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## **FEW Washington Legislative Update**

### **April 1 - 15, 2023**

***Congress returns from recess on April 17, 2023***

#### **In Congress:**

On Monday, April 3, 2023, a bipartisan group of senators [pushed the Financial Regulators Transparency Act](#) which would subject the twelve regional Federal Reserve Banks to the Federal Records Act and Freedom of Information Act. This push was in light of the collapse of Silicon Valley Bank and Signature Bank, as well as fears about the stability of the banking system as a whole.

On Thursday, April 6, 2023, the Freedom Caucus and the Progressive Caucus are [openly uniting](#) in favor of repealing two-decades-old war authorizations in Iraq.

On Monday, April 10, 2023, the President signed into law [H.J.Res. 7](#), which terminates the national emergency related to the COVID-19 pandemic declared on March 13, 2020.

#### **Diversity, Equity, and Inclusion:**

#### **NASA Asks How to Better Advance Equity Through Its Spending Power**

The space agency wants to hear from the public about how it can better advance racial equity and support underserved communities with the billions of dollars in procurements and other forms of federal assistance it doles out each year.

A request for information from NASA, which was formally published in the *Federal Register* on Tuesday, April 11, will forward President Biden's executive orders on equity, issued in January 2021 and February 2023. The agency specifically wants to hear feedback on outreach,

engagement, and training; barrier analysis; and diversity, equity, inclusion, and accessibility for procurement, grants, and cooperative agreements.

“NASA will review inputs received and may use this information to evaluate, implement, modify, expand, and streamline procurements, grants, cooperative agreements, regulations, policies, practices, and processes to remove systemic inequitable barriers and challenges facing members of underserved communities,” the document reads. This request builds on a previous one issued in June 2021.

Examples of questions are: Are there barriers to entities taking advantage of the NASA Office of Small Business’ training opportunities? How can NASA better work with Historically Black Colleges and Universities and other Minority Serving Institutions to advance its outreach on contract, grant, and cooperative agreement awards? Are there particular barriers with either NASA or federal government regulations, policies, or practices to applying for contracts, grants, and cooperative agreements?

The request notes that NASA has already instituted a requirement that contractors must submit diversity, equity, inclusion, and accessibility plans for certain contracts and it has “included a term and condition in its grant and cooperative agreement awards for recipients to obtain at least one quotation from a small and/or minority businesses, women’s business enterprises, or labor surplus area firm when acquiring goods or services that exceed the simplified acquisition threshold (currently \$250,000).” NASA would like to know what more it can do to further the goals of each.

Public comments on the request for information are due in about two months. NASA especially wants to hear from members of underserved communities.

NASA’s equity action plan, released in April 2022 as required by Biden’s first executive order, stated that in 2021, NASA spent \$19.6 billion on goods and services, which included about \$2 billion (or 10 percent) going to small, disadvantaged businesses. “By focusing its purchasing decisions and paying particular attention to Small Businesses classified as Disadvantaged-, HUBZone-, Service-Disabled Veteran-, and Women-Owned, the agency can promote equitable economic investment and spur innovation,” the plan said.

Also, NASA awards about 3,000 grants and cooperative agreements every year; however, Minority Serving Institutions such as Historically Black Colleges and Universities, Predominantly Black Institutions, Hispanic-Serving Institutions, Tribal Colleges or Universities, Native American Non-Tribal Institutions, Alaskan Native- or Native Hawaiian-Serving Institutions Asian American- and Native American Pacific Islander-Serving Institutions are often underrepresented in such, the plan stated. “Whatever the barriers, preliminary data

suggests that NASA grant and cooperative agreement awards could be distributed more equitably.”

Sourced From: ([Government Executive](#))

## **FEW Washington Legislative Update – April 1 - 15, 2023**

### **Tier I**

#### **Proposed HIPAA Rule Would Restrict Law Enforcement Access to Abortion, Reproductive Health Data Across State Lines**

New proposed regulations surrounding reproductive health care data could strengthen privacy protections for patients as the nation’s legal landscape threatens patient privacy for select reproductive treatments, specifically abortions.

