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FEW Washington Legislative Update
June 1-15, 2023

In Congress:

On Saturday, June 3, 2023, President Joe Biden signed H.R. 3746, the "Fiscal Responsibility Act of 2023," two days before Monday's default deadline, on which the U.S. would run out of cash to pay its bills, according to a White House release.

The legislation is now in the Senate, where Senators were negotiating which amendments would be allowed on the floor. Senate Majority Leader Chuck Schumer (D-New York) is determined to defeat them, because any changes would force the measure back to the House, where no action would likely occur before the default deadline of June 5th. Among those seeking votes is Senator Tim Kaine, (D-Virginia), who on Thursday called for stripping a provision from the legislation that would expedite the approval of the Mountain Valley Pipeline in West Virginia.

Several conservative Minority Members also want to offer proposals for deeper spending cuts in the measure, while others criticized the Pentagon spending figures in the bill, saying they were too low and could hinder military readiness. But pursuing changes at this point would prove problematic and derail the legislation. Leaders were likely to set the threshold for approval of changes at 60 votes to make them easier to defeat.

But several obstacles remain. Senator Rand Paul (R-Kentucky) indicated that he's willing to allow the deal to move through the Senate at a faster rate in exchange for a vote on an amendment that would cut total federal spending by 5 percent a year. Senator Mike Lee (R-Utah) said Thursday that he plans to offer amendments "to strike some of the more egregious provisions" of the bill. Lee cited one example: a

section that he argued gives Shalanda Young, director of the Office of Management and Budget, too much power in deciding whether agencies must offset the costs of new rules. So far no one has said they are seeking to derail the legislation. In theory, if all 100 senators can agree, the Senate could pass the bill as early as Thursday night (June 1st), or Friday morning (June 2nd) sending it to President Joe Biden. While the Senate awaits a vote on the debt ceiling legislation, it will wrap up work on H.J.Res.45, Student Loans CRA.

The House is now in recess and will reconvene on Monday, June 5th.

On Friday, June 9, 2023, lawmakers unveiled a plan that would offer a range of benefits to big businesses, small firms as well as millions of average Americans. Nonpartisan congressional forecasters say the tax cuts would run some $240 billion over the next decade, most of which Republicans propose to cover by rescinding $216 billion in green energy breaks.

On Wednesday, June 14, 2023, the House passed bipartisan legislation to fend off federal action on gas stoves, moving legislation aimed at stopping the Energy Department from finalizing a proposed efficiency regulation for the appliances.

Diversity, Equity, and Inclusion:

State Department Diversity Chief Outlines Plan to Address 'Toxic Conduct' in Workforce Survey

The State Department's first Chief Diversity and Inclusion Officer (CDIO) is asking Congress for more funding to build out its data analytics capabilities, after spending much of the past two years getting a baseline of the department's workforce diversity. CDIO Gina Abercrombie-Winstanley told members of the House Foreign Affairs Committee that the department's leadership is addressing issues outlined in a workforce survey her office led last year.

Abercrombie-Winstanley told members of the oversight and accountability subcommittee the department is focused on the "need to level the playing field, so that everyone who wants to serve our country can, to the best of their abilities."

"Now that we have a better sense of who we are, we can better ensure that we tap the best and brightest among all Americans to represent this great nation," she said Tuesday. "We intend to attract, hire, promote and retain talent, and remove barriers that might keep some from rising as far as their abilities can take them."

Nearly 9,000 employees — about a third of the department's direct hires — responded to the survey. Respondents said their top recommendation was to remove barriers to merit-based promotion.

The department, looking to eliminate one potential bottleneck, has already made interview panels a best practice for hiring and promotion decisions, rather than leaving the decision up to a single individual. Abercrombie-Winstanley said the department is also conducting barrier analyses and considering additional changes to how it makes promotion decisions.

The survey results, she added, also showed "too many" employees reported discrimination, harassment or bullying, and expressed "little confidence that the department would address it."

"We intend to fix that. We intend to take on toxic conduct," she said.

As CDIO, Abercrombie-Winstanley is tackling workforce diversity challenges that have been documented by watchdogs for decades. The Government Accountability Office (GAO) in 2020 found racial and ethnic minorities within the department's civil service were up to 29 percent less likely to receive a promotion than their white peers with similar qualifications. A GAO report from 1989 outlines many of the same conclusions as the 2020 report.

