

# NFIB Federal Lobbying Update

## Latest Proposals and Timeline



# Agenda

- State of Play & Latest Timeline
- Policy Update
  - Bipartisan Infrastructure bill v. Build Back Better Act
  - House v. Senate
- Current Political Dynamic
  - Progressives v. Moderates
- NFIB Advocacy
- Q&A



# State of Play

- November 2 – Election Day in Virginia and New Jersey
- November 5 – House passed bipartisan infrastructure bill (*Infrastructure Investment and Jobs Act*)
- November 6 – House passed procedural vote for reconciliation bill (*Build Back Better Act*)
- November 8–15 (weeks) – Congressional Budget Office estimates
- November 18–19 – House vote expected
- December 3 – government funding deadline, debt limit x-date?



# Bipartisan Infrastructure Bill

- Passed Senate on August 10, 2021 (69-30)
- Passed House on November 5, 2021 (228-206)
- Signed into law next week (expected)
- **Shortens duration of Employee Retention Tax Credit (ERTC)**
  - Originally scheduled to expire December 31, 2021
  - **Now expired on September 30, 2021 (disallowed ERTC for 4<sup>th</sup> quarter)**



# Original House Build Back Better – Tax

- Limits Small Business Deduction – \$500,000\*
- Increases top individual rate – 37% → 39.6%
- Lowers top rate threshold – \$628,301 → 450,001
- Imposes 3.8% surtax on active business income >\$500,000\*
- Imposes 3% surtax on income >\$5 m\*
- Restores graduated corporate tax rate\*
- Increases the top capital gains tax rate from 20% to 25%\*
  - Plus 3.8% surtax >\$500,000 (28.8%)\*
  - Plus 3% surtax >\$5 m (31.8%)\*
- Accelerates sunset of estate tax thresholds
  - Exemption would be reduced from \$11.7 m to ~\$6 m



*\* not indexed for inflation*

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# Original House Build Back Better – Mandates

- Creates Paid Family & Medical Leave Program
  - Applies to all businesses and all employees
  - Allows up to 12 weeks of leave/year
  - Administered and paid by Treasury Department
  - Partial employer reimbursement
  - Employees self-attest they provided employers 7 days notice
- Mandates “Automatic Contribution Plans or Arrangements” (“ACPAs”)
  - Applies to businesses with >5 employees and certain employees
  - Requires withholding 6%-10% of employees’ earnings
  - **Not** required to contribute
  - Penalty of \$10/day/employee excise tax for up to 3 months





# New House Build Back Better – Mandates

- Creates Paid Family & Medical Leave Program
  - Applies to all businesses and all employees
  - Requires up to ~~12~~ **4 weeks** of leave/year
  - Administered & paid by ~~Treasury Department~~ **Social Security Admin.**
  - Partial employer reimbursement
  - Employees self-attest they provided employers 7 days notice
- ~~Mandates “Automatic Contribution Plans or Arrangements” (“ACPAs”)~~
  - ~~Applies to businesses with >5 employees and certain employees~~
  - ~~Requires withholding 6%-10% of employees’ earnings~~
  - ~~**Not** required to contribute~~
  - ~~Penalty of \$10/day/employee excise tax for up to 3 months~~



# New House Build Back Better

- **“Small Business Surtax”** – Imposes 3.8% surtax on active business income >\$500,000\*
  - Lower threshold for businesses held in trusts >\$13,000\*
- Imposes 5% surtax on business income > \$10 m\*
- Imposes 3% surtax on business income > \$25 m\*
- Creates Paid Family & Medical Leave Program
  - Requires up to 4 weeks of leave/year
- Increases penalties & penalty exposure
  - FLSA, OSHA, NLRA
  - Expands ACA employer mandate – “affordability” 9.5% → 8.5%



# Senate will make changes

- Restore any of the tax increases or add new tax increases?
  - Institute “mark-to-market” for billionaires
  - Eliminate stepped-up basis
- Increase IRS enforcement by allowing access to banking information?
- Eliminate paid family and medical leave mandate?



# Current Political Dynamic

- Virginia and New Jersey elections – shades of 2009
  - Democratic Leadership doubling down and plowing ahead
- Distrust between House and Senate
  - Progressives v. Blue Dogs / Sens. Manchin & Sinema
- Distrust between progressives and moderates
  - Hostage has been released (infrastructure bill)
- Potential disruptions
  - Disagreement over top line - \$1.75-\$2.T (House) v. \$1.5 T (Senate)
  - Bad CBO score



# NFIB Advocacy

- FGR / SGR / Grassroots – *Small Business Survival* campaign
- Broad Lobbying – NFIB & Coalitions
  - Meetings, testimony, letters, briefings, studies
- Advertising
- Broad Grassroots – *Take Action!*



**QUESTIONS?**

