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**FEW Washington Legislative Update
October 1-15, 2021**

In Congress

The House raised the nation's debt ceiling averting a default for about three months but setting up a tougher political hurdle for Democrats at the end of the year.

The bill was packaged with several other measures so there was no standalone vote on the unpopular debt limit increase. The larger package passed 219 to 206. The Senate had previously approved the increase, which now goes to President Biden's desk.

With a default off the table for now, Democrats are hoping to turn their attention to enacting Biden's "Build Back Better" program, which would reshape the nation's social programs and improve its aging infrastructure. Leaders hope to finalize the package by the end of the month, but there are significant questions about whether Democrats can overcome their policy differences that quickly.

And lurking beyond Biden's top policy priority will be the same debt ceiling — which will probably need to be raised again in December or January — and a Dec. 3 deadline to continue government funding to avoid a shutdown.

Allowing the debt limit to be breached would cause the nation's first default on its debt, with the potential to set off a global recession. A lapse in government funding, which has happened several times in recent years, would shutter national parks and museums, and jeopardize federal programs.

Congress has a record of punting its toughest priorities until the end of the year, with leaders using the threat of forcing members to stay in Washington over the holidays as a pressure point to get things done. But this year's task list is more grueling, with significant political stakes for Biden's agenda and the 2022 midterm election to decide control of Congress.

"December in Washington is always a challenge, and this one will be the most challenging in recent memory because the scale and import of the various legislative priorities is greater than any in recent memory," said Mike Spahn, a partner at Precision Strategies and former longtime senior Democratic Senate staffer.

The debt limit could prove particularly complicated because Republicans are insisting Democrats do it by themselves, though previously it has been done with at least some bipartisan support. There is no clear path forward, and while both parties — chiefly the GOP in recent years — have used the debt limit as a political cudgel in the past, neither appears prepared to tank the economy over it.

Congress periodically needs to raise the spending limit to pay for existing debt, which expanded significantly in the last few years.

Democrats' position has been that they wouldn't have time to raise the debt limit through reconciliation, a legislative process that takes several days. Their bigger concern has been setting the precedent that only one party is responsible for raising the debt limit, which until several years ago was just viewed as a basic function of governing. Republicans say they have now given Democrats plenty of time to set up the reconciliation process for the December debt lift.

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Tier I

Office of Personnel Management and the COVID Vaccine:

The Office of Personnel Management on Friday offered up more details on how agencies might approach disciplinary action against employees who fail to comply with the Biden administration's recent federal vaccine mandate.

Because employees aren't considered fully vaccinated until two weeks after receiving a single-shot series or the second dose of a two-shot series, they must get the vaccine by Nov. 8 to comply with the federal mandate.

Therefore, agencies can begin the disciplinary process for employees who are unvaccinated by Nov. 8 on the following day, Nov. 9, OPM Director Kiran Ahuja said Friday in a new memo.

Failing to comply with the federal vaccine mandate is an act of misconduct, and there is legal precedent for punishing federal employees over failing to comply with a vaccine mandate, OPM said.

The agency pointed to *Mazares v. Department of Navy*, where the U.S. Court of Appeals for the Federal Circuit upheld the Navy's decision to fire two civilian employees who refused the anthrax vaccine before a deployment on a naval ship to Korea.

Removal wasn't excessive, the court said, and the employees were fired because they failed to obey a direct order from a supervisor.

To help agencies enforce the administration's new federal vaccine mandate, OPM developed this new guidance with several broad goals in mind, an agency official told Federal News Network Friday.

Vaccines are the best way out of the pandemic, the official said, and the new policies are meant to drive vaccinations, not terminate federal employment.

"We want to be fair to employees while also laying out an efficient process that shows that we're serious about this and that compliance is mandatory," the OPM official said.

The guidance is also meant to drive consistency among agencies in enforcing the federal vaccine mandate among its employees — and give them the discretion to tweak the process so that it best suits their individual needs, the OPM official said.

Agencies could take on three broad steps to discipline employees who fail to comply with the federal vaccine mandate, OPM said.

If an employee hasn't shown proof of vaccination, hasn't received an exception or the agency isn't actively considering a reasonable accommodation request for that individual by Nov. 8, OPM recommended agencies start by providing counseling and education to those federal workers.