Committee Ranking Member Gregory Meeks (D-N.Y.) said the department is making progress on these longstanding issues.

"The challenges faced by our foreign affairs and national security agencies in creating a more diverse workforce, they're not new," Meeks said. "They have persisted for decades, and progress has happened, but it's slow."

Abercrombie-Winstanley said over 80 percent of senior positions at the State Department are held by European-Americans, and that more than half 50 percent are held by men.

"One of the challenges still is that you can walk into a room and see few women inside, so that hasn't changed as much as I would have liked," she told lawmakers. "But I also walk into many rooms where half of the room is female, and that means that we are really getting the people in place that should be there," she said.

Abercrombie-Winstanley is stepping down from the CDIO position, after more than two years on the job.

“I’m proud of what my team and I have been able to accomplish so far. As I prepare to transition, I’m optimistic about the future, and I anticipate that my successor yet to be named will build on our achievement,” she said.

Among the changes made during her tenure, the department’s Civil and Foreign Service personnel are now evaluated in part by how their work helps advance transparency and inclusion or accountability. The department is also now paying interns for many of its programs and has launched new fellowships to diversify the next generation of its workforce.

“There are many young Americans across the country who cannot afford to offer free labor to the department,” Abercrombie-Winstanley said.

The department, she added, recently allowed nursing mothers to bring lactation devices into classified areas. It’s also taking steps to ensure every mission overseas has accessible housing for diplomats or their family members with disabilities.

Abercrombie-Winstanley said the department’s retention unit is conducting a review of employees who had already left the department, in order to understand their motivation for leaving the department midway through their careers.

“The reality is, if people leave before we’re getting our full muster from them, we are not using the taxpayer money that it takes to train them, to house them, to send them around to have them be excellent representatives of the United States,” she said.

Rep. Andy Kim (D-N.J.), a former diplomat who served both domestically and abroad, said his treatment as a Korean-American working at the State Department influenced his decision to leave.

Kim recalled receiving a letter during his tenure, prohibiting him from working on policy issues related to the Korean peninsula. He said he was surprised to receive the notice since he had just returned from Afghanistan and worked mainly in the Middle East.

“It was something that really made me wonder whether or not I had a future here at the State Department — whether or not I could continue on if my employer, the United States government, was questioning whether or not I would be able to adequately represent and loyally represent the United States,” Kim said.

The department, in its fiscal 2024 budget request, is asking for $76 million for diversity, equity, inclusion, and accessibility programs. Most of those funds would be spread throughout the department. The CDIO's office would only receive about 10 percent of those funds to support departmentwide coordination, travel, and data analysis. The budget request would allow the CDIO's office to grow its staff from 12 to 14 employees

About $3.8 million in the department's budget request would go toward additional DEIA data projects. Nearly $1 million of those funds would go toward the CDIO's office hiring its own data analysts.

"At this time, we are at the mercy of where the data analysts sit in other parts of the building," Abercrombie-Winstanley said.

Another $200,000 would go toward the department to conduct a follow-up survey to see what DEIA improvements have been made. The State Department, following the release of its DEIA strategy last year, now holds disaggregated workforce data sets that break down the composition of its workforce across nearly every one of its offices. Abercrombie-Winstanley said the State Department plans to release annual data reports showing trends in the diversity of its workforce.

"We cannot achieve merit-based advancement without data," she said.

Republicans on the committee, however, pushed back on the department making hiring and promotion decisions based on any criteria other than merit.

Subcommittee Chairman Brian Mast (R-Fla.) said the department was prioritizing a candidate's identity "equal to their ability to demonstrate leadership."

"No part of our government, including the State Department, should look any certain way. It should reflect hard work, loyalty to America, patience, willingness to sacrifice, a sense of duty, consistency, honor, discipline, confidence," Mast said. "Those are the traits that all hiring should be based on."

Republican lawmakers criticized the State Department for recent changes in how Foreign Service officer candidates are assessed. The agency, starting in June 2022, no longer uses the Foreign Service Officer Test (FSOT) scores as the sole criteria for who moves on to the next steps of the selection process. Foreign Service applicants will still take the written test, but the State Department will no longer treat the FSOT as a "pass/fail gateway."

