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Congress Breaks For August Recess Without Enacting Retirement Savings Bill

Both the House and Senate left Washington for August recess without resolving issues that have stymied enactment of the NAIFA-supported retirement savings bill, the SECURE Act. Bill supporters vow to continue their efforts when Congress returns to Washington after Labor Day. Also still pending is a House-passed multiemployer (union) pension bill that is now awaiting Senate action.

The House passed the SECURE Act, H.R.1994, on May 23 by an overwhelming 417 to 3 vote. However, the bill is stalled in the Senate, where at least three Republican Senators (Cruz of Texas, Lee of Utah and Toomey of Pennsylvania) have registered concerns about it. Senate Majority Leader Sen. Mitch McConnell (R-KY) has stated that there is not enough time for a debate on the bill on the Senate floor and so to pass the Senate, the bill will have to pass by unanimous consent (UC), or be attached to some other must-pass legislation. Sens. Lee and Toomey say privately that they will not object to a UC request, but Sen. Cruz has objected. He says he will not clear the measure for a vote by UC until he is promised a vote on expanding education savings accounts.

NAIFA, in partnership with the retirement savings community, has lobbied hard to win the UC needed to move SECURE through the Senate. Constituent NAIFA members have weighed in with Sen. Cruz, as have financial services and insurance companies in Texas. However, Sen. Cruz remains adamant that the Senate vote on the provision dropped from the House-passed bill that would expand educational savings accounts to include homeschooling expenses.

On July 24, just prior to breaking for the August recess, the House passed a multiemployer (union) pension "rescue" bill, H.R.397, that allows troubled union pension plans to borrow (and repay) funds from the federal government in order to avoid further beneficiary benefit cuts or to stave off going bankrupt. The bill is controversial. But a solution to the multiemployer pension plan problem—many union plans are on the verge of bankruptcy—is widely viewed by most lawmakers as crucially necessary. The Senate is not expected to approve the House-passed bill but may offer its own plan to rescue these troubled union pension plans.

Prospects: Senate insiders remain optimistic that one way or another the SECURE Act will pass the Senate before year-end. Supporters are looking at a number of potential paths forward. They include getting the measure attached to a must-pass fiscal-year-ending appropriations bill, coming to some kind of agreement that would allow Sen. Cruz his vote on the education savings account provision, a deal involving limited time for floor debate with a handful of amendments (all of which would likely fail), or persuading all 100 Senators to agree to passing the bill by UC. NAIFA will continue to lobby hard for Senate approval of the bill, as soon after Labor Day as possible.

Health Measures Await Congress' Return To Session After Labor Day

Congress recessed until after Labor Day without finalizing action on pending health measures, including legislation to address surprise billing and a House-passed bill that would repeal the Affordable Care Act's (ACA's) Cadillac tax. These issues await Congressional action when lawmakers return to Washington after the August recess.

The surprise billing issue is considered high priority by the Administration and Republicans and Democrats in both the House and Senate. However, the growing controversy over how to deal with the issue is slowing progress.

Surprise billing refers to sometimes shockingly high charges for out-of-network medical services, usually in cases involving medical emergencies or providers of services ancillary to the reason a patient is seeking care. Usually, those charges arise when a patient is using an in-network hospital or lab or primary care provider, but a non-network specialty service is provided in connection with the in-network services, without advance agreement from the patient.

The Senate Health, Education, Labor and Pensions (HELP) Committee approved legislation (S.1895) on July 8 that would require surprise billing charges to be limited to a benchmark rate that is an average of in-network rates in the area. S.1895 also includes provisions requiring disclosure of all forms of agent/broker compensation for both group and individual health insurance sales. NAIFA continues to oppose the compensation disclosure element of the bill as there is already some compensation disclosure requirements in place at the federal and state level.

The following week, on July 17, the House Energy & Commerce Committee approved a bill (H.R.2328) containing a surprise billing rule that would allow for arbitration between the providers and the insurers when the median in-network rate exceeds $1,250.

Neither the House nor the Senate has yet voted on their respective health bills. However, House and Senate leadership have promised votes on these measures.

Also pending action after Labor Day is the fate of the ACA's Cadillac tax. The Cadillac tax is a 40 percent levy on health insurance premium amounts in excess of statutory maximums. It is currently scheduled to take effect in 2022. The House passed a NAIFA-supported bill, H.R.748, repealing the tax by an overwhelming 419-6 vote on July 17. The bill, projected to cost some $200 billion (in lost tax revenue) over ten years, was not offset. The measure now awaits Senate action.

Prospects: The surprise billing legislation is growing ever more controversial as medical care providers line up against insurers and other payers on whether to use arbitration (as the doctors want) or a benchmark rate (preferred by insurers and large employers) as the way to address the surprise billing problem. There is widespread and urgent support for a law to curtail surprise billing, but the controversy over how to address the issue is slowing prospects for enactment.

On the NAIFA-supported Cadillac tax repeal bill, insider supporters are glum about the bill's prospects in the Senate, despite considerable bipartisan support for it. Between the cost of repeal and the likely insistence by fiscal hawks in the Senate on an offset for that cost, the fact that the tax does not kick in for two more years, and a shortage of time for floor debate in the Senate, chances for Senate action this year on H.R.748 do not look good.

Congress Passes Budget Bill That Suspends Debt Limit, Sets Spending Caps

Congress averted an economic crisis by passing legislation (H.R.3877) that suspends the federal debt limit through July 2021. The bill also sets federal spending caps for the next two fiscal years. The budget agreement calls for roughly equal increases in defense and non-defense discretionary spending levels, and some $77.4 billion in offsetting spending cuts, for a total of $320 billion in increased spending in fiscal years (FYs) 2020 and 2021.

Another important element of the budget bill is the agreement embodied within it to eliminate the "poison pill" policy riders. That means appropriations bills will not be permitted to contain controversial provisions that are not part of the spending/appropriations process (unless there is a bipartisan agreement by all four Congressional leaders and the President). Thus, hot button controversial issues like whether to extend or rescind abortion authority or authority to implement regulations deriving from laws like the Affordable Care Act (ACA), will not be allowed in appropriations bills for the next two years. And importantly for NAIFA, it lessens the risk of a policy rider that would prevent the Securities & Exchange Commission (SEC) from implementing its Regulation Best Interest rules—something that some key Congressional Democrats have wanted to do, but most Congressional Republicans oppose.

The budget bill resulted from bipartisan negotiations between the Administration, the House, and the Senate. The negotiations were driven by deep concern about the potentially catastrophic impact of the U.S. finding itself unable to pay all its existing obligations when it reached the statutory limit beyond which the U.S. government cannot borrow (the debt limit). No less than the full faith and credit of the United States was at stake, negotiators believed, if all the U.S.'s bills could not be paid on time as of the projected early September date after which the federal government could not borrow any more funds.

Concern about the need to address the debt limit helped drive agreement on the spending issues.

Lawmakers are notoriously skittish about raising the country's borrowing authority, and so combining the debt limit suspension with a budget agreement made the vote a bit easier.

Prospects: Congress must still enact the implementing spending bills now authorized under the budget agreement. But the contours of the agreement have made it less likely that there could be a confrontation this fall that would result in a government shut-down. The appropriations process will not be easy—it never is—but it should be considerably less contentious than it would have been without this agreement.

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