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TO: NATIONAL COUNCIL SSMA OFFICERS AND EXECUTIVE  
COMMITTEE

RE: Legislative Report #16

**PROPOSED PERSONNEL FLEXIBILITIES:**

Isn't there an old saying that goes, "I have seen the future and it is the same as the present, only more so."

**IRS Reform Bill and Restructuring:**

The bill which easily passed in the Senate last week would give taxpayers more protection and place the burden of proof more often on the government than the taxpayer (at least for taxpayers who keep full, accurate records and cooperate with the IRS during audits). It would establish an IRS oversight board, having six private-sector members, the Commissioner of IRS, the Secretary of the Treasury Dept., and the President of the National Treasury Employees Union. The management associations representing IRS employees, which we supported in their efforts, were unsuccessful so far in obtaining representation on that board or in modifying the power of the union, which would vote on - and therefore could effectively veto -- personnel matters.

With a view toward a dramatically modified IRS, the Senate bill would give the IRS even greater flexibility than would the House bill regarding the management of IRS employees. The Secretary of the Treasury could create a new performance management system (must enhance individual accountability by setting "retention standards" and must take action when those standards are not met; also authorizes \$10,000 to \$25,000 performance-based awards without OPM approval). The Secretary could create one or multiple pay bands for the IRS workforce, in accordance with guidance from OPM. IRS buyout authority would be extended through 2002. A new group-ranking system could be established to categorize job applicants into quality groupings, with management discretion re hiring from within the highest-ranked group (rather than individual ranking and required selection from the top three). Some provisions of the Senate bill could be modified during House-Senate conference prior to final passage.

Many of the proposed personnel flexibilities make sense. It remains to be seen how they would work out in practice. But it is clear is that what is happening with the IRS is part of a growing movement toward increased federal agency discretion and flexibility in personnel management.

NCSSMA is joined by many other professional and management associations in advocating

that flexibilities need to be checked by protections for the rights and basic benefits of individual employees and by safeguards for the integrity and quality of the civil service and the values it upholds for the American people.

**The Coalition for Effective Change (CEC)**, of which NCSSMA is an active participant, has issued set of position papers last year which continue to generate some interest on the Hill. Well before the IRS debate became full blown, the CEC expressed serious concerns, about opening the door to agency abuses of discretion unless there were adequate oversight and a set of ground floor criteria. CEC also questioned the authorization of numerous and large demonstration projects without adequate means of measuring success or failure of the projects. CEC noted potential problems of giving the agencies too free a hand with personnel systems. The already-enacted legislation which had given the Federal Aviation Authority wide discretion to develop its own personnel system, for example, had not specified that it must at least follow the merit principles (although indications are that they will voluntarily continue to embrace most of them).

**The National Partnership for Reinvention (new NPR)** has recently briefed the CEC that the Administration hopes to advance legislation more dramatic than previously proposed to create "Performance Based Organizations" of a number of federal agencies. They did not specify which ones; previously PBO proposals were restricted to a handful of small agencies. PBOs separate the policymaking from operational components of an agency, hire a CEO on a performance-based contract to run operations with few restrictions on how he/she does so. The NPR warned that if CEC representatives had problems with the old proposals (which we did -- having to do with public accountability for upholding of laws, undue erosion of a career civil service, etc.) then we would have even greater problems with the next round.

**The Office of Personnel Management** seems to be trying to take a balanced view: how to provide the agencies the flexibilities that they need to deal with a changing mission and a changing workforce while protecting the basic values upheld by the civil service. They are laying the groundwork to allow agencies to tailor pay to different missions, workforces, cultures and technologies, to allow broadbanding (one or more bands in an agency, perhaps different banding schemes for different positions) and flexibility for the timing of advancement (based on performance rather than time); to allow performance assessment based on organizational performance, while maintaining individual accountability; to decentralize recruitment and hiring; and to allow longer non-permanent appointments. They see the current GS system as a default or fall back system only.

Counterbalancing these flexibilities, they are recommending guarantees fair treatment of employees and a guaranteed basic benefit package (unfortunately the content of this is unknown until they complete their comprehensive study of total compensation next year); a merit based system with OPM oversight; more effective labor-management relations and funding for alternative dispute resolution programs. In addition, they would underscore OPM's statutory authority re oversight of agency adherence to "merit principles or their equivalent" and assist and oversee proper implementation of new personnel systems by

working directly with each agency's Human Resource officer.

OPM consulted with the CEC recently regarding their new Human Resource Management initiatives. After reviewing some draft proposals, the NC Executive Committee identified some

specific questions as well as more concerns for me to raise with OPM -- such as

- \* **whether the flexibilities OPM intends will really mean that managers in the field will be better able to manage** -- reducing red tape in hiring, for example. (OPM said this is certainly what they intend.)
  