Abercrombie-Winstanley said there have been many changes to the Foreign Service selection process over the years, and that many current Foreign Service officers, including those admitted through fellowship programs, have never taken the test.

“These people have had successful careers as Foreign Service officers, so the written test has never been the be-all end-all of who is going to be a successful diplomat,” she said.

Sourced From: (Federal News Network)

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Tier I

Fewer Federal Employees Are Reporting Sexual Harassment in the Workplace

Federal employees are reporting less sexual harassment in the workplace than they did five years prior, according to a new report that used data from 2021.

Among women, 17 percent of federal civil servants said in a Merit Systems Protection Board (MSPB) survey that they experienced one of 12 forms of sexual harassment within the prior two years, compared to 21 percent in 2016. Overall, that rate dropped from 14.3 percent to 12.6 percent. In offices with “substantially more men” on the team, 26 percent of women reported experiencing some form of sexual harassment.

While the numbers trended down, MSPB noted the progress may be circumstantial. The results could be attributed “success preventing sexual harassment as a result of agency efforts,” MSPB said, or it could be due to a “variety of other influences.” Most notably, employees began teleworking at far greater rates. The survey found agencies that teleworked less, meaning employees were in their normal facilities more often, had more reports of sexual harassment.

“More time will be needed to assess whether this shift represents a sustained improvement in the work environment due to changes in the behavior of management and employees—or whether it reflects the unique circumstances of the 2019-2021 time period,” MSPB said.

Employees were considered to have experienced sexual harassment if they checked one of 12 boxes on MSPB's survey, with the boxes divided in three categories: unwelcome behaviors that disparage or objectify others based on their sex or gender, unwelcome behaviors of a sexual nature that are directed toward a person, and pressure or forced to engage in sexual behavior.

Some areas that saw the greatest reductions in reported incidents included "unwelcome exposure to sexually oriented conversations," which dropped from 9.5 percent of women to 5.7 percent, and "unwelcome invasion of personal space," which went from 12.3 percent of women to 9 percent. Sexual assault and pressure for sexual favors stayed steady at around 0.5 percent and 1 percent, respectively.

In several categories, including inappropriate jokes, invasion of personal space and unwelcome looks or communications of a sexual nature, reported incidents ticked up among men. MSPB noted that could be a good sign as more men are feeling comfortable reporting such events.

The departments of State, Justice, Interior and Veterans Affairs had the highest reported levels of sexual harassment, at which at least 20 percent of women said they experienced such incidents in the prior two years. MSPB stressed that agencies should be doubly committed to rooting out sexual harassment, as failing to do so can undermine their missions.

"This can occur in numerous ways, such as jeopardizing the ability to recruit and retain the most capable and diverse workforce, and not fully utilizing all the talent that they have on board," MSPB said. "Further, the stress and dysfunction caused by sexual harassment can undermine the cohesion and productivity of work groups."

Across the board, engagement scores at federal workplaces declined among victims of sexual harassment. Employees' likelihood to recommend their agency as a good place to work, say they were treated with respect and report that cooperation exists in their workplace all dropped by 25 percent among those who experienced harassment.

MSPB noted that employees' responses to being harassed are not improving. Incidents of simply avoiding the harasser have increased, while cases of reporting incidents through formal channels has decreased. The agency called it "concerning" that one-third of respondents said filing an Equal Employment Opportunity complaint only makes the matter worse. Those experiencing harassment are also much more likely to leave their agencies. One in three victims said they were planning to move to a new organization or agency, compared to just 19 percent of those who were not harassed.

One-in-five employees said their agency tolerates sexually charged comments and actions.

Prior to 2016, MSPB last conducted its survey in 1994. That year, 44 percent of women said they had experienced sexual harassment in the workplace in the previous two years. The issue appears less prevalent in federal agencies than the workforce where, according to the Equal Employment Opportunity Commission, at least one-in-four women report experiencing sexual harassment.

Sourced From: (Government Executive)

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Tier II

Some Feds Fear They Might Not Get That Pay Raise Now That the Debt Deal is Inked

Months of uncertainty over whether the federal government would—for the first time ever—default on its debt and other financial obligations came to an end last week, as the Senate approved a last-minute Biden-McCarthy debt ceiling deal to lift borrowing authority.

In short, the deal provides for two years of spending caps with over $130 billion in cuts, satisfying the Republican House, while lifting the debt ceiling until January 2025—ending the immediate crisis.

