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**Fiscal Year (FY) 2021 Appropriations Update – House Appropriations Committee Passes FY 2021 Labor-HHS Bill**

On Monday, July 13, the House Appropriations Committee passed their FY 2021 Labor-HHS Appropriations bill by a vote of 30-22. A copy of the bill, report and a webcast of the markup can be accessed [here](#).

Included in the legislation is a \$100 million increase over the FY 2020 enacted level for SSA's Limitation on Administrative Expenses (LAE) account. Per the Committee Report, this recommended level of funding is \$381.528 million below the President's FY 2021 Budget Request. The Committee included the following language related to the recommended increase:

*The Limitation on Administrative Expenses (LAE) funds the administrative and operational costs for administering the Old Age and Survivors Insurance, Disability Insurance, and Supplemental Security Income programs, and associated costs for support to the Centers for Medicare and Medicaid Services in administering their programs.*

*The Committee remains concerned about the excessive waiting times, benefit delays, and service problems faced every day by Americans who are trying to access their earned benefits. The recommendation includes an increase of \$102,000,000, which combined with new funding provided in the Further Consolidated Appropriations Act, 2020 (P.L. 116–94), provides over \$200,000,000 for SSA to replace losses in field offices, teleservice and processing centers, and build additional capacity so that offices can function at appropriate levels.*

*The Committee acknowledges SSA's progress in reducing excessive and harmful delays for people waiting for a hearing before an Administrative Law Judge, which has been facilitated by \$390,000,000 in dedicated funding provided in fiscal years 2017 through 2020. The Committee understands that SSA anticipated eliminating its hearing backlog in fiscal year 2021, but is concerned that the effects of the COVID–19 pandemic on SSA's service delivery may lead to new delays. The bill includes \$50,000,000 for activities that will eliminate the disability hearing backlog in fiscal year 2021.*

*The bill continues to provide \$45,000,000 in dedicated funding for Information Technology Modernization, with \$4,000,000 of such funding available for IT Modernization efforts of the SSA Office of Inspector General.*

*In addition, the CARES Act (P.L. 116–136) included \$338,000,000 for SSA, with \$300,000,000 to support essential telework, communication needs, and salaries and benefits of Federal employees impacted by office closures, and \$38,000,000 for the purposes of issuing emergency assistance Economic Impact Payments.*

Additional language of interest from the Committee Report related to the LAE account:

*Administrative Appeals Hearings.—The Committee considers the Notice of Proposed Rulemaking (NPRM) "Hearings Held by Administrative Appeals Judges of the Appeals Council" (84 Fed. Reg. 70080, December 20, 2019) to be an unjustified erosion of due process for individuals who are appealing a denial of Social Security or SSI benefits. As part of a beneficiary's right to an impartial appeal process, an on-*

*the-record hearing, conducted by an impartial judge with decisional independence, must be conducted in accordance with the Administrative Procedure Act to ensure due process, without agency interference, or political bias. Replacing this appeals step and the role of independent administrative law judges (ALJs) with SSA employees, jeopardizes the independence of the process. In light of the harm that would be caused by this policy change, the Committee strongly urges SSA to immediately withdraw this proposed rule.*

*Administrative Law Judge Selection.—The Committee is deeply concerned about the impact of Presidential Executive Order 13843 on the judicial independence of administrative law judges (ALJs). The Order eliminates the competitive hiring process for ALJs and has the potential impact of converting independent adjudicators to political appointees, undermining longstanding principles of fair and unbiased consideration of matters of vital importance to the American people. ALJs must be independent decision-makers and it is the Committee’s expectation that SSA maintain the highest standards for appointment of ALJs. The Committee directs the Administration to develop and submit to the Committees on Appropriations, Ways and Means, and Oversight and Reform, a report on hiring processes, to include an explanation of the process, qualification standards, and criteria used to recruit, evaluate and hire ALJs.*

*Continuing Disability Reviews.—The Committee is disappointed that the Notice of Proposed Rulemaking (NPRM) “Rules Regarding the Frequency and Notice of Continuing Disability Reviews” (84 Fed. Reg. 63588, November 18, 2019) proposes a massive increase in CDRs without any evidence of its necessity or appropriateness. The Committee believes the NPRM is a harmful and unjustified attempt, under the guise of fiscal prudence, to deprive many people with disabilities of the Social Security, SSI, Medicare, and Medicaid benefits that they are eligible for and rely on for survival. The Committee directs the Administration to carefully review the comments received on this proposed rule, which were overwhelmingly negative. The Committee strongly urges SSA to withdraw the rule and instead use its limited resources to restore strong customer services and address the backlogs and other service issues that have become too common across the agency in recent years.*

*Disability Payments.—The late payment of Social Security Disability Insurance claims creates an excessive burden on claimants waiting for their Social Security Disability Insurance back pay. The Committee directs SSA to work with the relevant stakeholders to evaluate national and regional payment trends and implement changes to its disability payments process that would ensure that SSA pays all Social Security Disability Insurance claims within 60 days of receiving a fee request pursuant to 20 CFR 404.1725. The Committee further directs SSA to report to Congress within 90 days on the specific policies SSA has implemented, or has considered, to streamline the disability payments’ process and to ensure consistent timeliness of payment across all local service areas.*

