bill on Saturday, so we may soon see what the “framework” and/or secret pay-for-it plan” are.

Republicans view the unusual Saturday mark-up of the reconciliation bill as part of the continuing effort to show momentum rather than being a serious effort to legislate and point to the many incomplete parts of the bill to make their point.

Specifically, there is the required Congressional Budget Office (CBO) “score” on only 4 of the 13 committee bills that make up the reconciliation bill. Moreover, several committee-reported pieces of the bill have failed to comply with the reconciliation spending instructions from the Budget Committee – in other words, their bills spend more money than they were authorized to spend.

Despite the lack of CBO scores and problems with committee bills not complying with their instructions, the Speaker sent a letter to House Democrats today saying she plans to move both the BIF and the reconciliation bill next week. And then attention moves to the Senate.

And once the process does move to the Senate, it gets even more confusing: the Byrd Rule prohibiting extraneous policies in reconciliation bills will take center stage, and the bill will be subjected to a “Byrd Bath” during which provisions deemed by the

Parliamentarian to be out of order will be removed from the bill and become “Byrd droppings.” Really. But more on that later.

3. President Biden’s Employer Vaccine Mandate and the OSHA ETS

As you all know, the President recently issued an Executive Order instructing the Occupational Safety and Health Administration (OSHA) to promulgate a rule mandating that all employers with more than 100 employees require their employees to either be vaccinated or take a weekly COVID test.

OSHA has begun the process of developing a rule and new Emergency Temporary Standard (ETS). While we do not yet know a great deal, NAW is a member of the business-focused Coalition for Workplace Safety, which will be deeply involved in this process.

What we have learned:

- It is expected that OSHA will move quickly, perhaps producing a rule in 4-6 weeks;
- There will be no public comment period or stakeholder involvement as they develop the rule;
- The ETS will take effective immediately in states where OSHA has direct jurisdiction;
- The 22 states with state OSHA plans covering both public and private sector employers will have 30 days to implement the rule;
- You can find a list of the 22 states with OSHA plans, and a link to the OSHA website for more information, [HERE](#)
- Stakeholders will have an opportunity to comment on the ETS **after** it is published in the Federal Register and submitted comments will help shape a final rule that will replace the ETS. OSHA intends to issue the final rule 6 months after the release;
- OSHA and federal agencies will work to ensure the ETS is consistent with the vaccination mandates imposed on federal contractors;

- The ETS testing/vaccination requirement will not extend to remote employees who are physically isolated from co-workers;
- Employers will need to provide employees with PTO or allow employees to use existing PTO to obtain vaccinations and recover from vaccination side effects; and
- The 100-employee threshold for coverage applies to the employer – not just a single worksite.

There are obviously a lot of unanswered questions, among them:

- Who will pay for the COVID testing for employees who decline to get vaccinated?
- How will the \$14,000 fine “per violation” work?
- How will employers be expected/allowed to verify vaccinations and tests?
- Will the rule specify what level/type of vaccine will satisfy the mandate?
- Will there be specified procedures for handling employees who refuse to vaccinate or test?

Whatever the final details and answers to questions, it is expected that the rule will be challenged in court – likely immediately after its release.

We will be following this closely and will keep you apprised as we learn more.

4. Latest on Protecting Federal Procurement and Addressing Amazon’s Anticompetitive Acts

Last week, NAW announced its support of Representative Veronica Escobar’s (D-TX-16) “Federal Acquisition E-Commerce Fairness and Competition Act.” H.R. 5217 will remedy a serious flaw in how the federal government is testing e-commerce platforms for departments and agencies to purchase products. This legislation will broaden competition and instill fairness benefitting American taxpayers.

Every day, Amazon commits unfair acts against small businesses and distributors that sell on Amazon’s marketplace. This bill restores Congressional intent by requiring GSA to expand its pilot program by testing at least 3 commercial e-commerce portal models and prevents Amazon from being both a platform manager and supplier. NAW is committed to fighting unfair acts by monopolistic companies and we urge Congress to quickly pass the House Judiciary committee’s bi-partisan antitrust bills.

Please [CLICK HERE](#) to contact your Member of the U.S. House of Representatives to co-sponsor the Federal Acquisition E-Commerce Fairness and Competition Act. You can compose and send your message easily using our E-Alert Take Action page. The process is quick and talking points are included.

