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FEW Washington Legislative Update August 15-31, 2021

In Congress

Questions about the Biden Administration's chaotic exit from Afghanistan—which resulted in a gruesome terror attack that left 13 U.S. service members dead—are setting up the first big congressional oversight probe of the current White House.

The Biden Administration had been fielding questions from lawmakers on both sides of the aisle about the Afghanistan withdrawal since the August 31, 2021, deadline was set back in April 2021. But the requests for documents and testimony ratcheted up after the Taliban took control of Kabul on August 14, 2021 and intensified further after the deadly suicide bombing at the Hamid Karzai airport on August 26, 2021.

The push for accountability is coming from both political parties, but differences in approach between Democrats and Republicans are already setting the stage for a pitched partisan battle. For Democrats, the fight will reveal whether their loyalties lie with the party or with the truth, after they spent four years criticizing Republicans for not conducting rigorous oversight of President Donald Trump. For Republicans, this moment marks an opportunity to attack the Biden Administration after a series of decisions led to a speedy Taliban takeover that put both U.S. citizens and Afghans in danger. The congressional fight will be waged on both substance and process: Democrats control both chambers of Congress, so Republicans don't have the power to issue subpoenas or call for testimony on their own.

In recent years, congressional oversight typically has involved "the President's party basically protecting its quarterback and under-investigating its president, and over-investigating the other party," says Tom Davis, a former Republican lawmaker who chaired the House Committee on Oversight and Government Reform during the George W. Bush Administration. "This will be a real test."

So far, Democrats have indicated they will investigate the Biden Administration. “We clearly want to do oversight,” says one Democratic source familiar with the House Foreign Relations Committee’s oversight strategy. “That alone is a radical departure from what we saw in the previous Administration.”

Democratic aides say that while they want to hear from Biden Administration officials, the oversight must also expand to include the United States’ actions during the 20-year war. One topic of interest will likely be the peace agreement Trump signed with the Taliban last year to leave Afghanistan by May 2021. Menendez said that his oversight hearing on Afghanistan will focus on the Trump Administration’s negotiations with Taliban along with the Biden Administration’s execution of the U.S. withdrawal. “It’s impossible to examine the collapse of a 20-year war in Afghanistan through the lens of the last 15 days,” says one senior Democratic aide on the Committee on Oversight and Reform.

Like the Democrats, Republicans are seeking answers about the withdrawal, the speedy collapse of the Afghan government and the future of the counterterrorism mission. But they want the oversight efforts to focus on the withdrawal itself, rather than probing actions over the past 20 years, according to two congressional aides. “We had been hearing on the ground repeatedly concerns that [the collapse of the Afghan government] was indeed going to happen,” says one senior Senate aide. “The fact that the State Department was completely unprepared for all of this highlights the fact that they either weren’t reading the intelligence, or they didn’t want to believe it.”

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Pay Raise:

Federal employees will get a total 2.7 percent pay raise in 2022, as President Joe Biden informed Congress August 27, 2021, that he intends to exercise his authority to determine federal pay rates during a state of emergency.

U.S. law stipulates that federal compensation rates should increase by the amount the Employment Cost Index (ECI), calculated by the Bureau of Labor Statistics, went up in September two years prior, minus 0.5 percent.

For example, the ECI in September 2020 increased by 2.4 percent, meaning that feds should, under the code, get a 1.9 percent pay increase for 2022.

The reality is that feds rarely receive this mathematical increase, as often the president or Congress stipulates a different percentage increase or a pay freeze in budget legislation.

“Title 5, United States Code, authorizes me to implement alternative plans for pay adjustments for civilian federal employees covered by the General Schedule and certain other pay systems if, because of ‘national emergency or serious economic conditions

affecting the general welfare,' I view the increases that would otherwise take effect as inappropriate," Biden wrote to the speaker of the House and president of the Senate.

"Accordingly, I have determined that it is appropriate to exercise my authority to set alternative pay adjustments for 2022."

The alternative pay plan would increase feds' basic pay by 2.2 percent next year and locality pay increase by 0.5 percent, in line with Biden's initial pay plan outlined in his 2022 budget proposal. Locality pay applies on top of basic pay to feds that work in more expensive parts of the country, so that their income better matches the cost of living in their work location.