The question in the air is: does the deal make it unlikely that feds will get the 8.7 percent pay raise favored by federal employee unions and advocates? Or even the 5.2 percent currently advocated by the Biden administration? Or—much of any raise at all? The answer, unfortunately, is: We just don't, and can't, know. At least not yet.

The federal employee unions—or at least those that are speaking up right away in the wake of the deal—are vehement that this is an apples and oranges situation. Whatever cuts or ceilings may be set in motion as of October 2023—when the deal's terms begin to go into effect—should have nothing to do with the fact that feds must receive some relief against inflation.

"There is absolutely no reason for Congress not to consider a fair pay raise for federal employees in 2024," Tony Reardon, president of the National Treasury Employees

Union, told Government Executive. “[President] Biden has already recommended an average 5.2 percent raise next year—which is not impacted by the debt limit deal that recently passed into law.”

“While that spending agreement does curtail some federal spending over the next two years,” Reardon added, “it does not automatically foreclose the debate over a federal pay raise, which is essential to helping recruit and retain the skilled employees that federal agencies need to serve the American people.”

Another major fed union expressed the same worries—and hopes, and determination to convince Congress and the White House that the debt deal shouldn’t be allowed to imperil the promised raise.

“We remain hopeful—and that’s our official stance—that Congress and everyone else will see the need here,” Steve Lenkart, executive director at the National Federation of Federal Employees, told Government Executive. “Given the inflation rates in recent years, and given last year’s COLA boost for Social Security—8.7 percent, we’re hoping federal employees’ needs here also will be honored.”

“I have to add here that some kind of 1 percent—or anything lower than what we’re asking for—definitely would amount to a pay cut, under the current circumstances and inflation,” he said.

Reardon, Lenkart and other union brass leave no doubt they remain hopeful. But what’s the word in their circles, so far? Is there already talk circulating among labor leaders and legislators of a much lower raise?

“No—there’s no real chitchat like that,” Lenkart said. “But there is a lot of concern among the troops, among our people, because of the shape of the debt ceiling agreement,” he replied. “Everyone is aware that the new debt ceiling deal could somehow encourage some in Congress to try for a limitation of 1 percent or something very low. This would be a huge problem, and it’s a huge concern for federal employees at the moment.”

Lenkart pointed out that if the deal were allowed to get in the way of a decent raise, there could be some very real consequences—not just for feds, but for all of us. For example, he noted that federal wildland firefighters have only recently been provided a—temporary—pay increase, one adequate to live on.

“The increased pay for wildland firefighters—that pay authority—expires at the end of the year,” Lenkart noted. “Without new funding, some could lose as much as 50 percent of their base pay, and for others that could represent a loss of $20,000.”

Lenkart noted that many federal agencies are already having a hard enough time attracting and keeping employees. Having pay fall further behind inflation won’t help. “We're trying to stop a mass exodus already,” he said. “We’re reminding leaders that there are ways to move money around within the government—and we're asking them to make sure to do that to go forward with needed pay increases.”

The National Active and Retired Federal Employees Association, an advocacy group for all federal employees, echoed similar concerns as the unions. It also ventured a tentative prediction, a positive one.

“The budget deal certainly leaves open the possibility of the full Biden-proposed pay raise—that’s 5.2 percent including locality pay—being implemented,” John Hatton, vice president for Policy and Programs at NARFE, told Government Executive. “But it also makes the budget numbers tighter for federal agencies.”

Hatton explained that while, yes—as has been widely reported—substantial COVID funds will be repurposed under the deal (as well as funds from specific cuts—for instance, from a planned expansion at the IRS), unfortunately, financial space for a strong raise indeed has been lessened.

“But just because the numbers are tighter doesn't mean that the raise won't go through,” he said.

“If I had to make a prediction,” and he was pressed for one, “I would say that Congress will not act in the end here—leaving the president’s 5.2 percent raise as the outcome. But I would also say the matter is likely to come under debate,” Hatton gave as his bottom line.

“It's very much up in the air—we don’t know this, where Congress will land. There will be a lot of negotiation that will be ongoing,” Hatton said. “We at NARFE still support the FAIR Act proposal—with its 8.7 percent raise. We would love to see that enacted into law. But at this point, we also could be satisfied with President Biden's proposal.”

