FCA International’s 2020 Legislative and Regulatory Update

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“Unlike in the past, where we were unified and drew in allies, currently our own commons seems to be breaking apart. What concerns me most as a military man is not our external adversaries; it is our internal divisiveness. We are dividing into hostile tribes cheering against each other, fueled by emotion and a mutual disdain that jeopardizes our future, instead of recovering our common ground and finding solutions.”

— General Jim Mattis, former Defense Secretary, per his essay, “Duty, Democracy and the Threat of Tribalism.”
FCA International has developed Coronavirus Employer Issues of Concern and Resource Guide Memos

Beyond a public health problem, Coronavirus is impacting:

- Political and Economic Assumptions
- National Security Threat
- Diversifying American Supply Chains (away from China)
- The Limitations of Central-Bank Powers
- Recent respect for Government Professionals such as Dr. Fauci (Director of the National Institute of Allergy and Infectious Diseases – 35 years)
- Congress and the Administration’s Stimulus Decision?
116th Congress
The 116th Congress

- House: 235 Democrats, 199 Republicans, 1 undecided seat
- Senate: 47 Democrats, 53 Republicans
- Average age: 58.5 years old
- 24% female (102 House, 25 Senate)
- 21% minorities

Politico & Rutgers Eagleton Institute
116th Congress

The 116th Congress: Most Partisan in History

2018 Elections

- Republican Party Spending
- Conservative Non-Party Spending
- Democratic Party Spending
- Liberal Non-Party Spending
116th Congress – The U.S. House of Representatives
Of House Democrats’ plans, the most likely to gain GOP support are improving infrastructure and cutting drug prices

Democrats’ legislative priorities for the 116th Congress

- Reform campaign ethics and voting rights
  - Lessen the effects of lobbying on policy and enforce ethical campaign financing
  - Require presidential nominees to release tax returns from the three most recent taxable years
  - Expand voting rights, and partisan gerrymandering

- Address climate change
  - Establish measures to cut carbon pollution and counteract the Trump administration’s rollback of environmental protections
  - Enact a Green New Deal, which would transition all electric power to renewable sources in 10 years

- Cut drug prices and fortify Obamacare
  - Decrease drug prices, in part by allowing Medicare to negotiate prices and requiring manufacturers to be more transparent about pricing
  - Fight litigation that could strip away the ACA’s protections for people with preexisting conditions

- Revamp US infrastructure
  - Improve transportation infrastructure, water systems, broadband and more
  - Demands for any infrastructure to include clean energy tax credits and provisions for research of new technology

- Roll back GOP tax reforms
  - Increase the corporate tax rate from 21% to as high as 28%; increase rates for high-earning individuals

- Raise the minimum wage
  - Pass legislation for a $15 per hour federal minimum wage, up from $7.25

October 15, 2019: White House Syria Meeting
In 2013, former Democratic Majority Leader Reid ended the filibuster on judicial nomination votes.

Supreme Court Justices: Neil Gorsuch and Brett Kavanaugh

Senate confirmed 187 federal judges to the federal bench in the last three years.

Including 50 judges to the federal circuit court of appeals

- In 2017, when President Trump took office, Democratic appointees made up the majority on nine of the 13 circuit courts.
- In 2020, President Trump’s appointments flipped three circuit courts:
  - 2nd (NY, VT, CT)
  - 3rd (DE, NJ, PA)
  - 11th (FL, GA, AL)
- In total, seven circuits have Republican majority appointees.
2020 Election
Impeachment
Trump’s re-election outlook and each party’s ability to field strong candidates are key:

- If Democrats net four seats they would take control of the Senate; netting three seats would result in a tie and the majority would be decided by the vice president’s party.
- If either Elizabeth Warren or Bernie Sanders were the Democratic presidential nominee and defeated Trump then the GOP governor of their state would be in a position to name an interim senator of their choosing until a special election could be held.
- Democrats last defeated more than two Republican senators in 2008, when Barack Obama’s victory helped Democrats beat five GOP incumbents.

