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## FEW Washington Legislative Update December 16-31, 2023

### In Congress:

While the House has gone into [recess](#) until the week of January 8<sup>th</sup>, the Senate remains in session working on the significant issues that remain in negotiations on US-Mexico border restrictions demanded by Republicans in exchange for clearing assistance to Ukraine and other US allies. Although Senate negotiators worked [through the weekend](#), the Senate looks unlikely to advance new border security restrictions alongside billions more for Ukraine aid this month, as negotiators work through complex border law in difficult closed-door discussions with the Biden administration and top Senate aides. A bipartisan group of Senators James Lankford (R-Oklahoma), Kyrsten Sinema (I-Arizona) and Chris Murphy (D-Connecticut) met for three hours on Sunday and continued to cite forward progress afterward, with reports saying some portions of the challenging border language had been finalized. But the full deal is not complete enough for even a cursory framework or summary to be released yet, and senators on the Republican side suggested the bill shouldn't be taken up until January when the House is back in session. The senators will continue discussions when the Senate comes back into session.

Even with final legislative text, approving a bill on the Senate floor could take a week or more. Senate Majority Leader Chuck Schumer (D-New York) can [quickly force](#) another vote to advance President Joe Biden's foreign aid request this week, but no firm decision has been made on having that vote and in the meantime the Senate will take up votes on nominations and work on extending an expiring FAA bill and top-level military nominations.

On Monday, December 18, two international railway crossings between the United States and Mexico closed as the Biden administration scrambled to detain and process record numbers of migrants arriving at the border. The [announcement](#) comes as the White House is engaging with Senate Republicans on a plan to tighten immigration policy and ramp up border security, though the two sides have yet to reach a deal.

On Tuesday, December 19, Senators [cleared](#) nearly a dozen long-stalled four-star military positions as lawmakers left for the year without action on international aid or border security policy. In addition, the chamber cleared a short-term extension of the Federal Aviation Administration's authorization by voice vote after Sen. Michael Bennet (D-Colo.) dropped his hold, sending the bill to President Joe Biden's desk.

On Wednesday, December 20, Congress took its final recess without passing the customary [appropriations bill](#). However, the White House almost certainly will issue an alternative pay plan along the lines President Biden proposed months ago: 4.7 percent base increase and, taking into account locality pay, an average pay boost of 5.2 percent.

### **EEOC Issues Article on Workplace Accessibility**

The U.S. Equal Employment Opportunity Commission (EEOC) issued an article titled "Providing an Accessible Workplace", which provides an overview of the laws that federal agencies must comply with to provide individuals with disabilities access to accommodations, and to ensure they are able to participate fully in the workplace. It focuses on accommodations that improve access to job facilities, physical spaces, and information technology. Also, it provides information about where agencies can find additional resources to help them comply with anti-discrimination and accessibility laws.

Federal agencies have a legal obligation under Section 501 of the Rehabilitation Act to provide reasonable accommodations, if requested, for their qualified employees and job applicants with disabilities (unless the agency can show that reasonable accommodation would cause an undue hardship). A reasonable accommodation, such as a change in the work environment or the way in which the work is performed, helps ensure that such federal employees will be able to perform the essential functions of their positions and enjoy all the benefits and privileges of employment enjoyed by non-disabled employees.

Additionally, on June 25, 2021, President Biden signed Executive Order 14035, which commenced a coordinated, governmentwide effort to ensure that the federal

workforce—as the nation’s largest employer—serves as a model for diversity, equity, inclusion, and accessibility.

Federal agencies are prohibited from discriminating on the basis of disability in regard to the hiring, compensation, training, advancement, or discharge of employees. The standards used to determine whether a federal agency discriminated against an individual with a disability are the same standards applied under the American with Disabilities Act. More information about the federal sector complaint process can be found on the EEOC’s website [here](#).

Sourced From: [\(U.S. Equal Employment Opportunity Commission\)](#)

## **FEW Washington Legislative Update – December 16-31, 2023**

### **Tier I**

#### **OPM Proposes New Pay Rules for Feds Working Above Their Pay Grade**

Like a lot of other people, feds sometimes get temporarily assigned to do work that is technically above their pay grade. The Office of Personnel Management (OPM) is proposing new rules to make sure they get paid accordingly. As of now, agencies can tell employees to work on things that are supposed to be done by more senior workers. While that is happening, they can also earn higher pay, but only for four months. The new rule would remove that 120-day cap. The proposed regulation is in today’s Federal Register. OPM will take public comments through the end of February.

