

The National Council of Social Security Management Associations, Inc.

**THE WASHINGTON REPORT
LEGISLATIVE REPORT 10-2002**

October 11, 2002

- **Washington Overview**

This is written on the return flight from the NCSSMA annual meeting in Denver. Members of Congress could take a lesson from NCSSMA in how to constructively air differences and reach consensus and how to conduct elections. The Denver Region Social Security Management Association did an extraordinary job hosting the meeting and it was great to see so many familiar faces.

As Congress prepares to head home for the mid-term elections, Washington conversation is focused on the handful of Congressional races that hold the balance of power in the House and the Senate. Last-minute pleas for campaign contributions, discussions about Continuing Resolutions and Lame Duck sessions, and which legislation might eventually be passed before the 107th Congress adjourns sine die dominate nearly every conversation.

One of the bills in question is the Homeland Security Act that includes Sen. George Voinovich's (R-OH) amendment relating to human capital needs in the federal workforce. We were pleased to note that the Senator's comments on the Senate floor in late September referenced the NCSSMA Managers' Survey and the anticipated personnel crisis in the Social Security Administration field offices.

With none of the thirteen appropriations bills signed into law ten days into the fiscal year and most legislation at a standstill, it is a challenge not to be cynical about Congress' ability to do its job. This depressing "big picture" view of Congress should not deter from the inroads that NCSSMA has made. NCSSMA's presence on Capitol Hill has grown more prominent, giving the National Council a "place at the table" in many important public policy debates – from the human capital legislation to disability reform. While we will continue to aggressively pursue the legislation specific to NCSSMA's interests, such as Supervisory Overtime and the Limitation on Administrative Expenses, our ability to progress on these bills is enhanced by the increased visibility of the National Council on Capitol Hill. NCSSMA's ongoing grass roots activities are also an important contribution to the organization's Washington credibility.

Many of you are probably counting down the 26 days until the election when you will have a newly found appreciation for non-political television advertisements. With so many races too close to call, it is anyone's guess which political party will be in the majority in the House and Senate. We intend to do a post-election report, which will provide an analysis of how the new Congress will affect issues of concern to NCSSMA.

- **Pay Raise**

The current logjam in the FY2003 appropriations process could reduce the anticipated 4.1 pay raise for January. October 1st has come and gone without any of the appropriations measures being conferenced between the House and Senate – to say nothing of being signed by the President.

Both the House and Senate versions of the Treasury-Postal Appropriations legislation provide for a 4.1 percent pay raise for civilian federal workers. The House has passed its version and the Senate has yet to vote on its measure.

To keep the government from shutting down Congress has approved the current Continuing Resolution (CR) through October 11 – another CR or perhaps a series of CRs will have to be approved to continue to maintain current spending levels. If, for any reason, Congress does not forward the 4.1 percent pay raise to the President, or if a CR should continue into early 2003, then the pay raise will be determined by the 1990 Federal Employees Pay Comparability Act (FEPCA). The FEPCA formula would provide workers with an across-the-board increase of 3.1 percent. Under those circumstances, the President would allow the 3.1 percent figure to go into effect – more than the 2.6 percent increase proposed in the President’s Budget, but less than the 4.1 proposed by Congress.

Representatives Steny Hoyer (D-MD), Tom Davis (R-VA), Jim Moran (D-VA), Frank Wolf (R-VA), Eleanor Holmes Norton (D-DC), Albert Wynn (D-MD), and Connie Morella (R-MD) recently sent letters to President Bush, Appropriations Chairman Bill Young (R-FL), and Ranking Member David Obey (D-WI) to push for the 4.1 percent pay increase for civilian federal workers next year.

“Congress should not punish federal employees because we have not finished our work for the year on time, especially at a time when we are relying more and more on federal employees to protect our country from harm,” said Hoyer. “The House and Senate have made clear their support for a 4.1 percent pay adjustment and that is what federal employees should receive next year.”