Source: Bloomberg Government

Note: Yellow reflects independents who caucus with Democrats.
Senate 2020 Forecast

Source: Race ratings from Cook Political Report; as of Jan. 10
Note: Georgia has one regularly scheduled election and one special election; Arizona has one special election
Big Picture on 2020 House Races

All 435 House seats are up in 2020

- Democrats are defending their majority after a net gain of 40 seats in 2018 election
- Republicans would need to net around 18 seats to flip the chamber
- Some of the most closely watched races will be districts won by the other party’s 2016 presidential candidate

The five vacancies are in CA-25, due to the resignation of Katie Hill (D); CA-50, due to the resignation of Duncan Hunter (R); MD-07, due to the death of Elijah Cummings (D); NY-27, due to the resignation of Chris Collins (R); and WI-07, due to the resignation of Sean Duffy (R).
Population Shift Helps South and Southwest

- New state census totals show population continuing to shift from the North and Midwest to the South and Southwest.

- The results of the 2020 census will determine the new distribution of House seats and Electoral College votes by December 2020. The first elections likely to be affected by the seat changes will be in 2021. Most states will redraw congressional and legislative districts in time for 2022 votes.

- The latest data reflect sweeping changes across the U.S. since the start of the decade:
  - Americans are getting older and having fewer babies;
  - Immigration is slowing, and the rate at which people move between states is at its lowest level in decades; and
  - Those who do uproot are often leaving the Northeast and Midwest for warmer places in the Sunbelt and pockets of the West because of their favorable weather, strong job growth, cheaper housing and, in some cases, lower taxes.

Seat Shuffle
if House seats were allotted using the 2019 population estimates, Texas would gain two seats.

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Source: WSJ analysis of Census data
Legislative Update
FCA Legislative Priorities

- Bid Listing on Federal Construction Projects
- Government Regulations on the Industry
  - Identify Grant Opportunities
  - Immigration Reform
  - Misclassification of Employees
  - Multiemployer Pension Reform
- Nation’s Infrastructure Investment (Highway Bill)
  - Oil and Gas industry
- Opposing Efforts to Modify, Suspend, or Repeal Davis Bacon Act
  - Prompt Payment
  - Public Private Partnerships
- Repeal of the ACA’s Cadillac Tax
  - Trade Deals
Butch Lewis Act (Multiemployer Pension Reform):
  • **House:** On 7/24/19, the House voted 264-169 with 29 Republicans voting for it and Congressional Budget Office (CBO) scored it at $48.5 billion from 2019-2029.
  • **Senate:** Introduced it on 7/24/19, 27 Democrat cosponsors included Sen. Schumer (Minority Leader) and CBO scored it at $67.7 billion from 2019-2029.

S. 1434: Banning reverse auction in construction services unanimously passed in the Senate 100-0.

Cadillac Tax: President Trump signed the law for the full repeal of the 40% excise tax on high-cost health plans (the "Cadillac Tax").

529 Apprenticeship Savings Accounts: Setting Every Community Up for Retirement Enhancement (SECURE Act), which takes effect on January 1, 2020:
  • expands 529 education savings accounts to cover registered apprenticeships; homeschooling; up to $10,000 of qualified student loan repayments (including for siblings); and private elementary, secondary, or religious schools.
FCA International’s 2020 Legislative Priorities

**MULTIEMPLOYER PENSION REFORM:** On Wednesday, November 20, 2019, the Senate Republican Leadership released a rather lengthy Multiemployer Pension Reform White Paper regarding recently drafted MEP legislation.

**Four Components of the Proposed Republican MEP Plan:**

1. **Rescue for failing plans** – partitioning, with government money
   - CBO, PBGC working on funding requirements of the Republican Proposed Plan
2. **PBGC Solvency**
   - Premiums will go up – unknown $ amount
   - Variable-rate premiums (risk-based)
   - Retiree premium
3. **Changes in Funding Rules & Zone Status**
   - Not clear what changes to withdrawal liability might occur
   - Stricter funding standards
   - More tools for plans, available earlier
4. **Composite Plans**
   - Available to Green Plans only – last-minute lobbying efforts notwithstanding!
   - Not clear what other changes from GROW – outside of some technical changes
FCA International’s 2020 Legislative Priorities

