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DATE: July 13, 1998

TO: NATIONAL COUNCIL SSMA OFFICERS AND EXECUTIVE  
COMMITTEE

RE: Legislative Report #24

Chairman Mica's civil service reform proposals continue to evolve. He has decided to move swiftly, without an additional hearing, by scheduling subcommittee action on Thursday for the bill he will introduce tomorrow or Wednesday. Following is an outline of the latest draft. A major problem with this version is the proposal Mica has included to address the supervisory overtime pay problem. The draft summary now reads:

Review current statute that restricts federal employees' overtime pay to the GS 10/Step 1 level and propose phased approach to increase (at one step per year) overtime pay levels (over five years) for employees currently subject to the cap.

This would mean that in the year 2003 or 2004 (depending on when phase-in began) the cap would reach GS 10 Step 6, falling far short of an adequate correction for the problem. NCSSMA is expressing its objections to each of the Subcommittee members prior to the mark-up this week. Chairman Mica's staff report they do not have cost figures for this proposal, nor for other proposals to raise the overtime cap; however, they cite OPM concerns about cost as one factor in their unwillingness to propose a more significant increase. We are working to have a more favorable amendment improving upon the Mica proposal offered at the mark-up of the bill. Attempts to poll the Subcommittee regarding a vote on an amendment are inconclusive because of lack of certainty about who will attend.

(NOTE: OPM has not yet followed through on its commitment to the Subcommittee to propose a "less costly" alternative to Rep. Davis' overtime bill, H.R. 3956. NCSSMA continues to try to find ways of generating interest and action at OPM, and we are currently seeking the assistance of supportive Members of Congress in that effort.)

There are a number of other controversial issues, and a few less controversial ones, among those in the latest summary from Chairman Mica. The summary indicates that it would:

- \* permit up to 15 simultaneous **demonstration projects** governmentwide and eliminate the restriction that they cover no more than 5,000 employees each; limit "impact and implementation bargaining" and prohibit bargaining over wages and benefits.
- \* prohibit appointed employees, noncareer SES and Schedule Cs from **competing for career positions** until a change in administration; repeal ability of White House staff to convert to career positions based on 3 years' service in Exec. Office.
- \* authorize monetary penalties and employment debarment for former federal employees convicted of **Hatch Act violations** during their federal employment
- \* require agencies to report on appropriated funds used to subsidize **union activities**.  
(modified from earlier version which would have restricted use of official time)
- \* restrict federal employment of those who have been convicted of use, possession or sale of illegal **narcotics**; felony narcotics convictions after enactment would be the basis for termination of current federal employees; such felony convictions within ten years (and misdemeanor convictions within five years) of application shall serve as a basis for exclusion from federal employment.
- \* restrict ability of arbitrators to impose mandatory **disciplinary measures on federal managers**  
(i.e., language which attempts to ensure that accused managers have opportunity to present their case fairly)
- \* **performance management**: establishment of a separate retention register for employees who receive less than fully successful performance ratings (i.e., less retention consideration under RIFs rather than former proposal to change weights of ratings for RIF purposes); place a moratorium on any agency which has not already done so moving to a two-tier (pass/fail) performance management system until OPM evaluates those in place (rather than earlier proposal to prohibit them altogether); strengthen ability of managers to withhold within-grade increases and eliminate appeal to MSPB; require only one Performance Improvement Plan before removal action can be taken; provide for group performance/incentive awards for team projects; allow employees in agencies facing workforce reductions to volunteer for RIF.
- \* give ALJs annual increases the same as GS employees (they are currently tied to Congressional/SES pay raises); pay SSA's appellate judges at least equal to the ALJs whose cases they review.
- \* require employees to take **mixed case appeals** to the MSPB; extend MSPB appeal rights to FBI agents.

\* establish a **retirement investment fund**, run by the FERS Thrift Plan Board, for a portion of all federal retirement receipts in order to increase the government's assets. No affect on federal employee benefits. (Opposed by several unions on basis of increased risk to funds; Thrift Plan Board has opposed taking over such a responsibility.) Create a portable retirement option for pol. appointees and congressional staff.

\* authorize employees to participate in **TSP** when employment begins; new hires to roll over private sector accounts; federal employees to contribute up to the IRS limit (currently \$10,000)

\* Miscellaneous issues include: additional leave time to serve as an organ donor; guarantee of child health insurance benefits under court order.

Some proposals (such as demonstration projects regarding benefits, mandated Alternate Dispute Resolution and changes to federal employees' workers' comp) have apparently been dropped; others may yet be added. Chairman Mica hopes to push some version of his bill through the Committee process for a vote on the House floor despite the very little time left.

Even were that to happen, however, **the Senate, will definitely not take up a comprehensive bill.** The Governmental Affairs Committee is not seriously analyzing all aspects of Mica's proposal, because they do not intend to take up anything other than the MOST non-controversial portions, such as the OPM proposals regarding child health insurance benefits under court order.

However, NCSSMA will submit comments to the full House Government Reform and Oversight Committee and to the Senate Governmental Affairs Committee after review of the provisions which are included in the introduced bill and reported by the Subcommittee. In the meantime, we are focusing on the need to improve Chairman Mica's proposal on overtime pay. While this bill is not destined for enactment, it will not help us in our future work on the overtime issue if a proposal which we do not support is favorably reported at any point in the process.

