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FEW Washington Legislative Update February 16-29, 2024

Congress avoids another government shutdown and Schedule F updates:

In Congress:

On Tuesday, February 27, President [Joe Biden met with the top four congressional leaders](#) at the White House as they scrambled to send military aid to foreign allies and avert a partial government shutdown at the end of the week. Leaders left the meeting in agreement that Congress should avoid a shutdown, though they've yet to release legislation to do so.

On Wednesday, February 28, Republican Sen. Cindy Hyde-Smith of Mississippi [blocked passage of legislation](#) that would protect access to in vitro fertilization. The measure, sponsored by Sen. Tammy Duckworth, D-Ill., and brought to the floor for consideration under unanimous consent — meaning one senator could block it from passage — would provide federal protections for IVF.

On Thursday, February 29, The House [approved a stopgap spending measure](#) that would move two funding deadlines later into March, giving the Senate just more than one day to approve the bill and avoid a shutdown over the weekend. The measure would move the deadline for the agencies facing a budget cessation on Friday evening by one week, while extending the shutdown date for others by two weeks to March 22. The measure won broad, bipartisan support in the House, despite opposition from some conservatives who demanded spending cuts.

Diversity, Equity, and Inclusion:

Congressional Black Caucus Launches AI Policy Series Spotlighting Discrimination

The Congressional Black Caucus (CBC) has launched a new Artificial Intelligence Policy Series that will spotlight the potential AI systems have to discriminate against marginalized Black communities in the U.S.

Echoing the broader federal mission to harness the benefits of AI systems while controlling for the problematic possibilities of deploying more generative technologies, CBC members will focus on the specific impact AI systems can have on Black communities and address the potential for AI algorithms to further promulgate bias and discrimination.

“Given the rapid emergence of new AI technologies, we owe it to the communities that we serve to be out front on the trends that will have significant impacts on the lives and the livelihoods of the constituents that we serve,” CBC Chairman Rep. Steven Horsford, D-Nev., said during a briefing on Wednesday.

Horsford confirmed that the series will launch “in the coming weeks” and feature leaders in public policy to focus on bringing equity and inclusion in both access to and the function of AI technologies.

One such focus will center on algorithmic decision-making in the context of economic opportunities for Black Americans, particularly surrounding the discrimination related to housing, health care and financial opportunities.

A goal of the session is to educate CBC members and Congress ahead of passing formal legislation to regulate AI systems.

“We hope that each of the sessions that will be facilitated around this discussion of key aspects of AI and its implications for Black America will inform our legislating here in Washington D.C.,” Rep. Yvette Clarke, D-N.Y., said during the Wednesday briefing. “There’s no doubt that we are in need of a federal legislative solution to many of the harms and concerns that impact the lives of Black people in America.”

Beyond Capitol Hill, Horsford added that CBC is aiming for the perspectives voiced in its Artificial Intelligence Policy Series to inform decisions made within federal agencies, as well as the private sector.

“This Congress is closing the racial wealth gap and advancing policies, as well as working with the administration to ensure that racial equity stands at the center of the work that we’re doing,” Horsford said. “And whether it’s in AI or any other sector, we understand that that we have to have both the opportunity to make sure our

communities participate but also ensure that the protections and the guardrails are there to protect any of the challenges or impacts — negative impacts that we know exist, if they are not addressed in a proactive way from a policy standpoint.”

Sen. Cory Booker, D-N.J., similarly touched on the need for oversight of AI systems in the vein of civil rights and discrimination. Speaking during an Axios discussion, Booker doubled down on the need for scrutiny in algorithmic decision-making and the impact on Black communities.

“With the ... transformative impact AI is going to have, we as policy-makers especially should be asking questions about its impact upon a diverse nation,” Booker said on Wednesday. “Will [this] help us to be better in a multicultural democracy? Or will it serve to further exacerbate divisions and disadvantage?”

Source: [\(NextGov\)](#)

USDA’s Equity Commission Urges ‘Sweeping and Generational Change’

The Agriculture Department has new guidance from its equity commission, which delivered over 60 [recommendations](#) to the department late last week to improve how it works with farmers and ranchers, delivers nutrition assistance, supports rural communities and more.

The goal of the independent equity commission, established in 2022, was “to identify additional steps for embedding equity into USDA’s policies, practices and processes,” Ertharin Cousin and Arturo Rodriguez, the co-chairs of the commission, wrote a letter to the secretary included in the report.

