# Legislative and Regulatory Update

**April 2014**

## Introduction

It's now the end of the first quarter of the Second Session of the 113th Congress and we have seen history made. Despite of or maybe because of the fact that 2014 is an election year, Congress has passed several major bipartisan bills including the FY 2014 Budget, raising the debt ceiling, reauthorizing flood insurance and legislation to remove the cost of living cuts for retired veterans under the age of 62. Will this trend continue? Highly unlikely. With Primary season upon us and the general election in just 8 months, the two sides will be ramping up their election year rhetoric and widening the gap between the two parties. For example, the House Republican FY 2015 budget which begins in October 2014 is being highly contested by the Democrats.

At stake for Republicans is increasing their current majority in the House while seeking to take control of the Senate. Right now, the former seems likely but the latter is more problematic. For Democrats, they are playing to just hold what they have especially in the Senate. Regardless of the outcome coupled with the recent spate of retirements, NFDA will have a whole new Congress to deal with in 2015. Hopefully, we will have several new friends to support our efforts thanks to their support by funeral directors and the NFDA PAC.

In the meantime, NFDA continues to be involved in several issues that will impact funeral service. Set forth below is a brief summary of these current issues.

## 1. Legislative Issues

**Funeral Rule Improvement Act of 2014 (H.R. 4213) –** Introduced at the request of NFDA, the bill would amend the definitions of "Funeral Provider" and "Funeral Services" in the FTC Funeral Rule to include all for-profit sellers of funeral or final disposition goods or services. The bill has been referred to the House Energy and Commerce Subcommittee on Commerce, Manufacturing and Trade. We will be meeting with the Majority and Minority staffs of the Subcommittee to discuss our bill and determine what actions the Subcommittee may have planned for it. We also will be working hard to secure a Senate sponsor to introduce a Senate version of the House bill. NFDA members are urged to go to the Congress-At-A-Click function on the NFDA website and send an e-mail to your House members asking them to co-sponsor H.R. 4213 and actively support its passage.

**Health Insurance Tax (H.R.763/S.603 and H.R. 3367) –** NFDA has joined 35 other small-business groups in supporting and actively advocating for passage of legislation to repeal or delay the onerous health insurance tax created by the Patient Protection and Affordable Care Act.

H.R.763, entitled the "*Jobs and Premium Protection Act of 2013,*" has been introduced in the House and now has over 226 co-sponsors from both sides of the political aisle. A companion bill, S.603, has been introduced in the Senate and has more than 26 co-sponsors and supporters from both parties as well. (NOTE: it takes 217 votes in the House to pass a bill and 51 votes in the Senate unless Cloture is invoked. It then would require at least 60 votes.) H.R. 3367 simply delays the imposition of the tax for two years.

Beginning this year, the tax will be imposed on insurance companies that offer fully insured coverage. The tax will be assessed on the net earned health insurance premiums as a percentage of their total premiums.

The Congressional Budget Office (CBO) has stated that the tax "*would be largely passed through to consumers [small and family-owned businesses] in the form of higher premiums for private coverage.*"

A recent study by Oliver Wyman Company found that on average, across all states from 2014-2023; premiums will increase $2,794 for small-business employees with an individual plan and $6,883 for those with a family plan. In 2014, the first year of the new tax, the average increase in premiums will range from 1.9 to 2.3 percent. By 2023, the expected increases will range from 2.8 to 3.7 percent.

While there is such strong support for these bills, it is now very problematic that any of them will be considered this year as stand alone bills. However, we do believe that either the repeal bill or the delay bill may be included as part of the compromise budget or tax agreement now being developed and probably introduced later this year but not actively considered until after the election in a Lame Duck Session. NFDA will keep members updated as these bills progress through the legislative process.