The U.S. Department of Health and Human Services is set to publish a proposed rule on April 17 that would update patient privacy provisions in the federal Health Insurance Portability and Accountability Act, commonly known as HIPAA.

Citing recent legal developments in the judicial system as well as differing state laws, HHS said that it may need to fortify existing health care privacy laws to ensure patients have safe, confidential access to legal healthcare treatments.

“Based on information the department has received in recent months, we believe it may be necessary to modify the privacy rule to avoid the circumstance where an existing provision of the privacy rule is used to request the use or disclosure of an individual’s PHI [protected health information] as a pretext for obtaining PHI related to reproductive health care for a non-health care purpose where such use or disclosure would be detrimental to any person,” the rule reads.

Previous regulations within HIPAA’s privacy rule worked to balance a patient’s PHI confidentiality while allowing certain disclosures on the basis of legal needs. The modifications suggested in this recently proposed rule amend the privacy law to strengthen protection surrounding the usage of PHI in criminal and civil investigations on the basis of seeking or providing abortion access.

“Based on the longstanding purposes of HIPAA, there is a compelling need to provide additional protections to this especially sensitive category of information,” the rule says. “The Department believes it is necessary to provide heightened protections for ... PHI sought for the

purposes of conducting a criminal, civil, or administrative investigation into or proceeding against any person in connection with seeking, obtaining, providing, or facilitating reproductive health care that is lawful under the circumstances in which it is provided.”

This major step in codifying protections for reproductive data privacy follows the landmark Supreme Court case *Dobbs vs. Jackson*, which ruled in 2022 that there is no right derived from the U.S. Constitution to guarantee an abortion, subsequently overturning the longstanding abortion access case *Roe v. Wade*.

Concern then mounted over data privacy for people seeking any type of reproductive health care, ranging from abortion to contraception. The question of whether or not law enforcement agencies in states with limited access to legal abortions could utilize PHI and other data—such as GPS and search histories—was also raised in the aftermath of the Supreme Court’s ruling.

In response, President Biden signed an executive order strengthening reproductive data privacy, and tech companies like Google began safeguarding and deleting user location history to prevent law enforcement from abusing private user information.

HHS leadership hinted at strengthening protections surrounding PHI privacy in mid to late 2022, following the Court’s ruling. HHS Secretary Xavier Berceerras condemned the Supreme Court’s ruling, with the agency’s Office of Civil Rights Director Melanie Fontes Rainer telling Nextgov that “all options are on the table” to protect patient rights and confidentiality.

“Those developments have made information related to reproductive health care, which has long been considered highly sensitive, more likely to be of interest for punitive non-health care purposes, and thus more likely to be disclosed if sought for a purpose permitted under the privacy rule today,” HHS said in the rule.

The new proposed rule limits access to reproductive PHI for criminal and civil proceedings specifically if the investigation is being conducted outside of the state the procedure occurred in; that is, states that do not allow abortions are not able to investigate a resident’s health care that occurred in a separate state where the procedure is legal.

In a corresponding press release, Fontes Rainer clarified that the proposed rule change also works to help health care providers continue giving care.

“I have met with doctors across the country who have shared their stories,” said Fontes Rainer. “These providers have expressed fear, anger, and sadness that they or their patients may end up in jail for providing or obtaining evidence-based and medically appropriate care. Today’s proposed rule is about safeguarding this trust in the patient-provider relationship, and ensuring

that when you go to the doctor, your private medical records will not be disclosed and used against you for seeking lawful care.”

Sourced From: [\(Government Executive\)](#)

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### **Tier II**

#### **Debt Ceiling Concerns, the New Postal Health Plan Rule, and More Reaction to the COVID Hazard Pay Setback**

The White House is advocating a 5.2 percent pay bump for feds in FY 2024. Unions and Democratic leaders in Congress are pushing for 8.7 percent. But ideas on how to move on reining in federal government spending—some possibly affecting employees on the pay front—are increasingly on the radar. And not necessarily for the right reasons.

