



FEW Washington Legislative Update December 1-15, 2023

In Congress:

On Monday, December 4, House lawmakers introduced [The Federal Cybersecurity Workforce Expansion Act](#) to support veterans and service members looking to launch public sector cybersecurity careers. The act would establish two new programs designed to grow the federal cybersecurity workforce: a cybersecurity apprenticeship program housed at the Cybersecurity and Infrastructure Security Agency and a pilot program at the Department of Veterans Affairs that offers cybersecurity training to veterans.

On Friday, December 8, Rep. Mike Gallagher's (R-Wisc.) introduced the [2 for 1 Act \(HR 6666\)](#), which would codify Executive Order 13771, which then-President Donald Trump signed in January 2017 to require agencies to offset the expenses of every new regulation by eliminating those associated with two existing regulations.

On Tuesday, December 12, the House voted 218-203 to pass [The Ensuring Accountability in Agency Rulemaking Act \(H.R. 357\)](#), introduced by Rep. Ben Cline, R-Va., which would require the vast majority of regulations issued by federal agencies to be signed and issued by a Senate-confirmed agency head and that the "initiation" of rulemaking or a regulatory agenda must be done "by a senior appointee." An exemption exists if the agency head determines that compliance with the bill "would impede public safety or security."

As the House and Senate work to complete various year end items, funding for Israel and Ukraine remains elusive. President Joe Biden will host Ukrainian President Volodymyr Zelensky at the White House the administration [announced](#), as Congress

looks increasingly unlikely to pass additional funding for Ukraine and as [U.S. officials warn](#) that the country will run out of money by the end of the year to fight against Russia's invasion. Zelensky also will meet with some congressional leaders on Tuesday including Senate Majority Leader Chuck Schumer (D-NY) and Senate Minority Leader Mitch McConnell (R-KY) who also invited Zelensky to speak to senators Tuesday morning.

House Speaker Mike Johnson (R-LA) will also meet with Zelensky. The debate over Ukraine funding has been mired in a broader battle over a [\\$110 billion national security supplemental](#) the White House requested that includes about \$61 billion for Ukraine, as well as funding for Israel, humanitarian aid for Gaza and money for the U.S.-Mexico border. Senate Republicans last week blocked a procedural vote to advance the national security bill because it did not include changes to border policy. Every Senate Republican voted against advancing the resolution plus Senator Bernie Sanders (I-VT) who opposed the measure over its inclusion of unconditional aid to Israel. Leader Schumer changed his yes vote to no to bring the resolution forward again.

Reports have said there is just about \$2 billion still available in the eyes of the administration that the United States can send out to Ukraine. There is \$4.8 billion left in the presidential drawdown authority, but that funding is used to send existing U.S. stockpiles to Ukraine and the U.S. only has about \$1 billion left to replenish those stockpiles. There is then potentially about \$1 billion left in intelligence and defense surveillance funds.

Senate negotiators continued talking over the weekend but there were no major breakthroughs on a border compromise. While the White House appears willing to offer major concessions on border policy, including new asylum limits and subjecting more undocumented immigrants to a fast-track deportation process, Republicans are seeking more. Those proposals include a national expulsion authority — similar to a Covid-era restriction that permitted border authorities to swiftly turn away migrants at the U.S.-Mexico border — and chipping away at the president's parole authority, which allows migrants to temporarily live in the U.S. on a case-by-case basis.

The Biden administration has used parole in emergency situations, like to admit Ukrainians after Russia's invasion and Afghans after the Afghanistan withdrawal, as well as to admit certain migrants. Republicans have also floated subjecting anyone released in the U.S. to electronic monitoring, including children.

Diversity, Equity, and Inclusion:

USPS' Workforce is Very Diverse. Its Management is Less

The U.S. Postal Service (USPS) has grown more diverse in recent years and is “one of the most diverse workforces in the nation,” according to a new watchdog report, though its management is still disproportionately comprised of white employees.

A slight majority of USPS workers are of historically disadvantaged races or ethnicities, the Government Accountability Office (GAO) found in its review, significantly exceeding the federal workforce writ large. From 2016 to 2022, Black employees went from 25 percent to 30 percent of the postal workforce and Latino employees went from 10 percent to 13 percent. That compared to 19 percent and 9 percent in the larger federal workforce in 2022, respectively.

The postal workforce is divided into three general categories: craft workers, who are the letter carriers and clerks that make up 90 percent of all employees; management, who are non-union front-line supervisors and middle managers and number 40,000; and executives, who are the roughly 600 top officials at the agency. Two-thirds of USPS' executives are white, GAO found, compared to 56 percent of the overall workforce. While the Postal Service has grown representation in its top ranks in recent years, some groups still lag behind. Just 38 percent of executives are women, compared to 46 percent of the postal workforce and just 7 percent are Latino, just more than half of the overall workforce's rate.

