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DATE: August 12, 1998

TO: NATIONAL COUNCIL SSMA OFFICERS AND EXECUTIVE COMMITTEE

RE: Legislative Report #28

August recess is underway, and the legislators will be among you rather than in D.C. each week until early September. Shorter office hours and the accommodation of staff vacations during this month contribute to the sense of quiet on the Hill. During this period, I will review the status of pending legislation, visit with Hill contacts, deliver letters of appreciation and thanks to legislators who have helped address NCSSMA concerns and advance federal employee interests generally, and organize for the last month of the 105th when Congress resumes. I also plan to follow up with OPM regarding the status of their human resource flexibilities and work on the Coalition for Effective Change position paper regarding that initiative. Following is the latest information on issues pending at this time:

FY 99 Budget Status:

SSA: The House Appropriations Committee concluded work on the Labor/HHS/Education funding bill for FY 99. It duplicates the Subcommittee allocations for SSA's administrative expenses: $5,949 M for regular administrative expenses, plus $75 M for activities funded from user fees authorized last year, and an additional $355 M for CDRs (above the $200 M already included in the regular limitation). In approving the agency's request for the CDR funding, which is $165 M more than in 1998, the Committee said it "has provided this funding with the expectation that processing of additional CDRs will reduce trust fund liabilities far in excess of the cost of such processing."

The House bill, however, is $69 M shy of the full request level. Most of those funds were intended for redeterminations, but House appropriators state that some technical enabling legislation is needed before that appropriation can be made. We are now contacting members of the Senate Labor/HHS/Education Appropriations Subcommittee to urge restoration of those funds.

Of the overall budget proposed in the House (which is about $55 million above the 98 level) the Committee wrote that it "believes the amount provided in the bill is sufficient to enable the Agency to fully meet defined performance targets for the improvement of service in 14 specific areas as submitted to the Committeee . . . this increase in funding will support continuing initiatives to streamline the disability determination process and fully automate agency administrative functions. . . While the Agency has made substantial progress in improving its performance, the Committee remains concerned that it has not met its performance commitments in several areas, most notably regarding hearings and appeals. The Committee continues to be concerned that the recent multi-billion dollar investment in the reengineering process has not been adequately linked to direct improvements in service, productivity and efficiency and has not resulted in attainment of performance goals. The Committee will continue to monitor the Agency's progress in meeting these goals, and future funding will be conditioned on the Agency's ability to produce measurable improvements in service and productivity."

Federal Employee Pay -- FY 99 and beyond:

As previously reported, the House Treasury/General Government appropriations bill is silent on the issue of the FY 99 pay raise (language recommending a 3.1% raise was lost on the House floor along with pay language which would have advanced implementation of FEPCA), whereas the Senate bill recommends a civilian raise of 3.6%. Insiders say the prospect for 3.6% looks good, despite the President's recommendation of 3.1%. Agencies would have to absorb the additional cost of a larger raise.

Regarding the longer-term pay raise prospects, the Administration has made more formal its objections to FEPCA -- both to the locality pay survey methodology and the survey results. Using that method -- the Occupational Compensation Survey Program -- only 59% of government positions were matched to private/state&local positions in 1997, for a number of reasons including shortages of Bureau of Labor Statistics staff to conduct the survey, relatively rapid changes in non-federal job tasks and classifications, and lack of cooperation by some private companies. Older data has therefore been used to fill in the holes. Discussions are underway with the major federal employee unions concerning an Administration proposal to use an alternative means of determining comparability on a geographic basis -- the National Compensation Survey, which is a consolidated, simpler method developed by the Bureau of Labor Statistics. In comparisons between NCS and OCSP results, differences were found which were inconsistent from one locality to another (i.e., some geographic pay gaps were larger using the NCS, others were smaller). OPM Director LaChance stated that the Administration believes the NCS is more accurate because it covers more occupations and they plan a transition to its use after 2000. It is also less costly to conduct. The unions which are members of the Federal Salary Council have raised objections to the NCS, all of which the Bureau of Labor Statistics believe can be ironed out.

Ironically (to me) while the Administration is advocating the use of the NCS instead of the OCSP, no one in the Administration has yet stated that the President will commit to recommending pay raises in keeping with NCS results!

Meanwhile, OPM's efforts to conduct a comprehensive compensation-package comparison between federal and non-federal employees will be ongoing in 1999.

