NAIFA GovTalk

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## Senate Tries—and Fails—Again to Enact SECURE Act


On November 7, the Senate again tried to pass H.R.1994, the SECURE Act, by unanimous consent (UC). Again, objections (largely unrelated to the legislation itself) were heard, thus preventing enactment. A letter from 51 NAIFA members from each State and the District of Columbia, representing a wide range of metropolitan and rural areas and businesses large and small, went to Senate leadership, urging enactment. And NAIFA signed on to a multi-industry letter to Senators asking them to enact the bill.

The UC effort started with Sen. Pat Toomey (R-PA) proposing that the Senate debate ten amendments—five each from Republicans and Democrats and each limited to 30 minutes of debate—to the SECURE Act, and then vote on the bill as amended (or not). Democrats—led by Sen. Patty Murray (D-WA)—noted that the SECURE Act "as is" enjoys wide bipartisan support and that amendments—almost all of which were unrelated to the bill—could unravel that support. She suggested that instead, the Senate pass H.R.1994 by UC, without amendment. Sen. Toomey objected to that counter-suggestion, and so Sen. Murray objected to the Toomey UC request to debate ten amendments to the bill. The result is that the Senate again failed to act on the SECURE Act.

Lobbying to get SECURE passed is fierce. NAIFA, other insurance organizations, retirement savings organizations, and employers sponsoring (or wanting to sponsor) retirement plans have banned together to win support for the measure. In addition to ongoing meetings on Capitol Hill and with lawmakers back home, NAIFA's lobbying included:

- On November 7, 51 NAIFA members wrote to Senators asking them to vote for the bill, explaining its importance to expanding retirement savings opportunities for small and large employers. The NAIFA members who signed the letter come from all 50 States and the District of Columbia and represent big and small businesses as well as mainstream America clients.

- On November 5, a group of 91 businesses, retirement and insurance trade associations, and employer and community groups wrote to Senate leadership asking for action on the SECURE Act. NAIFA was among the signatories on this letter. The letter, addressed to Senate Majority Leader Sen. Mitch McConnell (R-KY) and Democratic Leader Sen. Chuck

Schumer (D-NY), asked that the Senate leaders “make the SECURE Act a top legislative priority and encourage quick action to pass this important bill this year.”

The letter said, “"While we wait for passage of the SECURE Act, low- and middle-income Americans struggle to save for retirement and military survivors face significant tax repercussions. If the SECURE Act is not signed into law, more than 700,000 small business workers will not save for retirement at work, more than 4 million workers in private-sector pension plans will be at risk of losing future benefits, 1,400 religiously affiliated organizations will be at risk of losing access to their defined contribution retirement plans, and more than 18,000 children and spouses of fallen service members will continue to be economically disadvantaged by unfair taxation on their survivor benefits." (The last point refers to the politically-sensitive provision in the bill that corrects a mistake in the tax reform law enacted late in 2017 that increases taxes on survivor benefits of military personnel killed in action—the “gold star” provision.)

There is internal (to the Senate) lobbying on the issue, too. On October 16, seven Republican Senators –Tim Scott (SC), Rob Portman (OH), Thom Tillis (NC), Joni Ernst (IA), Marth McSally (AZ), Susan Collins (ME) and Cory Gardner (CO)—also wrote to Sen. McConnell to urge prompt action on the SECURE Act.

Almost all Senators support the quick enactment of SECURE, but three have objected to repeated UC requests for several unrelated reasons. Sen. Toomey wants to debate the bill and amendments to it; Sen. Ted Cruz (R-TX) wants a provision expanding eligibility for section 529 education accounts to homeschooling, and Sen. Mike Lee (R-UT) wants to drop a provision in the bill that deals with community newspaper pension plans. The House passed the bill last May, by a near-unanimous 417 to 3 vote.