The report states that inequitable past practices by USDA continue to impact Americans today, citing historical policies and eligibility requirements that didn’t recognize Indigenous practices, made it harder for small and mid-sized producers to compete, displaced Black farmers, excluded farmworkers from benefits like overtime and more.

“Historic injustices have created barriers to access to USDA programs which have caused present day challenges regarding wealth disparity, heirs’ property issues, lack of awareness and use of innovative technology and relatively smaller farm sizes,” the report reads. “Unfortunately, some individuals who have interacted with USDA have come away with the belief that discrimination, bias, or unfairness played a role in limiting their access to services and benefits.”

Among the recommendations are some the commission says will help the department institutionalize a focus on equality, including by designating an executive-level career staffer to be responsible for language access in Agriculture's programs and services — an issue that's already a focus under a language access [plan](#) the agency issued last November.

The commission also wants Agriculture to put in place a routine customer feedback loop — something the department doesn't have right now, its chief customer experience officer told Nextgov/FCW last summer— and focus on supplier diversity in its contracting programs.

The report also focuses on Agriculture's Farm Service Agency loan programs because of the agency's role as “an entry point for those seeking assistance from” the department, the report notes, offering recommendations like plain language improvements and flexibility around the timing and processing of loans.

Tech improvements are also featured among the recommendations: The commission urges Agriculture to use Technology Modernization Funding to revamp Rural.gov as a way to consolidate information about the complex mass of programs meant for rural communities.

The commission did not limit its recommendations to just the agency itself, as some will also require action from lawmakers to be implemented.

Among the recommendations for lawmakers, one focuses on the Supplemental Nutrition Assistance Program — or SNAP — urging Agriculture to “seek legislative authority to hold states accountable for barriers to access and require states to develop processes for beneficiaries to be involved in program and systems design and evaluation.”

The commission also recommends that Congress change policies limiting access to nutrition programs based on things like immigration status.

The commission's new report isn't the only equity agenda item for Agriculture, as the agency recently released an [updated equity action plan](#), as required by a [2023 Biden executive order](#).

“USDA is committed to improving access to our programs, equipping people with the resources they need and improving America's food system to create more, better, and

fairer markets for producers and consumers alike,” said Secretary of Agriculture Tom Vilsack in a statement about the plan.

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

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Tier I

Agencies Need to Beef Up Sexual Harassment Training for Employees, GAO Says

A government watchdog agency has found key gaps in federal agencies’ support to training programs aimed at preventing incidents of sexual harassment in the workplace.

Federal agencies are required to address incidents of sexual harassment both via complaints before the Equal Employment Opportunity Commission and their own internal investigation enforcement programs, and they are required to provide training to employees on sexual harassment at least biennially. A 2021 survey by the Merit Systems Protection Board of nearly 4,200 federal workers found that 12.6 percent of respondents reported that they had experienced sexual harassment in the workplace within the last two years.

A Government Accountability Office report published Monday found that select federal agencies and Defense Department components frequently have only partially implemented an array of best practices relating to sexual harassment training, and few if any of those agencies surveyed routinely evaluate the effectiveness of existing training.

“All seven DOD components and six other federal agencies require their employees to complete some sexual harassment prevention training,” GAO wrote. “However, none of them have fully incorporated GAO and EEOC management practices to enhance the effectiveness of their training content and the implementation of such training. They also do not know if their training needs improvements because they have not developed and implemented plans to evaluate its effectiveness.”

Along with the Defense Department, GAO evaluated the harassment training programs of the Interior and State departments, General Services Administration, Federal Deposit Insurance Corporation, Security and Exchange Commission and the Environmental Protection Agency.

While the agencies and Defense Department subcomponents all reported some compliance with the need to revise and update training when needed to implement new

laws or policies, other elements of successful harassment prevention training programs have been implemented more sporadically, GAO found.

“All seven DOD components at least partially incorporated the practice of revising and updating training as needed, but officials from only one component stated that a portion of its training was developed using social science research on harassment and retaliation—a practice designed to help ensure relevant and effective content,” the report stated. “[Similar] to what we found with the DOD components, all six agencies at least partially incorporated the practice of revising and updating training as needed. However, none of the agencies incorporated the practice of conducting training in smaller groups to foster more employee engagement and participation.”

But the chief problem with the agencies’ harassment prevention training is their failure to routinely evaluate the effectiveness of training, GAO found.

