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## **FEW Washington Update October 1-15, 2020**

### **In Congress**

Five weeks separate the November elections and the expiration date on the current stopgap funding measure keeping the federal government operational – and a path to avoiding a shutdown is not entirely clear.

Congress and the White House punted funding decisions to December 11 with a stopgap spending bill passed by overwhelming margins by the House and the Senate and signed into law in the early hours of October 1. While there was a push by some in Congress to have a continuing resolution expire next February, after the presidential inauguration, ultimately lawmakers settled on a post-election deadline.

Mike Hettinger, a former senior congressional staffer who lobbies on behalf of technology firms and government contractors, said he's worried about the continuing resolution expiring in the post-election environment.

Hettinger notes that the ongoing COVID-19 pandemic – which could be in the midst of a winter spike when the funding bill expires – might make a shutdown less likely because "it would be so egregious to shut down government, including the Centers for Disease Control and Prevention and the Department of Health and Human Services, in the midst of a pandemic that may be growing."

One thing that is unlikely to happen is Congress passing a slate of appropriations bills. The House has most of its bills in order, minus funding for the Department of Homeland Security and the legislative branch. The Senate reportedly has bills written, but they have not been publicly released or marked up in committee, let alone passed by the full chamber.

## **FEW Washington Update – October 1-15, 2020 Tier I**

### **Equal Rights Amendment:**

Equal Rights Amendment (ERA) supporters won't get an immediate hearing at the U.S. Supreme Court as they fight to ensure the nearly 50-year-old proposition is added to the U.S. Constitution.

The high court on Tuesday denied an unusual direct Supreme Court petition, which would have leapfrogged a U.S. appeals court, after a federal trial court in Boston dismissed their lawsuit for lack of standing.

"The petition for a writ of certiorari before judgment is denied," the justices said.

The case is one of the two pending in federal courts over the ERA's drawn out, and therefore disputed, ratification. ERA supporters had argued immediate Supreme Court action was appropriate "because the ERA is the most important and fundamental of all women's rights, but also because everyone in America has a right and need to know whether it is now the Twenty-Eighth Amendment to the Constitution."

The plaintiffs in the Boston case also have an appeal pending at the U.S. Court of Appeals for the First Circuit.

The language of the ERA states: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." It gives Congress authority to pass laws enforcing it and says it takes effect two years after ratification.

Supporters of the amendment say its enforcement would affect a broad range of state and federal laws that impact women's treatment in areas of employment, health care, and other policies.

Opponents such as Alabama Attorney General Steve Marshall (R), who intervened in a Washington federal court case to prevent a finding of ratification, have argued the amendment isn't needed because other federal laws bar sex-based discrimination. He contends the measure would generate new litigation over previously upheld state laws including restrictions on abortion.

Virginia's legislature voted to ratify the ERA in January, giving the amendment the necessary approval by three-fourths of states, but that approval came 40 years after a 1979 congressional deadline.

The women's advocacy groups Equal Means Equal and The Yellow Roses, along with an individual woman, Katherine Weitbrecht, sued U.S. Archivist David Ferriero in January to force him to add the ERA to the Constitution and asked the court to find the congressional deadline to be invalid.

Ferriero has refused, relying on a U.S. Department of Justice legal opinion that the deadline is valid and enforceable.

“Now we focus on the First Circuit where they have the power not only to consider the standing question but also to rule on the merits and order the Archivist to publish the ERA and declare women equal citizens, subject to fully equal protection of the law,” said Boston attorney Wendy J. Murphy, who represents the advocacy groups.

“Standing doctrine is notoriously political in the sense that it is often applied arbitrarily to silence certain voices while elevating others,” Murphy said, noting men’s rights groups were recently allowed to move forward in suing over a law that prevents women from registering for the military draft. “We will emphasize to the court the importance of listening to women’s voices, especially on something as important as equal protection of law under the Fourteenth Amendment.”

Ferriero, represented by U.S. Acting Solicitor General Jeffrey B. Wall, waived his right to respond to the advocacy groups’ petition for Supreme Court review. Representatives for the Justice Department and the solicitor general’s office didn’t immediately respond to requests for comment on this article.

The Boston court’s August decision didn’t address the deadline’s validity, but simply found the plaintiffs didn’t satisfy the legal requirements for bringing the case. The second case, pending at the U.S. District Court for the District of Columbia, was brought by state attorneys general including Virginia AG Mark Herring (D), whose legal standing to sue might be viewed differently.