"Agencies should use the counseling period to remind the employee again of the vaccination requirement, emphasize that failure to comply will lead to discipline up to and including removal or termination, address any questions, and inform the employee that they will have a short period of time (e.g., 5 days) to submit documentation establishing either the initiation or completion of vaccination, as applicable, or request an exception," the OPM guidance reads.

If an employee doesn't begin the vaccination process in that time, OPM recommends agencies begin to pursue disciplinary action, which, as the Biden administration has stated previously, can include removal or termination from federal service.

Agencies don't have to use a concept known as "progressive discipline," but OPM recommends it.

"One approach we could have taken is to advise agencies that as soon they know about unvaccinated employees by the deadline... they could have moved directly to proposing removal," the OPM official said. "We don't think that's in the best interest of the government, the American people or the employee."

On the other hand, a protracted disciplinary process doesn't meet the administration's intended health and safety goals for the federal workforce and isn't the right approach either, the official added.

At least one agency, the Department of Veterans Affairs, has publicly committed to using the progressive discipline approach on health care workers subject to their own unique vaccine mandate.

"While the law and OPM adverse action regulations do not require progressive discipline, this is the preferred approach in the instance of non-compliance with the requirement to be vaccinated," the guidance reads. "With this in mind, agencies are strongly encouraged to consider whether lesser disciplinary penalties are adequate, as an initial matter, to encourage an employee to be vaccinated, such as a short suspension of 14 days or less under procedures established [under law]."

If a short, unpaid suspension doesn't compel an employee to get vaccinated, agencies should consider greater disciplinary measures, which, again, could include removal from the agency or federal service.

Agencies should consider a variety of circumstances when setting the penalty, OPM said.

"Agencies should strive for similar penalties for similarly situated employees, where appropriate, within the same work unit," OPM said. "To facilitate this for larger organizations where actions may be necessary for multiple employees, an agency should consider designating one management official to be a proposing official and designating another management official to be a deciding official for all actions in the work unit."

But the agency official stressed OPM does want to see agencies act with some consistency when disciplining unvaccinated federal employees. An unvaccinated teleworker wouldn't necessarily receive different treatment from another employee who must work in-person at his or her agency, the official said.

Agencies can pause discipline if employees start complying

Unvaccinated federal workers can demonstrate they're taking steps to comply with the mandate at any point during the disciplinary process, including while the employee is serving out an unpaid suspension or is in the middle of the removal process.

Agencies should effectively pause the disciplinary action in that case and give the employee a deadline for receiving final vaccine doses and providing proof of vaccination to their supervisors, OPM said. Once they've provided that proof, agencies should formally close the disciplinary process.

As the Biden administration has previously indicated, federal employees can request an exception from the vaccine mandate for a disability or valid religious reason.

Agencies shouldn't discipline these employees who have a legal exception, OPM said, and they should consider what accommodations, if any, they might offer.

If an agency denies an employee a reasonable accommodation, that individual will have two weeks from the date of the final decision to receive the first vaccine dose, OPM said.

OPM is working with agencies to ensure they have the capacity and the tools to process these requests, the official said.

“Evidence shows these mandates work,” the official added. “Although people might say that they’ll leave their job over it when asked about it, that’s not actually what the data shows.”

Federal employees on some form of extended leave, like paid parental leave or worker’s compensation as examples, don’t have to be fully vaccinated by the Nov. 22 deadline if they’re planning to return to work after that date.

They must, however, provide proof of vaccination prior to returning to work, OPM said.

That same general policy applies to seasonal workers, interns, volunteers and others on an extended break in service, OPM said. Those employees must comply with the federal vaccine mandate prior to returning to work — if their anticipated return date is after Nov. 22.

Employees who have indicated their plans to leave their position in the executive branch and are on leave until that time do not have to comply with the federal vaccine mandate.

To inform employees about the federal vaccine mandate, OPM suggested agencies send periodic reminders to the workforce about the requirements and the upcoming deadline. They might consider holding town halls, sending emails and talking about the vaccine in other meetings.

Under the Biden administration’s previous vaccine policy, agencies asked their employees to attest to their vaccination status. But that process was voluntary, and OPM is still collecting vaccination data about the federal workforce, the agency’s official said.