*Electronic Consent Based Social Security Number Verification System Implementation.—The Committee supports continued implementation of the Electronic Consent Based Social Security Number Verification system (eCBSV) in accordance with section 215 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115–174). The Committee notes the draft user agreement published in the Federal Register (Volume 85, Number 47) on Tuesday, March 10, 2020 presents requirements that may limit the utility of the eCBSV as a tool to fight identity fraud and protect consumers, including minors. The Committee encourages SSA to be consistent with the E–SIGN Act with regards to electronic consent and to keep the Committee informed of any delays to timelines for implementation.*

*Information Technology.—The Committee continues to monitor the Information Technology (IT) Modernization Plan and encourages SSA to focus on improvements to customer service and efficiency improvements for customers and employees as it makes updates to the plan. The Committee requests an update of the plan referenced under this heading in House Report 114–699.*

*Labor-Management Relations.—The Committee is concerned that persistent labor-management relations problems are undermining the vital work of the SSA. Within 180 days of enactment of this Act, SSA is directed to submit to the Committee a plan, developed in consultation with labor organizations representing its workforce, to improve workplace morale and to strengthen employee recruitment and retention, to better serve the American people.*

*Mailing Paper Statements.—The Committee is concerned that SSA continues to not mail Social Security benefits and earning statements to all contributors aged 25 and older not yet receiving benefits, in accordance with Section 1143 of the Social Security Act (42 U.S.C. 1320b–13). The Committee directs the Administration to continue to include in its annual Congressional Budget Justification the estimated costs for mailing paper statements to all contributors aged 25 or older and not yet receiving benefits, as required by law.*

*National Medical Evidence.—The Committee encourages SSA to consider additional innovations and technological resources that could efficiently and effectively support state Disability Determination agencies and the Office of Hearings and Appeals in medical evidence collection, data analytics, and quality assurance.*

*Pilot Program Metrics.—The Committee appreciates the information on pilot program metrics provided in the fiscal year 2021 Congressional Budget Justification. The Committee expects that, prior to undertaking any new pilots, SSA will ensure that it has developed a research design that identifies a clear purpose for the pilot, key objectives and an evaluation plan, including adequate metrics to determine the pilot's effectiveness. Metrics should be specific, quantifiable measures—accompanied by specific goals for the measures—that can be used to evaluate success. The Committee reminds SSA that it uses the term “pilot” to encompass all efforts to test the effects of process changes, including “initiatives” and “tests.”*

*The Committee directs SSA to include in its fiscal year 2022 Congressional Budget Justification a description of all pilots conducted in fiscal years 2020 and 2021, or proposed for fiscal year 2022; the purpose and key objectives of each pilot; its start date and timeline; which SSA components are involved in the pilot; the evaluation plan; the measures or metrics the SSA will use to evaluate the pilot; and a specific goal for each metric that will be used to determine the pilot's effectiveness. All SSA pilots should be included in the justification, including those undertaken as part of the Compassionate and Responsive Service (CARES) plan and in other parts of the agency. The justification does not need to include programmatic demonstrations, such as those involving changes in program eligibility rules.*

*Reconsideration.—The Committee continues to be concerned about the delays that may result due to SSA's decision to reinstate reconsideration in ten States despite bipartisan and bicameral concern for reinstatement. The Committee's concern is heightened as the COVID–19 pandemic creates new service delivery challenges for the State Disability Determination Services agencies. The Committee looks forward to receiving and reviewing the plan requested under this section in House Report 116–62, and urges SSA to keep the Committee informed of any systematic process delays or feedback received from the States as reconsideration is reinstated.*

*Replacement Card Fees.—The Committee continues to reject the proposal to charge a fee to replace a lost or stolen Social Security card and directs the Administration to not move forward with this proposal.*

*Report on LAE Expenditures.—The Committee continues to request that the data referenced under this heading in House Report 114–699 be included in future budget justifications. In addition, the Committee requests the fiscal year 2022 Congressional Budget Justification include a historical table of costs and fiscal year 2022 requests for personnel and benefits, by major SSA component to include Operations*

(field offices, teleservice centers, processing centers, and regional offices); Office of Hearings Operations; Systems; Office of Analytics, Review, and Oversight; and Headquarters.

*State-Reported Data.*—The Committee believes that accurate, timely and complete death data is important for the integrity of public programs, and that allowing all Federal agencies to have secure access to complete death data for program integrity purposes would help detect and prevent improper payments. The Committee recognizes that although SSA has access to confirmed death data through negotiated data-sharing agreements with States, and shares such data with certain Federal agencies, current law prohibits sharing such data more widely. The Committee supports efforts of other Federal agencies to obtain this data, and urges SSA to accommodate any Office of Management and Budget (OMB) requests for consultation on how other agencies can obtain this State-reported data.

