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Congress Still Working on Next Coronavirus Response Bill, but Pace Slows

Congressional leadership and the White House say they expect to enact another coronavirus response bill by late July. Top-tier issues include business liability protection, help with health insurance costs for the unemployed, unemployment benefits, and funding for State and local government coronavirus response efforts.

Signs that the economy may be recovering more quickly than anticipated from the shock of the coronavirus-required nationwide shut-down have slowed legislative action aimed at cushioning people and businesses from the impact of the shut-down. However, there is bipartisan and widespread (but by no means unanimous) agreement that the federal government must do more to contain the adverse economic fall-out.

NAIFA's priority issues include help for the 42 million newly-unemployed individuals with the cost of health insurance, improved retirement savings rules, and fixes to two life insurance rules—one would fix a tax code (section 7702) definition of life insurance interest rate issue, and the other would recharacterize insurer-held bonds as ordinary rather than capital assets. Also of importance is the issue of shielding businesses from lawsuits claiming the businesses are responsible when someone contracts COVID-19 from an unsafe business environment. Here is a rundown of how those issues seem to be developing currently.

- ***Health insurance***: Lawmakers are looking at ways to help uninsured folks pay for their health insurance. One possibility is a federal subsidy for the cost of COBRA continuation health insurance coverage. Another is making it easier for unemployed people to access subsidized health insurance through Affordable Care Act (ACA) exchanges. Also in play are rules to allow more flexibility in accessing flexible spending arrangement (FSA) funds, through changes in allowable timing for deferral decisions and/or in expanded rollover opportunities.

- ***Life insurance tax rules:*** The current definition of life insurance (which governs whether a policy qualifies as life insurance and thus for tax-free death benefit payments) uses a four or six percent rate to calculate maximum allowable premium levels. In today's interest rate environment, those rates result in artificially low maximum premiums, which in turn diminish the competitiveness of whole life insurance—an important element in the safety net available to people during tough economic times (like right now). The suggested change would replace the four or six percent rates with a market-based rate.

This change is in the House-passed Heroes Act. NAIFA, in conjunction with the American Council of Life Insurers (ACLI) and many carriers, is encouraging the Senate to include this provision in its next coronavirus response bill.

Also, among NAIFA's priorities is the proposal to recharacterize life insurer-held bonds as ordinary rather than as capital assets. This change is needed to match insurer-held assets with insurers' liabilities from losses from investments hit hard by the coronavirus crisis. This provision is not in the House-passed Heroes Act, but lobbying continues to add it first to the Senate package, and then to include it in the compromise House-Senate final version of the next coronavirus response bill.

- ***Liability protection***: Businesses are growing increasingly concerned amidst a spiking increase in lawsuits claiming that people who have contracted COVID-19 got the virus from unsafe conditions at their employer's place of work. Providing some kind of shield against these lawsuits is the GOP's top priority. A specific proposal to do this has not yet surfaced, but insiders believe that a provision that shields a business from this kind of lawsuit when the business has carefully followed government guidelines for reopening/operation has a good chance for inclusion in the next coronavirus response bill.

- ***Retirement savings***: NAIFA supports a package of retirement savings rules that would help plan participants recover from the economic fall-out of the coronavirus crisis. Among these proposed rules changes are increasing the age by which RMDs are required from 72 to 75; addition of COVID-related of catch-up contribution rules; an increase in the amount of a retirement plan balance that can be allocated to a qualifying longevity annuity contract (QLAC); clarification that businesses are eligible for the 3-year start-up tax credit from the date of their adoption into the plan; and expansion of MEP law to allow non-profit, educational and religious employers to join a MEP.

Congressional priorities include addressing the potential continuing need for unemployment benefits—the House-passed Heroes bill extends the CARES Act's $600/week federal supplemental unemployment benefit through the end of the year. Senators and some House GOP lawmakers prefer some kind of "back-to-work" benefit rather than an extension of the current program.

President Trump wants the next bill to include a payroll tax cut—probably through a temporary suspension of the payroll tax, restoration of full deductibility for business meals and entertainment, and an infrastructure package.

Another set of topline issues includes funding for State and local governments—to address coronavirus response efforts and/or to pay for remote voting processes. There will also be debate about whether to include money for the struggling U.S. Post Office, for expanded broadband access, and for literally dozens of other special rules that are the subject of intense lobbying by affected industries and interests.

Prospects: It is very likely that current prospects on any given issue will change as economic numbers show the economy recovering or stalling over the next few weeks. But as of now, it appears that the new bill will total around $1 trillion, and that it will include business liability protection, help for the unemployed with health insurance, changes to the federal unemployment benefits program, and additional "emergency" funding for State and local governments. Prospects for the life insurance tax rules are murkier—it is possible one or both will be included in the final agreement, but far from certain. It is looking less likely that the next bill will include many, if any, of the retirement savings provisions.