This summer every family and every business in our country could suffer from one of the less savory effects of “divided government” on a linchpin of planet Earth’s largest economy, the U.S. government’s debt ceiling, with the White House and Senate in Democratic hands and the House sporting a Republican majority. There is sharp disagreement between these power centers over long-term budgetary matters—most pointedly, on how to shore up Social Security. And although the pension program’s trust funds are predicted to remain solvent into the next decade, some Republican lawmakers are insisting that Dems join them in effecting controversial longer-term fixes now, in the current session of Congress. If they do not get the desired concessions enough Republicans might vote against raising the debt ceiling.

Indeed, that would be a potential showstopper. Without a timely majority upvote on raising the debt limit, the U.S. government would for the first time ever default on scheduled debt instrument payments and bills for regular operations. Near-term that would possibly slow or reduce regular payments to contractors and employees. And, despite the hopes of feds and some of their leading unions and advocacy organizations, debt ceiling inaction could hit pay increases for next year and down the road.

So, if the current congressional standoff advances to millimeters from the ceiling—or, like Willy Wonka’s elevator, blows through it—it will not just inconvenience feds, it could crash whole markets and take the U.S. economy and much of the worlds with it into recession.

There may be some hope for the feds, though. Last month, Sen. Brian Schatz, D-Hawaii, and Rep. Derek Kilmer, D-Wash., reintroduced the Federal Employees Civil Relief Act (S. 640). The bill, first introduced in 2019 amid the 35-day partial government shutdown, protects federal

workers and contractors from a variety of civil financial penalties during a lapse in appropriations or a breach of the debt ceiling.

#### More Feds Affected by the COVID-19 Hazard Pay Setback?

In February, a federal appeals court ruled in favor of the federal government's rejection of hazard pay for feds in a major case, potentially affecting hundreds of thousands of feds. More recently, lawyers handling a related case confirmed that the court's action in Adams et al vs. U.S. applied also to their feds.

"On February 14, 2023, the U.S. Court of Appeals for the Federal Circuit affirmed the dismissal of Adams v. U.S., which was one of the later-filed cases also seeking hazard pay on behalf of a group of federal employees," the law firm of Kalijarvi, Chuzi, Newman & Fitch, P.C. said in a recent statement. "Even though Adams is a different case, the Court's analysis applies similarly to our case, Braswell et al. v. United States. The Court determined that in all but a very limited number of potential scenarios, federal employees are not entitled to Hazardous Duty Pay or Environmental Differential Pay for exposure to COVID-19 during the pandemic."

But the attorneys in the case still hold out hope for succeeding in securing hazard pay in such conditions.

"We disagree strongly with the court's [decision]," they said. "We are evaluating our options moving forward and will update this status as appropriate."

#### Interim Rule for the New Postal Health Benefit System:

The Office of Personnel Management (OPM) has issued an interim final rule for the new Postal Service Health Benefits Program. The nascent scheme will be a new offering under the Federal Employees Health Benefits Program, as mandated under the Postal Service Reform Act of 2022. Beginning in 2025, the new Postal Service Health Benefits Program will replace existing health benefit offerings for USPS employees, annuitants, and eligible family members.

The rule governs the implementation of the new program, permitting OPM to contract health insurance carriers for it. The aim is to continue cost-effective coverage for current employees while also integrating a Medicare element for Medicare-eligible annuitants. The public comment period, which will last for 60 days total, can be accessed at [www.regulations.gov](http://www.regulations.gov).

Sourced From: ([Government Executive](#))

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**Tier III**

**House Democratic Women Make a Case Against Cuts to Programs for Women and Families**

The House Democratic Women's Caucus is stepping into the brewing battle over the federal budget and GOP plans to propose steep funding cuts, asking leaders of the House Appropriations Committee to prioritize funding for federal programs focused on women and families.

"I'm gearing up for really big fights in the area of women's health, because that's where we expect really harmful, draconian cuts," Rep. Lois Frankel of Florida, chair of the Democratic Women's Caucus, said in an interview Wednesday, add the date, citing potential cuts to family planning services including Title X and funds to organizations like Planned Parenthood.

