National Employers Association

The NEA Monthly Lobbyist Report for Members

Lobbyit

NEA February 2023 Policy Report

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NEA February Report

What's Happening in Washington

February marked the true beginning of the 118th Congress now that all Committees are fully formed and organized. This also brought the first substantial hearings of the year which laid the groundwork of the Committee work and priorities this Congress. Lobbyit monitored all pertinent committee activities with an eye towards appropriations season.

State of the Union

On February 7th, President Joe Biden exhorted Congress to work with him to "finish the job" of rebuilding the economy and uniting the nation as he delivered a State of the Union address aimed at reassuring a country beset by pessimism and making the subtle argument ahead of an expected Spring re-election announcement.

In his 73-minute speech, Biden sought to illustrate substantial improvements compared to the state of the country two years ago: from a reeling economy to one prosperous with new jobs; from a crippled, pandemic-weary nation to one that has now reopened, and an overwhelming bipartisan infrastructure package that rivals President Eisenhower's investment. Members of both parties coalesced around their messaging in favor of or criticizing President Biden's address to the nation.

Debt Ceiling

The debt limit—commonly called the debt ceiling—is the maximum amount of debt that the Department of the Treasury can issue to the public or to other federal agencies. The amount is set by law and has been increased or suspended over the years to allow for the additional borrowing needed to finance the government's operations. On December 16, 2021, lawmakers raised the debt limit by $2.5 trillion to a total of $31.4 trillion. On January 19, 2023, that limit was reached, and the Treasury announced a "debt issuance suspension period" during which, under current law, it can take wellestablished "extraordinary measures" to borrow additional funds without breaching the debt ceiling.

The Congressional Budget Office projects that, if the debt limit remains unchanged, the government's ability to borrow using extraordinary measures will be exhausted between July and September 2023—that is, in the fourth quarter of the current fiscal year. The projected exhaustion date is uncertain because the timing and amount of revenue collections and outlays over the intervening months could differ from CBO's projections. Income tax receipts in April could be more or less than CBO estimates. If those receipts fell short of estimated amounts—for example, if capital gains realizations in 2022 were smaller or if U.S. income growth slowed by more in early calendar year 2023 than CBO projected—the extraordinary measures could be exhausted sooner, and the Treasury could run out of funds before July.

If the debt limit is not raised or suspended before the extraordinary measures are exhausted, the government would be unable to pay its obligations fully. As a result, the government would have to delay making payments for some activities, default on its debt obligations, or both.

Presidential Budget Set for March Publication

The Biden Administration has signaled that its budget proposal will publish on March 9th. President Biden's budget proposal must navigate a divided Congress where House Republicans will seek to reduce spending and limit additional spending that could add to ongoing inflationary pressures. President Joe Biden has also pledged to raise taxes on the "ultra wealthy" while toeing the line of avoiding tax increases on Americans making less than $400,000 a year.

The Congressional Budget Office (CBO) has examined baseline projections of what the federal budget and economy would look like if current tax policy remain unchanged. CBO projects a federal budget deficit of $1.4 trillion for 2023. In the agency's projections, deficits generally increase over the coming years; the shortfall in 2033 is $2.7 trillion. The deficit amounts to 5.3 percent of gross domestic product (GDP) in 2023, swells to 6.1 percent of GDP in 2024 and 2025, and then declines in the two years that follow. After 2027, deficits increase again, reaching 6.9 percent of GDP in 2033—a level exceeded only five times since 1946.

Although the CBO is a nonpartisan agency, expect both parties to spin data to their favor as Congress parses spending details to avoid a year-end shutdown if government funding expires.

DOL

U&T Visas

U.S. Secretary of Labor, Marty Walsh, and Assistant Secretary for Occupational Safety and Health, Doug Parker, signed a memorandum granting the Occupational Safety and Health Administration the power to issue certifications that support applications for U Nonimmigrant Status and T Nonimmigrant Status visas. These visas, also known as "U Visas" and "T Visas," offer protection to individuals who have been victims of specific crimes and assist law enforcement in detecting, investigating, and prosecuting these crimes without fear of retaliation based on their immigration status. These visas grant non-citizen victims immigration status and allow them to remain in the U.S. to aid authorities in combating human trafficking and other related crimes.

UBSA Voluntary Fiduciary Correction

The U.S. Department of Labor announced that its Employee Benefits Security Administration would reopen the public comment period on amendments to its Voluntary Fiduciary Correction Program and the proposed amendment to the associated class Prohibited Transaction Exemption 2002-51.

The program had encouraged plans to comply with the Employee Retirement Income Security Act and the Internal Revenue Code by self-correcting violations of the law. If plans voluntarily corrected eligible transactions and met the specified requirements, the program and exemption together allowed the plans to avoid potential civil enforcement actions and penalties.

