NAIFA Advocacy

GOVTALK

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August 2020

Coronavirus Crisis Response Bill Negotiations Stall

With more than $1 trillion in proposed aid separating the two sides, negotiations on the next coronavirus crisis response bill are currently stalled. However, it is not impossible that negotiations resume, though unclear the timing, and whether there will be a new law – and if so, it may contain life insurance tax, retirement, business and health insurance provisions of key interest to NAIFA.

On August 7, negotiators on the next coronavirus crisis response bill declared themselves at an impasse. The two sides remained quite far apart on the big issues, both sides agreed. However, neither side declared the effort dead, although resumed negotiations were not immediately scheduled. Reports were that the last meeting, late in the day of August 7, produced no progress. Rather, the negotiators—Speaker of the House Rep. Nancy Pelosi (D-CA) and Senate Democratic Leader Sen. Chuck Schumer (D-NY) for the Democrats; and Treasury Secretary Steven Mnuchin and White House Chief of Staff Mark Meadows for the Republicans—spent their time blaming each other for failure to move towards an agreement.

Mnuchin and Meadows then announced that President Trump would take unilateral executive action "as soon as possible." That turned out to be Saturday afternoon, August 8. The President signed one executive order (EO) and three memos to agencies designed to extend unemployment benefits, suspend payroll tax payment due dates (but not liability), defer student loan payments, and continue the moratorium on evictions/foreclosures.

Prospects: It is unclear whether the effort to enact another law to shore up the economy and provide help to struggling individuals will resume, and if so, when. In part, a decision on whether to keep trying will depend on the reaction to the executive actions taken by the President on August 8. We will keep you informed.

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President Trump Takes Executive Action on Payroll Tax, Unemployment

On August 8, President Trump issued four new executive action directives—one executive order (EO) and three memos with instructions to relevant agencies—related to coronavirus crisis response relief. They include a suspension of the requirement to remit individual payroll tax payments, and reinstatement (with conditions) of a $400/week federal supplemental unemployment benefit.

Administration negotiators on the currently-stalled coronavirus crisis response legislation are hoping that these executive actions will ease some of the pressure for more aid and will weaken the Democrats' bargaining position. Whether that will happen is unclear—most Hill insiders don't think the Administration has the authority to do much via executive action. Plus, the executive actions themselves are limited—more so than legislation would be.

The four executive actions are:

1. Payroll tax: This is a memo to the Secretary of the Treasury directing Treasury to defer the withholding, deposit and payment of their lower-paid employees' payroll taxes. (As you know, employers and employees each pay 7.65 percent of wages—6.2 percent for Social Security and 1.45 percent for Medicare.) This directive impacts only the employee

share of the tax (which employers withhold and then remit to the government). It applies only to those employees earning less than $100,000/year. It does not eliminate tax liability; rather it defers the employer's obligation to collect and remit taxes owed by the impacted workers. Treasury guidance on a host of questions is expected within a few weeks.

The payroll tax suspension would last through the end of the year and would waive any penalties or interest on the taxes not paid/remitted. It also directs the Treasury Department to explore ways (including legislation) to eliminate rather than merely defer the tax. And, President Trump said if he is reelected, he will extend the payroll tax holiday past year-end. He also said he would "forgive" payroll tax liability from August 1 through year-end; i.e., make sure the payroll taxes not paid between now and year-end would not have to be paid later. It is likely that such a result would require statutory authority, however, so whether it can be done could depend on the next Congress' reaction to the proposal.

2. Unemployment benefits: The memo on unemployment benefits directs FEMA and calls on the States to participate in extending federal supplemental unemployment benefits by $400/week, contingent on the States paying 25 percent ($100/week) of the benefit. The memo specifies that FEMA use up to $44 billion in the Disaster Relief Fund (DRF) to pay the federal $300/week share of these supplemental unemployment benefits; and that the States use the CARES Act-created Coronavirus Relief Fund to pay their $100/week share of the payments. The payments shall continue, the memo says, until either the DRF balance falls to $25 billion or through December 6, 2020, whichever comes first.
3. Student loans: President Trump also signed a memo that directs the Department of Education to authorize deferral of payments on federally-held student loans, using current authority for waivers of and modifications to the requirements and conditions of economic hardship deferments.
4. Eviction/foreclosure protection: The EO on evictions/foreclosures states that the Administration "will take all lawful measures to prevent residential evictions and foreclosures resulting from financial hardships

caused by COVID-19." This has been characterized as an extension of the now-expired freeze on evictions authorized by the CARES Act. However, it is unclear what authority the Administration has ("lawful measures") to reinstate the freeze.

Prospects: Whether these executive actions will jump-start negotiations on the next coronavirus crisis response bill, or instead deepen the divide between Republicans and Democrats remains to be seen. Already some key Democrats are reacting negatively to the payroll tax memo, saying it exceeds presidential authority, provides false hope to those it is intended to benefit because the problems associated with it mean many if not most employers will not suspend withholding of their employees' payroll tax liability. It would, if taken up by employers, deal a serious blow to the solvency of Social Security and Medicare, opponents say.

The unemployment benefit memo also troubles Democrats, and some Republicans, too. States are already begging for more coronavirus-related aid—making this new unemployment benefit contingent on States ponying up an extra $100/week raises questions about whether many cash-strapped States will participate in the program. Plus, it too is subject to legal challenge. Guidance may clarify states' obligations.