NOTE: If you are a first-time Take Action user, you may be sent an email asking for verification before your message is sent to your member of Congress. This is a security measure put in place to protect you. And, after your message is sent, you may receive a follow-up email – another security measure – confirming you used our Take Action process.

To view NAW's letter supporting the Federal Acquisition E-Commerce Fairness and Competition Act, [click here](#).

To view Representative Escobar's press release on H.R. 5217, [click here](#).

5. Latest on the NAW-American Job Creators Ad Campaign

NAW and several of our partners have been hard at work to defend business in the current reconciliation bill fight. Next week, thanks to the support of many distributors and others in the business community, our coalition—America's Job Creators for a Strong Recovery—will announce a \$1 million advertising campaign targeted to congressional districts across the country. We are one of the few coalitions on the air with an outright defense of business and a message of how higher taxes hurt families, workers, and businesses. More to come next week.

6. Latest on Other Issues Impacting NAW Members

NAW Endorses Reintroduction of Pro-Consumer, Pro-Business Legislation:

Yesterday, the Partnership for Employer-Sponsored Coverage Coalition, which NAW helps manage, sent a letter to Representative Mike Thompson (D-CA-5) and Representative Adrian Smith (R-NE-03) supporting H.R. 5318, the Commonsense Reporting Act.

The bipartisan Commonsense Reporting Act provides consumers with help during the annual health coverage open enrollment process, employers with relief from the

burdensome reporting requirements, and Exchanges with an additional tool to verify tax credit and subsidy eligibility. This bill also protects the privacy of individuals' Social Security numbers, authorizes the electronic transmission of reporting information, and establishes oversight of reporting verification.

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.

Click [HERE](#) to read our letter of endorsement for H.R. 5318, the Commonsense Reporting Act.

Please [CLICK HERE](#) to contact your Member of the U.S. House of Representatives to co-sponsor this pro-consumer, pro-business legislation. You can compose and send your message easily using our E-Alert Take Action page. As noted above, the process is quick and talking points are included.

7. 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 Covington:

***Opening the Doors: Return-to-Workplace Considerations During COVID-19:
Part Ten: Preparing for President Biden's Employer Vaccine Mandate***

Whether a company is an essential business that has operated throughout the pandemic or is expecting to re-open in the coming weeks or months, several challenges must be addressed to provide a safe environment in which employees can work, while at the same time mitigating risk and restoring operations. This alert will address employers' key questions concerning when and how the Biden Administration will implement regulatory measures through OSHA to achieve the Administration's goal of "Vaccinating the Unvaccinated." To read more, click [HERE](#).

From Reed Smith Law Firm:

It continues: Virginia updates its permanent COVID-19 workplace safety standard

On August 26, 2021, the Virginia Department of Labor and Industry's (DOLI's) Safety and Health Codes Board (Board) voted 8 to 5 to update and continue its COVID-19 permanent workplace safety standard. That vote came despite the fact that the bulk of COVID-19 business requirements issued by Virginia Governor Ralph Northam ended on May 31 ... [Continue Reading](#)

From Littler Law Firm:

Mandatory Employee Vaccines – Coming to A State Near You?

While available vaccines have proven highly effective to date, COVID-19 continues to spread, particularly among unvaccinated populations. This post provides basic information on employee vaccination mandates issued at the federal and statewide levels. To read more, click [HERE](#).

From McGuireWoods:

Frequently Asked Questions About the New COVID-19 Vaccine Executive Actions

As McGuireWoods noted in a September 10, 2021, alert, President Biden's broad six-part strategy to combat the COVID-19 pandemic is raising many questions for employers. While employers await the much-anticipated regulations, a few answers to questions regarding the proposed federal vaccine requirements already are available. Read on for answers to frequently asked questions about the COVID-19 vaccine executive actions. To read more, click [HERE](#).

From Reed Smith Law Firm:

Biden announces major COVID-19 vaccine requirements for employers

On Thursday, September 9, 2021, President Biden issued a memorandum, "Path Out of the Pandemic" (the Memo), announcing a six-pronged national strategy to combat COVID-19. Among other things, President Biden has ordered the Department of Labor's Occupational Safety and Health Administration (OSHA) to develop and issue an Emergency Temporary Standard (ETS) to require all employers ... [Continue Reading](#)

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

Many thanks—

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National Association of Wholesaler-Distributors*

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