## **Two Cases Pending**

As the appeal in the Boston case moves ahead, the D.C. case is awaiting a decision on a motion to dismiss and motion for summary judgment. The attorneys general of Nevada, Illinois, and Virginia filed the lawsuit, after their states became the final three states to ratify the ERA—in 2017, 2018, and 2020, respectively.

The two cases have drawn wide interest in the form of amicus briefs from women’s groups, law professors, labor unions, state officials, major U.S. businesses and religious groups.

Bloomberg LP, the corporate parent of Bloomberg Law, was one of the corporations that signed onto an amicus brief supporting ERA ratification in the D.C. court.

In their Supreme Court petition, the advocacy groups disputed the Boston judge’s finding that their case against Ferriero couldn’t proceed partly because his actions weren’t responsible for causing the inequality or discrimination that women face. The groups also argue the ERA is legally valid now, but Ferriero’s refusal to carry out his “ministerial” function of publishing it has hurt the public perception of the amendment being valid.

Murphy contends Article V of the Constitution, which lays out the process for constitutional amendments, doesn't give Congress authority to impose deadlines for states to ratify proposed amendments.

Opposing ratification, Department of Justice attorneys have argued Congress has repeatedly imposed deadlines and that they help ensure "an orderly and contemporaneous process," rather than a prolonged ratification period in which understanding of the language and cultural issues might change.

As a second point of contention in the ERA lawsuits, five of the 35 states that originally ratified the amendment before the 1979 deadline later took action to rescind their approval. The ERA supporters suing Ferrero say states have no authority to rescind ratifications after their initial approval.

The Supreme Court case is *Equal Means Equal v. Ferrero*, U.S., No. 20-318, cert. denied 10/13/20.

Sourced from [Bloomberg Law](#).

## **FEW Washington Update – October 1-15, 2020**

### **Tier II**

#### **Retirement & Social Security:**

Federal retirement benefits will be increased by 1.3 percent in January, the same as the upcoming increase in Social Security benefits that was announced Tuesday.

The cost-of-living adjustment, or COLA, will go to almost all of the nearly 2.2 million federal retirees plus about 500,000 survivor beneficiaries. The figure is about average for the past 10 years, when the boosts have ranged from zero to 3.6 percent; a 1.6 percent increase was paid at the start of this year.

The increase applies only to annuity benefits for retirees, not to the salaries of current federal employees. Retiree COLAs are set automatically by an inflation index whose annual count concluded with the announcement Tuesday of figures through September.

In contrast, current employees receive pay raises set through the annual government budget process. No decision has been reached regarding a January 2021 raise.

President Trump has recommended a 1 percent pay raise, while Congress so far has taken no position. If no figure is enacted into law by the end of the year, that amount will take effect automatically. Some members of Congress continue to advocate for increasing the figure to 3 percent to match the planned raise for military personnel.

For retirees, some COLA policies vary depending on which of the two main federal retirement systems applies to them.

All of those retired under the Civil Service Retirement System, applying only to employees first hired before 1984, receive a full COLA regardless of age. Although that program applies only to about 5 percent of current federal employees, 59 percent of retirees, just under 1.3 million, draw their benefits from it.

Those retired under the newer Federal Employees Retirement System do not receive inflation adjustments until passing age 62, unless they were disabled or worked in positions requiring earlier retirement, such as law enforcement.

Under both systems, inflation adjustments are reduced for those who have been retired for less than a year at the time of a payout.

As of September 2019, the average monthly benefit under CSRS was \$3,939 and the average FERS benefit \$1,576. After accounting for the increase paid in January, the upcoming COLA will be worth about \$52 and \$21 per month on average, respectively.

Average benefits to survivors of deceased retirees — which also are inflation-adjusted — were \$1,710 and \$620 per month under CSRS and FERS, respectively, a year ago.

The FERS program yields a smaller benefit because it includes Social Security coverage and employer contributions toward Thrift Savings Plan retirement accounts, two features absent from the CSRS program.

The value of the inflation adjustment commonly is compared with the average increase in premiums under the Federal Employees Health Benefits Program, in which most federal retirees remain enrolled. The Office of Personnel Management has not yet announced rates for 2021.

Sourced from [The Washington Post](#).

## **FEW Washington Update – October 1-15, 2020 Tier III**

### **Gender Discrimination:**

Working mothers are being disproportionately affected by the coronavirus pandemic — and experts fear it could have a significant impact on their financial future.