- **H.R. 5247**: SUBS Act – Bid Listing
- **H.R. 2344**: Change Orders
- **S. 1434**: Reverse Auction in the House
- **P3 Bonding Requirements** in TIFIA (Transportation Infrastructure Finance + Innovation Act)
- **Corrosion Prevention**: Reauthorization of the Surface and Water Transportation Funding Bills - due to expire September 30, 2020
PREVAILING WAGE:
• **H.R. 1319/S. 2630 – Davis-Bacon Repeal Act**
  — Sponsored by Rep. King (R-IA) and Sen. Lee (R-UT)
  — Repeals Davis-Bacon prevailing wage requirement on all federally funded projects worth more than $2,000.
  — Awaiting consideration in the Senate Health, Education, Labor and Pensions (HELP) Committee and the House Education and Labor Committee
• **H.R. 2122 – Protect Our Workers Act**
  — Sponsored by Rep. Smith (R-NJ)
  — Requires the GAO to carry out a study on the contracting practices of the Corp of Engineers, with a specific focus on how the Corps complies with and enforces the requirement to pay prevailing wages on federally financed construction jobs.
  — Awaiting consideration in the Education and Labor Committee
• **H.R. 3904 – Highway Trust Fund Reform Act**
  — Sponsored by Rep. Fox (R-NC)
  — This legislation would eliminate the requirement that all laborers or mechanics working on federal-aid highway and public transportation projects shall be paid wages at rates not less than the locally prevailing wage rate.
  — Awaiting consideration in the Education and Labor and Transportation and Infrastructure Committees
PREVAILING WAGE:

- **S.2404 – Build Local, Hire Local Act**
  - Introduced by Sen. Gillibrand (D-NY)
  - This legislation proposes $100 billion in annual federal infrastructure spending and Sec. 301 requires that all laborers and mechanics employed by contractors or subcontractors on projects covered under this infrastructure program be paid no less than the prevailing wage of its locality.
  - Awaiting consideration in the Environment and Public Works Committee

- **H.R. 3506/S. 3015 – Locality Pay Equity Act**
  - Sponsored by Rep. Cartwright (D-PA) and Sen Casey (D-PA)
  - This legislation would ensure that the percentage increase in rates of basic pay for prevailing wage employees shall be equal to the percentage increase received by other Federal employees in the same pay locality.
  - H.R. 3506 is pending in the Oversight and Reform Committee and S. 3015 is pending in the Homeland Security and Governmental Affairs Committee

- **H.R. 1073 – FAIR Act**
  - Introduced by Rep. Connolly (D-VA)
  - This legislation would increase rates of pay under the statutory pay systems for federal prevailing wage employees by 3.6 percent.
  - This legislation is pending in the House Oversight and Reform Committee
PROJECT LABOR AGREEMENTS:

• **H.R. 1858/S. 907 – Fair and Open Competition Act**
  — Introduced by Reps Budd (R-NC) and Rooney (R-FL) and Sens. Young (R-IN) and Perdue (R-GA)
  — This legislation would ensure that the federal government cannot mandate project labor agreements (PLAs) on federal projects.
  — S. 907 is awaiting action in the Homeland Security and Governmental Affairs Committee and H.R. 1858 is awaiting action in the Oversight and Reform Committee

• **S. 2185 – Good Jobs for 21st Century Energy Act**
  — Introduced by Sens. Merkley (D-OR) and Hirono (D-HI)
  — Amongst other things, this legislation would establish labor standards for projects in the clean energy sector by setting employment and safety standards through the PLA process.
  — Awaiting consideration in the Finance Committee

• **H.R. 1417/ S. 611 – Water Affordability, Transparency, Equity and Reliability (WATER) Act**
  — Introduced by Reps. Khanna (D-CA), Lawrence (D-MI), and Omar (D-MN) along with Sen. Sanders (I-VT)
  — This legislation would create a $35 billion trust fund to invest in water infrastructure improvements across the United States. Sec. 11 of the WATER Act requires that any improvements made through the trust fund be subject to prevailing wage along with Project Labor Agreements.
2019 FCA International Legislative Fly In
2020 FCA International Legislative Fly In:
May 19-20, 2020
**SREs and IRAPs**

- On 6/25/19, the DOL issued a proposed rule to establish a process for recognizing Standard Recognition Entities (SREs), and in turn, authorizes the creation of industry-led apprenticeship program (IRAPs).
- SRE’s would have the jurisdiction to accept or reject new apprenticeship programs rather than a government agency.
- The rule outlines a process in which private organizations can apply to become DOL-recognized SRE’s.
- Though the rule opens the door for IRAPs across many industry sectors, it contains an exemption for the construction industry.
ISSUE OF CONCERN
• DOL would use the number of federal registered apprentices from prior years to approximate where registered apprenticeship opportunities are already significant.

ACTION TAKEN:
• FCA, along with the CEA, working with DOL inserted this footnote to the Rule:
  — DOL would identify sectors where registered apprenticeship opportunities are already significant as those that have had more than 25% of all federal registered apprentices per year on average over the prior 5-year period, or that have had more than 100,000 federal registered apprentices per year on average over the prior 5-year period, or both, as reported through the prior fiscal year by the Office of Apprenticeship.