*Telework.*—The Committee stresses its long-standing support for well-managed telework programs in the Federal workplace and is concerned about recent reductions in telework at SSA. Within 60 days of enactment of this Act, SSA is directed to submit a report to the Committee to explain each decision by SSA to reduce telework availability on or after October 1, 2019, which shall include any metrics used by SSA to reach these determinations, and an impact assessment on human capital in hiring and retention, increases to transit and parking subsidies, office space and utility needs changes, lost productivity and morale decline due to lost telework. In addition, the Committee notes that SSA could have been better prepared to ensure continuity of operations and deal with the challenges associated with working from home during the COVID-19 pandemic if it had a clearly defined and operational telework program in place for its employees. The Committee directs SSA to evaluate the use of telework during the COVID-19 pandemic, assess the feasibility of telework in all components of SSA, and provide to the Committee a report on such evaluation and assessment within 60 days of enactment of this Act.

*Video Hearings.*—The Committee appreciates that SSA preserved an individual’s right to an in-person hearing before an SSA Administrative Law Judge (ALJ), rather than pursuing the original proposal in Notice of Proposed Rulemaking “Setting the Manner for the Appearance of Parties and Witnesses at a Hearing,” (83 Fed. Reg. 57368, November 15, 2018). The Committee understands that during the COVID-19 pandemic, SSA is also providing claimants with the option of a telephone hearing, or a postponement if the individual would prefer to wait until an in-person or video hearing is available. The Committee expects that once the COVID-19 pandemic ends SSA will resume in-person hearings on the same basis as prior to the pandemic. The Committee continues to encourage SSA to work with claimants who need additional flexibility by allowing a claimant to choose to use video hearings on a voluntary basis or to have an in-person hearing or proceeding if the party chooses to do so.

*Vocational Factors.*—The Committee believes the Final Rule, “Removing Inability to Communicate in English as an Education Category” (85 Fed. Reg. 10586, February 25, 2020) will unjustifiably deny Social Security and SSI benefits to nearly 100,000 older workers with long-term or fatal medical impairments who are severely limited in their functional capacity and who cannot communicate in English. The Committee is disappointed this rule was finalized without regard to the overwhelming opposition and significant concerns raised in public comments and from Members of Congress.

*Social Security Advisory Board* The Committee recommends \$2,500,000 for the Social Security Advisory Board (SSAB), equal to the fiscal year 2020 enacted level and \$200,000 below the fiscal year 2021 budget request.

*User Fees* In addition to the other amounts provided, the Committee recommends \$136,000,000 for administrative activities funded from user fees. Of this amount, \$135,000,000 is derived from fees collected from States that request SSA to administer State SSI supplementary payments. The remaining

*\$1,000,000 is derived from fees charged to non-attorneys who apply for certification to represent claimants under titles II and XVI of the Social Security Act.*

*Continuing Disability Reviews and Redeterminations The Committee recommends \$1,575,000,000 for program integrity activities. This includes the maximum cap adjustment authorized in the Budget Control Act. The Committee continues bill language allowing for the transfer of up to \$11,200,000 to the Office of the Inspector General for the cost of jointly operating co-operative disability investigation units.*

Next week, House leaders plan to bundle a four-bill spending package for passage on the floor, including the Agriculture, State, Foreign Operations, Interior and Mil-Con VA bills. The House is then expected to pass a second minibus the week of July 27, which could include the Labor-HHS bill, although the makeup of that package has not yet been announced. The House is significantly ahead of the Senate, which has not released any of its spending measures to date. No Senate markups are expected in the near future as there remain disagreements about which amendments Democrats can offer. We will continue to communicate with the Hill regarding SSA's administrative funding needs and provide updates.

### **COVID-19 Update – Senate Developing Phase 4 Legislation**

Senate Majority Leader Mitch McConnell (R-KY) has told Senators they should expect to quickly begin consideration of the Senate Phase 4 legislation when the chamber returns on July 21. Committee staff are currently working on developing multiple bills, but at this point, Republicans and Democrats are drafting separate partisan bills. The Senate Republican bill, according to Leader McConnell, will include liability protections and support for “kids, jobs, and health care.” White House Economic Advisory Larry Kudlow also advocated the Senate Republicans include another round of \$1,200 per individual payments to lower income families. Details of the Democratic bill remain unknown at this time. Neither partisan bill is expected to garner the 60 votes necessary to advance. We have learned that the expectation among Senate staff is that once both Republican and Democratic efforts fail, leadership will instruct them to begin working on a compromise bill which can pass the chamber prior to the August recess.

Meanwhile, on Tuesday, July 14, House Speaker Nancy Pelosi (D-CA) said she will delay the start of the chamber's August recess if necessary, in order to complete work on the next COVID-19 response package.

### **NCSSMA Twitter Account**

Reminder: NCSSMA has a Twitter account and we encourage you to join in and follow us! You can view and follow our page on your **home computer** at <http://twitter.com/NCSSMAORG> or your **personal mobile device** at <https://mobile.twitter.com/NCSSMAORG>.

Greystone Group LLC  
3303 South Wakefield Street  
Arlington, VA 22206  
202-547-8530  
Contact: Rachel A. Emmons  
E-mail: [rachele@greystone-group.com](mailto:rachele@greystone-group.com)