**Tax Reform (No Bill Yet) –** Ways and Means Committee Chairman Dave Camp (R-MI) has announced his draft comprehensive tax reform proposal to both applause and boos. In these efforts, there are always winners and losers. On the corporate side, many of the small business proposals NFDA has reviewed seem to be beneficial to NFDA members. In that regard, NFDA has submitted comments to the chairmen of the House Ways and Means Committee and the House Small Business Committee supporting several provisions contained in the draft small-business tax reform proposal. However, several of the Subchapter S provisions appear to be detrimental to those pass-through entities. A considerable number of NFDA members fall into this category. As a result, NFDA has joined the Subchapter S Corporation Coalition to work with other groups on these issues. On the individual side, there seems to be much more controversy as the proposal eliminates or reduces many of the very popular exemptions and deductions in the current tax code and retains a much higher top tax rate then on the corporate side.

NFDA continues to actively monitor ongoing Congressional discussions as they mature and progress through the internal and external discussion stages; however, it appears that there is no political will in this election year to officially introduce this draft proposal and move it through the legislative process. However, certain sections or provisions of the larger tax reform bill may be extracted and inserted in the FY 2015 Budget and tax discussions now underway. We will keep you advised as this process proceeds.

**Estate Tax (No Bill) –** Just when we thought this issue had finally been resolved, President Obama included a provision in his FY 2015 budget that would reduce the current law to 2009 levels. Currently, the estate tax law provides a $5 million exclusion ($10 million for couples) and a tax rate of 40% above the exclusion. The exclusion is indexed for inflation and includes a stepped-up basis and spousal transfer. The President's proposal would reduce the exclusion to $3.5 million ($7 million for couples), and it would not be indexed for inflation. While NFDA understands there is little, if any, political support for the President's proposal from either Republicans or Democrats, it is nonetheless in play during the upcoming budget and tax negotiations and could be included in any of these bills as a way to reduce expenses.

As a side note, the Ways and Means Tax Reform proposal does not recommend any changes to current estate tax law. NFDA will continue monitor this issue and act with other members of the Family Business Estate Tax Coalition to oppose any effort to roll back the current law.

**Compensatory Time Option for Private Employers and Employees (H.R.1406) –** Under current law, only public-sector employees can receive compensatory time off in lieu of monetary overtime compensation. With certain exemptions for those serving in an executive, administrative or professional capacity, and this right does not extend to the private sector. Any violation of this law carries significant penalties.

H.R.1406, the *Working Families Flexibility Act of 2013,* allows all employers to offer their employees the choice of paid time off, or comp time, in lieu of cash wages for overtime. Under this bill, no worker could ever be forced to take paid time off, just as no business owner would be forced to offer it. This bill does not change the 40-hour work week or how overtime pay is calculated. The same protections that have been a part of labor law for decades remain. But for some workers and businesses, comp time could be a valuable option to include in a benefits package. Specifically, H.R.1406 provides:

- Receiving paid time off, or "comp time," for working overtime hours is completely voluntary. An employee who prefers to receive cash payment for overtime hours worked is always free to do so.

- Requires the employer and employee to complete a written comp time agreement. An employee can withdraw from this agreement at any time and receive his or her accrued comp time in cash wages.

- Comp time is accrued at the same rate as overtime cash wages. Employees who work more than 40 hours a week will accrue paid time off at a rate of one and one-half hours for each overtime hour worked.

- Workers can cash out their accrued comp time whenever they choose and receive the equivalent in cash wages. Employers are required to provide cash wages within 30 days of receiving an employee request.

- Explicitly prohibits an employer from "directly or indirectly intimidating, threatening or coercing or attempting to intimidate, threaten or coerce an employee" into taking or not taking comp time.

- An employer who violates these anti-coercion provisions will be liable to the affected employee for "double damages," which includes both the amount of comp time owed *and* an equal amount in cash wages.

- In addition to new provisions prohibiting coercion, H.R.1406 ensures that all existing enforcement remedies – including action by the U.S. Department of Labor – are available to workers if an employer fails to pay cash wages for overtime hours worked.