RESPONSE:
• DOL believes these thresholds are reasonable measures of where registered apprenticeship opportunities are already significant relative to other sectors.
Registered Apprenticeship Programs

ISSUE OF CONCERN – Per the Rule:

- DOL recognizes the need for flexibility over time, particularly as the economy and workforce needs change.
- DOL seeks comment on whether its approach is the best measure of where there are significant registered apprenticeship opportunities?
  - is it appropriate for managing potential overlap and conflict between registered apprenticeship programs and Industry Programs
  - how should this approach be described and implemented in the future
  - should DOL consider alternative or additional means to promote and support the expansion of Industry Programs in sectors that do not currently have significant registered apprenticeship opportunities
- DOL seeks comment on whether this provision should sunset after a certain period of time and, if so, what length of time would be appropriate?
**ACTIONS TAKEN**

- During the last two years, FCA International’s Government Affairs Committee, has worked tirelessly educating the Administration and members of Congress on the importance of our industry’s registered apprenticeship programs.
- FCA has teamed up with the CEA and other trade associations across the construction industry to ensure our registered apprenticeship programs are protected.
- On 7/24/19, FCA issued a white paper to our members on this rule and guidelines for comments to be issued before August 26, 2019.
DOL’s IRAP FINAL RULE (Tuesday, March 10, 2020):

Effective on May 11th, and the Construction Exemption Language to the IRAP Rule (pages 211-225):

• 211 (construction exclusion language and the DOL Administrator is prohibited to recognize IRAPS for apprenticeship training)

• 213 (the elimination of the deconfliction formula)

• 219-220 (registered apprenticeship system as the "gold standard")

• 223 ("To begin, that union registered programs might predominate over non-union registered programs is not itself a compelling reason for or against the exclusion.")

• 224 ("The Department agrees with commenters opposed to the exclusion that the market for apprentices in the construction sector is not saturated and even that demand might be greater than supply, but as discussed above, the Department disagrees with excluding the construction sector from the scope of the IRAP Rule is inconsistent with the purpose of this rulemaking. Notably, commenters opposed to excluding the construction sector did not provide persuasive evidence that contradicted the Department’s conclusion that registered apprenticeship programs are more widespread in construction sector than in other sectors.")

• 225 ("The Department determined that the exclusion of the construction sector from the IRAP eligibility should not sunset, expire after a certain date. Moreover, repeal of the construction exclusion would have to proceed through notice-and-comment rulemaking.")

Finally, 326,000 comments were received regarding this rule.
Regulatory Monitoring

- **DOL**
  - Overtime Rules
  - Injury Reporting Requirements
  - Mental Health Portal
  - Grants
    - Susan Harwood OSHA Training Grants
    - Federal Mediation and Conciliation Service (FMCS) Labor - Management Grant Opportunities
  - Beryllium and Silica Rules
    - On 7/29/19, OSHA submitted a proposal to revise its silica rule’s list of acceptable practices for limiting workers’ exposure to the dust.

- **DOE**
  - POTUS’s Energy Executive Order

- **EPA**
  - Lead Paint Removal Air Quality Requirements
Curtainwall:

On January 3, 2020, the EU initiated Anti-Dumping Investigation into Aluminum Extrusions Imported from China.

On March 22, 2019, The U.S. Court of Appeals for the Federal Circuit has affirmed a decision by the Court of International Trade (CIT) that ruled Chinese curtain wall is subject to U.S. tariffs on aluminum extrusions imported from China.

The decision upheld an earlier scope determination by the U.S. Department of Commerce for the antidumping (AD) and countervailing duty (CVD) orders on aluminum extrusions from China.

FCA International = WINNING!
FCA demonstrated its commitment to #workforcedevelopment last week when Board Member Penny McDonald met with @POTUS, @IvankaTrump and @larry_kudlow and FCA pledged its members will provide educational/training opportunities to 42k workers over the next 5 years!
“A great challenge in politics and diplomacy is to see in real time the line between the opening that should be pursued and the trap that must be avoided. And once you made that calculation, not push things too far. It can be delicate. You have to be like a safecracker, who files down his fingers so he’ll feel every click.”

• Declarations by Peggy Noonan, Wall Street Journal, September 8, 2019.
Questions / Comments
Thank You!

The only time members of Congress act in unison...

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