“Training evaluation can identify and highlight emerging and best practices, which in turn can help develop employees and improve agency performance,” GAO wrote. “Furthermore, data collection and analysis plans can guide agencies in assessing the effectiveness and efficiency of training by outlining clear goals about what the training is expected to achieve and agreed-upon measures to ascertain progress toward those goals . . . Evaluation is essential for organizations to know how well training is working and consider how it might be improved.”

But the agencies surveyed in the report cited difficulty measuring training’s effectiveness and a lack of resources to devote to evaluation and revision of existing training programs. And officials at EPA suggested that evaluating its training program was unnecessary because sexual harassment is “not pervasive” at the agency, an argument GAO discounted due to the fact that instances of sexual harassment often go unreported.

GAO issued recommendations to each agency and Defense Department component to develop and implement plans to evaluate their existing sexual harassment prevention training programs for potential deficiencies, along with an additional recommendation to the Pentagon’s Office of Diversity, Equity and Inclusion and undersecretary for personnel and readiness to develop a plan to better oversee the training programs of department components. Each agency cited in the report agreed with its applicable recommendation, though Defense Department officials only partially concurred with the final recommendation.

“DOD also noted that it partially concurred with [the last] recommendation because the Office of the Under Secretary of Defense for Personnel and Readiness’ oversight responsibilities pertain to DOD sexual harassment prevention policy, not implementation

of workforce training, which is a responsibility of the DOD components,” GAO wrote. “[As] noted in our report, our recommendation is specifically focused on the development and implementation of a plan to facilitate ODEI’s execution of its oversight responsibilities relative to the components’ sexual harassment prevention training. The recommendation does not address the implementation of this training.”

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

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Tier II

One Agency’s Trump-era Plan Included Stripping Protections from 68 Percent of its Workforce

A tranche of newly publicized documents stemming from the Trump administration’s abortive effort to strip thousands of federal workers of their civil service protections suggests that the plan to make employees in policy-related positions was even more widespread than initially indicated.

In the waning months of the Trump administration, the then-president signed an executive order creating a new classification of federal jobs called Schedule F, reserved for jobs involved in policy creation and advocacy or of an otherwise confidential nature.

Each federal agency was expected to scour its organizational charts and submit lists of jobs to the Office of Personnel Management (OPM) to move from the competitive service to the new job category, effectively making the people occupying those roles at-will employees.

Ultimately, no jobs were converted into the new job category before President Biden took office in January 2021 and rescinded Trump’s executive order. But one agency got close: the Office of Management and Budget (OMB) received OPM approval on January 11, 2021, to move 68 percent of its workforce into Schedule F.

The National Treasury Employees Union (NTEU) on Tuesday published [more than 300 pages](#) worth of OMB documents associated with its effort to implement Schedule F, obtained via the Freedom of Information Act. The trove of documents indicates that positions eligible for the new job category could be far wider than initially suggested by the plan’s proponents, as the former president makes its revival a key piece of his campaign to return to office.

As an arm of the White House, OMB naturally would have a higher concentration of employees in positions related to the policy-making and advocacy process. But OMB's submissions to OPM—one dated November 20, 2020, and a supplemental request on January 5, 2021—take a maximalist approach. In addition to policy analysts and attorneys, the office also proposed jobs like statisticians, IT specialists and even office managers and executive assistants.

In some cases, jobs are set for conversion to Schedule F simply based on the employee's proximity to high-ranking policy officials. And in others, the positions are slated for conversion because the employees work on technical systems that other officials then use to create policies.

"Because the position's duties involve, among others, building consensus around [U.S. Digital Service] strategies and goals, developing strategic partnerships, working with senior officials, acting as an agency spokesman and serving as a member of policy-making projects and groups, the position meets the element of 'substantive participation in the advocacy for or development or formulation of policy,'" OMB wrote in reference to a recruiter job within the U.S. Digital Service.

NTEU National President Doreen Greenwald told reporters Tuesday that the newly uncovered documents show just how destructive a revival of Schedule F could be if scaled across the federal government.

"The bottom line is, looking at OMB's list, they stretched the definition of 'policy-related' to the point of absurdities," she said. "Under these broad definitions, tens of thousands in every agency could be swept up in this, including many GS-12s and below. They tried to convert as many employees as possible regardless of their duties, just to make it easier for them to fire. If employees moved to Schedule F are removed entirely, they'll be replaced by unqualified partisans, or they'll stay knowing they can be fired at will, while we're left with malfunctioning agencies and the rapid deterioration of the merit-based civil service."