Senate Appropriations mark-ups are moving along once again, with Treasury/Postal scheduled for this week. However, mark-up of the Labor/HHS/Ed bill, which contains SSA's FY 99 funding for administrative expenses, has been delayed until September. The delay is not due to the ill health of Chairman Specter (who has returned to work after bypass surgery much more quickly than expected) but rather due to the unresolved funding decisions for programs in this bill. SSA's funding, while it is not contentious and could realistically be expected to be close to the House level, can be impacted as available funds are shifted among other programs.

**Senate Finance Hearing on SSI and Children:**

Sen. Conrad (D-N.D.) and Sen. Breaux (D-La) joined Chairman Chafee (R.I.) to hear testimony from Commissioner Apfel and from a variety of advocacy organizations regarding the new disability standards for children. Chairman Chafee opened by stating his concern for families, the problems involved in child care for disabled children if both parents are "forced" into the workforce because of loss of SSI benefits for a child, and the possibility that a child may be forced into an institution if the family loses benefits which would have permitted keeping that child at home. Sen. Breaux noted that the current Congress is taking a closer look at implementation of the welfare reform bill enacted during the last Congress, with special concern for how changes are affecting the daily lives of people.

Comm. Apfel said "we cannot imagine" the challenges and burdens of the families of disabled children, some of whom live in poverty. He pledged a "top to bottom review of the 1996 childhood disability legislation," which review is already underway. He noted three areas of focus: mental retardation diagnosis code problems; quality of case processing; and adequacy of notices. He reported that SSA is re-writing to those families in which a child had benefits ceased; and that 3/4 of them would have undergone at least two reviews before the process is completed. Regarding cessation accuracy questions, he said that those without mental retardation codes were the most likely to be inaccurate, that "continuance cases" would be reviewed in 1999, and that SSA was educating families on how to appeal and how to request continuation of benefits while appealing -- special notices went to 63,000 in February plus 12,000 who had requested reviews but not a continuation of benefits. He said SSA was conducting additional training regarding appeals and establishing "unprecedented safeguards" to assure consistent adjudication. He said the Administration supported a proposal which would keep children eligible for Medicaid benefits.

Chairman Chafee and Sen. Breaux both raised concerns about the age 18 cutoff. Apfel responded that the threshold questions to meet the disability test are more lenient for older applicants. At age 18 childhood beneficiaries are required to pass the adult test, which he believes is appropriate because they are no longer school age but the age at which most people are "entering the world of work." But he suggested that beneficiaries and their families need to be better prepared for the age 18 change.

There was a lengthy discussion of the breakdown of those for whom benefits were ceased. Apfel said that of the one million total, 722,000 were unaffected by the legislation, many of these were mental retardation cases. Of those who were cut off, 10% were due to income changes and 90% were due to the tougher eligibility standards (with a further breakdown of the 90%: 70% mental/emotional/learning disabled and 20% physical impairments).

Asked about differences among the states in cessation rates, Comm. Apfel said it related in part to how strictly states were adhering to the old standards to begin with (seeming to suggest that states which had been more lax in applying the old standards had higher cessation rates when the new standards were more rigorously applied than those states which had been more rigorous in the first place).

Sen. Conrad expressed concern about what SSA was learning about "who these kids are" in its top to bottom review, saying from what he was hearing about individual children, he believed that many of them were clearly disabled children who should still be entitled to benefits. A panel of advocacy organizations attempted to underscore that message, offering examples of children who had benefits ceased because SSA determined there was only "marked" delay in one area even though there was also "significant" delay in three of four other areas, etc. The suggestion was made that SSA was not using "common sense" and not looking "at the whole child" even though the statute required that they look at the "combined effects of impairment." There were stories of children who did not meet the criteria for Medicaid and had used their SSI benefits for health insurance, doctor bills, orthotics, etc. The recommendations coming out of this panel were for less restrictive regulations, increased family understanding of their rights, better notices and better training of those who handle these claims/reviews (including more emphasis on multi-lingual needs).

Prior to the hearing, Chairman Chafee and Sen. Breaux wrote jointly to Comm. Apfel asking that he protect the SS and SSI disability programs from "unnecessary changes that would further reduce access to benefits by individuals who have very significant impairments." They expressed concern that SSI would be further cut and SS disability changed "under the guise of preventing fraud or streamlining administrative processes." There are draft proposals reportedly being considered by the House Ways and Means Human Resources Subcommittee which Chafee and Breaux believe would go beyond the 1996 changes and create even higher standards for children to qualify for benefits, particularly affecting children with mental retardation or cerebral palsy. Finally their letter

refers to "other proposals that would substantially alter the manner in which disability decisions are made for all applicants. These include provisions regarding the weight given to medical evidence and the value of the evidence from a treating physician versus a consulting examiner." They urged the Commissioner "to exercise great caution when considering these and othe proposals that appear to address concerns about possible fraud, without any factual documentation of problems."

A hearing on SSI fraud which had been scheduled by the Ways and Means Human Resources Subcommittee had been postponed. I do not have copies of the draft proposals to which Chafee and Breaux referred but should learn more when the re-scheduled hearing is held. There is also a new report pending from GAO on SSI program integrity.

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