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## NRCA's 10@10

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With the exception of today's House vote on a \$26 billion package of aid to state governments, the House and Senate will be in recess until early September, when lawmakers return to an extremely crowded legislative agenda with limited time before the Nov. 2 elections. A number of issues of interest to the roofing industry may be addressed by Congress sometime this fall. If you have questions or comments regarding the issues discussed below, please contact NRCA's Duane Musser at (800) 338-5765 or [dmusser@nrca.net](mailto:dmusser@nrca.net).

### OSHA Legislation

The House Education and Labor Committee approved H.R. 5663, a bill to improve mine safety, but which also contains numerous OSHA-related provisions, on a straight party-line vote in mid-July. NRCA strongly opposes this legislation because the heavily punitive OSHA measures will create costly new burdens on employers without improving workplace safety. For example, the bill provides for immediate abatement of alleged OSHA violations and requires employers to pay interest compounded daily while a citation is being contested. It also dramatically increases civil and criminal penalties and makes "any officer or director" of a company subject to criminal prosecution. House leaders had intended to bring the bill to a vote in the full House before adjourning for the August recess, but strong opposition from NRCA and other business groups helped deter House leaders from moving forward with the bill. It is unclear if the legislation will be brought up for a vote when the House returns in September.

### Home Star Legislation

Senate Majority Leader Harry Reid (D-Nev.) released the "Clean Energy Jobs and Oil Spill Accountability Act," and this legislation includes the "Home Star" program that provides \$5 billion in federal rebates for energy-efficiency improvements to homes. Home Star has two basic components: Silver Star (one year program) and Gold Star (two year program). Under Silver Star, consumers receive between \$250 and \$1500 in "point-of-sale" rebates for specified energy efficient retrofits to homes (with a maximum of \$3,000 or at least 50% of total project costs, whichever is less). NRCA was successful in getting language in Home Star that enables Energy Star-rated roofing products to qualify as eligible for a \$500 rebate. Under the Gold Star component, homeowners can receive rebates of up to \$3,000 for whole home energy retrofits that achieve 20% energy savings with a comprehensive energy audit, with additional incentives available for retrofits that achieve higher levels of energy savings. NRCA is working with Senators to address several concerns with the structure of the Home Star program to make it practical for roofing contractors. The Senate may take up this legislation in September.

### **DISCLOSE Act**

The so-called “DISCLOSE Act” (S. 3628) was defeated on a party-line vote in the Senate when it came one vote shy of the 60 votes needed for approval. NRCA opposed this legislation because it would create excessive disclosure requirements for political advertising in order to deter businesses and trade associations from supporting pro-business candidates. With the defeat of the DISCLOSE Act, it appears that congressional leaders may now try to move the “Shareholder Protection Act” as an alternative method of trying to prevent businesses from exercising their First Amendment rights. This legislation, recently approved on a party-line vote by the House Financial Services Committee, would, among other things, require corporations to get advance approval from shareholders for all political expenditures.

### **Small Business Lending Fund Act**

The Senate debated the “Small Business Lending Fund Act,” which creates a new \$30 billion program at the Treasury Dept. aimed at expanding access to credit for small businesses. The bill also contains short-term tax cuts designed to help small businesses, including a temporary increase in the exclusion from capital gains on the sale of certain small business stock; extending the one-year carryback for general business credits to five years for small businesses; and extending Section 179 expensing and bonus depreciation for certain capital expenditures through the end of 2010. However, lawmakers were not able to move forward with the bill due to lack of agreement on amendments that would be allowed to the legislation. The Senate may make another attempt to pass this legislation, along with several amendments, sometime in Sept.

### **Estate Tax Reform**

NRCA joined other business groups in sending a letter to Senators in support of an estate tax proposal by Senators Blanche Lincoln (D-Ark.) and Jon Kyl (R-Az.) as an amendment to the Small Business Lending Fund Act. Such an amendment would provide a permanent estate tax rate of 35 percent with a \$5 million exemption (indexed for inflation). However, Senate Majority Leader Reid would not allow this and other Republican amendments to be offered to the bill, and it is unclear when or if Congress will deal with this issue. While the estate tax is currently zero for 2010, it is scheduled to jump to 55 percent with a \$1 million exemption on Jan. 1, 2011 if Congress takes no action. The House passed a bill in late 2009 that would establish a 45 percent rate and \$3.5 million exemption (not indexed for inflation).

