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FEW Washington Update
August 15-30, 2019

Congress is in Recess:

Lawmakers are preparing for the possibility of a short-term spending patch to avoid a government shutdown next month. While Congress passed a budget deal last month to establish top-line spending numbers, lawmakers have yet to finalize appropriations bills that actually fund the federal government.

Since the House and Senate don't return from the August recess until September 9, that leaves just three full legislative workweeks for lawmakers to reach an agreement on spending bills for the entire government before funding runs out on September 30. Given the limited time frame to reconcile both chambers' appropriations bills, lawmakers are eyeing the likelihood of a short-term spending patch known as a continuing resolution (CR).

The House:

"While the House has acted and wants to go to conference with the Senate on appropriations bills as soon as possible, there is a possibility that we will need a short-term CR to provide time for the Senate to do its work," said Mariel Saez, a spokeswoman for House Majority Leader Steny Hoyer (D-Md.).

"Mr. Hoyer continues to urge the Senate to mark up and pass their bills as quickly as possible so that we can go to conference and pass legislation to fund the government and prevent a shutdown," Saez added. A second Democratic aide said that "it's our expectation" a short-term spending bill will be needed, likely into early December or potentially late November. One date floated was December 6, which is the first Friday of December. Majority Leader Hoyer also suggested November 22 as an earlier end date.
for a stopgap measure during a caucus-wide conference call with House Democrats on Friday. The House is currently scheduled to adjourn for the year on December 12.

Congress has to pass 12 annual funding bills, which are often enacted in smaller packages or in one massive piece of legislation known as an omnibus.

The House passed its versions of 10 out of the 12 bills in June. But the Senate has yet to take up any spending bills after leaving its appropriations process on hold while the White House and Speaker Nancy Pelosi (D-Calif.) negotiated the two-year budget pact.

**The Senate:**

The Senate Appropriations Committee is expected to hold its first committee markups of spending bills on September 12, which is during the chamber’s first week back from the summer recess.

The Senate Majority has been considering combining three spending bills — defense, health and human services, and energy and water development — into one package to consider on the floor next month since they would make up a majority of total spending.

“If we did that, that would be over 70 percent of the expenditure,” Senate Appropriations Committee Chairman Richard Shelby (R-Ala.) said last month. “That would be progress big time.”

The budget deal that the President signed into law earlier this month raises spending by more than $320 billion and suspends the debt ceiling through July 2021.

House appropriators will also have to adjust their spending bills to adhere to the bipartisan budget deal enacted last month. The House passed their 10 spending bills on the floor — encompassing all agencies except for the Department of Homeland Security and legislative branch operations — before the budget deal was reached.

Senate Majority Leader Mitch McConnell (R-Ky.) placed a handful of nominations up for cloture when members return from August recess September 9. Dale Cabaniss, the president’s nominee to be director of the Office of Personnel Management, is among those up for a vote.

Jim Byrne, the president’s pick to be number 2 at the Department of Veterans Affairs, is also up for a confirmation vote. Beyond the confirmation votes — and the inevitable sprint to avoid a government shutdown on September 30 — here’s what else federal employees should keep an eye on as Congress returns to Capitol Hill early next month.
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FEW In Action

“Advocacy for Dollars Not Small Change”

FEW Hosts Webinar on Equal Pay

While action on federal equal pay and pay equity laws are stalled in Congress, FEW hosted a webinar on legislation that was focused on equal pay, family support, and added benefits. FEW members are encouraged to let Congress know that closing the gender wage gap is an important step in providing financial security for women and families.

This webinar was held in August in recognition of Equal Pay for Women. FEW thanks those who participated in this important webinar on The Paycheck Fairness Act (Equal Pay).

The Bills:

**House of Representatives: H.R. 7** - To amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

**Main Sponsor:** Representative Rosa Delauro (D-CT) - The Bill would update and strengthen existing law and prohibit retaliation against workers who voluntarily discuss or disclose their wages, and support data collection and research.

Latest Action: Senate – April 3, 2019
Read the second time. Placed on Senate Legislative Calendar under General Orders. Calendar No. 53.

**Senate: S.270 (Companion Bill)**

**Main Sponsor:** Senator Patty Murray (D-WA)

Latest Action: Senate – January 30, 2019 Read twice and referred to the Committee on Health, Education, Labor, and Pensions

You can write to your representatives using ENGAGE.