In a Thursday hearing before the House Homeland Security Committee, the Department of Homeland Security said 64% of its workforce is vaccinated.

“I have to expect that the vaccination rates of the federal workforce probably mirror those of society overall,” the OPM official said. “And I have to expect it’s been moving in a positive direction, but this is the kind of thing that will really move it forward.”

OPM also urged agencies to require vaccinations for new hires before entering duty, “subject to such exceptions as required by law.”

New hires joining federal service after Nov. 22 should be fully vaccinated before their start date, the OPM official said.

“When advertising vacancies, agencies should clearly describe in their job opportunity announcements the COVID-19 vaccination requirement and, for positions with a duty location having an official government worksite, information about the agency’s reentry plan, to the extent that plan has been finalized,” separate OPM guidance reads.

Agencies should make job offers contingent on tentative new hires submitting appropriate materials documenting their compliance with the federal vaccine mandates, OPM said.

If new hires fail to meet these vaccination requirements, an agency might consider rescinding tentative job offers.

Agencies who have “urgent, mission-critical hiring needs” can delay the vaccination requirements for certain job applicants. These individuals won’t have to submit proof of vaccination prior to a final appointment or onboarding with the agency, OPM said.

Instead, agencies should require these new hires to be fully vaccinated within 60 days of their start date, OPM said.

Sourced from [Federal News Network](#).

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Defense Authorization Bill:

With Congress passing it every year for the last six decades, the annual defense authorization bill has become a bit of a grab-bag of sorts for members looking for a relatively easy vehicle to address other legislative priorities.

The upcoming year’s defense policy bill is no different, and the most recent House draft includes a wide variety of changes and updates important to civilian federal employees.

The House passed its version of the 2022 National Defense Authorization Act late last month.

The Senate Armed Services Committee has completed work on its own draft of next year’s NDAA, but the full chamber hasn’t considered amendments or taken up the full legislation.

With little time left in the year, House and Senate leaders will likely start discussing the differences between the two versions and reach a conference agreement that can pass both chambers.

Federal employees have scored significant benefits through recent defense policy bills. The 2020 NDAA brought most federal workers paid parental leave for the first time, and the 2021 authorization expanded those benefits to the rest workforce.

Federal employees won’t find proposals on that scale in the upcoming year’s defense policy bill. But the House-passed NDAA does contain a few nuggets for the federal workforce.

The House-passed version, for example, establishes parental bereavement as a specific reason for which federal employees could take paid leave.

The amendment from Reps. Brad Schneider (D-Ill.) and Anthony Gonzalez (R-Ohio) simply allows federal employees to use paid parental leave to grieve the death of a son or daughter.

Another provision would clarify that civilian federal employees who also serve as members of the District of Columbia National Guard are entitled to leave during their mobilization — without losing pay or time.

The change would apply prospectively. Rep. Don Beyer (D-Va.) and Del. Eleanor Holmes Norton say the provision is intended to correct a “longstanding error.”

Here are a few other highlights.

New benefits for federal wildland firefighters

A few proposals in the House-passed defense policy bill are aimed at improving working conditions for federal wildland firefighters.

One amendment would establish a housing stipend for federal wildland firefighters who live more than 50 miles away from their deployment location. The Interior and Agriculture secretaries would be responsible for determining those allowances based on the cost of living in the area.

A second amendment would create a new mental health program for federal firefighters, with professionals trained on the particular challenges facing the wildland workforce providing services.

It would also grant federal firefighters up to seven consecutive days of paid leave each calendar year “for the purposes of maintaining mental health,” the legislation reads. Wildland firefighters could use this leave any time between June 1 and Oct. 31, and unused days would expire at the end of each year.

Both Congress and the Biden administration in recent months have been giving more public attention to the challenges that federal firefighters face. Congress, for example, included more funding for federal firefighter salaries, plus additional funding to convert more temporary firefighters to permanent employees, in the Senate-passed Bipartisan Infrastructure Investment and Jobs Act.

Reps. Joe Neguse (D-Colo.) and Katie Porter and Julia Brownley (D-Calif.) are the lead cosponsors behind both proposals.

The probationary period debate continues

House Democrats again included a provision in the next year’s NDAA that would shorten the probationary period for civilian employees at the Defense Department.