- \* **partnership needs to be made explicitly inclusive of federal middle managers and professionals** -- we asked for language about the importance of an inclusive partnership in any "labor-management" or "partnership" proposals coming from OPM or anywhere in the Administration. (OPM said they would see what they could do, mentioning the possibility of a new Executive Order which would expand the partnership concept.)
  
- \* **the missing pay/compensation proposal is a critical missing piece**, because whether that piece is perceived as fair by federal employees will color their views, and impact their willingness to trust other aspects of the proposal. (Recall that OPM is taking a look at "total package" compensation relative to the private/non-profit sector for a comprehensive look at "comparability" -- but OPM responded that this won't be finished this year, whereas they will try to move forward with new personnel flexibilities sooner.)
  
- \* **inadequate supervisory overtime pay needs to be addressed in anything coming from OPM on pay.** (OPM career staff said they would take a look at this issue, but noted that under pay banding flexibilities, agencies could build in ways to compensate supervisory employees -- some kind of differential -- which might at least partially address this problem.)

OPM met with unions just last week to obtain their comments and concerns. I hope to learn at next week's CEC meeting what the timetable is for a final set of OPM proposals and what their plans are for advancing them. There is pressure from the Administration and some agencies to get broad-banding authority, expanded demonstration project authority, etc. in place ASAP.

**The Department of Defense** is exerting a great deal of that pressure. DOD also sent representatives to meet with the CEC last month regarding their demonstration project proposal, which they say they realistically believe will cover at least 35,000 civilian employees. They were anxious to tell us that some newspaper reports about the proposed demo had been incorrect. They said it would not mean a loss or diminution of any of the

currently guaranteed non-pay benefits (insurance, retirement). It would, however, put all pay increases at risk, because both annual pay increase funds and award money would be put in a funding pool to be distributed based on performance only. DOD would create multiple pay bands -- different for different professions. The lack of a guaranteed annual pay increase is the element over which unions are most strongly opposing the demonstration project, but prospects look good for DOD moving forward with it. They point out that it is a voluntary demo project -- up to 80,000 employees would be eligible to participate, but they realistically expect fewer than half that number to be employed at components which sign on.

**Contracting out** proposals are also being debated and advanced within this environment of movement toward greater flexibility for agencies. The push is on by House Republicans (who, in turn, are pushed by the Chamber of Commerce) to maximize **contracting-out** by moving legislation requiring the government to allow private sector competition for more and more federal work (all federal work which is not deemed "inherently" governmental -- something for which only a subjective definition seems possible). Even some "moderate" Republicans, such as Chairman Horn of the Government Management Subcommittee of Gov. Reform, have embraced that idea of dramatically expanding contracting out, and Horn plans to act on a revised bill this week (H.R. 716 -- a revised bill intended to bridge previous House and Senate proposals). The Administration has opposed these bills during hearings, but for practical, cost-related reasons, not ideological, grounds.

The current bill remains controversial enough that Republicans are not (or not yet, anyway) completely united behind it in the House, and Senator Stevens, Chairman of the Senate Appropriations Committee, has publicly stated staunch opposition. He said he did not think Congress has an appropriate role in determining whether and which federal government functions could be "contracted out" to the private sector (something akin to the anti-micromanagement position many congressmen use to steer clear of telling SSA how to do its job).

I do not believe an extreme measure such as this one can make it beyond the House floor this year. If it were to be passed in the House, it would remain pending before the Senate as this Congress ends, which would necessitate re-introduction and a repeat of the entire process next year. However, the fact is that only a few Democrat Members of Congress, and no one in the Administration, are raising red flags about the need to maintain a politically neutral, publicly accountable civil service to do the lion's share of the government's business to protect the rights and privacy of the public. The push toward competition between the government and private sector to do the government's work -- perhaps with rules that will favor private contractors -- is harbinger of the future that is more "more so" than it is wise.

Therefore, the OPM proposals, which offer flexibilities balanced by what they believe are "safeguards" -- protection of basic benefits, adherence to merit principles, preserving governmentwide values -- appear as more reasonable, and reasoned, approaches to

advancing change. We are well advised to work with OPM as much as we can as they move forward with their initiative.

**ON OTHER MATTERS:**

**Social Security Subcommittee hearing next week:** Chairman Bunning has decided to expand an upcoming hearing, which had been planned to address the issue of state and local government employees coverage under SSA. The hearing, now scheduled for May 21, will also examine the Government Pension Offset and Windfall penalty. NARFE has been invited to testify, representing a large coalition (of which NCSSMA is a member) advocating amelioration of these offsets. My understanding, however, is that the main reason the Subcommittee has decided to air the offset issues at this time is a finding by GAO that SSA does not obtain correct and comprehensive information on all public employees' pensions and annuities and therefore that some number of them are paid more Social Security than they are entitled to under current law.

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