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GOP Offers HEALS Act, Its Next Coronavirus Response Bill

On July 27, the GOP offered a $1 trillion coronavirus response package. At less than one third the size of the Democrats' $3.5 trillion Heroes Act (H.R.6800), the Republican package is facing stiff headwinds from some GOP lawmakers as well as outright opposition from Democrats. However, it is the GOP's starting negotiating position on the next coronavirus crisis response bill. Negotiations on that bill are currently stalled but may resume at any time.

Generally, here are the provisions that the Health, Economic Assistance, Liability Protection and Schools (HEALS) package includes:

- Liability protection—applicable to any person or entity at risk for being sued by someone who contracts COVID-19. This liability protection would last for five years and would be applicable to coronavirus-related lawsuits only. It would make any such lawsuit subject to federal court jurisdiction (and would preempt all state laws). Plaintiffs could prevail only if they prove that the entity or person being sued is guilty of gross negligence or willful misconduct.
- Retirement savings—The legislation provides for new flexibility in retirement plan required minimum distributions and coronavirus-related plan loans.
- FSAs—There is a provision in the GOP proposal that allows flexible spending arrangement (FSA) amounts not used in 2020 to be carried over to 2021.
- Paycheck Protection Program (PPP)—The GOP legislation adds an additional $60 billion in funding for the PPP and creates a "second draw" program that allows businesses with 300 or fewer employees to apply for a second PPP loan. It also makes certain trade associations (those with fewer than 50 employees) that are not principally engaged in lobbying eligible for PPP loans.
  It also adds new expenses to the list of expenses that can be paid for with forgiven PPP loan money. Those new covered expenses include worker protection expenses—e.g., personal protective equipment (PPE) and adaptive investments needed to comply with federal health and safety guidelines related to COVID 19 incurred between March 1, 2020 and December 31, 2020; software, cloud computing and other HR and accounting needs; costs related to property damage due to public disturbances in 2020 that are not covered by insurance; and expenses in connection with contracts for goods in effect prior to February 15,

2020 that are essential to the recipient's current operations. The PPP section of the legislation also allows the borrower to choose a coverage period between eight weeks after loan origination and December 31, 2020, and simplifies the process for applying for loan forgiveness by allowing borrowers to attest to a good-faith effort that they have complied with PPP loan forgiveness requirements and reducing documentation requirements. New PPP provisions also allow inclusion of employer-provided group benefits in addition to group health insurance, but the 60/40 rules continue to apply (i.e., forgivable loan amounts will be reduced if the amount of PPP loan money spent on other than payroll costs exceeds 40 percent).

- Extended federal supplemental unemployment benefits—the GOP proposal reduces federal supplemental unemployment benefits from the current $600/week to an amount (to be calculated by the states) capped at 70 percent of lost wages. Because States say their computer systems are not equipped to do these calculations in a timely manner, the bill provides for two months' worth of a flat $200/week in federal supplemental unemployment benefits, and allocates $2 billion to the states to upgrade their computer systems to accommodate the 70 percent of lost wages standard. The extension would be through the end of this year.

- A refundable payroll tax credit equal to 50 percent of an employer's "qualified employee protection expenses"—the tax credit applies to the cost of personal protective equipment (PPE), and for other steps (e.g., enhanced cleaning, technology, adaptions to the workplace) required of a business in order to reopen/stay open safely. The tax credit would be capped at $1,000 for each of the first 500 employees; $750 for each employee between 500 and 1,000; and $500 for each employee above 1,000. The credit applies to expenses incurred/paid between March 12, 2020 and December 31, 2020.

- Enhanced employee retention tax credit (ERTC)—This provision would extend the ERTC to the third and fourth quarters of this year. It would also increase the ERTC from the current 50 percent on up to $10,000 paid to a retained employee in the second quarter to $19,500 per retained employee for the third and fourth quarters. The GOP proposal also allows coordination of the ERTC with the Paycheck Protection Program (PPP). It also allows inclusion of employer-provided group benefits in addition to group health insurance in the calculation of "qualified wages," even when no other wages are being paid to a furloughed employee.

- Medicare Part B premium freeze—the legislation freezes Medicare Part B premiums for 2021 at 2020 levels
- Business meal deduction—the HEALS package includes a provision that would allow a 100 percent deduction for business meals paid for between the date of enactment of this legislation and December 31, 2020.
- The HEALS legislation also provides for direct stimulus payments to individuals—at the same level as the first round of such payments ($1,200/individual; $2,400 per married couple earning $75,000/$150,000 or less each year). There is a phase-out that allows for smaller payments to individuals earning between $75,000/$150,000 and $99,000/$198,000. It expands the CARES Act direct payments, though, by allowing $500 for each dependent, not just children under age 17.

The bill also allows more flexibility to States on how they spend the aid allocated last March in the CARES Act but does not appropriate any new money to state governments. It does, however, include money to help schools reopen safely and money for testing/contact tracing. It also includes provisions to help with childcare for essential workers.

Prospects: There is no realistic chance that the HEALS package will become law. Instead, it is viewed as the Republicans' opening bargaining position vis a vis the Democrats. Thus, every provision in it (and those in the Democrats' Heroes Act) are subject to change as negotiations proceed toward an enactable new coronavirus crisis response bill. To date, those negotiations are difficult. Most lawmakers do want a new bill, and while the chasm between the GOP and the Democrats is wide and deep, there is considerable common ground in the two proposals. There is pressure for a successful conclusion to the negotiations, because the need for new aid is acute and many of the

CARES Act relief provisions are expired or expiring. However, prospects for success remain murky at best.

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