Senators Barbara A. Mikulski (D-MD), Paul S. Sarbanes (D-MD) and John W. Warner (R-VA) have also sent a letter to President Bush urging him to support a 4.1 percent pay raise for next year. The letter did not include a signature by Sen. George Allen (R-VA) – a spokesman from his office stated that Senator Allen planned to write to Senate Majority Leader Tom Daschle (D-SD) and Senator Robert C. Byrd (D-WV), chairman of the Senate Appropriations Committee, about the federal pay raise.

The 4.1 percent increase is not dead at this point, but it does face some uncertainty in the days ahead.

- **Homeland Security**

The debate continues between the Bush Administration and the Senate regarding management flexibilities for the proposed Department of Homeland Security. The issue of workers' rights remains the largest obstacle in the negotiations. Sens. Phil Gramm (R-TX) and Zell Miller (D-GA) offered a proposal that would give President Bush the flexibility he wants in shaping workforce rules for the estimated 170,000 department personnel. Sen. Miller is the first Democrat to openly side with the White House on this issue and has said that the federal personnel system is "as outdated as an oxcart on an expressway."

In an effort to smooth relations with labor unions, the proposal by Sens. Gramm and Miller also includes a provision that the president be required to notify Congress before employees are removed from collective bargaining units for national security reasons. Their proposal mirrors the one passed by the House in July.

Sens. John Breaux (D-LA), Ben Nelson (D-NE), and Lincoln Chafee (R-RI) are pushing a provision that would give union employees a chance to appeal their removal before the Federal Labor Relations Authority. The period of time for the appeal could last no more than 120 days, and collective bargaining rights would be suspended during this period. It would also allow the president to waive union rights via executive order, but only for employees whose primary duties involve terrorism investigations, intelligence or counterintelligence. Both the American Federation of Government Employees and the National Treasury Employees Union have voiced their approval of this compromise.

The Senior Executives Association has said the compromise measure is too restrictive and has urged the Senate to reject the amendment – saying that the provision would make managing the department more, not less, difficult than managing the existing 22 agencies. In August, SEA recommended that the homeland security bill include provisions of legislation offered earlier in the year by Sen. George Voinovich (R-OH). Sen. Voinovich's bill (S. 1603) would revise federal laws regarding employee recruitment, relocation and retention bonuses, expand the criteria for providing employees with academic training, and authorize agencies to pay for employee certifications. SEA is urging the administration to keep the Senior Executive Service intact in the new department and maintain appeal rights for misconduct cases under the Merit Systems Protection Board.

It seems that both chambers agree on the basics of the legislation that combines 22 existing federal agencies into one new department. Senate Democrats are seeking to make it more difficult for President Bush to move employees out of unions for national security reasons. The administration wants to protect the authority that the President has to curtail the rights of many employees for those same reasons. At this time, about 40,000 of the department's proposed 170,000 employees now belong to unions. The measure has been considered by the Senate on an almost daily basis since early September, but little to no progress seems to have resulted. Senate Majority Leader Daschle has called for cloture on the legislation on numerous occasions but has been unable to secure the votes necessary.

We thought you might appreciate a sample of some of the rhetoric that has been included in the debate on the Senate floor:

Excerpt from the Congressional Record – September 18, 2002

Sen. Robert C. Byrd: “A favorite piece of reading material for this administration apparently is “Gulliver's Travels ,” where we read about the Lilliputians. That is a great piece of literature; I have liked it over the years. But we have heard various Secretaries in this administration and other high officials in this administration indicate that they are very fretful, they are very irritated by the fact they are being asked to abide by certain rules. These have been longstanding rules. So the administration does not want to be tied down by any rules. We have heard them tell the story of the Lilliputians a number of times. So they do not want to be pinned down. This administration does not want to be pinned down by any rules, not pinned down on the details of its policies or the specifics of its actions.”

Although the above debate still remains in the spotlight there are other key issues involving federal workers contained in the homeland security legislation. As we’ve reported previously, the Senate measure contains a provision that would create new government-wide buyouts and early retirement programs. The House-approved legislation does not contain this provision.