About 63 percent of USPS managers are white, also a disproportionately high percentage. Black employees are 9 percent less likely than their white counterparts to go from a craft role to a front-line supervisory position, GAO found, while Asian employees were 25 percent less likely. Asian and Black employees were 40 percent to 50 percent less likely to move from supervisor positions to middle management, while Latinos were 28 percent less likely. Asian and Black employees were twice as likely, however, to jump from middle-management to executive positions.

Controlling for factors such as tenure, GAO found employees from historically disadvantaged groups earned less than their white colleagues. Black, Asian, and Latino employees earned between 1 percent and 1.5 percent less than white colleagues among front-line supervisors, 3 percent to 5 percent less than middle-management coworkers and 5 percent to 9 percent less than executive colleagues.

“Although USPS employs one of the most diverse workforces in the nation, certain historically disadvantaged racial or ethnic groups and women continue to be underrepresented in USPS leadership positions relative to the overall USPS workforce,” GAO said.

Postal management on an annual basis identifies trends and anomalies that could create issues for employees of color or who are otherwise underrepresented but told GAO it has not identified any actual barriers in 15 years. It disputed GAO’s characterization of those trends as “potential barriers,” though the auditors said USPS should be investigating them more thoroughly.

In response to the report, Jenny Utterback, USPS’ vice president for organization development, took significant issues with much of GAO’s process and many of its findings.

“In light of the Postal Service’s longstanding commitment to diversity, we have concerns about the representations of our workforce and the sometimes-misleading representation of facts throughout GAO’s report related to our workforce diversity efforts,” Utterback said.

In part, postal management’s concerns stemmed from GAO’s use of statistics, saying the auditors did not properly account for errors. GAO rejected that criticism, saying it followed general statistical principles.

“The adjustment that USPS advised would reduce the likelihood of false discovery, but at the same time reduce our ability to detect potentially important disparities, and therefore is not an adjustment that is universally applicable or advisable,” GAO said.

GAO flagged that USPS does not maintain complete demographic data from applicants and said management’s attempts to address the problem were inadequate. USPS has sought to deploy a system to better collect the data since 2012, but now does not expect it will be fully operational until 2028. It does not have a plan for how it will use its demographic data once it collects the information and GAO said it should develop one.

Utterback said all of GAO’s recommendations were redundant to efforts already underway. GAO noted the Postal Service had demonstrated “promising” progress, but still fell short in several areas related to its diversity, equity, inclusion, and accessibility program. The watchdog praised postal leadership for taking the issue seriously and applauded Louis DeJoy for giving a speech on the topic last year.

Still, GAO said, USPS should create better performance metrics for its diversity goals and improve its solicitation and utilization of feedback from affinity and other employee groups.

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

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Tier I

Childcare Programs See Closures, Resignations, and Tuition Hikes After Federal Funding Expires

In Fairmont, West Virginia, Helen Post-Brown owns and operates an early learning program licensed to serve 160 children. These days, due to staff shortages, she can only accommodate about half that many.

A dozen miles down the road, in Bridgeport, five of the 25 classrooms in Jennifer Trippett's childcare center sit dark and empty. Families in the community are desperately awaiting her call for a spot: More than 400 children are on the wait-list. But without teachers, she can't take in more kids.

Another 120 miles south, in the town of Oak Hill, staff at Melissa Colagrosso's early education program are reeling from pay cuts that went into effect in October. They aren't sure how they'll make their next car payment or cover their phone bill. They might need to apply for public assistance—and maybe a new job. Colagrosso wouldn't blame them, she admits. She is already bracing herself for their resignations. If those come, she will have to consider closing classrooms and turning families away.

It's been two months since the federal government's \$24 billion in childcare stabilization grants expired, sending the sector over what many have come to refer to as the "childcare cliff."

"What's happening in West Virginia is not an anomaly," says Melissa Boteach, vice president of childcare and income security at the National Women's Law Center. "It is echoed by the experiences of childcare providers and parents across the country."

The relief, part of the 2021 American Rescue Plan Act, was intended to avoid a worst-case scenario for the early care and education field while the country rebounded from the pandemic. To some degree, it worked. For the most part, programs stayed open,

providers were able to supplement the otherwise paltry wages of their teachers, and most families didn't have to absorb huge tuition hikes.

"It was unbelievable," says Post-Brown, owner, and director of Sunbeam Early Learning Center. "I've never gotten money like that."