Federal employee groups expressed general appreciation for the increase, though not all felt that it would be enough to close the gap between private and public sector pay.

"With his proposed 2.7 percent average pay increase for the civil service, Biden is demonstrating respect for hard-working civil servants and the jobs they do, as well as a commitment to recruitment and retention of talented federal employees," said Ken Thomas, national president of the National Active and Retired Federal Employees Association.

"However, federal employee pay increases have lagged for years and there is still a very real gap between federal pay and comparable positions in the private sector," National Treasury Employees Union National President Tony Reardon said in a statement.

"According to the Federal Salary Council, federal employees are paid 23.11 percent less than their private sector counterparts. NTEU believes that a 3.2 percent average raise is merited in 2022, as called for in the FAIR Act legislation introduced earlier this year. We will continue to urge Congress to implement an average 2.2 percent increase across the board, plus a 1 percent boost toward locality pay."

The pay adjustment will take place in the first pay period beginning after January. 1, 2022.

Sourced from [Federal Times](#).

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Hiring Surge:

The Biden administration is looking to overhaul the asylum process for immigrants arriving at the border, shifting responsibilities and seeking to hire thousands of new federal employees.

The move would allow Department Homeland Security personnel within U.S. Citizenship and Immigration Services to quickly rule on asylum cases, bypassing the severely backlogged immigration courts housed within the Department of Justice. The

change would speed up the way claims are processed, the administration said, allowing migrants to remain in the United States if they demonstrate they are likely to encounter certain dangers upon returning to their home countries.

As part of the overhaul, USCIS is seeking to hire at least 800, and up to 4,600, new employees. The administration said in a notice of proposed rulemaking that it did not want to unload responsibilities from Justice's Executive Office of Immigration Review into DHS without providing it with the proper resources to handle the new work.

"In proposing this rule, the departments seek to avoid simply shifting work from a resource-challenged EOIR to a similarly resource-challenged USCIS Asylum Division," it wrote. "DHS seeks to fully resource the USCIS Asylum Division to handle their present workloads and this new workload prior to the USCIS full takeover of the adjudication of protection claims that follow a positive credible fear determination."

DHS estimated it has sufficient funding to bring on the 800 asylum officers and support staff, a process it expects to begin before the end of September. That estimate, however—which would come with a \$180 million price tag—is the low end of the department's projections. Its "primary estimate" would see a total of more than 2,000 new positions, more than doubling the current asylum workforce. That would allow USCIS to handle 150,000 asylum cases at the border, which would mark an increase from recent years and cost \$438 million. The upper-bound estimate, which DHS called "unlikely" to occur, would cost nearly \$1 billion.

While DHS and Justice will allow 60 days for comments on their proposed rule, USCIS is planning to immediately move forward on finalizing job descriptions, posting the positions and beginning the hiring process. Most of the new employees will be brought on as GS-13s, a higher pay grade than current asylum officers due to the increased responsibilities.

Under current policy, USCIS officers conduct only preliminary "credible fear" screenings to determine whether immigrants' removals should be put on hold. Those who receive a favorable determination are then referred to EOIR to have their case heard before an immigration judge. Under the new system, those immigrants would still have another hearing but would only have to deal with asylum officers. Those whose credible fear cases are rejected by USCIS would still have the opportunity to appeal to an immigration judge, if they make such a request.

"These proposed changes will significantly improve DHS's and DOJ's ability to more promptly and efficiently consider the asylum claims of individuals encountered at or near the border, while ensuring fundamental fairness," said Secretary Ali Mayorkas.

"Individuals who are eligible will receive relief more swiftly, while those who are not eligible will be expeditiously removed."

USCIS currently has a backlog of 400,000 asylum cases, a number that has doubled since 2016. Immigration courts, meanwhile, have a backlog of nearly 1.4 million cases.

"Today marks a step forward in our effort to make the asylum process fairer and more expeditious," said Attorney General Merrick Garland. "This rule will both reduce the

caseload in our immigration courts and protect the rights of those fleeing persecution and violence.”