### **1099 Expansion Repeal – Senate**

A provision in the health care law requires, beginning in 2012, that reporting of business-to-business contracts via IRS Form 1099 be expanded to include incorporated businesses and all property of \$600 or more. This will impose costly new paperwork requirements on employers, and NRCA supports legislation to repeal the 1099 expansion. Sen. Mike Johanns (R-Neb.) also attempted to repeal the 1099 expansion by offering an amendment to the Small Business Lending Fund Act in the Senate. However, Johanns was blocked from offering his amendment when Democratic and Republican leaders could not agree on what amendments would be made in order during floor debate. Johanns may be allowed to offer his 1099 repeal amendment if the Senate takes up the Small Business bill again in Sept. If so, Senate Democrats are expected to offer an alternative amendment that would exempt credit card transactions from the new 1099 reporting requirement, lift the threshold for 1099 reporting from \$600 to \$5,000, and exempt firms with fewer than 25 employees.

### **1099 Expansion Repeal - House**

Rep. Dave Camp (R-Mich.) attempted to use a procedural motion in the House to offer an amendment to repeal the 1099 expansion. However, fearing Camp's motion would pass, House Democratic leaders pulled the underlying bill from the floor, then introduced their own 1099 repeal bill, coupled with tax increases on multinational corporations, and brought the new bill to a House vote only hours later. However, House leaders called up the bill under "suspension" of normal House rules, thus requiring a two-thirds vote rather than a simple majority vote for passage. The bill failed to attain the two-thirds needed for passage, with most Democrats voting yes and most Republicans voting no due to the accompanying tax increases. Thus, House Democrats can now claim to have voted for repeal of the 1099 expansion without passing a bill.

### **Extension of 2001/2003 Tax Rates**

On Jan. 1, 2011, lower tax rates on individual income, capital gains and dividends enacted by Congress in 2001 and 2003 will expire if Congress does not pass legislation to extend the rates. If Congress fails to act, it could result in one of the largest tax increases in U.S. history. NRCA supports extension of the lower tax rates, and recently joined other organizations in sending a coalition letter to all members of Congress urging passage of legislation to extend the lower tax rates as soon as possible. Among other things, the letter noted that failure to act will result in tax increases on investment income of up to 164 percent on dividends and 33 percent on capital gains. President Obama and most Congressional Democrats favor extending the lower individual tax rates except for households with more \$250,000 in income, while most Republicans favor extending the lower tax rates for all earners, at least temporarily. The outcome could come down to a few dozen moderate Democrats who haven't yet taken a position. Congressional leaders will likely attempt to address this issue in Sept.

### **Employee Free Choice Act**

On Aug. 4, President Obama told the AFL-CIO that he would "keep on fighting" to pass the so-called Employee Free Choice Act, or "card check" bill, which would fundamentally alter union organizing rules and mandate binding interest arbitration without recourse. In a speech to the labor group's executive committee, the president said "(g)etting EFCA through the Senate will be tough. It's always been tough, it'll continue to be tough. But we'll keep on pushing." However, Capitol Hill sources indicate the prospects for passage of EFCA, or even a compromise bill, do not look good during the remainder of 2010. Nevertheless, NRCA and other business associations that oppose EFCA continue to monitor developments on this legislation closely.

### **"High Road" Government Contracting Proposal**

There is renewed speculation in Washington, DC, that the Obama administration will move forward with an Executive Order to implement a "High Road" proposal that would favor government contractors who adopt labor practices "over and above those required by law."

Among the factors under consideration include payment of a "living wage" to a contractor's entire workforce, "affordable" health insurance, an employer-funded retirement plan, and paid sick days. It appears that the administration is considering a mechanism to favor contractors that meet its "high road" conditions and that the Labor Department would be charged with scoring every contractor on these metrics. This proposal is reminiscent of the Clinton Administration's blacklisting proposals of over a decade ago. However, federal government sources indicate there appears to be some resistance from career procurement officials to a "high road" proposal.