• **FEHBP Premiums to Increase 11.1 Percent in 2003 – Open Season Period Just Around the Corner**

OPM has announced that the average increase in FEHBP premiums for 2003 will be 11.1 percent. For the third consecutive year the increase is above 10 percent – although it is less than last year’s 13.3 percent hike. Employees with self-only standard option insurance coverage will pay an average of \$4.45 more per period, or \$116.00 per year. Employees with family coverage will pay an average of \$10.21 more per pay period, or \$265.00 annually.

As we reported in the last legislative update, OPM Director Kay Coles James signed an administrative waiver that exempts insurance plans – including Blue Cross/Blue Shield – from cost accounting standards for federal contractors. The primary purpose of this waiver was to keep Blue Cross/Blue Shield in the program. The Blues had threatened to pull out of the program if they were forced to make costly changes to their bookkeeping system in order to comply with the cost accounting standards. The federal government will continue to pay approximately 72 percent of the premium costs for active and retired federal workers.

You can get additional details regarding benefit changes in your plans during the open season period (November 11 – December 9). Remember, during that time you can select a new health plan or choose to stay with your current insurer. Four new insurance plans are joining the FEHBP while 11 are dropping out – forcing 27,461 enrollees to select new plans during the open season.

Starting next July it will be possible to contribute to a Personal Flexible Spending Account

(FSA) as an additional source of pre-tax dollars. The money in this account may be used to pay for authorized medical expenses and dependent care. Under the OPM plan, federal employees will initially be able to set aside up to \$3,000 for an FSA for out-of-pocket medical expenses and up to \$5,000 for childcare or elder care.

- **Locality Pay Status Update**

Last week, the Federal Salary Council recommended that locality pay status should be granted to federal employees in Barnstable County, Massachusetts. If the Bush administration approves the Council's recommendations, then approximately 750 federal employees in the Barnstable area, which includes Cape Cod, will be paid as much as federal employees in nearby Boston. The Council recommended a 4.40% pay increase for Boston to reflect the higher cost of labor in the city. Under the new guidelines, a GS-15 manager in Cape Cod would earn almost \$4,071 more per year beginning in 2004. Currently, federal workers in 31 metropolitan areas, such as San Francisco, Atlanta, Miami, and Washington, DC, receive special locality pay.

Each year, federal officials petition the Federal Salary Council to increase locality pay rates; however, the last time requests were approved was in 2001. According to 1990's FEPCA, the government is supposed to close the large gap between federal pay and private sector pay. The pay gap, which was 30% in 1990, is now down to roughly 19%; however, that decrease is still well above the 5% gap goal decided upon in the 1990 law. For the last two years, federal officials have avoided locality pay increase requests because they said they were waiting for Census data to arrive. Federal officials expect that the Census data, scheduled to be released in the spring of 2003, will greatly affect current locality pay boundaries.

Federal employees and critics of the locality pay system assert that the current formula for setting locality pay increases does not realistically reflect the pay differences amongst occupations. Critics are hopeful that the Council will reevaluate the structure of the system next year, and that it will recommend measures to correct the structural deficiencies. Federal Salary Council Chairman Sam Wallace has invited officials to reapply for higher locality pay rates in 2003.

- **FLRA Update**

Brief Background about the FRLA

Established by the Civil Service Reform Act of 1978, the FRLA is "quasi-judicial" arm of the government that provides guidance and policies for federal sector labor-management issues. The FRLA helps to resolve disputes and to ensure compliance with the Title VII of the CSRA. It makes decisions regarding the negotiability of collective bargaining agreement proposals and appeals concerning unfair labor practices and representation petitions. The FRLA also assists unions and Federal agencies with questions about their rights and responsibilities established in the CSRA. The FRLA also consists of the Office of the General Counsel, which acts as investigator and prosecutor.

Currents Members of the FRLA

The President of the United States nominates members of the FRLA, and the United States Senate must confirm their appointments. Currently, there are three members of the FRLA, including the chairperson. Members are usually appointed to serve 5-year terms.

| Member | Term Began | Term Ends |
|----------------------------|------------|-----------|
| Dale Cabaniss, Chairperson | 3/8/01 | 2006 |
| Carol Weller Pope* | 1999 | 2004 |
| Tony Armendariz | 2001 | 2005 |

*Carol Weller Pope was nominated and appointed during the Presidency of Bill Clinton

Current General Counsel

In July of 2002, Peter Eide was nominated to serve a 5-year term as the FRLA General Counsel. He will serve as acting General Counsel until the Senate confirms his appointment.