Civil Service bills:

Several bills have been reported to the House floor by the full Government Reform Committee:
H.R. 2526 introduced by Rep. Morella (R-Md) would raise the cap on Thrift Savings Plan contributions to $10,000 per year regardless of salary level; allow new-hires to participate immediately and to transfer 401(k) savings to the Thrift plan.

H.R. 2566 introduced by Rep. Morella (R-Md) would expand the class of eligibles who, upon re-employment by the federal government, could elect an actuarially-reduced annuity rather than buy back into the system through redeposits.

H.R. 4280 introduced by Rep. Morella (R-Md) would let agencies use salary funds to subsidize childcare for federal employees.

H.R. 2943 introduced by Rep. Cummings (D-Md) would provide additional paid leave for bone marrow donations (up to seven days) and organ donation (up to 30 days).

Only consensus bills (an up or down vote, no opposition) will make it through the legislative process in the remainder of this Congress. Of the above four, H.R. 2526 which would raise the Thrift Savings Plan contribution limit, is the most controversial. It is still opposed by the Administration due to projected revenue losses and would be vetoed if presented to the President for signature. The Senate, in particular, the Senate will not schedule floor time on such measures. Majority Leader Lott has said that if it's not appropriations and it's not consensus, "it's not going to happen."

Retirement Fix: The House passed H.R. 3249, which would allow federal employees mistakenly placed in the wrong retirement system to switch if they desire and which makes up benefits lost because they were assigned to the wrong plan. A Senate counterpart bill (S. 1710) is still pending in the Senate Governmental Affairs Committee.

Veterans Preference: The Senate Veterans Affairs Committee approved S. 1021 during July. The bill, which will be scheduled for a floor vote in September, establishes a new appeal process for veterans who question whether their rights were upheld and makes violation of their rights a prohibited personnel practice. It also extends veterans preference to additional jobs in the legislative and judicial branches and in the Executive Office of the President, and adds veterans preference mandates in government contracting. The House-passed version differs, so a conference must be held after Senate passage and the conferenced bill must be approved on both the House and Senate floor. If the conferenced bill is one about which there is no reasonable expectation of objection on the floor, this could be one that is enacted before the end of the 105th.

Contracting Out: The House Government Reform Committee has approved the compromise worked out by the Senate Governmental Affairs leaders which would require only that federal agencies prepare a list of "non-inherently governmental activities" for review and consideration for competitive bid by the private sector. OMB must publish the list, and both government agencies and private sector companies can appeal agency decisions regarding whether an activity can be contracted out. It does not, however, require agencies to open activities to private contracting, as earlier versions of these bills did. Since identical versions of this measure have met committee approval in both the House and Senate, enactment during this Congress is possible.

FEHBP: The House-passed and Senate-pending Treasury/General Government appropriations bills both require all federal employee health benefits plans to cover the cost of prescription contraceptives.

A provision authorizing a Medical Savings Account option for federal employees under FEHBP was dropped from the House-passed version of health insurance reform; a similar provision remains in a Senate counterpart bill which has not yet gone to floor vote. Neither of these largely Republican health care bills is supported by the President, who maintains his own vision of a "Patients Bill of Rights" and says it is high on his domestic agenda. He advocates access to specialists and emergency rooms as needed, a timely appeals process to resolve disputes between individuals and insurers, and coverage guarantees regarding pre-existing conditions. He has proposed that carriers who do not provide coverage for pre-existing conditions for new enrollees be prohibited from participation in FEHBP.

H.R. 3956, overtime pay for FLSA-exempt employees: There are now seven co-sponsors on this bill introduced by Rep. Davis (R-Va). Rep. Hoyer (D-Md) and Rep. Woolsey (D-Ca) signed on July 30th, joining Reps. Moran (D-Md), Morella (R-Md), Frank (D-MASS), Olver (D-MASS) and E. Johnson (D-TX). NCSSMA is expressing thanks to each of the co-sponsors and letting them know we will need their support again after the bill is re-introduced next year. as our work on this issue continues into the 106th Congress. After raising concerns about H.R. 3956 at Civil Service Subcommittee hearings last month, the Office of Personnel Management has not come forward with an alternative proposal. I will continue to work with Members of Congress and their staffs to try to elicit a proposal from OPM.