Currently, new hires at DoD must spend two years successfully working at the department until they can, for example, access their rights to appeal a disciplinary action with the Merit Systems Protection Board.

All other federal employees are subject to a one-year probationary period.

But in an effort to perhaps test the concept of a longer trial period for the federal workforce, Congress adopted a two-year probationary period for DoD civilian employees in the 2016 NDAA.

Since then, House Democrats have made multiple, but unsuccessful, attempts to change it back.

In 2020, Congress directed an external study of the effects and impacts of the two-year probationary period for DoD civilian employees, including a demographic analysis of those who were fired before completing their trial period at the department.

Federal employee organizations are mixed on this particular topic. Unions, including the American Federation of Government Employees and National Federation of Federal Employees, have applauded the push to get rid of the “unnecessarily long” two-year probationary period, as NFFE described it.

But the Federal Managers Association disagrees, arguing Congress should at least wait until the Pentagon, lawmakers and other stakeholders can evaluate the results of the study.

“The study ordered by Congress will provide a wealth of information and data that will be useful for making future decisions regarding the probationary period,” FMA National President Craig Carter said in a recent statement. “However, the study has not been completed, submitted to Congress or analyzed. It would therefore be irresponsible and illogical, costly and wasteful for Congress to take premature action related to the DoD probationary period until after the results of the study are released, with evidence and data determining if the probationary period should be altered or not.”

This provision will likely earn more debate as House and Senate leadership work to develop a consensus defense policy bill that can pass both chambers later this year.

A new digital corps within GSA

Congress is renewing its push to inject more cybersecurity talent into the federal workforce, this time with a reserve-style program that would allow tech talent to serve in short stints.

A large bipartisan group of House members is behind this provision, which would establish a new program within the General Services Administration known as the National Digital Reservist Corps.

Reservists would come from the private sector, and they'd serve on relatively short, 30-day stints at federal agencies who need digital, cybersecurity and other IT expertise. They'll sign on to serve on one of these 30-day stints at least once a year for three years, according to the legislation.

GSA has a year to begin recruiting new digital reservists to the program. The GSA administrator would be responsible for activating and deactivating reservists based on agencies' needs and setting members' pay and compensation.

"The administrator may assign active reservists to address the digital and cybersecurity needs of executive agencies, including cybersecurity services, digital education and training, data triage, acquisition assistance, guidance on digital projects, development of technical solutions and bridging public needs and private sector capabilities," the provision reads.

The legislation caps reservist pay at a rate equal to that of a GS-15, including any applicable locality adjustments.

Congress has considered a wide variety of legislative ideas in the past that were intended to bring in private sector tech talent to agencies struggling with cybersecurity and other IT initiatives.

In its recommendations to Congress, the National Commission on Military, National and Public Service suggested lawmakers create a reserve of individuals with special skills, particularly those with cyber and tech expertise, who can volunteer with the military when certain circumstances arise.

The Office of Personnel Management once proposed the creation of an industry exchange program, which would have allowed federal employees to temporarily work at private sector companies as a way to gain new skills in the science, technology, engineering and math (STEM) field. In return, private sector employees would have temporarily lent their expertise to federal agencies, but the proposal never got off the ground.

Rep. Tony Gonzales (R-Texas) is the lead cosponsor behind the National Digital Reservist Corps legislation.

The National Digital Reservist Corps is different from the U.S. Digital Corps, an initiative GSA announced in late August. That initiative is geared toward entry-level tech talent, and it's designed to give undergraduates and recent graduates two-year stints as federal employees.

At last, a digital Plum Book?

The House also included the PLUM Act in next year's defense policy bill, which Democrats have described as an effort to shed more light on the political appointees filling prominent roles in the executive branch.

The measure technically folds together two bills, one from House Oversight and Reform Committee Chairman Carolyn Maloney (D-N.Y.), and another from Rep. Alexandria Ocasio-Cortez (D-N.Y.).

Together, the provisions would require the Office of Personnel Management to publish and maintain an active roster of political appointees online.

It would also require OPM to work with the White House Office of Presidential Personnel to make a summary of demographic data available for those appointees.