Federal Services Impasses Panel

The FSIP consists of 7 appointed members who serve on a part-time basis. The Panel handles disputes between federal agencies and federal unions that arise from negotiations over the conditions of the Federal Service Labor-Management Relations Statute, the Federal Employees Flexible and Compressed Work Schedules Act, and the Panama Canal Act of 1979. If the Panel can not resolve the dispute, it has the authority to recommend procedures or take action that it deems necessary.

Current Members of the FSIP

| Member | Term Began | Term Ends |
|--------------------------|------------|-----------|
| Becky Norton Dunlop | 2002 | 2005 |
| Richard Barber Ainsworth | 2002 | 2005 |
| Mark A. Carter | 2002 | 2004 |
| John Cruz | 2002 | 2004 |
| Andrea Fischer Newman | 2002 | 2007 |
| Grace Flores-Hughes | 2002 | 2004 |
| Joseph Carter Whitaker | 2002 | 2007 |

- **Electronic Government Legislation**

The Electronic Government Act of 2002 (H.R. 2458) was passed by voice vote in the House Technology and Procurement Policy Subcommittee of the House Government Reform Committee. The Subcommittee is chaired by Rep. Tom Davis (R-VA). Rep. Davis said the

proposed “e-gov” office is based largely on the administrative structure established in June 2001, when Mark Forman was appointed Associate Director for Information Technology and Electronic Government at OMB. The bipartisan compromise bill creates a new Office of Electronic Government within OMB. The legislation seeks to improve coordination and deployment of information technology across the federal government and also to help agencies achieve the information technology management reforms that are required under the Clinger-Cohen Act that was passed in 1996.

The legislation was introduced by the ranking Democrat, Rep. Jim Turner (Texas), and called for a Senate-confirmed federal chief information officer to be appointed within OMB. Rep. Davis proposed a bipartisan substitute that calls for an “e-gov administrator” instead of a new federal CIO. The substitute also includes a provision based on Rep. Davis’s Federal Information Security Management Act (FISMA) (H.R. 3944). That legislation would reauthorize the Government Information Security Reform Act (GISRA) of 2000, and would allow OMB to develop performance-based standards to protect federal information security systems. “This legislation will force the federal government to more effectively address pervasive information security weaknesses,” Rep. Davis said of the FISMA provision.

Rep. Turner supported the substitute, but he opposed another amendment by Rep. Davis that would allow the e-gov administrator to be appointed without Senate confirmation – as Forman was. Rep. Davis said his amendment would recognize OMB’s deputy director of management—an existing, Senate-confirmed position—as the federal CIO who would delegate some of his authorities to the e-gov administrator. “It does not make any significant structural changes to OMB’s operations,” Davis said. “In the absence of that type of change, I do not believe Senate confirmation is necessary.”

Despite objections from Rep. Turner, the amendment proposed by Rep. Davis passed by voice vote. But Rep. Davis said lawmakers would revisit the issue of whether the e-gov administrator should be Senate-confirmed next year, when Congress reauthorizes the Paperwork Reduction Act.

The panel also adopted, by voice vote, a Davis amendment creating an exchange program that would allow federal agencies and private sector companies to “exchange” mid-level information technology managers for one-year assignments with an optional one-year extension. That amendment is identical to Rep. Davis’s Digital Tech Corps Act (H.R. 3295) which the House approved in April.

The legislation has 39 cosponsors and has been referred to the full committee, the House Government Reform Committee. At this time there is no companion legislation in the Senate.

Breaking News!

On Wednesday, the legislation discussed above was passed by the House Government Reform Committee. The measure cleared the committee by voice vote. As we mentioned above, when the legislation was introduced by Rep. Jim Turner (D-TX), the subcommittee's ranking

Democrat, the legislation called for a Senate-confirmed chief information officer (CIO) within OMB. But a bipartisan substitute adopted Wednesday by voice vote calls for an e-government "administrator" instead of a new CIO. The substitute, was sponsored by Committee Chairman Dan Burton, (R-IN) and would allow the administrator to be appointed without Senate confirmation. Rep. Turner argued that Senate confirmation "imbues a position with prestige and power," and offered an amendment to restore the confirmation requirement. Republicans opposed Turner's amendment, and the panel rejected it by voice vote.