From job losses to [career downsizing](#), women are feeling the hit.

When it comes to promotions, they are also being left behind: 34 percent of men working remotely with children at home said they received a promotion, versus 9 percent of women in the same situation, according to [an August study](#) by software company Qualtrics and [theBoardlist](#), which focuses on gender parity in the boardroom. The study of 1,051 salaried U.S. employees was conducted July 9-13.

In addition, 26 percent of men with children at home said they received a pay raise while working remotely, compared to 13 percent of women with children at home.

“It is a backwards move for women and it’s not just from a career perspective,” said certified financial planner [Stacy Francis](#), president and CEO of Francis Financial, a New York-based wealth management practice dedicated to services for women. “It is also from a financial perspective.”

If a woman in her 40s gets a pay raise, it will be amplified for the next 20 years to 25 years of her career, Francis explained. So, when the woman doesn’t get that raise, it sets her back even more so.

“When we look at women’s retirement nest eggs as they get ready to retire, it is typically significantly less than the amount that men have saved,” said Francis, a member of the [CNBC Financial Advisor Council](#).

The troubling statistic is one of many highlighting the gap between men and women during the pandemic.

Of the 1.1 million workers over the age of 20 who left the labor force in September, [80% were women](#), according to an [analysis by the National Women’s Law Center](#).

Meanwhile, [1 in 4 women](#) are considering downshifting their careers or leaving the workforce altogether, according to Lean In and McKinsey & Company’s “[Women in the Workplace](#)” report released last month.

Women have traditionally borne the brunt of household and childcare duties, Francis said. It’s no different during this health crisis.

Working mothers are more than three times as likely as fathers to be responsible for housework and caregiving, the “Women in the Workplace” report found. They are 1.5 times more likely than fathers to be spending an extra three or more hours a day on those duties, equivalent to 20 hours a week, it said.

“ [The crisis is] just exacerbating a problem that has long existed and that we have been trying to chip away at,” said employment-discrimination attorney Megan Goddard, who focuses on equity in the workplace.

In fact, she’s seeing coronavirus-based employment decisions adversely impacting women.

“Employers are using Covid as an excuse to get rid of or get around promoting employees they find ‘less desirable,’ including pregnant women, breast-feeding women, disabled women, women with childcare and elder-care responsibilities, and older female employees especially.”

## **What to do**

If you feel you have been discriminated against, reach out to an attorney to explore your options, Goddard said.

The pandemic has also highlighted the necessity of childcare, said Holland Haiis, an executive coach who works with women.

“We’ve got to be able to support the men and women who have children,” said Haiis, who is also a corporate consultant. “We have to look at how our world has changed.

“We have to start planning and putting in processes, procedures and systems that work for the way our workforce looks today, and not the way that the workforce looked in 1950 or 1960.”

Here is Haiis’ advice to working women trying to navigate the crisis.

### **1. Ask for what you want**

While men do, women tend to not make their desires known.

“This is an opportunity, ladies, to really dig deep and find that connection to your leadership,” she said.

### **2. Ask for help**

Go to your friends and neighbors for support, like sharing childcare and schooling duties with other moms, Haiis suggests.

“As humans, we actually like to help other people,” she said. “When you help others, it releases endorphins and in return, it improves your mood and boosts your self-esteem.”

This is going to be a new suffrage movement.

The same goes for asking your spouse or partner for help. Do it in a way that removes sarcasm, anger and frustration if you feel he or she is not doing enough to help at home.

### **3. Negotiate with your partner**

Don’t necessarily aim for a 50/50 split of household duties with your partner. Instead, negotiate from a place of strength — see what your strengths are versus your partner’s and split accordingly, she advises.

### **4. Don’t be superwoman**

“Let go of your expectations,” Haiis said. “Be forgiving that you can’t do it all.

“None of us can do it all.”

## **5. Get creative**

If you feel overwhelmed about the number of Zoom or Microsoft Teams calls, take a look at ways to be more efficient without all those meetings. Approach your boss in a way that shows your ingenuity and ability to streamline systems, she said.

For Haiis, the opportunity is there for women to unite as they never have before.

“This is going to be a new suffrage movement,” she said.

Sourced from [CNBC](#).

*FEW receives information from the following sources and contacts: Federal News Network, CNBC, The Washington Post, Bloomberg Law, and FedWeek.*