Feel free to contact the congressionalrelationsvp@few.org, or tsaunders@washingtonpremiergroup.net, if you have any questions.
ERA:

On Monday, August 26 the ERA coalition celebrated the day of women’s suffrage. For 99 years women have been allowed to vote in the United States—a hard won battle that Alice Paul helped lead. She had another idea of course—the Equal Rights Amendment, introduced in 1923. We are almost at the century mark in fighting for that one, hoping to get it done by 2020.

Also, in August, VARatifyERA will kick off its fall campaign with talks, screenings, and a traveling ice cream truck partnered with the Equal Means Equal organization.

Federal Pay:

Another Senate bill, which also cleared the Homeland Security and Governmental Affairs Committee last month, would restrict agencies from handing out bonuses to federal employees who are fired or suspended for more than 14 days.

The Stop Improper Federal Bonuses Act would prevent giving federal employees a bonus if they’ve received some kind of disciplinary action for poor misconduct. The bonus ban would be in place for five years after the agency determined an employee had violated the organization’s policy or federal law. Senator Deb Fischer (R-Neb.) reintroduced the bill last month.

The Congressional Budget Office recently scored the bill at zero, though it acknowledged enacting the legislation could impact agencies that use fees or other collections to cover operating costs.

The Administrative Leave Act:

It’s been more than two years since Congress agreed to overhaul federal administrative leave policies, but agencies are still missing the regulations needed to implement some of the more transformative changes.
Those changes originally came in the form of the Administrative Leave Act, which Congress passed back in December 2016 after adding it to the annual defense authorization bill.

The Administrative Leave Act was supposed to create new categories of leave, called investigative or notice leave, for employees who are placed under agency investigation or are awaiting a decision on an adverse personnel action.

Specifically, it capped investigative or notice leave to 10 days a year for employees and set up a procedure for agencies to grant additional leave, between 30-to-90 days, to complete personnel investigations. The goal was to give federal employees the due process rights they deserve but limit paid time off for those who had potentially committed misconduct or some other offense, often at a great cost to the government. The law also encourages agencies to perform personnel investigations more quickly — or search for other ways to put employees under investigation back to work in other offices.

The Government Accountability Office in 2014, for example, said 263 employees had spent one-to-three years on paid administrative leave, to the tune of $31 million.

The 2016 law gave the Office of Personnel Management 270 days to prescribe new regulations, but the agency has missed that deadline.

One of the main reasons for the holdup, a Senate staffer told Federal News Network, is due to a challenge with the existing text of the Administrative Leave Act, which OPM, the Office of Management and Budget and other agencies have said would prevent employees in combat or those who work overseas from using paid leave to take time off for rest and recuperation — or to observe a foreign local holiday.

Senator Tom Carper (D-Del.) introduced an amendment earlier this summer to address this challenge, and the Homeland Security and Governmental Affairs Committee attached it to a bill from Senator James Lankford (R-Okla.). Lankford’s bill details another technical fix, which the Office of Personnel Management has said it needs to help agencies more easily hire student interns to federal jobs.

The amendment creates new categories called rest and recuperation leave and foreign holiday leave, which allow agencies to grant up to 20 days of paid time off a year for employees who work in a combat zone or high risk, high threat areas.

Agency heads would have sole discretion over the use of this leave, according to the amendment. In addition, employees would also get up to five days a year to observe local holidays in a foreign area, if their agency head determines that working on that day would be inconsistent with local practice or not in the best interest of the U.S. or its diplomatic interests.

Rest and recuperation leave and foreign holiday leave would mostly apply to federal employees at the departments of Defense or State or the U.S. Agency for International Development.
The Lankford bill and technical administrative leave fix cleared the Senate Homeland Security and Governmental Affairs Committee back in July.

DoD, State and OMB have been discussing the topic and submitted the details for rest and recuperation leave and foreign holiday leave as a legislative proposal first to the congressional armed services committees, and then to the Senate Homeland Security and Governmental Affairs Committee, the Senate staffer said.

Now that it’s cleared the Senate Homeland Security and Governmental Affairs Committee, the staffer said members are focused on trying to find a path forward for the amendment. They’re relatively optimistic, since both the Lankford bill and Carper amendment are mostly procedural matters and have bipartisan support.