F. Stevens Redburn, a retired senior government official with the U.S. Office of Management and Budget and lecturer at George Washington University on the federal government’s budget process, took the opposite view.

“If I had to guess—and at this point it would only be a guess—I would say that Congress would not simply decide not to act here,” Redburn told Government Executive. “I think they would want to have a say in how their limited allocation is used—and so they will want to weigh in on the pay raise.”

Sourced From: (Government Executive)

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Tier III

White House Presses Agencies to Hire More Military Spouses

The White House is making what it says is a big push to increase the hiring of military and veteran spouses in federal agencies, saying it wants the government to be a “model employer” for a population that’s challenged by the transient lifestyle associated with military service.

An executive order President Biden is expected to sign at Fort Liberty, N.C. includes a raft of provisions addressed specifically to federal agencies, including a directive that the government as a whole develop a strategic plan for hiring and retaining military spouses.

Most of the ideas were drawn from Joining Forces, the White House’s initiative to increase support to military families, said First Lady Jill Biden, who leads the project.

“It’s filled with solutions inspired directly by the conversations Joining Forces had with military-connected spouses and children, because these families know what they need.” Biden told reporters on a conference call. “We’re asking agencies to make it easier for spouses employed by the federal government to take administrative leave, telework, and move offices. We’re creating resources to support entrepreneurs. And the executive order helps agencies and companies retain military spouses through telework or when they move abroad.”

The executive order (EO) tells the Office of Personnel Management (OPM) and the Office of Management and Budget (OMB) to draft a strategic plan for spouse hiring and retention within the next 180 days. Specifically, OPM and OMB will need to come up with specific ways to market job candidates who are military spouses to federal agencies, and “set benchmarks to improve performance and accountability,” according to a White House fact sheet.

Meanwhile, individual agencies are being told to make more use of hiring pathways that let them hire military spouses outside of the usual competitive hiring process. Those authorities already exist — Congress last updated them in the 2019 Defense authorization bill — but officials said they are still underutilized.

“What we heard frequently from our stakeholders and from military families was that it was a great tool, but not necessarily being utilized fully,” a senior administration official told reporters on condition of anonymity. “And so, what the EO does is directs the agencies to attach the [noncompetitive] authority to job postings outside of an agency’s workforce, which will increase opportunities for military spouses to apply through that pathway. So, we expect that it will greatly increase the number of job postings that are available to military spouses.”

For those who are already part of the federal workforce, the EO also aims to increase retention by making it easier to keep their jobs when their families get orders to relocate, including for overseas permanent changes of station (PCS).

It tells agencies to develop common standards for allowing military spouses to telework from overseas, and orders the Defense Department and State Department to draft a permanent memorandum of understanding for the Domestic Employees Teleworking Overseas (DETO) program.

Agencies would also need to implement new training programs to make sure their HR workforces understand their existing hiring authorities for military spouses and the workplace flexibility options they already have available.

“My team and the Joining Forces team have heard from stakeholders that hiring managers and supervisors in both the federal government and the private sector may lack an understanding of the challenges faced by military families — for example, why a military spouse might have gaps on a resume,” said Cara Abercrombie, the National Security Council’s defense policy coordinator. “Things like juggling child care while a service member is gone for training or deployment, needing time to manage or relocation, providing care to an injured veteran — the goal really is to help civilians, especially those in the human resources or hiring roles, understand this community, the needs of military spouses and caregivers, the diversity and adaptability of this population and the skills that they bring to the workplace. That way, we’re equipping agencies with best practices to access and support this capable and diverse talent that may have been overlooked without this additional awareness.”

And the order seeks to partially address the childcare shortages that have impacted military bases around the world. Officials said it would “expand pathways” for military spouses to operate home-based childcare services on bases. And it tells the Defense

Department to create flexible savings accounts to help military family's budget and pay for child care no later than January 1, 2024

DoD has already announced plans to create the FSA option, but a senior administration official said it was important to hold the department accountable to a specific timeline.

"And what that will help do is it will free up the challenges with on base childcare as well," the official said. "Another thing that this executive order does, which is really exciting in the childcare bucket, is that it will also create some really targeted technical assistance and support with the Defense Department and military spouses who are themselves seeking to go through the important licensure process to hold childcare in their own home."

Sourced From: **(Federal News Network)**