Don Kettl, professor emeritus at the University of Maryland and a former dean of its School of Public Policy, said he was struck by how widely Trump's OMB interpreted the definition of policy-related work.

"My mind went back to Sharpie-Gate, and if you look at that incident, you can see the kind of risks that could come through in the process we're talking about," he said. "You can imagine some people who are not going to be included, like air traffic controllers

and TSA workers and maybe border guards, but in the IRS how deep might it go? Or the people in Social Security calculating benefits? And that dividing line could always be subject to change.”

He also noted the apparently cursory review process OPM undertook before approving all but four jobs—all presidential management fellows, which are already outside of the competitive service—for conversion to Schedule F. OPM’s approval was dated January 11, 2021, less than a week after OMB’s supplemental request. Given how quickly—and quietly—OPM’s approval came, Kettl warned that many feds could be fired, or threatened with firing without much public attention.

“What kind of recordkeeping and data will be available on exactly who is put in Schedule F and who might be dismissed?” he asked. “It would be insane operationally to replace all 50,000 [as proposed by its proponents] immediately, but say there are 5,000, some small fraction. Will we know who, in real-time, and be able to assess the implications of all this?”

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

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Tier III

White House Beefs Up Childcare Block Grants

Childcare is expensive. It costs a family nearly \$11,000 a year per child, an expense that can strain family budgets and limit employment options for parents.

For low-income families, the price is especially burdensome. They pay as much as 30 percent of their income on childcare. But under a new federal rule announced Thursday, February 29, the White House is hoping to reduce the financial strain for many of these families by strengthening the Childcare and Development Block Grant, or CCDBG, program.

“I am proud to announce that President Joe Biden and I are lowering the cost of childcare for more than 100,000 working families who receive federal childcare assistance,” Vice President Kamala Harris said in a video posted on X. “For these families, we will cap the total amount you have to pay at 7 percent of your income, which will save you on average \$200 a month.”

The CCDBG program, which supports more than a million children, sends funds to states to use to lower the cost of care for families and raise childcare provider wages, among other things. Every state participates in the program.

The move comes as childcare costs in the U.S. have increased more than 30 percent since 2019. Inflation has driven up childcare costs, while a loss in federal funding is also taking a toll. During the pandemic, the federal government invested more than \$52 billion to help keep childcare providers in business and ensure that low-income families could still access care. But the majority of those subsidies have ended.

In addition to capping childcare costs for participating families to no more than 7 percent of their income, the new rule also encourages states to go further and make childcare completely free for families at or below 150 percent of the federal poverty level and for those with disabled, homeless, or foster children. The Department of Health and Human Services has “long encouraged” states to set copayments at or below 7 percent, but only 18 states do so, according to the White House.

Capping copayments for CCDBG families will save a North Carolina family of three earning \$44,000 close to \$110 per month, for instance. In Wisconsin, the same size family earning \$68,000 could save as much as \$635 per month.

The approximately 140,000 childcare providers with CCDBG families as clients will also get more financial stability as a result of the new policy. The rule requires all states to pay home-based and center-based CCDBG providers on-time, which will make it easier for providers to hire necessary staff. It will also pay providers based on enrollment, rather than attendance. Advocates argue that attendance-based payment structures disincentivize providers from taking low-income families, who may have inconsistent attendance due to work stoppages, transportation, or other reasons.

Currently, only eight states pay CCDBG childcare providers on-time, and only half of states pay those providers based on enrollment.

The new rule also encourages states to create and accept online enrollment applications. The reasoning is that this would make it easier for families to access CCDBG subsidies. “Some families currently face barriers in accessing CCDBG because of challenging enrollment processes and paperwork burdens,” according to the White House. “For instance, in nearly one-third of states, families still use paper applications to access childcare assistance.”

With the finalized rule, states are also encouraged to adopt a policy of presumptive eligibility for childcare subsidies, which would allow families to receive temporary financial childcare assistance while the state verifies their eligibility. This change will

considerably lower the burden for families to receive the subsidy, particularly for those experiencing homelessness.

Only six states offer presumptive eligibility to families, and 37 have a policy for online enrollment.

“I strongly believe that when we lift up the status and the economic status of families, we lift up the economic status of communities, our entire economy, and our entire nation benefits as a result,” Harris said back when the rule was [first proposed in July](#).

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

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