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SBA and Treasury Announce New and Revised Guidance Regarding the Paycheck Protection Program

Enactment of the PPP Flexibility Act brought changes to the program's loan forgiveness rules. The SBA and Treasury issued new and revised guidance for the Paycheck Protection Program (PPP) that implements the Paycheck Protection Program Flexibility Act (PPPFA) and expands eligibility for businesses with owners who have past felony convictions.

The PPP Flexibility Act, signed into law on June 5, changes some PPP rules, including:

- Extends the program from June 30, 2020, to December 31, 2020;
- Expands the "forgiveness period" during which forgivable expenses must be incurred and paid from 8 weeks to 24 weeks (with the option for pre-Act loan recipients to keep the original 8-week period);
- Requires borrowers to spend at least 60% of loan dollars on payroll costs to be eligible for forgiveness (down from 75% under SBA regulations);
- Provides a statutory safe harbor from forgiveness amount reductions for employers who make good faith efforts to restore payroll to pre-crisis levels but are unable to get employees back to work or to resume full business operations by the end of the year due to COVID-19-related restrictions;
- Extends the deadline by which employers can maximize forgiveness amounts by rehiring employees and/or restoring employee wages to the end of the year;
- Gives borrowers longer to pay back unforgiven loan amounts by setting a minimum loan maturity of 5 years;

- Extends deferral of all principal, interest, and fee payments on loans to the date on which forgiveness amounts are remitted to the lender or until 10 months after the end of the 24-week forgiveness period if the borrower has not applied for forgiveness by then; and
- Allows borrowers who receive loan forgiveness to participate in employer payroll tax deferral relief provided in section 2302 of the CARES Act.

In addition, as an exercise of SBA's policy discretion in furtherance of President Trump's leadership and bipartisan support on criminal justice reform, the eligibility threshold for those with felony criminal histories has been changed. The look-back period has been reduced from 5 years to 1 year to determine eligibility for applicants, or owners of applicants, who, for non-financial felonies, have (1) been convicted, (2) pleaded guilty, (3) pleaded nolo contendere, or (4) been placed on any form of parole or probation (including probation before judgment). The period remains 5 years for felonies involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance. The application also eliminates pretrial diversion status as a criterion affecting eligibility.

SBA issued revised PPP application forms to conform to these changes. SBA will issue additional guidance regarding loan forgiveness and a revised forgiveness application to implement the PPPFA in the near future.

There is a loan forgiveness application currently available—on May 16, the SBA and Treasury released a form and instructions for applying for forgiveness of PPP loans. Updated guidance, covering how to calculate the reductions and exemptions that help determine the amount of a PPP loan that can be forgiven, and also the lender review process, was issued on May 23. **The new loan forgiveness guidance will modify these rules to reflect the PPPFA changes.**

Additional Resources:

- Steptoe & Johnson Detailed Summary
- Interim Final Rules *Revised June 12*
- New Borrower Application *Revised June 12*

Prospects: It will likely take at least a couple of weeks before the loan forgiveness forms are released.

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DOL Sends New Fiduciary Rule to White House for Review

The Department of Labor (DOL) has sent to the Office of Management and Budget (OMB) for review its long-awaited proposed new fiduciary rule. DOL has indicated that it will align, at least to a considerable degree, with the Securities and Exchange Commission's (SEC's) investment advice rules, including Regulation Best Interest, (Reg BI).

There is no firm information on what the new rule will contain, but conversations with agency personnel (the Employee Benefits Securities Administration (EBSA). There are also indications that EBSA was considering a reversion to rules substantially similar to the old five-part test rules that date back to 1975. Modifications that may be made to those rules include rollover situations. It is unclear whether the new proposed rule will encompass IRAs—a sore point in the now-dead fiduciary rule promulgated by EBSA in 2017 and killed by the courts in 2018.

Prospects: EBSA's newly-proposed fiduciary rule must be approved by the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) before EBSA can release it. It usually takes OIRA a month to six weeks to complete its review process, but there is no set deadline by which OIRA must finish and send the proposed regulation back to DOL. Once OIRA approves the proposed rule, it goes back to EBSA for release.

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NAIFA Nation Impact Week Available On-Demand

We welcomed over 4,500 people to NAIFA Nation's Impact Week. All videos are now available on-demand along with helpful event notes. Some highlights include:

- Our largest Diversity Symposium to date with an advisor and an industry panel.
- A bipartisan interview with two representatives from New York.
- Inspiring messages from industry and congressional leaders.
- And a special guest session with Shark Tank's Kevin O'Leary.

All these videos and more at https://belong.naifa.org/impact-week-archive