VPP Program

The U.S. Department of Labor has invited the public and workplace safety stakeholders to share their comments on how the Occupational Safety and Health Administration (OSHA) can best acknowledge companies that have made exceptional commitments to workplace safety and health, and encourage others to follow suit.

The Voluntary Protection Program, established in 1982, recognizes workplaces that demonstrate best practices in safety and health management and serve as industry models. Over the last 40 years, the program has attracted a diverse range of organizations across various industries. However, the program's success has strained OSHA's resources and made it challenging to ensure the quality of safety and health management systems for program applicants.

Changes to 5500 Annual Return Report Form

The U.S. Department of Labor, the IRS, and the Pension Benefit Guaranty Corporation released Federal Register notices that announced changes to the 2023 Form 5500 Annual Return/Report of Employee Benefit Plan and Form 5500-SF Short Form. These changes are expected to reduce the overall filing costs for employee benefit plans by $95 million per year.

This announcement represents the third and final phase of the implementation of a regulatory proposal from September 2021, which included changes related to provisions in the Setting Every Community Up for Retirement Enforcement Act, commonly known as the SECURE Act. These changes affected annual reporting requirements under the Employee Retirement Income Security Act and the Internal Revenue Code.

Upcoming Wage and Hour Division Webinars

The U.S. Department of Labor announced that its Wage and Hour Division will provide online seminars for contracting agencies, contractors, unions, workers, and other stakeholders regarding the requirements for paying prevailing wages on federally funded construction and service contracts.

As part of the division's initiative to raise awareness and enhance compliance, the seminars will include pre-recorded training videos on a range of Davis-Bacon Act and Service Contract Act topics that participants can access on demand. The division will also offer live Q&A sessions to provide additional information.

Ag Educational Series

The U.S. Department of Labor's Wage and Hour Division is pursuing a multi-year initiative to educate agricultural industry employers about compliance and workers about their legal protections under federal law, following a nearly $1 million annual increase in back wages recovered for Southeast agricultural industry workers in calendar year 2022.

Along with the compliance outreach and education elements of the initiative, the division will maintain its enforcement activities in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

H-2A Program Changes
The U.S. Department of Labor will soon issue a final rule amending the Adverse Effect Wage Rates for the H-2A program to ensure consistency and accuracy of the rates based on the actual work performed by H-2A workers. The new rule aims to prevent the negative impact of H-2A workers' employment on the wages of U.S. workers in similar positions.

Under the H-2A program, employers can hire foreign agricultural workers to address temporary labor shortages as long as it does not adversely affect the wages and working conditions of U.S. workers in similar jobs. The Adverse Effect Wage Rates, which is the wage below which there would be an adverse effect on the wages of U.S. workers, will be updated accordingly.

Ed & Workforce
PRO Act
On Feb. 28th, Education and the Workforce Committee Chairwoman Virginia Foxx (R-NC) issued the following statement on the fate of the (PRO) Union Bosses Act in the 118th Congress:

"The PRO Act is a key tenet of the Left's agenda, a radical wish list of union boss priorities which undermines the rights of workers. To my Democrat colleagues and their union allies, I have one simple message: The era of Big Labor in the Committee is over, and putting the demands of union bosses above the interests of America's workers and job creators will stop. In the 118th Congress, Education and the Workforce Committee Republicans are charting a new course, one that puts the needs of America's workforce, innovators, independent contractors, and job creators first—and we will not be deterred in doing so."

OFCCP Employee Data Release
On February 10th, Education and the Workforce Committee Chairwoman Virginia Foxx (R-NC) sent a letter to Office of Federal Contract Compliance Programs Director Jenny R. Yang to lambast the agency's imminent release of job creators' sensitive employee data.

In the letter, Foxx writes: "I have serious concerns that the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has not provided federal contractors, especially smaller employers, with sufficient information and time to object to having their confidential data released pursuant to a Freedom of Information Act (FOIA) request from the Center for Investigative Reporting, a left-of-center journalism organization.... [T]hese reports can reveal the private information of individual employees, especially for smaller employers."

Senate HELP
This month, Senate HELP focused their efforts on issues like rail workers, the healthcare workforce, teacher pay, and community health centers. This month, there was no relevant committee activity for NEA.

Our Work
This month, our work was focused on ensuring that NEA stayed up to date on all happenings in the labor space. There was quite a few updates, most coming from DOL and the administration, and we expect other labor related issues to speed up in the coming weeks and months as new and previous Congress bills are introduced.

We are also planning an additional half-day fly-in for March, and our plans are to continue to work toward that throughout the month of March.

Please let me know if you have any questions regarding what is included in this report.

Best,
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Bills by Issue

National Employers Association (12)