Colagrosso, who owns A Place to Grow Children's Center, said the relief was stabilizing. Both providers had been receiving monthly checks of \$27,000 from the federal package. They are among nearly 1,600 childcare providers in West Virginia—and 220,000 nationwide—who received stabilization grants, totaling \$160 million invested in early care and education in the state. They used the money to invest in their programs and in the people—mostly women—who keep their programs afloat.

But the checks stopped coming on September 30. Without another source of funding to supplement the sector, which the U.S. Secretary of the Treasury has called a "textbook example of a broken market," the problems that the relief money helped paper over are once again pronounced.

In the weeks after the funding expired, 29 percent of families nationally reported that their childcare tuition had increased, according to a survey from the RAPID Survey Project and the National Association for the Education of Young Children, and 28 percent of childcare providers said they had reduced staff wages. Another quarter of providers reported that they were serving fewer children than when they'd been receiving stabilization funding.

"It makes sense," says Boteach, "that when you take \$24 billion out of a system that was already on the margins, you're going to see childcare providers left with impossible choices: raise prices for families already struggling to afford care, cut back on pay for early educators who already live on the brink of poverty, or close their doors altogether. When we don't invest in care, there are no good choices."

Sourced From: [\(The 19th\)](#)

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Tier II

Supreme Court Vacates Ruling Restricting President's Right to Issue Federal Workforce Mandates

The Supreme Court on Monday, December 11, ended the case against President Biden's COVID-19 vaccine mandate for federal employees, issuing a summary judgment instructing a lower court to dismiss the case as no longer relevant.

The Biden administration had sought intervention from the high court after a panel of judges on the appellate circuit ruled in favor of the plaintiffs—Feds for Medical Freedom and a union representing some Homeland Security Department employees—in invalidating the mandate, even after Biden withdrew it. The En banc decision by the U.S. Court of Appeals for the Fifth Circuit had potentially wide-ranging impacts on the president's capacity to issue federal workforce-wide edicts, but the Supreme Court vacated that decision in its expedited decision.

The court will not hear arguments on the case, instead sending it back to the U.S. District Court for the Southern District of Texas that originally issued a nationwide injunction on the vaccine requirement. The Supreme Court instructed the district court to vacate its preliminary injunction, issued in January 2022, as moot rather than issue a permanent decision on the case. While Biden withdrew the mandate earlier this year, the plaintiffs said the president could reinstitute it at any moment and had sought to kill it permanently.

The Supreme Court's decision is a win for the Biden administration, which had asked the justices to accept the case—a process known as granting a writ of certiorari—vacate the ruling against the administration and instruct the district judge to dismiss the case as moot. The court followed that request exactly.

It did not disclose the breakdown of its votes on the case, though Associate Justice Ketanji Brown Jackson dissented from the majority because the plaintiffs did not have "equitable entitlement."

A three-judge panel on the Fifth Circuit last year briefly overturned the district court's injunction, but the pause went back into effect in June 2022 when the full court agreed to rehear the case. The majority opinion on the en banc decision subsequently ruled the president overstepped his authorities in mandating "private, irreversible medical

decisions." While the pandemic-era health emergency has ended and nearly all federal employees are no longer subject to any COVID-19 vaccine requirement, the Biden administration sought to prevent a wider, precedent-setting ruling that would rewrite presidential authorities by instead having the case dismissed as no longer relevant.

The Biden administration asserted in its request similar arguments it has made throughout the lengthy legal battle, including that the president has long had the power to set policy regarding the conduct of federal employees and that civil servants must take their grievances through the processes spelled out in the Civil Service Reform Act. The plaintiffs had asked the U.S. Court for the Southern District of Texas, where the case originated and now awaits final action, to immediately and permanently kill the mandate.

Attorneys for the Justice Department had argued many of the issues at stake in the appeal to the Fifth Circuit were "no longer the subject of any live controversy." Put simply, they added, Biden's order "no longer exists to be enjoined."

While they recognized the court's precedent precludes a defendant from claiming a case moot because it ends the aggrieving behavior once sued, the attorneys suggested that logic did not apply in this case because Biden only revoked the order due to the waning impact of the pandemic. While the plaintiffs previously argued the government could reinstate the mandate at any time, the Biden administration said that was unlikely.

"At this time, no reasonable prospect exists that the government will resume enforcing the same policy challenged here," the Justice attorneys said. Any change would be responsive to a change in circumstances of the spread of COVID-19, the federal lawyers added.

The Biden administration also expressed concern about the precedent set by the appellate court. The decision "erroneously resolves important questions of presidential authority and the proper scope of equitable relief," it said. It also opens the door to employees regularly finding workarounds to civil service laws to instead bring their cases to federal courts. The Justice Department on Monday declined to comment on the Supreme Court's ruling.