H.R.1406 passed the House on May 8, 2013 and is currently pending in the Senate. Passage of this bill in a Democrat controlled Senate is problematic especially in an election year. However, stranger things have happened! NFDA submitted a letter of support for passage of H.R. 1406 to the Chairman of the House Committee on Education and Workforce. A similar letter was also submitted to the Chairman of the Senate Health, Education, Labor and Pensions Committee.

We will keep members updated as this bill proceeds through the legislative process

**Various Regulatory Reform Bills** (H.R.2542, 2122,1493 and 2641) – All of these bills seek to reform and streamline the federal regulatory process especially as it impacts and relates to small business. NFDA, along with over 100 other small business groups, signed letters to House members urging their support for all theses bills. All bills have been favorably reported out of Committee and placed on the Union Calendar for future floor consideration. The only exception to this is H.R. 2641 which has passed the House and is pending in the Senate. NFDA will continue to advocate for the passage of these bills.

**Dignified Interment of Our Veterans Act of 2014** (H.R. 4446/S.1755) – These bills would require the Secretary of Veterans Affairs to conduct a study on matters relating to the identification, claiming, and interring of unclaimed remains of veterans, including: (1) estimating the number of unclaimed remains; (2) assessing the effectiveness of the procedures of the Department of Veterans Affairs (VA) for claiming and interring unclaimed remains of veterans; (3) assessing state and local laws that affect the ability of the Secretary to identify, claim, and inter such remains; and (4) recommending appropriate legislative or administrative action. Last Congress, NFDA supported enactment of legislation to require the VA to work with VSOs and other groups as well as funeral directors to assist in identifying the unclaimed cremated remains of veterans held by funeral homes. Once identified, VA would arrange for those remains to be interred at a national cemetery and provided with appropriate honors if they qualified. H.R. 4446 and S.1755 would require VA to conduct a study to determine how that program was working and make recommendations to improve its effectiveness. NFDA strongly supports these bills and have submitted letters of support to their House and Senate sponsors.

## 2. Regulatory Issues

**Mass Fatality Management** – At the direction of the Commanding General of NORTHCOM, the Federal Government has constituted an interagency Mass Fatality Management Working Group and an Executive Steering Committee to develop and implement a federal mass fatality management plan. NFDA has been asked to serve on the Working Group as the only private sector funeral service organization representing all of funeral service in this process. The stated Purpose of the Working Group is "*To bring together FM SMEs (Subject Matter Experts) from DoD, Federal, local and private sector agencies to brain-storm a logical approach to developing a FM framework strategy to create a CONOPS ( Concept of Operations) which can be used to provide FM planners across the U.S. a planning and source document." .*

The Working Group had its first meeting of 2014 in March at the Department of Defense to review where we are in this process and how and who should take responsibility for moving this effort forward. The next face –to-face meeting will be held later this spring at the Pentagon. It is now clear that the federal government is serious about proceeding with this effort. Several conference calls have been scheduled to discuss issues related to this process and more in-person meetings are scheduled for later this year. NFDA is much energized about this effort, as it has been a priority for us since 2005! It has been a long time coming, but all involved are hopeful this will finally result in a comprehensive mass fatality plan that clearly sets forth the roles, duties and responsibility of all federal, state, local and private sector entities involved in mass fatalities.

Separately, NFDA has been meeting with Officials at the Department of Health and Human Services to craft an outline of specific functions that must be addressed in any mass fatality plan. We plan to present that to the DOD Working Group as a template in moving forward on a comprehensive federal plan.

**Department of Labor** – President Obama has directed the DOL to draft changes to the federal wage and hour regulations to require that certain salaried employees currently exempt from the overtime rules be paid overtime. These changes will probably not be made available for public comment until later this year or early in 2015. Needless to say, NFDA is concerned that the proposed changes may impact many of our members especially those in Tiers 4, 5 and 6. We will keep a close eye on this situation and be prepared to review the proposed changes and comment on them as appropriate.