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## **FEW Washington Legislative Update June 15-30, 2021**

### **In Congress**

Opposing views arose along party lines at a House Oversight and Reform Committee hearing on a bill (HR-564) to broaden federal employee paid leave entitlements for personal or family medical conditions, in addition to regular sick leave available for those purposes.

Democrats and federal unions called the proposal a common-sense next step to expand on a late-2019 law, which took effect last October, allowing up to 12 weeks of paid time over 12 months following the birth or adoptive or foster placement of a child, substituting paid time for unpaid time under the Family and Medical Leave Act.

Under the pending bill, employees could use part or all of those 12 weeks within a 12-month period for the other reasons for which unpaid FMLA time is allowed: for personal medical conditions or those of a spouse, child, or parent; or for certain purposes related to military duty of a spouse, child, or parent.

“While providing access to paid parental leave was critically important and long overdue, it’s just as important to provide access to paid family and medical leave too. Illnesses and military deployments are not events that can be planned for—as we’ve all learned in the past year, illness can strike any of us, at any time,” said chairwoman Rep. Carolyn Maloney, D-N.Y.

Federal unions voiced similar views and argued that agencies would also benefit by helping them recruit against private sector firms that already offer such benefits as a matter of their own policies even though there is no national requirement that they do so.

However, the top Republican on the committee, Rep. James Comer of Kentucky, criticized the bill as “more benefits for federal employees who already enjoy job security

and a lavish set of benefits not afforded to most American workers.” Rep. Jody Hice, R-Ga., the ranking GOP member of the government management subcommittee similarly said the bill would “give federal employees more time off on the backs of American taxpayers.”

Sponsors have several potential options for trying to move the bill even in the face of such opposition, including attaching the language to a “must-pass” measure. They used that technique both to gain enactment of the parental leave authority and of a later fix to extend that benefit to certain categories of employees inadvertently left out of the original version, in each case adding the language to the annual defense spending bill.

## **FEW Washington Legislative Update – June 15-30, 2021 Tier I**

### **Pay Increase:**

The first draft of the annual general government spending bill as passed by a House subcommittee agrees to President Biden’s proposed 2.7 percent pay raise for federal employees in January by taking no position on the issue.

If that silence continues throughout the year, the recommendation would take effect by default. However, federal employee organizations and some Democrats have been advocating for 3.2 percent and many steps lie ahead before a final decision is made.

A raise of even 2.7 percent likely would be split between across-the-board and locality components, another decision that lies ahead, potentially not until near year’s end. When such splits occur, the majority of the amount typically goes to the former component, leaving relatively little variation—on the order of several tenths of a percentage point above or below the enacted figure—in the locality component.

The House typically passes its appropriations bills first with Senate action later, and the dozen measures commonly are combined into only one or several. Because the budget process got off to a late start due to the change in party control of the White House, it is generally assumed that some form of stopgap funding will have to be enacted ahead of the October 1 start of the new fiscal year, with a final version later.

In one notable policy change, the bill would discontinue a general ban on coverage for abortions and related services in the FEHB program. That ban has been in predecessor versions of the general government appropriations bill for at least several decades and its proposed removal almost certainly will be a point of political controversy as the bill moves forward. Even if it is ultimately enacted, it’s unclear whether it could take effect for 2022 since negotiations already are well under way between OPM and the carriers over coverage terms and premiums for the upcoming plan year.

The bill however does continue several other long-running policies of its predecessors including extending the moratorium on starting new “Circular A-76” studies that can lead to contracting out of commercial-type federal jobs.

*Sourced from [FedWeek](#).*

## **FEW Washington Legislative Update – June 15-30, 2021 Tier II**

### **Diversity Initiative:**

President Biden has issued an executive order significantly expanding on diversity and inclusiveness initiatives in the federal workplace, both in terms of the areas of federal work that are affected and the individuals potentially affected.

“This order establishes that diversity, equity, inclusion, and accessibility are priorities for my Administration and benefit the entire federal government and the nation,” says the order issued June 25, 2021. It builds on an Obama administration order plus two orders and a memo issued by Biden himself in the early days of his administration on promoting diversity and preventing and responding to discrimination on grounds including gender identity or sexual orientation.

Unlike the prior orders which focused on certain demographic groups, the new order broadly affects policies for “underserved communities,” which it defines as:

- “communities of color, such as Black and African American, Hispanic and Latino, Native American, Alaska Native and Indigenous, Asian American, Native Hawaiian and Pacific Islander, Middle Eastern, and North African persons.”
- “individuals who belong to communities that face discrimination based on sex, sexual orientation, and gender identity (including lesbian, gay, bisexual, transgender, queer, gender non-conforming, and non-binary (LGBTQ+) persons); persons who face discrimination based on pregnancy or pregnancy-related conditions; parents; and caregivers.”
- “individuals who belong to communities that face discrimination based on their religion or disability; first-generation professionals or first-generation college students; individuals with limited English proficiency; immigrants; individuals who belong to communities that may face employment barriers based on older age or former incarceration; persons who live in rural areas; veterans and military spouses; and persons otherwise adversely affected by persistent poverty, discrimination, or inequality.”

It tells OPM, along with OMB, EEOC and several other agencies to “reestablish” a government-wide initiative to promote diversity and inclusion in the federal workforce under the Obama order and to “expand its scope to specifically include equity and accessibility.”

That is to include issuing a new “Government-wide Diversity, Equity, Inclusion, and Accessibility Strategic Plan” within 150 days to “define standards of success” of that effort; identify strategies to advance those principles; and identify and eliminate barriers to them in a wide range of aspects of federal employment. Those include recruitment, career development, benefits, disciplinary policies, accommodations for employees with disabilities, and much more.