Saikrishna Prakash, a University of Virginia law professor, and author whose books have focused on the expanded powers of modern presidents, called the decision a "win for the administration and future presidents" because it got rid of the potentially restrictive precedent set by the Fifth Circuit. It also means groups will have to start from scratch if a president issues another, similar requirement.

“Plaintiffs will have to relitigate the issue if there is another vaccine mandate,” Prakash said.

Feds for Freedom, as the group has relabeled itself, is pursuing multiple additional cases seeking monetary damages for the alleged suffering endured by its members who were briefly subject to the mandates. By the time Biden’s mandate was enjoined in early 2022, at least 98 percent of the federal workforce was in compliance with the mandate by either proving they received the vaccine or requesting a medical or religious exemption.

“We believe the United States Constitution clearly does not permit the federal government to force federal workers—or any law-abiding citizen—to inject their bodies with something against their will,” said Feds for Freedom President Marcus Thornton. “In fact, the freedom to control your own body and your own medical information is so basic that, without those liberties, it is impossible to truly be ‘free’ at all. We are disappointed that the Supreme Court dodged these important constitutional arguments and instead chose to vacate our case on technicalities.”

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

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2 Million Women and Children Risk Losing WIC Food Assistance, Study Says

Unless Congress increases funding for food assistance by a billion dollars in January, states will be forced to gradually begin turning away low-income women and their children starting around March.

The number of people waitlisted in states for assistance could grow to 2 million through September, according to an analysis released Tuesday by the left-leaning Center on Budget and Policy Priorities. That would be more than a quarter of the total number of women expected to seek help next year amid rising food costs from the Special Supplemental Nutrition Program for Women, Infants, and Children, or WIC.

Like the heads of many state WIC offices, Paul Throne, director of the Washington Office of Nutrition Services, said he feared his state will have to turn women and children away at some point next year.

“We're on the train tracks and the train is coming, and that train is our inability to serve everybody who needs us,” he said during a press call.

The estimate comes as the U.S. Department of Agriculture and states have warned for months that the current level of funding for the program isn't enough to keep up with the growing demand. Nearly every state is seeing an uptick in applications—even Utah, which has historically served fewer women than others, has seen a rapid increase in women seeking help.

But it is unclear whether Congress will approve more funding for the program. Both the House and Senate appear poised to keep spending at roughly the same levels as last year under the deal they struck in June to increase the debt ceiling.

Already, the two continuing resolutions passed to keep the government open did not increase WIC funding. The September 30 continuing resolution did allow the USDA to give states four months of funding to be used over three months. However, the department warned at the time that as a result of higher spending, it will run out of money unless Congress approves more funds for the program.

The issue is about to come to a head again in a little over a month. After Congress took a “laddered” approach in November's short-term spending bill, the nation faces a shutdown of parts of the federal government on January 19 unless they are able to reach a spending deal for the remainder of the fiscal year or pass another continuing resolution to prevent the shutdown of several state agencies.

Should Congress again not increase funding for the program, states will not have enough funding to cover all of the women they expect to sign up for the program. As a result, the states will have to start wait-listing some of those applicants. Women who need to reenroll in the program will also have to wait.

The analysis noted that states' regulations prioritize who is placed on waiting lists.

Initially, most women considered to be a high-priority— “including infants and pregnant or breastfeeding adults”—will get assistance. But “new parents who are not breastfeeding would be the first to be put on waiting lists, followed by children who are at nutritional risk but who have not yet developed a nutrition-related medical condition,” the analysis said.

Over time, the analysis said states would have to start putting even those considered the most important to help on waiting lists. “Even children as young as 1 with a documented medical condition that puts them at risk of nutritional deficiencies could be

turned away,” said Ty Jones Cox, the group’s vice president for food assistance during the press call.

There is also the risk that many won’t even apply for the program because they believe they will be turned away. “The harm from these cuts would disproportionately fall on Black and Hispanic families because they face greater economic hardship due to long-standing barriers to housing, education and employment opportunities and other forms of discrimination,” the analysis said.

Sandy Chung, president of the American Academy of Pediatrics, called for more funding. Pediatricians refer families to the program, she said on the call, because it has been “shown to reduce preterm births, increase the likelihood of healthy birth weights, reduce obesity in young children, and reduce racial and ethnic health disparities.” The program, she said, has also increased the number of women who breastfeed by 30 percent.

“It hurts to think that my patients, families who are struggling to survive, could soon lose access to food for their babies and young children.”

Sourced From: [\(Route Fifty\)](#)

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