“It’s important for federal agencies, employees and taxpayers to have clarity on what paid administrative leave can and should be used for,” Carper said in a statement back in July. “The current catch-all use of this term creates ambiguity that has led to misuse and abuse. There have been instances of supervisors using administrative leave to push people out of their jobs without due process and placing others on extended administrative leave while under investigation for wrongdoing.”

The original Administrative Leave Act had bipartisan support, with Senate Homeland Security and Governmental Affairs Committee Chairman Ron Johnson (R-Wis.), along with Chuck Grassley (R-Iowa), Jon Tester (D-Mont.) and Carper as co-sponsors back in 2016.

OPM did propose new regulations on administrative leave back in 2017 and received 89 comments. The agency cited the number of responses as another reason for its delay in releasing administrative leave policy guidance, the Senate staffer said.

OPM has, however, implemented portions of the 2016 law. It released regulations on weather and safety leave last year, which allows agencies to grant paid time off due to an “act of God,” a terrorist attack or some other emergency that prevents federal employees from safely traveling to work or their official duty site.

Notably, weather and safety leave won’t usually apply to federal employees who are telework-eligible, because they can work remotely in most situations.

**Federal Job Relocations Update:**

Employees eligible for a Voluntary Separation Incentive Payment (VSIP) or Voluntary Early Retirement Authority (VERA) will receive $10,000 to leave USDA — $15,000 less than the statutory maximum buyout. By law, civilian agencies can offer separation incentive payments of up to $25,000.

“Due to the volume of applications and in an effort to afford all employees who applied the opportunity to receive the incentive payment, the amount approved for all applicants
has changed from $25,000 to $10,000,” USDA wrote in a VSIP confirmation update given to employees.

USDA offered a VSIP to every eligible employee who applied, the department told Federal News Network Tuesday. It offered VSIPs to 43 employees at the Economic Research Service and 48 employees at the National Institute of Food and Agriculture, the department said.

The department first told employees June 13 about its plans to offer a “limited number” of Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payments. Buyouts would be “based on an availability of funds and to ensure the agency maintains a critical number of employees to support the mission,” according to a June 13 memo from Willis Collie, human resources director for the research, education and economics mission area, given to ERS employees assigned to relocate.

Employees had to notify their agency by July 15 of their decision to decline the USDA relocation in order to apply for a VSIP, the department said. The period to apply for an early-out or buyout ran from July 22 through July 29, according to the June memo.

Eligible employees who are approved for a VSIP have until Aug. 26 to accept the buyout.

Eligible employees who do accept can change their minds and decline the VSIP until their separation or retirement date, USDA added. Employees can also choose to change to course entirely and relocate to Kansas City at any time.

Those who accept the buyout must leave or retire from the department between September 16 and September 27, the last Friday before USDA’s report date in Kansas City.

The department reiterated it wasn’t required to offer VSIPs to employees who chose not to relocate to Kansas City — and that it wasn’t required to offer the maximum buyout of $25,000. ERS and NIFA employees who accept a buyout will give up selection priority under those career transition programs.

The American Federation of Government Employees, which represents both ERS and NIFA employees, took issue with the $10,000 buyouts. The department should have planned and budgeted for the possibility that several dozen employees would decline the USDA relocation, AFGE National President J. David Cox said in a released statement.

Several House lawmakers have been critical of the USDA relocation. There was an inspector general report and subsequent legal opinion from USDA’s general counsel, which dismissed attempts to block reorganizations or relocations without first gaining permission.

The $25,000 buyout value has been under debate for some time. Members of Congress have tried to raise the maximum amount agencies could offer in Voluntary Separation
Incentive Payments from $25,000 to $40,000 for several years, but their attempts have failed.

The administration recommended raising the maximum VSIP to $40,000 in a 2017 legislative proposal, but it never made it through Congress.

Congress hasn’t adjusted the maximum VSIP payment for civilian employees since at least 2002, but lawmakers extended the authority for $40,000 buyouts to defense civilian workers in 2017.

Federal Retirement:

Despite the successful passage of a two-year budget deal, there’s still plenty of work left for Congress to tackle when it returns from August recess.

