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Coronavirus Crisis Aid Stalls

House, Senate and White House negotiators have apparently hit a wall on new coronavirus crisis aid legislation. The principal hang-up currently is the size of the package. Democrats want at least $2.2 trillion; Senate Republicans are offering a $500 billion package; the White House says it won't go higher than $1.3 trillion.

August brought some small movement on this initiative. Speaker of the House Rep. Nancy Pelosi (D-CA) has talked with White House Chief of Staff (CoS) Mark Meadows and with Treasury Secretary Steven Mnuchin. But all of them say there have been no break-through's in finding an agreement. Rep. Pelosi says the Democrats will not budge from their demand that the GOP "meet them in the middle"—i.e., agree to a package of about $2.2 trillion (down from their previous positions of first $3.5 trillion and then $2.4 trillion). For the GOP, CoS Meadows said President Trump will sign a package of about $1.3 trillion. Treasury Secretary Mnuchin says the Administration wants an agreement. Some say that's progress. At least the difference—wide though it is—is narrower.

The Republicans are willing to negotiate now on specific proposals to include in the package—they've suggested liability protection for businesses, health care providers and schools; a $300/week federal supplemental unemployment benefit; more money for and reopening of a streamlined Paycheck Protection Program (PPP); child care assistance; and aid to reopened schools. Democrats say they will negotiate the particulars of the package after its size is determined.

New talks are possible throughout September, but CoS Meadows says he is not optimistic about getting an agreement prior to the end of the month.

Treasury Secretary Steven Mnuchin is also less than optimistic about prospects for an agreement. But there is intense pressure on both Democrats and Republicans to enact a new aid package.

Insurance Issues: There has been no progress—and it's likely there will be no progress until late September at the soonest—on the issues of particular concern to insurance. But when (if?) an agreement on the size of the package is reached, negotiators will consider whether to:

- Expand/extend the Paycheck Protection Program (PPP)
- Provide a market-based interest rate for calculating the investment potential of a whole life insurance policy (the 7702 issue)
- Recharacterize life insurer-held bonds as ordinary rather than as capital assets
- Protect businesses from COVID-related liability
- Provide new federal supplemental unemployment benefits, with guardrails to be sure lower-wage workers can't make more money from unemployment than from working
- Provide subsidies for health insurance for the unemployed
- Make it easier to apply for PPP loan forgiveness
- Enhance tax credits for retaining employees
- Modify paid sick leave rules

Other issues are also in play; e.g., stimulus payments to individuals, more aid to State and local governments, and certain industry-specific initiatives (like, for example, help to keep struggling airlines from having to make extensive staff cuts or cut service to smaller airports).

Prospects: There is growing pressure on lawmakers to enact more coronavirus crisis aid legislation. However, partisanship—already intense—is reaching even more intense levels as election campaigns have shifted into high gear. This partisanship will complicate already difficult negotiations. Washington insiders are growing increasingly skeptical about whether

Congress and the President can agree on a new aid package. There is now the beginning of talk about addressing the need for new coronavirus aid during a post-election lame duck session.

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Senate Republicans Offer Smaller, Targeted Coronavirus Aid Package

On September 8, Senate Republicans offered a new, smaller coronavirus aid package. The new package, S.178, would protect businesses from being sued due to coronavirus-related reasons, expand the Paycheck Protection Program (PPP), and provide for new federal supplemental unemployment benefits.

The package is expected to total about $500 billion in new spending—that's less than half the $1.3 trillion that President Trump says he is willing to allocate to new coronavirus crisis aid, and only a small fraction of the $3.5 trillion Democrats authorized in their Heroes Act or the $2.2 trillion the Democrats offered as a compromise.

Among the skinnied-down provisions in the new Senate GOP package are:

- Paycheck Protection Program (PPP): Small businesses—including non-profit organizations like NAIFA and its chapters—could take a second loan from the PPP if they employ fewer than 300 workers and have experienced at least a 35 percent loss in revenue over last year. The PPP provisions also streamline the rules for applying for PPP loan forgiveness, and include $250 billion in new PPP funding.
- Liability protection for businesses, hospitals and health care workers, and schools that might otherwise be sued by people claiming they

contracted COVID-19 as a result of actions taken/not taken by the entity being sued. Under the provisions in the package, coronavirus-related lawsuits could proceed only if the plaintiff can prove gross negligence or willful misconduct, and that the plaintiff's illness was a result of the defendant's action/inaction.

- An increase in the above-the-line charitable contribution from $300 to $600 ($1,200 for married couples filing jointly)
- Reallocation of funds appropriated in the CARES Act for a Treasury business lending program, and the "old" PPP funds that have not yet been spent.
- Authority and funding for the States to choose whether to offer supplemental federal unemployment benefits of $300/week through December 27.

The package also includes childcare assistance funds, some new funding for coronavirus testing, and new loan money for the Post Office. It does not include new money for state and local governments, although it extends the time during which states, and local governments can use funds already allocated.

On September 10, the Senate took a cloture vote (on whether to debate and vote on S.178)—on a party-line 52 to 47 vote, the Senate said "no." While this vote does not kill this bill, it does prevent Senate action on it. And so, coronavirus crisis relief is back to square one.

Prospects: Democrats immediately panned the S.178, calling it "emaciated." (Note: Republicans were equally dismissive of the Democrats' $3.5 trillion Heroes Act passed by the House this summer.) Republicans, however, believe that the 52 GOP votes for the package constitute a "message victory." (That's how the Democrats view their mostly party-line vote for the Heroes Act last May.) Ultimately, lawmakers and the White House will have to find a compromise between the two-party positions, or there will be no further coronavirus crisis relief.

In the meantime, while all parties agree that more federal aid is needed, there is no visible progress towards a package that can be enacted and signed into law. But Congressional Republicans and Democrats, along with the Administration, say they will keep trying to find an agreement.

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DOL Issues LIDA Interim Final Rule

On August 18, the Department of Labor (DOL) issued an interim final rule that will help employers comply with the SECURE Act requirement that defined contribution (DC) plan sponsors provide annual illustrations of the monthly lifetime retirement payments that their plan participants may receive from their current retirement account balances.

The interim final rule (IFR):

- States that a plan sponsor will be shielded from ERISA liability for a lifetime income illustration that complies with the IFR's specific rules and uses the IFR's model language in plan participant benefit statements. This is important because illustrations may or may not reflect actual experience over the years. Plan sponsors need to know that they cannot be sued if actual experience varies from what is illustrated, so long as they follow the rules in the IFR.
- Provides model benefit statement language
- Specifies the assumptions that plan administrators must use to calculate the plan participant's illustrated lifetime monthly benefits. These assumptions include the assumed start date of monthly benefits; the participant's age at the time benefits payments start (normal Social Security retirement age (67) or, if the participant is older, his/her actual age); the assumed interest rate (10-year constant maturity Treasury

rate); and how to calculate life expectancy (by use of the tax code's gender neutral mortality table). The IFR includes an example of an illustration that complies with these rules.

- Includes special rules for annuities used in a retirement plan, including deferred income annuities.

The rule is now in a 60-day public comment period.

Prospects: NAIFA strongly supported the new monthly lifetime income disclosure rule because it will make clear to plan participants whether they need to make current adjustments to their savings for retirement. This interim final rule provides the information plan sponsors need to calculate projected monthly lifetime benefits. And, it does so in a way that protects plan sponsors from liability if projections—which are not guarantees—fall short. Actual experience, if it falls short of projections, could lead disgruntled employees to think about suing. The new law and this interim final rule protect the plan sponsor from this risk.

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