***Prospects***: Sen. McConnell has said both publicly and in private that the Senate will pass the SECURE Act, and so the hunt for a legislative vehicle to which it can be attached continues. Most Hill insiders think the most likely such vehicle is government funding legislation—but that legislation is currently stuck in legislative limbo, and probably will remain so until at least mid-December (and maybe longer). It is possible, although not likely, that the SECURE Act could be attached to a trade bill (which may or may not get through the legislative process by year-end), or to a health reform bill, which looks increasingly unlikely to move before 2020. There is also new talk about a stand-alone tax bill (extenders and fixes to the Tax Cuts and Jobs Act (TCJA)) to which the SECURE Act could be attached, but that effort also has uncertain prospects.

Bottom line is that prospects for enacting SECURE remain good, but the timing of its enactment is frustratingly elusive. We’ll keep you posted.

## Congress Scrambling to Fund the Government amidst Impeachment Stress

Congress is finding it difficult to find the compromises that will allow for a government funding bill that can also change policy. To date, none of the 12 required appropriations bills have passed. And Congress has all but thrown in the towel on the effort to do a funding bill prior to the November 21 deadline. So, it appears that another continuing resolution (CR)—with no policy changes—will be needed, or the government will shut down.

The House has passed 10 of the 12 regular-order appropriations bills, some multiple times in different package combinations. But those House-passed bills do not reflect the budget agreement reached by Congressional leaders and the President this past September. So, they must change during negotiations with the Senate, which has so far passed only one appropriations bill.

Currently, the Senate is grappling with a controversial spending package that would combine funding for the Departments of Defense, Labor (DOL), and Health and Human Services (HHS). This package could (although it currently appears unlikely that it would) provide a “legislative home” for the pending retirement savings bill, the SECURE Act (H.R.1994).

Failure to craft and pass government spending legislation means Congress must enact temporary funding authority by way of another continuing resolution (CR) in order to avoid a government shut-down. The deadline for that is November 21, the date that current CR temporary funding authority expires.

Currently, lawmakers are contemplating a CR to last until December 20. The President has said he’d be open to such a short-term CR. There is no one on Capitol Hill who believes it would be possible to add SECURE—or any other policy change—to a CR. However, extension of funding and authority for the National Flood Insurance Program (NFIP) is likely to be included in this next CR.

Complicating the spending negotiations is the impeachment inquiry currently underway in the House of Representatives. There are, of course, policy (and funding) issues still in dispute—particularly involving funding for the wall on the U.S. southern border. That is something President Trump badly wants, and Democrats are adamantly opposed to providing. But on top of that is a new sense that a government shut-down—or threat of one—could take some of the heat off the President relative to the House impeachment inquiry.

Perhaps of most immediate import with this issue is that Congress has not yet enacted legislation to fund itself—the Legislative Branch appropriations bill, or a CR that includes funding for the legislative branch. If it doesn’t, that will not stop the impeachment inquiry. Constitutionally-authorized government activity (and impeachment is such an activity) is exempt from shut-down requirements, although those working on such issues would not be paid. But it would virtually certainly impact the scope and timing of the impeachment inquiry process.

So, there are some in Washington who are speculating that President Trump and/or his Congressional supporters will, as a matter of impeachment strategy, try to derail funding for the legislative branch—or for the entire government. That may be behind the rather sudden shift in thinking on the next CR—

setting it up to expire in December rather than in February or March, as had been the thinking as little as two weeks ago.

One more complicating factor is the timing of the impeachment inquiry. No date has been set by House leadership for a vote on articles of impeachment. Indeed, while it appears inevitable that there will be such a vote, it is not, in fact, a certainty at this point. It is possible, albeit unlikely that the House will decide against bringing articles of impeachment. But if they do, insiders are now predicting that it will happen before Christmas. That would set up a Senate trial in January and would probably ensure that the government will limp along with CR funding, rather than a policy-changing appropriations bill. That would spell more trouble for enactment of the SECURE Act.

***Prospects***: No one is ruling out a pre-holiday government shut down, especially with the Administration and its supporters looking hard for a way to stave off first House and then-Senate action on impeachment. Equally, no one is optimistic about prospects for government funding legislation (other than a CR) that could carry the SECURE Act (or other priority policy issues). At the moment, the outcome is entirely unclear, but there will be at least an interim answer by November 21, the date that current government funding authority runs out. We will, of course, keep you posted.