To date, NCSSMA has received the following official responses to its advocacy with Congress and the Administration on the overtime issue:
Civil Service Subcommittee Chairman Mica states in a July 29 letter to Ron Niesing that "Although we understand those concerns, we are aware that federal agencies have managed around the problem extensively, through strategies such as classification changes, grade inflation, and other measures. As you are aware, private sector professionals and managers are rarely paid for overtime work, and we are aware of several agencies that recruit new

employees by advertising this difference from the private sector. We understand that any increase in the pay level authorized for overtime ay would have to be met from agencies' salaries and expense accounts . . . would face opposition from the Administration, and might result in agencies having to RIF some employees . . Our proposal* sought to phase in an increase that could be accommodated within current spending ceilings. . . We will consider options in this area in the next Congress." (*Note: This was the five year phase in to GS 10 step 6 as base for overtime calculation, which NCSSMA opposed as an inadequate correction.)

OPM Director LaChance wrote on July 21: "We share your concern about the overtime pay problems caused by this limitation, including overtime pay inversions between supervisors and their subordinates. However, we are concerned about the potential cost of some proposals that have been advanced for raising the limitation. We are also concerned that some of these proposals would provide both supervisors and non-supervisors at high grade levels with substantially more overtime pay than is commonly received by non-Federal employees in similar positions. Please be assured that OPM will continue to search for a solution to overtime problems that is both cost-effective and in keeping with non-Federal overtime pay practices."

With the Administration and the Civil Service authorizing committee Chairman singing from the same book, we continue to travel a hard road on this issue.

<u>Social Security issues pending</u>:

Return to Work: The Senate Finance Committee held a well-attended hearing at which former Senator Dole, Senator Kennedy and Senator Harkin appeared in support of initiatives which encourage and support disabled people moving into the workplace. In particular, they advocated improvements in health care benefits during transition to work and beyond. Advocacy groups for the disabled testified in support of provisions in the bill. I do not have reliable information as to whether this legislation will be one of the few non-appropriations bills enacted this year. Congress would certainly like to have it to publicize as an accomplishment; it has already passed the House. It may be that only if the Senate were to quickly pass an identical bill, eliminating the need for House-Senate conference, could there be sufficient time to do this one.

Social Security Reform: The President indicated at the recent public forum in Albuquerque that he would consider modification to the Social Security program which include establishment of individual savings accounts and investment in private equities. Commissioner Apfel testified before the Senate Finance Committee in July in the first of Chairman Roth's series on retirement and SS reform. He declined to analyze or to comment on any Administration positions regarding specific bills which have been introduced to incorporate various forms and measures of PSA/market investment. SSA is keeping to its stated strategy of considering all options but endorsing none prior to the White House conference in December. As part of his domestic agenda for the remainder of his term, President Clinton reiterated his commitment to holding the overall budget surplus in "reserve" until reforms to Social Security have been decided upon. He has pledged to work with Congress next year on that initiative and has challenged Congress to work quickly in order to finalize reform during 1999.

Continuing Resolutions? Government Shutdown?

Debate about enacting last minute tax cuts (CBO projected in July a $520 billion budget surplus over the next five years -- four times higher than their previous projections) and funding for the President's education and other high-priority initiatives will be major issues intertwined with the budget/appropriations process endgame when the 105th Congress resumes for its last work period. Funding the President's budget priorities cannot come from the projected surplus if his edict to "reserve" the surplus until Social Security reforms are determined is upheld. (There is the inevitable talk of spending "only" the "surplus" surplus, as projections are adjusted upward.) Despite such rosy economic speculation, there are rumored strategies and counter-strategies regarding fiscal-year-end government shutdown.

Continuing Resolutions are the easy way to avert even a short-term shutdown if all appropriations bills are not completed, but CRs require a Presidential signature. Some Republicans fear that the President may use threat of a shut down to obtain budget concessions, feeling confident that Congress would take the blame and the negative fallout would be largely targeted at incumbent Republicans at the polls in November. House Appropriators have written to the President urging him to communicate to them how he envisions funding his budget requests which fall beyond the caps set in the five-year budget agreement, since the offsets he previously assumed have "little, if any, political life" (such as the now-dead tobacco tax). Appropriations Chairman Livingston wrote the President in July: "If we are to respond to your requests for spending, then you owe us the offset details of how we can develop signable bills. We also need to know exactly what you want in the way of spending. We need to know it now, not in September."

If you believe everything you hear in Washington, both the President and Congress are considering shut-down strategies, and both are appalled that the other would even think of it.

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