The caucus asks House Appropriations Chair, Rep. Kay Granger, a Republican, and Rep. Rosa DeLauro, the panel's ranking Democrat, to "especially consider the impact this process has on women and girls across the United States of America."

"We do not believe these should be partisan issues; rather, these are investments that will make our economy and our communities thrive," said the Democrats' letter. It was signed by Frankel, policy task force co-chairs Reps. Ayanna Pressley and Kathy Manning, vice chairs Reps. Teresa Leger Fernández and Nikema Williams, and chief whip Rep. Lucy McBath.

The caucus specifically asked Granger and DeLauro to preserve and expand funding for programs bolstering women's economic security and healthcare access, combating violence against women, supporting women service members, and investing in the security and economic prospects of women and girls abroad.

But their requests run against a highly contentious budget process threatening deep cuts. Some House Republicans, who won back the majority in the 2022 midterms, said they intend to propose a plan to balance the federal budget in a decade without touching defense spending or entitlements like Social Security and Medicare, requiring drastic cuts to virtually every other area of federal spending. The effort stems from the concessions House Speaker Kevin McCarthy reportedly made with hardline members of his caucus to win the speakership.

Republicans also plan to leverage their demands for spending cuts in exchange for voting to raise the United States' debt ceiling, setting up a high-stakes, bruising battle in Congress over the next several months.

House GOP leaders have not yet released their official budget plan to counter President Joe Biden's \$6.8 trillion proposal, leaving the various factions within the House GOP caucus to

develop their own budget proposals and attempt to influence the process from behind the scenes, Axios reported.

"You name it, it's gonna get hit," Frankel said. "We haven't seen their budget, but there could be a very draconian, disastrous budget to come out of the House if the extreme Republicans have their way."

Any budget has to make it through both the House, where Republicans have a narrow majority, as well as the Senate, where Democrats hold a slight advantage.

Granger did not respond to a request for comment on the letter. DeLauro said she plans to work with other Democratic women to prevent cuts, saying they would be "devastating."

"Hundreds of thousands of women will lose their homes and the childcare that helps them keep their jobs," DeLauro said in a statement. "The advancements we have made in women's health over the past two years would be slashed, the pay gap would widen, and hundreds of women would lose the ability to feed themselves and their families."

Frankel is particularly concerned about cuts to childcare funds and early education programs such as Head Start that enable parents to participate more easily in the workforce.

"Women in our country are just trying to get back to the workplace after COVID," she said. "Getting women back to work means having someplace to have their children to be properly taken care of, be safe, and be nurtured. We are talking about potential cuts of really hundreds of thousands of slots to childcare, to Head Start, that would be a really big economic step back for women."

Federal agencies across the Biden administration are warning lawmakers about the negative impact that harsh budget cuts could have on federal services and programs.

And Democratic lawmakers and advocates are particularly concerned about the impact of potentially dramatic cuts to programs aiding lower-income parents and families, from food assistance programs like SNAP to housing and childcare.

"Guess who gets hurt when we push austerity down people's throats? It is women and people of color," said Melissa Boteach, vice president for income security and childcare/early learning at the National Women's Law Center. "Because we're cutting the very investments that are helping to mitigate the inequality that folks face in the labor market, that folks face in wealth gaps."

The budget and debt ceiling battles also come as the powerful appropriations panels in both chambers are, for the first time, led by four women lawmakers. Democratic Sen. Patty Murray and Republican Sen. Susan Collins serve as chair and ranking member of the Senate's appropriations panel.



Granger is a strong proponent of defense spending, and DeLauro, a longtime appropriator, and advocate of abortion and reproductive health access, has historically “been able to find common ground with Republicans,” Frankel said. But McCarthy’s concessions to the right wing of the Republican caucus may complicate their influence in the process.

“Most people who go on Appropriations actually believe in the value of appropriating money for government services,” Frankel added. “But this ’round, you have extreme, right-wing Republicans who have a lot more leverage.

Sourced From: [\(Government Executive\)](#)

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