- **House Passes Thrift Savings Plan Legislation**

The House has passed legislation (H.R. 3340) that would allow investors aged 50 and above to make special "catch-up" contributions to the Thrift Savings Plan. The measure would bring policy for TSP investors in line with the change enacted last year for private sector workers. The bill would allow catch-up contributions of \$2,000 in calendar year 2003, with the amount rising by \$1,000 each year until hitting \$5,000 in 2006, and adjusted for inflation afterward. The measure, which has been delayed by budget scorekeeping disputes, now moves to the Senate, where quick action is possible because a similar measure sponsored by Sen. Daniel Akaka (D-HI) (S. 1822) has already cleared the committee level there. The catch-up contributions would be over and above the dollar or percentage of salary limits applying to TSP investors.

- **GPO-WEP Legislation**

Because of the lack of progress Congress has made on the 13 appropriations bills, it is likely that legislation to modify the Government Pension Offset and Windfall Elimination Provision will be put off until at least next year. Below is an updated status regarding cosponsors for the legislative proposals we have been monitoring.

- **S. 611 – "Government Pension Offset Reform Act"**

The legislation (S. 611) sponsored by Sen. Barbara Mikulski (D-MD) would amend title II of the Social Security Act to modify the formula for determining the amount of reduced monthly OASDI benefits payable to a spouse, surviving spouse, or parent receiving monthly payments from a Federal or State pension plan. The measure declares that such benefit reductions "shall be equal to the amount by which two-thirds of the total amount of the combined monthly benefit (before reduction) and monthly pension exceeds \$1,200, adjusted for inflation". The legislation has been referred to the Senate Finance Committee and currently has 36 cosponsors.

- **S. 1523 – "Social Security Fairness Act of 2001"**

The legislation (S. 1523) sponsored by Senator Dianne Feinstein (D-CA) would amend title II of the Social Security Act to repeal the government pension offset and the windfall elimination provision. Specifically, the legislation repeals pension offset provisions applicable to husband's and wife's insurance benefits, widow's and widower's insurance

benefits, and mother's and father's insurance benefits with respect to Old-Age and Survivors insurance benefit payments. The legislation also repeals windfall elimination provisions with respect to computation of the primary insurance amount of an individual. The measure currently has 14 cosponsors and has been referred to the Senate Finance Committee.

- **S. 2521**

The legislation (S.2521) introduced on May 15, 2002, by Senator John F. Kerry (D-MA) would amend title II of the Social Security Act to restrict the application of the windfall elimination provision to "individuals whose combined monthly income from the individual's primary insurance amount under such title and the portion of the monthly periodic payment attributable to noncovered service performed after 1956 exceeds \$2,000". The legislation would also provide for a graduated implementation of the windfall elimination provision by specified percentages with respect to incremental amounts above such threshold, up to 100 percent for combined amounts over \$3,000. The legislation has been referred to the Senate Committee on Finance and currently has 3 cosponsor. The Congressional Research Service has identified H.R. 1073 introduced by Rep. Barney Frank (D-MA) in the House of Representatives as an identical measure.

- **H.R. 664**

The legislation (H.R. 664) introduced by Rep. William Jefferson (D-LA) would amend the Social Security Act to provide that "reductions in Social Security benefits are equal to the amount by which the total combined monthly benefit and monthly pension exceed \$1,200." The bill amends title II of the Social Security Act to modify the formula for determining the amount of reduced monthly OASDI benefits payable to a spouse, surviving spouse, or parent receiving monthly payments from a Federal or State pension plan. The legislation declares that such benefit reductions shall be equal to the lesser of: (1) the amount by which the total amount of the combined monthly benefit (before reduction) and monthly pension exceeds \$1,200, adjusted for inflation; or (2) an amount equal to two-thirds of the amount of any such monthly pension plan payment. The measure has been referred to the House Committee on Ways and Means and to the Subcommittee on Social Security and currently has 297 cosponsors.