## Democrats Float New Tax Proposals Mostly Focused On "Tax The Rich"

Democrats are bursting with new tax ideas, most of them targeting high-income individuals. Virtually all the candidates for the Democratic nomination for President are proposing tax increases, including wealth taxes and hikes in the corporate and top individual income tax rates. By contrast, President Trump is floating the possibility of further tax cuts.

Among the tax proposals offered in the past few weeks are:

- Increase the top individual tax rate—usually back to the pre-Tax Cuts and Jobs Act (TCJA) rate of 39.6 percent
- Impose a tax surcharge (a "wealth tax") on income above a certain amount—proposals range from $1 million/year to $10 million/year or more
- Raise capital gains rates—most often the proposals suggest subjecting high-income taxpayers' capital gains to ordinary income tax rates (i.e., tax those gains at 37 percent, or whatever the top individual rate is, rather than the current capital gains rate of 20 percent)
- Make more inherited property subject to estate tax liability—perhaps by rolling back estate tax rates and rules to pre-TCJA levels
- Mark to market capital gains—i.e., tax increases in capital asset value annually, whether or not the assets are sold (gain realized)
- Increase the current corporate tax rate of 21 percent (some suggest going back to the pre-TCJA rate of 35 percent; others suggest a 25, 27 or 28 percent rate)
- Repeal (or substantially diminish) the TCJA, including its 20 percent deduction for pass-through business income
- Require employers to contribute to the cost of government-provided health insurance to the extent of 95 percent of the amount they currently pay for employer-provided health insurance
- Impose a financial transaction tax (FTT)—a tax (usually consisting of from one to 10 basis points) on each trade of a stock or security. Most often, these FTT proposals contemplate that the manufacturers and/or sellers of the stocks/securities, rather than the buyers of them, pay the tax.

- Close “tax loopholes” (special rules applicable to specific products/transactions/situations), especially at the corporate level

So far, President Trump has not specified a new tax plan, but his director of the National Economic Council, Larry Kudlow, said last month that a new tax cut that would principally benefit the middle class is something the Administration is working on. He referenced proposals to create a tax code with only two rate brackets—15 percent and 28 percent, presumably including a significant bump-up in the level of income at which income tax would be assessed (to avoid a tax increase on those currently in the 10 and 12 percent brackets). The Trump people have not specifically addressed the business/corporate tax rate or rules, but it is likely they will as the campaign heats up.

Estimates are that taking the corporate tax rate back to 35 percent would raise about $1.3 trillion in revenue over ten years. The lawmakers and candidates proposing the corporate tax rate increase (and other tax hikes) have no shortage of ideas on how to spend the resulting increase in tax revenue. Among the proposals that would be paid for by these tax increases are federal paid leave, education, climate change, and increased (usually provided by the government) health coverage. The revenue could also be used to reduce the federal deficit, which is currently projected to top $1 trillion in the next year or two.

Early polling shows considerable voter support for higher corporate taxes as well as higher taxes on extremely wealthy individuals. Thus, the campaign trail is likely to be unusually focused on proposals that include taxes—whether to increase them or cut them. Expect this at the Presidential, Senate and House race levels.

***Prospects***: It’s still a long way to the November 2020 elections, and it remains unclear who the actual candidates will be. But the current trend is clear: Democrats are largely in favor of an increase in taxes paid by businesses and wealthy individuals, while Republicans prefer a lower tax burden, in general, and specifically for business. But candidates and sitting lawmakers from both parties are making taxes among their priority issues. Expect 2020 to be full of discussion of new tax proposals, and 2021 to bring debate on actual legislative proposals.

## NAIFA's National Advocacy Meeting is December 2-4


The annual National Advocacy Meeting (NAM) is NAIFA's premiere training and planning seminar. Attendees will hear from advocacy experts on a variety of issues, attend training on how to lead and grow PAC and Grassroots programs in their state chapters, and receive an update on the legislative landscape and the issues effecting NAIFA members and their clients. The meeting will culminate with a Day on Capitol Hill where attendees will meet with their members of Congress to discuss issues important to their industry. All NAIFA members are welcome. Register now!