(OPM issues proposed rule for time limited promotions - [federalregister.gov](#))

Nearly two years in the making, The General Services Administration (GSA) is giving industry a second look at its new governmentwide cloud contract. GSA is finally out with its revised and much-anticipated ASCEND cloud services blanket purchase agreement. This second draft Performance Work Statement (PWS) details almost two-years of analysis for how best to create a new governmentwide contract for cloud services. GSA is seeking feedback on its Pool 1 PWS for infrastructure-and platform-as-a-service cloud services. It also offered general ideas for Pools 2 and 3, software-as-a-service and IT professional services. Comments on the draft performance statement of work are due by Jan. 30.

(GSA issues draft PWS for ASCEND cloud BPA - [SAM.gov](#))

Agencies need to do a better job of working together to address cyber threats to medical devices, according to a new report from the Government Accountability Office (GAO). GAO said cybersecurity vulnerabilities in medical devices can pose a risk to hospital networks and patients. But the auditors found the Food and Drug Administration (FDA), and the Cybersecurity and Infrastructure Security Agency (CISA), have not refreshed their cybersecurity coordination plans in more than five years. CISA and the FDA agreed with GAO's recommendations to update their information sharing agreements.

(GAO report on medical device cybersecurity - Government Accountability Office)

The Cybersecurity and Infrastructure Security Agency (CISA) wants to take advantage of advances in machine learning. The Department of Homeland Security's Science and Technology Directorate is working on a new machine-learning platform for CISA. It is called the CISA Advanced Analytics Platform For Machine Learning (CAPM) for short. The platform is envisioned as a multi-cloud, multi-tenant environment for testing new software and tools, and developing complex machine-learning capabilities. The DHS S&T Directorate put out a request for information on the project earlier this month, with responses due by Jan. 15.

(RFI on CISA Advanced Analytics Platform For Machine Learning (CAP-M) project - SAM.gov)

The Smithsonian will expand internationally, thanks to a multi-part agreement with Foggy Bottom. Smithsonian scientists will join the State Department's Embassy Science Fellows program. Other Smithsonian staff members will help preserve traditional crafts in Mexico. Still others will become part of an international exchange program for sharing best practices for inclusive museums. Secretary of State Antony Blinken says the agreement will support three foreign policy priorities: education, the environment and cultural preservation. The Secretary of State and the Secretary of the Smithsonian Lonnie Bunch signed the memorandum of understanding shortly before Christmas.

(Department of State and the Smithsonian Institution Renew Partnership Through Expanded Memorandum of Understanding - State Department)

The annual defense policy bill that was signed into law last week will require the Pentagon to set departmentwide standards for livable military housing. The Defense Department will have to establish standards for floor space and the number of service members allowed to live in barracks. It will also have to develop health-and-safety standards, as well as fire-and-electrical-safety standards, in an effort to improve the conditions service members are living in. Lawmakers have been calling on Pentagon officials to fix military housing, as evidence of dire barracks conditions mounted over the

past year. Earlier this year, a Government Accountability Office report documented poor conditions service members have been living under for decades, including mold, no heat in the winter or air conditioning in summer.

(NDAA directs Pentagon to set standards for livable barracks - Congress.gov)

The Office of Personnel Management (OPM) is out with the first iteration of the Periodically Listing Updates to Management (PLUM) website, but it is far from complete. OPM, which is fulfilling some of the requirements of the PLUM Act of 2022, will update the portal in 90 days to confirm the completeness, accuracy, and reliability of the information. Once fully updated and content-verified, OPM said the website will improve government transparency by giving the public a more up-to-date look at leadership in federal agencies, including the administration's top leaders, political appointees, and other senior positions in the federal civil service.

(OPM releases initial PLUM website - Office of Personnel Management)

## **FEW Washington Legislative Update – December 16-31, 2023**

### **Tier II**

#### **Biden Signs Order Finalizing 5.2 percent Pay Raise for Feds in 2024**

President Biden on Thursday, December 21, issued an executive order implementing his plan to provide civilian federal workers with an average 5.2 percent pay raise next month.

As first proposed in his fiscal 2024 budget plan last March, the increase amounts to a 4.7 percent across-the-board boost to basic pay, alongside an average 0.5 percent increase in locality pay. As authorized in the fiscal 2024 National Defense Authorization Act, which Biden is expected to sign this week, military service personnel also will see an average 5.2 percent pay raise next year.

An average 5.2 percent pay increase marks the largest authorized for federal workers since the Carter administration adopted a 9.1 percent average raise in 1980, as well as a 0.6 percent increase over last year's raise, which itself marked a 20-year high.

On top of the historic pay increase, tens of thousands of federal employees will see a slightly larger increase than expected, thanks to a slew of recent changes in the locality pay system. Last year, the President's Pay Agent, a body made up of Office of

Personnel Management Director Kiran Ahuja, Office of Management and Budget Director Shalanda Young and Acting Labor Secretary Julie Su, approved the creation of four new locality pay areas. And the body finally adopted plans to update the map of locality pay areas using new OMB data, adding dozens of counties to existing locality pay areas.