That plan also is to include a new “comprehensive framework to address workplace harassment, including sexual harassment.”

Individual agencies meanwhile are to review over 100 days “the current state of diversity, equity, inclusion, and accessibility in the agency’s human resources practices and workforce composition.” They are to assess the extent to which their practices “result in inequitable employment outcomes” and also assess the status of existing diversity, equity, inclusion, and accessibility initiatives or programs.

Within 120 days of the government-wide plan’s issuance, agencies are to produce their own plans in compliance with it, along with quarterly goals and actions to carry them out, and expanding the demographic data they collect, including data that is “voluntarily self-reported.”

Sourced from [FEDWeek](#).

## **FEW Washington Legislative Update – June 15-30, 2021 Tier III**

### **Whistleblower Act:**

On June 23, 2021, the U.S. House of Representatives passed emergency legislation to fund the Commodity Futures Trading Commission (CFTC) Whistleblower Program. The bill, an amended version of the CFTC Fund Management Act, unanimously passed in the Senate last month. Whistleblower advocates are now calling on President Biden to immediately sign the bill in order to save the whistleblower program from financial collapse.

“The CFTC Whistleblower Program is critical to effective Commodities oversight which touches every facet of our lives,” said Siri Nelson, Executive Director of the National Whistleblower Center (NWC). “The unanimous passage of the CFTC Fund Management Act demonstrates bipartisan support for whistleblowers and the importance of the CFTC program. I am grateful to the House for taking swift action for whistleblowers. President Biden should join in recognizing the value of whistleblowers by signing this bill into law right away and saving the CFTC program from disaster.”

“The Commodities whistleblower law is fast becoming a centerpiece in combating corruption in the international commodities markets,” said whistleblower attorney Stephen M. Kohn of Kohn, Kohn & Colapinto. “Bribery is rampant in markets dealing with oil, gas, coal, timber and other natural resources. The new focus of the CFTC in tackling corruption is a landmark development in policing fraud. The strong bipartisan support for the commodities whistleblower law is another breakthrough in the growing recognition of the critical role whistleblowers play in fighting corruption.”

“The leaders in Congress who supported this bill deserve the thanks of the whistleblower community,” added Kohn, who is also the Chairman of the Board of NWC.

“Senators Grassley, Collins, Stabenow, Hassan, Boozman, Baldwin, and Entz and Representatives Fischbach, Khanna, Scott and Thompson all showed their commitment to supporting whistleblowers who expose corruption.”

On the House floor, Representative Ro Khanna (D-CA) voiced his strong support for the bill. He stated: “This short-term solution is by no means a replacement for the much-needed comprehensive CFTC reauthorization. It will still, though, be a positive step to ensure the CFTC can accomplish an important mission, to promote the integrity, resiliency, and vibrancy of the U.S. derivative markets.”

Representative Michelle Fischbach (R-MN) also spoke in support of the bill. “I’m proud to support today’s legislation to avoid unnecessary disruptions to [the CFTC’s] activities and needless staff furloughs,” Fischbach stated. “The work in these offices, particularly the whistleblower’s office, helps to root out violations of the law, which harm individuals and undermine derivatives markets. Fraud and market manipulation can steal customer funds, distort prices, disrupt orderly trading, and settlement, and zap confidence in the fairness of our markets. Whistleblowers are a critical source of information from which the Commission protects the integrity of our commodity markets.”

Kohn, Nelson, and other whistleblower advocates had worked closely with members of Congress to pass this legislation since the financial crisis at the CFTC Whistleblower Program became urgent during the last session of Congress. In March, Kohn authored an article for JD Supra explaining how the CFTC Whistleblower Program is in a financial crisis due to its success. Since 2014, the program has awarded approximately \$123 million to whistleblowers and enforcement actions associated with those awards have resulted in more than \$1 billion in sanctions. However, due to a cap on the fund used to finance the program, the recent growth and success of the program has depleted its funds.

On April 30, 2021, a group of several whistleblower advocacy groups led by NWC sent a letter to the U.S. Senate Committee on Agriculture, Nutrition and Forestry urging the members to support the passage of the CFTC Fund Management Act. The letter noted that the whistleblower program’s fund is so depleted that “the CFTC has started delaying the processing of whistleblower cases due to a lack of funds and the CFTC Office of the Whistleblower might be forced to furlough staff.”

The financial crisis at the whistleblower program became even more dire when the CFTC recently began the process of determining a whistleblower award that could total over \$100 million. Through the CFTC Whistleblower Program, qualified whistleblowers, individuals who voluntarily provide original information which leads to a successful enforcement action, are entitled to a monetary award of 10-30 percent of funds recovered by the government. All CFTC whistleblower awards are paid out of an award fund entirely financed by sanctions recovered due to whistleblower disclosures, but the cap on the fund has led to its depletion.

The amended version of the CFTC Fund Management Act passed by Congress addresses the financial crisis by creating a fund for the operations of the CFTC Office of

the Whistleblower which is separate from the fund used to pay whistleblower awards. This would ensure the Office can continue to operate even if large awards deplete the award fund.

The CFTC Fund Management Act will next, need to be signed by President Biden. When he introduced the bill, Senator Grassley stated “[w]e can’t allow this program to become a victim of its own success. Congress has to pass this bill now to ensure that the CFTC whistleblower program remains solvent and can continue to grow.”

Sourced from [Whistleblower Network News](#).

*FEW receives information from the following sources and contacts: Federal News Network, GovernmentExecutive, CNBC, The New York Times, Federal Times, The Washington Post, CNN, FedWeek, and CBS News.*