Currently, OPM works with the House and Senate oversight committees to publish a list of political appointees, known as the "Plum Book," once every four years. But the

information is only up to date at the time OPM and the committees compile and publish the list; it isn't a real-time account detailing when appointees come and go or move into new positions.

The PLUM Act amendment would get agencies closer to such a real-time account. The measure requires OPM and agencies update the names and titles regularly.

Sourced from [Federal News Network](#).

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Pregnant Women and COVID:

The following is a summary of some recent studies on COVID-19. They include research that warrants further study to corroborate the findings and that have yet to be certified by peer review.

Delta variant increases risks for pregnant women

Compared to coronavirus cases earlier in the pandemic, infections with the Delta variant lead to worse outcomes for unvaccinated pregnant women, new data suggest. Doctors studied 1,515 pregnant women with COVID-19 who received care from a large public health system in Dallas from May 2020 through Sept. 4, 2021. Overall, 82 women - 81 of whom were unvaccinated - developed severe illness, including 10 who needed ventilators and two who died. The proportion of severe or critical cases among pregnant women was around 5% until early 2021, and were "largely nonexistent" in February and most of March 2021, the researchers said in a statement. In late summer, during the peak of the surge of the Delta variant, the proportion of pregnant COVID-19 patients requiring hospitalization jumped to 10% to 15%, they reported in the American Journal of Obstetrics and Gynecology. Pregnant women face greater risks for complications with any type of severe respiratory infection, so these findings of the higher risk from the Delta variant further emphasize the need for them to get vaccinated for COVID-19, study leader Dr. Emily Adhikari of the University of Texas Southwestern Medical Center said in a statement. On Wednesday, the U.S. Centers for Disease Control and Prevention called for "urgent action" to increase COVID-19 vaccination among people who are pregnant, recently pregnant, including those who are breastfeeding, or who might become pregnant in the future, saying "the benefits of vaccination outweigh known or potential risks."

Pfizer/BioNTech vaccine antibodies disappear in many by 7 months

Six months after receiving the second dose of the two-shot vaccine from Pfizer Inc (PFE.N) and BioNTech SE, many recipients no longer have vaccine-induced antibodies that can immediately neutralize worrisome variants of the coronavirus, a new study

suggests. Researchers analyzed blood samples from 46 healthy, mostly young or middle-aged adults after receipt of the two doses and again six months after the second dose. "Our study shows vaccination with the Pfizer-BioNTech vaccine induces high levels of neutralizing antibodies against the original vaccine strain, but these levels drop by nearly 10-fold by seven months" after the initial dose, Bali Pulendran of Stanford University and Mehul Suthar of Emory University said by email. In roughly half of all subjects, neutralizing antibodies that can block infection against coronavirus variants such as Delta, Beta, and Mu were undetectable at six months after the second dose, their team reported on Thursday on bioRxiv ahead of peer review. Neutralizing antibodies are not the immune system's only defense against the virus. Still, they "are critically important in protecting against SARS-CoV-2 infection," said Pulendran and Suthar. "These findings suggest that administering a booster dose at around 6 to 7 months following the initial immunization will likely enhance protection against SARS-CoV-2 and its variants."

Experimental Merck pill halves hospitalizations, deaths

Merck & Co's (MRK.N) experimental oral antiviral drug for COVID-19, molnupiravir, reduced by around 50% the chance of hospitalization or death for patients with mild or moderate infections who had risk factors for severe disease, according to interim clinical trial results announced by the company on Friday. A planned interim analysis of 775 patients in Merck's study found that 7.3% of those given molnupiravir twice a day for five days were either hospitalized or had died by 29 days after treatment, compared with 14.1% of placebo patients. There were no deaths among those given molnupiravir but eight in the placebo group. Due to the positive results, the Phase III trial is being stopped early at the recommendation of outside monitors. "An oral antiviral that can impact hospitalization risk to such a degree would be game changing," said Amesh Adalja, from Johns Hopkins Center for Health Security, who was not involved in the study. Merck and partner Ridgeback Biotherapeutics plan to seek U.S. emergency use authorization for the pill as soon as possible, and to submit applications to regulatory agencies worldwide. If authorized, molnupiravir, which is designed to introduce errors into the genetic code of the virus, would be the first oral antiviral medication for COVID-19.

Sourced from [Reuters](#).

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