- **H.R. 848 – "Social Security Benefits Restoration Act of 2001"**

The legislation (H.R. 848) introduced by Rep. Max Sandlin (D-TX) would amend title II of the Social Security Act to eliminate the provision reducing primary insurance amounts for individuals receiving pensions for non-covered employment. The legislation has been referred to the House Committee on Ways and Means and the Subcommittee on Social Security and currently has 149 cosponsors.

- **H.R. 1073**

The legislation (H.R. 1073) introduced by Rep. Barney Frank (D-MA) would amend title II of the Social Security Act to restrict the application of the windfall elimination provision to those whose combined monthly income from benefits is less than \$2000, and provides for gradual implementation of the windfall elimination provision on amounts between \$2000 and \$3000 per month. Those receiving more than \$3000 per month would still be fully affected by the windfall elimination provision. The legislation currently has 232 cosponsors and has been referred to the House Committee on Ways and Means and the Subcommittee on Social Security. The Congressional Research Service has identified S. 2521 introduced by Sen. John F. Kerry (D-MA) in the Senate as an identical measure.

- **H.R. 2638 – “Social Security Fairness Act of 2001”**

The legislation (H.R. 2638) sponsored by Rep. Howard McKeon (R-CA) would repeal the government pension offset and windfall elimination provisions. The measure would amend title II of the Social Security Act to repeal pension offset provisions applicable to husband’s and wife’s insurance benefits, widow’s and widower’s insurance benefits, and mother’s and father’s insurance benefits with respect to Old-Age and Survivors insurance benefit payments. The measure would also repeal windfall elimination provisions with respect to computation of the primary insurance benefit of an individual. The bill has been referred to the House Committee on Ways and Means and the House Subcommittee on Social Security and currently has 183 cosponsors.

- **H.R. 3497 – “Social Security Guarantee Plus Act of 2001”**

The legislation (H.R. 3497) introduced by Rep. E. Clay Shaw (R-FL) would amend both the Social Security Act and the Internal Revenue Code of 1986 to “preserve and strengthen the Social Security Program through the creation of personal Social Security guarantee accounts ensuring full benefits for all workers and their families, restoring long-term Social Security solvency, to make certain benefit improvements, and for other purposes.”

Included in the legislation is a reduction in the Government Pension Offset from a 2/3 offset to a 1/3 offset. The legislation currently has 5 cosponsors and has been referred to the House Committee on Ways and Means.

- **Senate Government Affairs Committee Moves Federal Employee Legislation**

The Senate Governmental Affairs Committee voted to move the following pieces of legislation 9-0 en bloc with a number of other measures. Only Democrats were present for the vote. According to Committee Chairman Joseph Lieberman (D-CT), Republicans had decided to boycott Senate Committee actions because of unhappiness with how a judicial nomination was being handled elsewhere.

The bills of interest to our membership that passed were as follows:

- S. 2936. This legislation provides that federal workers under the Federal Employee Retirement System (FERS), who receive workers' compensation when injured for at least a year, and subsequently return to work for at least a year, will receive an increase in their FERS retirement benefit of 1 percent for the period during which they were receiving workers' compensation. The measure is intended to compensate for the fact that while they are on workers' compensation, the employees earn no Social Security wage credits nor do they or their employer make contributions to the federal thrift savings plan. The committee has estimated the bill's cost at \$8 million over 10 years.
- S. 3070. This legislation reauthorizes and revises some rules for the Merit Systems Protection Board and Office of Special Counsel, agencies that "safeguard the merit system principles and protect employees who step forward to disclose government waste, fraud and abuse," according to an explanation from the committee. The bill makes numerous changes to clarify protections for such "whistleblowers," and the rules that apply to them.

The Washington Report
418 C Street, NE
Washington, DC 20002
202-547-8530/FAX 202-547-8532
Contact: Sara Garland or Rachel Emmons
e-mail: sarag@greystone-group.com or rachele@greystone-group.com