SCWA Legislative Update

June 6, 2022

What Small Business is Watching in Washington

There are now less than six work weeks before Congress leaves town for its month-long August recess. By the time the members return in September, the fervor of the midterms will be in full tilt and most legislative priorities will be sidelined.

Much to the chagrin of the Democratic leadership, crises and unexpected issues have dominated this year's legislative calendar and are expected to do so for much of the summer. While Congress did take something off its to-do list by successfully passing a Ukraine aid bill the week before last, the $10 billion COVID funding bill that was negotiated back in April is still stalled over disputes surrounding the Title 42 border issue. There is also a renewed push in the Senate to pursue bi-partisan gun control legislation – an objective that has eluded the chamber for decades – in response to the tragic mass shootings in Uvalde and Buffalo. Further, the Senate still has a large backlog of nominees to confirm, which will be a priority for Senate Majority Leader Charles Schumer (D-NY) given the razor thin majority that his party will be defending in November. Add to all this, the fact that Congress will need to pass a FY2023 budget or an extension by October 1 to avoid a government shutdown – and it becomes very clear that there simply aren't enough days, let alone legislative work days, for everything to get done.

From the privately owned and small business perspective, we continue to monitor two big pieces of legislation that could see movement this summer.

The first of these items is a yet to be negotiated new iteration of the "Build Back Better" legislation. It is clear that the version of Build Back Better (BBB) that was passed by the House late last year is dead and buried – primarily due to the opposition of Senators Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ). However, if common sense still holds sway with the Democrats, then there is still a chance that we will see a much smaller and cleaner reconciliation bill (probably not called anything like Build Back Better!) which will include only those provisions that Senators Manchin and Sinema support. [As you probably recall, when a bill is passed using the reconciliation process, only a majority vote is required because such budget bills cannot be filibustered.] If these two Senators are willing to back any new reconciliation legislation, then look for a few items such as the extension of the child tax credit and possibly universal pre-k, to be included. Once the process starts in earnest it should go quickly since basically there will be only two Senators writing it and that assumes that Senator Manchin doesn't pull back on the bill again.

Again, if common sense prevails, this bill will be short and sweet – with a relatively few items which can be easily explained to the public. Senator Manchin is facing pressure in his home state of West Virginia to renew funding for the Black Lung Disability Fund. This renewal was included in the House passed Build Back Better legislation and may be a bargaining chip that brings Senator Manchin back to the table to negotiate a new narrower version of the bill. He is on record saying that he wants to support some of the climate and energy tax credits, but also wants to include significant revenue raisers so that the bill will reduce the deficit. He also supports allowing Medicare to negotiate directly with the pharmaceutical companies to lower prescription drug prices. He said he'll support a corporate tax increase from 21% to 25%. Of course, Senator Sinema is on record against raising taxes. It will be interesting to see if the progressive arm of the Democrat party is willing to scuttle a more modest version of BBB because it will not include many of the items they want or whether they understand that half a loaf, even a quarter of a loaf is better than nothing.

There is a lot of pressure on the Democrats to pass something before the mid-terms – but whether they will be able to thread the needle amidst the various segments of their party to reach a compromise bill remains to be seen.

Also on the watch list for small business this summer is the SECURE Act 2.0, which passed the House by an overwhelming majority (414 to 5) at the end of March. The margin by which the bill passed the House certainly gives it momentum as it moves to the Senate – however, it is likely that, rather than passing the bill in its current form, the Senate will make changes or pass its own retirement plan bill and send the matter back to the House.

It seems strange that any retirement plan bill could pass so overwhelmingly in the House, particularly since from the small business perspective, it has a number of problems. Chalk this aberration up to claims that the bill will allow more people to invest for their retirement at larger contribution levels (larger contributions is hardly accurate) while the real cost to key employees of small businesses has been ignored.

Even though most of the major retirement plan groups in town are in favor of the House passed Secure Act 2.0, there are a number of proposals that are apt to cause privately owned and small businesses real problems. The bill would mandate new 401(k) plans to include auto-enrollment starting at 3% of pay and increasing each year up to at least 10%. This means that a participant would be automatically enrolled in the 401(k) plan and have 3% of his pay contributed to the plan in the first year, 4% in the second, until reaching 10% in the eighth year. Participants are allowed to opt out. The mandate will not apply to businesses with 10 or fewer employees or new businesses who have been in business for less than 3 years.

While auto-enrollment definitely increases participation in retirement plans, it also is difficult for small businesses to administer. Also of major concern is that the bill would force catch-up 401(k) contributions which are allowed for participants who are 50 or older to be after-tax, i.e., Roth contributions. It is likely that this change would cause many older participants to choose not to make catch-up contributions. A positive change in the House passed Secure Act 2.0 is that the age at which a participant must start taking distributions from a retirement plan (the so-called Required Beginning Date) would move to age 73 starting this year, to age 74 starting in 2029 and to 75 as of 2032. It would also allow a plan to match a plan participant's payments towards a student loan, instead of only matching 401(k) contributions made by a participant.

Although the House was the first to pass its bill, the Senate has already been working on retirement plan legislation for some time. Last May, Senators Ben Cardin (D-Md.) and Rob Portman (R-Ohio) introduced the Retirement Security and Savings Act of 2021 (S.1770) which covers some of the same ground as Secure 2.0.

Additionally, last week, the Chair and Ranking Member of the Senate HELP Committee, Senators Patty Murray (D-WA) and Richard Burr (R-NC), released a discussion draft of what they've dubbed the "RISE & SHINE Act". The RISE & SHINE Act pulls together a number of stand-alone retirement plan bills into one package and is focused on those retirement plan proposals that are under the jurisdiction of the HELP Committee.

Senators Murray and Burr are currently soliciting feedback on their draft before it is formally introduced. The expectation is that ultimately the RISE & SHINE Act will be merged with the Retirement Security and Savings Act of 2021 and potentially some parts of Secure 2.0 to create a new Senate retirement plan bill. Again even though the time and bandwidth for Congress to act is short, given the strong bi-partisan push behind this issue, the odds of a bill being passed this year are still strong.

SCWA will be closely monitoring the progress of this legislation and working to educate members about the retirement plan elements that are critical to small businesses and their owners and employees.

As we embark on yet another busy and contentious legislative season, we encourage our members to keep us apprised of the issues that they are tracking or concerned about.

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