The Office of Personnel Management must now publish pay tables outlining the pay raise across all General Schedule pay grades and locality pay areas. The pay raise will go into effect for the first full pay period of 2024, which for most feds begins January 14.

*Just released* - OPM has posted the full set of 2024 pay tables here: [General Schedule \(opm.gov\)](https://www.opm.gov)

In addition to the pay increases, four new pay localities have been added in the states of California, Nevada, New York, and Washington-Idaho. The employees in these new localities will be the recipients of larger locality-based raises starting in 2024 and in each subsequent year, as these employees previously fell under the 'rest of U.S.' locality pay.

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

### **FEW Washington Legislative Update – December 16-31, 2023 Tier III**

#### **How \$37 Billion in Federal Funding is Being Used to Improve At-Home Caregiving**

Vice President Kamala Harris touted new data illustrating the ways in which \$37 billion in American Rescue Plan funding has expanded and improved home- and community-based services. The White House also released detailed data, for the first time, showing how that money is being used.

“Let's be clear, every caregiver in our nation deserves fair pay, safe working conditions and respect. And every person in our nation deserves access to high-quality care, so they can live with safety, dignity and self-determination,” Harris said on a press call.

Over 7 million older and disabled Americans rely on home- and community-based services to support them in daily activities like eating, dressing, and bathing in their own homes, rather than in facilities like nursing homes or state institutions.

The workforce supporting older and disabled Americans is overwhelmingly made up of women, particularly women of color. According to the nonpartisan nonprofit Paraprofessional Healthcare Institute, nearly 9 in 10 home care workers are women and over half are women of color.

The American Rescue Plan was passed in 2021 as a stimulus package, to help mitigate the economic impact of the COVID-19 pandemic. It also contained some funding for home- and community-based services.

States had flexibility in how they could apply the funding. Colorado, for example, used it to raise the base wage for home care workers from \$12.56 to \$15 an hour, as well as provide specialized training on caring for people with Alzheimer's and other forms of dementia. New Jersey is using the money to pay for subsidized accessible housing for those at risk of homelessness or institutionalization.

The American Rescue Plan funding is not meant as a permanent solution and will run out in 2025. In order to apply for this specific funding, states had to put forward plans to continue their changes after the money ran out.

"Part of the rules around the original funding was that whatever the state planned, they were supposed to be able to continue with it," said Elizabeth Edwards, a senior attorney at the National Health Law Program, which advocates for health care access for low-income and underserved Americans.

Multiple administrative officials described the American Rescue Plan funding as a "downpayment" on improving and expanding home care.

"There is no question that the [home care] investment must be seen as a downpayment on a long-term solution, not a long-term solution in and of itself," said Gene Sperling, White House coordinator for the American Rescue Plan and senior adviser to President Joe Biden.

Sperling and others at the White House also see the American Rescue Plan funding and its successful implementation as a proof-of-concept.

"This just shows how popular and successful this type of investment can be," Sperling said. Sperling pointed to the president's budget as part of his commitment to home care. However, in order to continue in that investment, Congress will have to act by passing legislation to continue increasing and expanding funding for home and community-based services.

For years, the home- and community-based service system has been teetering on the brink of collapse. Low pay, grueling hours and little opportunity for improvement or advancement have driven many out of the industry, leading to high turnover and worker shortages.

In a White House panel on December 13 to promote the announcement, Secretary of Health and Human Services Xavier Becerra addressed workers directly: “We want you to be making more money than the folks flipping burgers at the hamburger joint down the street. We know that we have to do better. And that’s why we do the work together.”

During the same panel, Theo Braddy, executive director of the National Council on Independent Living, discussed the difficulty he has had finding appropriate home care for himself — Braddy uses a wheelchair.

“The pandemic demonstrated how badly home- and community-based services are needed. I have some influence and connections. And even for me, it was extremely difficult to find attendant care. I had to accept unvaccinated attendants and put my life in danger because I wanted to get out of bed,” Braddy said.

\$37 billion is not enough, in and of itself, to alleviate the severe and systemic problems facing the home- and community-based service system. But advocates and the administration both contend it is a step in the right direction.

Sperling also stressed the bipartisan, popular nature of home- and community-based services. All 50 states, including those whose representatives in Congress opposed the American Rescue Plan, opted in to receive the funding to improve and expand their programs.

“I think what that shows are that when you get even a few inches below the political rhetoric and grandstanding, this is not a Democrat or Republican or red state or blue state issue. It’s a kitchen table issue. Both Republicans and Democrats want the best for their loved ones who are dealing with dementia or who want to ensure a loved one with autism can live as independently as possible and work as much as possible,” Sperling said.

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

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