

## Bill-Impacting Controversy Awaits Congress' Post-Labor Day Return To DC

Lawmakers came back to Washington the week of September 9 to an extensive and controversial agenda. The controversy could stymie a wide range of legislative initiatives—including a tax bill that could include NAIFA-supported priorities. Or, Congress could find compromises that enable enactment of more initiatives than just the must-pass government funding legislation.

Topping the list of items Congress will tackle this month is legislation to fund the federal government. That legislation is necessary by September 30, the end of the current fiscal year and the date on which current funding authority expires. This is must-pass legislation.

At this juncture, it is unclear whether Congress will craft multiple spending bills, and if so, how many. But it is unlikely that the must-pass legislation (which must fund the entire government's discretionary spending budget) can be enacted in time to meet the hard September 30 deadline. The timing is so tight that House Democrats are already moving to enact a short-term (possibly until November 22) continuing resolution (CR) that will avoid a government shut-down (the result of failure to enact new spending authority by October 1) while lawmakers complete negotiations on the spending legislation.

In July, Congressional leaders and President Trump came to an agreement aimed at lessening the risk of the kind of gridlock that would trigger a government shut-down. That agreement provides the framework for current negotiations and could provide the necessary protection against stalemate (and resulting a government shut-down). It also precludes the inclusion of controversial policy riders. But it will also make addition of non-spending measures more difficult. Generally, per the terms of the July agreement, it will take unanimous support by President Trump and the four Congressional leaders to include any non-spending provisions in the government funding legislation.

Among the potential add-on items is a bill to reauthorize and fund the National Flood Insurance Program (NFIP). A bill to reform the NFIP could move on its own but appears unlikely to do so in the current legislative environment.

**Prospects:** This means news coming out of Washington for at least the next three to four weeks (and possibly the next two to three months) is likely to be confusing. There could be numerous opportunities to add other (non-government-funding) legislation to must-pass funding bills. Or, the many controversies surrounding spending decisions as well as other non-spending initiatives could derail



everything except a CR that does no more than extend current funding authority into a relatively distant future. We will keep you posted as the issues develop.

## Retirement Bill Could Catch A Ride on Must-Pass Spending Legislation



Among the issues that may be included in this month's must-pass government funding legislation is the NAIFA-supported pending retirement savings bill, H.R.1994, the SECURE Act. This bipartisan legislation would expand access to retirement plans for millions of Americans, especially those working for small businesses. It would allow older workers and retirees to contribute more to their retirement accounts. It would increase 401(k) coverage to part-time employees. It would prevent as many as 4 million people in private-sector pension plans from losing future benefits. These are pension benefits for which they've worked and planned. The legislation would protect 1,400 religiously affiliated organizations whose access to their defined contribution retirement plans is in jeopardy.

The SECURE Act also does the right thing for Gold Star families. It would correct unfair tax treatment of the survivor benefits of more 18,000 children and spouses of fallen service members. The SECURE Act would help new parents, including those adopting, with expenses by allowing tax-free distributions of retirement savings. Unfortunately, the legislation includes changes to the distribution rules for certain inherited IRAs.

The agreement between Congressional leaders and President Trump allows for the limited addition of non-spending initiatives to the must-pass government funding legislation that Congress must enact by October 1. Such an addition would require unanimous support from President Trump and the leaders of both the House and Senate (Senate Majority Leader Sen. Mitch McConnell (R-KY), Senate Minority Leader Sen. Chuck Schumer (D-NY), Speaker of the House Rep. Nancy Pelosi (D-CA), and House Minority Leader Rep. Kevin McCarthy (R-CA)).

Insiders believe this "unanimous support" provision in the agreement will permit the inclusion of the SECURE Act in a government funding bill. Also in play are certain "tax extenders" (tax breaks that expired last year or will expire this year), and some modifications to the Tax Cuts and Jobs Act (TCJA). Among the extenders that may find their way into the government funding bill is one that covers the deductibility of unreimbursed medical expenses. Other relevant tax rules that are being discussed are repeal/delay of the Affordable Care Act's (ACA's) Cadillac tax, and the ACA's Health Insurance Tax (HIT).

**Prospects:** The must-pass government funding legislation is turning into a magnet for a huge swath of unrelated legislation. (This is because it is the only legislation Congress absolutely must pass this year.) Thus, the competition to be included is fierce. Consequently, chances for inclusion of any specific proposal are not high, although Congressional insiders are optimistic about chances for including the SECURE Act.

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## Congress Will Tackle Health Issues This Month

Among the items that are high on Congress' priority list for September are health issues, especially ways to address surprise billing and the cost of prescription drugs. This legislation, if it does not fall to irresolvable controversy, could provide a vehicle for enactment of other health issues, like repeal or delay of some of the Affordable Care Act's (ACA's) taxes.

Most lawmakers—from both parties and in both the House and Senate—want to address the problems of surprise billing and the cost of prescription drugs. As is almost always the case, the problem is in deciding *how* to address these issues. Much controversy surrounds these issues, but they also offer an opportunity to attach other health-related provisions to a compromise package.



The surprise billing issue is embroiled in growing controversy—generally, employers and the insurance industry prefer a solution to the surprise billing problem that involves using a benchmark rate—derived from in-network rates in the relevant area. Doctors, hospitals, and other health care providers oppose use of a benchmark rate. They want an arbitration procedure to resolve surprise billing conflicts.

Also in play are provisions in the Senate Health, Education, Labor and Pensions (HELP) Committee bill (S.1895) that would impose harsh disclosure requirements regarding agent/broker compensation at the time a group or individual health insurance plan is sold. And, there is considerable controversy over how to deal with controlling the cost of prescription drugs as well.

If lawmakers succeed in resolving these controversies, the resulting consensus bill could include some other health issues as well. Among the possibilities are repeal of the ACA's Cadillac tax (a tax that takes effect in 2022 that imposes a 40 percent tax on the amount by which health insurance premiums exceed statutorily-set maximums), and the health insurance tax (HIT), a revenue-raising tax on health insurers.

**Prospects:** Virtually every lawmaker wants to enact a surprise billing/prescription drug cost control measure, but odds of a consensus bill emerging from the current fiery controversy over these issues are no better than 50-50. And chances for any of the other health issues finding a home in the surprise billing/prescription drug legislation are slim, but not impossible. Insiders also point out that it may be possible to add this legislation or any of the other health issues, to the must-pass government spending legislation. Again, odds favor this not happening, but it is possible.

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## NAIFA's GR Team to hold September 24 Webinar on Reg BI



**REGISTER TODAY!** On September 24 at 3 PM Eastern, members of NAIFA's GR team will be presenting a webinar on the SEC's new Regulation BI—how it came about, what it says and does, what it means for you and your practice, how it differs from the investment advisor fiduciary rule, and how state fiduciary and best interest proposals might interact (and possibly conflict) with the new rule. Advisors who market and sell investment products and securities (including variable annuities and life insurance) will need to comply with the new rule's requirements starting June 30, 2020. Advisors need to be sure they follow any instructions or guidance they receive from their broker-dealers regarding Reg BI.

Register for the webinar at:

[https://naifa.zoom.us/webinar/register/8915686448708/WN\\_D7SOvDfIRbqdx8cQouxPKA](https://naifa.zoom.us/webinar/register/8915686448708/WN_D7SOvDfIRbqdx8cQouxPKA)

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