Lawmakers have been trying for more than a decade now to address the Windfall Elimination Provision (WEP), a complicated relic from a 1983 law that reduces Social Security benefits for certain federal employees under the Civil Service Retirement System (CSRS).

The WEP reduces Social Security benefits for federal employees who worked in Social Security-covered jobs, namely a position in the private sector, but also receive a government annuity from their federal employment.

The WEP reduces a factor in the formula used to calculate federal employees’ Social Security benefits from 90 percent to as low as 40 percent — for other jobs they take that are covered by Social Security.

According to the National Active and Retired Federal Employees (NARFE) association, WEP-impacted workers lose out on an average of $463 a month in Social Security benefits due to this formula.

The WEP’s goal was to prevent what members of Congress often called “double-dipping.” Before 1983, federal employees and retirees, whose employers did not withhold Social Security taxes, received a Social Security benefit that represented a higher percentage of their earnings, as well as a government pension.

Representative Kevin Brady (R-Texas), ranking member of the House Ways and Means Committee, reintroduced the Equal Treatment of Public Servants Act in late July. Brady introduced a similar version of this bill back in 2016.

The legislation, which has bipartisan support, would replace the WEP with a new formula designed to offer some relief to impacted workers, which include federal, state and local government employees.

“By depriving dedicated public servants of full Social Security benefits that they rightfully earned through contributions to the Social Security system, the Windfall Elimination
Provision is simply unfair,” Ken Thomas, NARFE national president, said in a July statement. “With low-earning households disproportionately affected by larger benefit reductions, the federal community experiences significant financial loss due to the WEP.”

The new formula in Brady’s bill would replace the WEP with one that equalizes Social Security benefits for employees with non-covered employment. WEP-impacted employees age 60 or older would get a monthly rebate of $100.

The WEP does not apply to members of the Federal Employees’ Retirement System (FERS), because employees under this system already pay into Social Security.

**Efficient Federal Government:**

The National Archives and Records Administration (NARA) will wean agencies off paper records over the next few years, but has a plan in place to retrain the records management workforce and make it easier for agencies to buy the tools they’ll need to make the transition to fully electronic records.

By the end of December 2022, NARA will no longer accept hard-copy versions of historic, permanent records. Laurence Brewer, the agency’s chief records officer, said the agency had set its sights on becoming a paperless office years ago, but with agencies dealing with a “crushing” volume of legacy paper records, he said NARA eventually had to “draw a line in the sand.”

NARA is working on new guidance for agencies on how to digitize their permanent records after it released similar guidance in April on digitizing temporary records. But significant challenges still lay ahead for retraining records management personnel to have the skills they’ll need to manage electronic records.

“We have a lot of people who are comfortable working with analog paper records, and we need to make sure we bring them along so that they can be more comfortable and informed about working with electronic records,” Brewer said.

In order to streamline this reskilling, NARA is moving to an “online-only” model for training records management personnel who are not senior agency officials for records management (SAORMs).

“We’re trying to mitigate some of the loss of knowledge that has been communicated in the past by really beefing up our website and our web catalog, and really focusing on helping agencies train their own staff … By not charging anymore, and making everything available for free. We’re opening up the availability of the content to everyone. But we’re also planning to work with agencies to help them structure and figure out the best way to teach that content to staff within their agencies,” Brewer said.

Next year, NARA will work with the Office of Personnel Management to develop a new job series for records management professionals. Under the current system, some
agency components may only have one or two part-time employees who handle records management.

Brewer said his aim for those talks with OPM is to “elevate the profile” of records management personnel and to advocate for the resources they’ll need to carry out their duties.

Through its Federal Electronic Records Modernization Initiative (FERMI), NARA has also worked with the General Services Administration and the vendor community to make it easier for agencies to buy the IT modernization tools they’ll need for electronic records management.

NARA will prohibit agencies from running their own on-premises record centers past December 2022, creating an opportunity for vendors to store paper records offsite for agencies.

However, in some cases, agencies can still appeal to keep their own legacy paper records in-house. Brewer said NARA will review those business cases from agencies on a case-by-case basis.

FEW receives information from the following sources and contacts: Politico, Roll Call, House Committee on Ways and Means, Federal News Network, Government Executive, and National Women’s Law Center