SCWA Legislative Update

April 19, 2021

Washington Update

April 30 will mark President Biden's 100th day in office. Since the President signed the $1.9 trillion COVID relief package in mid-March, the Administration has been full steam ahead to put the President's next ambitious sets of policy goals on the table.

With press attention ping ponging between a range of topics, we thought it would be helpful to take a quick step back to look at where the big ticket items currently stand.

The President's Budget Proposal

Recently, President Biden released an outline of the discretionary spending portions of his proposed budget for the 2022 federal fiscal year (which will commence on October, 1, 2021).

Looking ahead to FY2022, the President and Congress will be in a different position than they have been in recent years in that they will no longer be subject to the discretionary spending caps that have been in place over the last decade as the result of the Budget Control Act of 2011. These provisions will be expiring at the end of the 2021 fiscal year.

At this point the President's current outline is just that – an outline. It doesn't yet include the level of detail that is expected to come later. The current price tag of this portion of this portion of the President's budget is $1.52 trillion (remembering again that this is only discretionary budget items and does not include Medicare, Medicaid and social security).

One of the most notable things about the President's top line numbers is that they break from a decades long trend of increasing military and domestic spending by similar increments. The President's proposal would increase discretionary non-defense spending by 16% while only increasing discretionary defense spending by 1.7%. The increase is below the 3-5% increase that many Republican members of Congress have called for. On the other side of the aisle, a number of progressive Democrats have opposed any increase in military spending and instead called for cuts.

The most significant increases would be to the budgets for the Departments of Commerce, Education and Health and Human services and the Environmental Protection Agency (EPA) – with a targeted focus on allocating resources to addressing health care, education, income inequality and climate change issues. Interestingly, on the climate change front, the Republicans in the House, under the leadership of House Minority Leader Kevin McCarthy have announced that they will be rolling out their own proposal for climate change legislation next week to coincide with Earth Day. Initial details of such proposal have not yet been released.

Of course, the release of the President's outline is just a first step down a long road towards Congress passing a budget by the end of September and as we've often seen Congress is free to ignore all or part of the President's proposal. That said, with both chambers of Congress controlled by the same party as the President, the outline does delineate a starting point and, importantly, tees things up for reconciliation in the event any of the President's other proposals (discussed below) are facing an impasse due to the Senate filibuster (particularly since centrist Democrat Senator Joe Manchin has stated he will not support the elimination of the filibuster).

American Jobs Plan

At the end of March, the Administration unveiled a $2.25 trillion infrastructure and public works proposal. The proposal itself has drawn some criticism for its inclusion of a number of items that don't traditionally come to mind when you think about infrastructure – including funding for workforce development, elder and disability care and schools. The proposal also encompasses more traditional infrastructure priorities like funding for bridges, roads, rail and broadband.

Since the proposal's release the Administration has been making a hard push to garner bi-partisan support. Earlier this week, the President met with a bi-partisan group of lawmakers to discuss the proposal.

While the Administration has said repeatedly that it is open to negotiation and hopes that infrastructure legislation will be bi-partisan – the biggest sticking point will almost certainly be over the pay-fors for any potential infrastructure package. The President's proposal includes a number of tax changes that the Administration says would pay for the entire package over a 15 year period. These changes include increasing the corporate rate from 21% to 28% and establishing a minimum 21% tax on foreign income of US companies. Senator Manchin whose vote the Democrats can't afford to lose has indicated that he opposes an increase in the corporate rate to 28% but that he might support an increase to 25%. Sen. Manchin has also expressed that he thinks an infrastructure package should be bi-partisan rather than be passed through reconciliation. However, the Senate Parliamentarian did recently rule that Senate Democrats have two more chances to pass legislation through the reconciliation process this year – by first by including reconciliation instructions in a revised 2021 budget proposal and then through the 2022 budget proposal. Given the sticking points over taxes, if the caucus can keep all of its members on board, there is a very real chance that they will try to pass some or all of the infrastructure proposal through on a simple majority.

The President is also facing pressure from certain members of his own party who have expressed that they will not support any tax changes that do not include a repeal of the cap on the deduction for state and local taxes. The White House has indicated that it is open to the inclusion of a repeal of the SALT cap but that such a change would need to be then offset by additional revenue raisers. Note that at this point none of the negative estate tax changes set forth in Senator Sanders' recent bill nor the loss of the step up in basis proposal advanced by Senator Van Hollen are in the American Jobs Plan. Many believe these adverse tax changes will be used as a partial way to pay for the next likely bill – sometimes referred to as the human or social infrastructure bill – the American Families Plan.

American Families Plan

As a companion to the American Jobs Plan, the President has also announced that he will be dropping another proposal for investments into health and families – which will be known as the American Families Plan. Such proposal could come out as soon as this month.

Certain members of the progressive wing of the Democratic caucus have already expressed their interest in consolidating elements of the American Jobs Plan and the American Families plan into a single piece of legislation in order for more bi-partisan elements to pressure support for other more liberal agenda items. However, speaker of the House Pelosi has indicated that she anticipates keeping the legislation arising out of the two proposals separate. Of course, all of this is difficult to predict without having yet see the American Families Plan.

DOL Guidance on COBRA Subsidies

As we have previously discussed, the latest round of COVID relief legislation that was signed into law in March (the American Rescue Plan Act of 2021) included a provision to provide COBRA premium subsidies to help laid off employees and their beneficiaries retain health insurance coverage.

As you may know, COBRA provides certain employees and their beneficiaries with the right to retain coverage under an employer's group health plan for a set period of time following certain triggering events including when the employee is laid off.

Typically the cost of the COBRA premiums are born exclusively by the individual. However, the new law provides subsidies to cover 100% of the premiums for eligible individuals who qualify for COBRA coverage for the period from April 1, 2021 through September 30, 2021.

During this period, the qualifying individual does not have to remit COBRA premiums and instead the premium will be reimbursed directly to the employer, plan administrator or insurance company (depending on the nature of the plan) in the form of a tax credit.

Recently, the Department of Labor (DOL) issued two new sets of **FAQs** to help employees and employers understand the new COBRA premium subsidies and COBRA in general.

The DOL also issued new **model notices** that employers and plan administrators may use to satisfy their obligation to alert COBRA qualifying individuals of the COBRA premium subsidies.

In the event of a termination/lay off or other action (such as a reduction in hours) that would end an employee's regular coverage under the group health plan and cause them to be eligible for COBRA – employers should make sure that they and their agents consult the new materials from the DOL and comply with the new requirements related to the premium subsidies.

Chuck Space - SCWA Executive Director
4600 Spicewood Springs Road
Suite 103
Austin, TX 78759
(512) 343-9023