The hiring would mark a dramatic shift at USCIS. After growing the asylum workforce and filling extensive vacancies, the Trump administration threatened to furlough about 70% of USCIS employees due to funding shortfalls. It ultimately backtracked, but implemented a lengthy hiring freeze. USCIS now has about 800 asylum officers, compared to just 238 in fiscal 2012.

President Biden is moving forward with the asylum reforms as part of sweeping changes to the immigration system he hopes to implement. The proposal also comes as arrests at the southern border have soared to rates not seen in decades, a situation that has strained resources across government and left immigrants’ cases in even longer delays. Due to pandemic-related emergency authority first invoked by Trump and still in place under Biden, most migrants arriving at the border are immediately turned away without the opportunity to claim asylum.

Sourced from [Government Executive](#).

FEW Washington Legislative Update – August 15-31, 2021 Tier III

Women’s Equality Day:

BY REP. CAROLYN MALONEY (D-N.Y.), OPINION CONTRIBUTOR

In 1971 — exactly 50 years ago — the indomitable feminist and fellow New Yorker, Rep. Bella Abzug, introduced a bill to establish August 26 as Women’s Equality Day. The holiday commemorates the August 26, 1920, certification of the Nineteenth Amendment, which granted women the right to vote.

But suffrage was never the final goal of our feminist foremothers. After the Nineteenth Amendment was ratified 101 years ago, suffragist leader Alice Paul, who is a relative of my late husband, immediately went to work to write the Equal Rights Amendment (ERA). She believed the ERA was the essential next step towards achieving gender equality in this country. In 1920, she said, “It is incredible to me that any woman should consider the fight for full equality won. It has just begun.”

The ERA was first introduced in Congress in 1923, and the amendment was re-introduced in every session of Congress until 1972. With the women’s equality movement at the forefront, on October 12, 1971, the U.S. House of Representatives passed the ERA by an overwhelming bipartisan vote of 354-23 to enshrine gender equality into the Constitution. The Senate passed the ERA in 1972, and Congress sent it to the states for ratification. Alice Paul fought for the ERA until she was on her deathbed in 1977. Unfortunately, in 1982 the congressionally extended timeline expired, and the ERA stalled — only three states short of ratification.

Fortunately, some of us never gave up on the amendment, and as a result, the ERA has had a modern renaissance. Over the last four years, Nevada, Illinois, and Virginia have all ratified the ERA, bringing us to the 38 states needed for ratification. Yet, because of a questionable legal opinion issued by the Trump administration, the ERA has still not been certified. We are still waiting, just like our suffragist mothers before us, for our rights to be permanently enshrined in the U.S. Constitution.

Women's equality cannot wait another century. That's why I have been proud to join over 200 of my congressional colleagues on a bill to remove the arbitrary deadline from the ERA. In March 2021, I also re-introduced the ERA in the House, as I have in every session of Congress since 1997. Equal rights for women are necessary in every democracy, and I will not stop until we finally see ourselves reflected in our most foundational document.

Unfortunately, the truth is the United States is falling behind when it comes to women's equality. Eighty-five percent of United Nations member states already have constitutions that explicitly guarantee equality for women and girls. In these countries, including a gender provision in the constitution has led to remarkable progress.

Take for example Tanzania, where the Court of Appeals used Article 13 of that country's constitution, which guarantees equality on the basis of sex like the ERA will, to strike down a law that had allowed girls to be married at the age of 15. Nigeria's Supreme Court used its equal rights amendment to invalidate inheritance laws that denied daughters equal inheritance rights. Case studies from France, Costa Rica, Argentina, and many other nations have shown that legislative body gender quotas facilitated by these nations' constitutions have led to a significant increase in women's level of political participation.

Throughout our history, the United States has been a leader in women's rights and breaking barriers for women. But to truly live up to that legacy, we need to catch up to where much of the world already is—by adding 24 simple words to our Constitution: “Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.”

This Women's Equality Day let's not leave it up to the next Congress to pass the ERA. This is the year we knock down any unnecessary obstacle to ensure that equal rights for women are enshrined in the Constitution once and for all. As Alice Paul herself once said, “There is nothing complicated about ordinary equality.”

Sourced from [The Hill](#).

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