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Status of Deputy Commissioner of Social Security

On Thursday, May 9, the Senate Finance Committee considered the nomination of David Fabian Black to be Deputy Commissioner of the Social Security Administration (SSA) for the term expiring January 19, 2025. Black was introduced by his home state of North Dakota senators, Senator John Hoeven (R-ND) and Senator Kevin Cramer (R-ND).

Senate Finance Committee members in attendance:
Chairman Chuck Grassley (R-IA)

Ranking Member Ron Wyden (D-OR)
Sen. Maria Cantwell (D-WA)
Sen. Robert Menendez (D-NJ)
Sen. Thomas R. Carper (D-DE)
Sen. Benjamin L. Cardin (D-MD)
Sen. Sherrod Brown (D-OH)
Sen. Catherine Cortez Masto (D-NV)

The hearing was straightforward, with standard questions and comments from members of the Committee related to progress on service delivery backlogs and the agency's IT modernization efforts. Chairman Grassley (R-IA) did ask that Black commit to addressing the service delivery backlogs. Black stated that he feels timeliness is part of quality service to the public, and that while the hearings backlog is now below 700,000 with an average wait time of 525 days, those levels are still unacceptable. Black also noted that the 800 number has not been fairing as well, and that it is a priority for both him and Andrew Saul as they are looking at everything. Black also stated that the agency needs sustained resources, but that he will look at the challenges (at SSA) and dig into all of the facts. Sen. Ben Cardin (D-MD) also made note that some of the backlogs at SSA are moving in the right direction, but that the TSCs have not received enough attention. Sen. Cardin also noted the importance of field offices and the one-on-one help they provide to the public. Sen. Cardin asked Black if he was committed to making sure that this one-on-one help is available and Black responded, "yes."

Chairman Grassley asked about the status of the IT Modernization Plan and DCPS. Black indicated that SSA will continue to prioritize IT Modernization and be good stewards. Black also noted that Acting Commissioner Nancy Berryhill takes this issue very seriously and meets with executives every week. Relative to DCPS, Black responded that the agency has had failures in the past and that SSA "owns those mistakes," and has learned from them.

There were also concerns voiced by a number of Senators, most notably Ranking Member Wyden (D-OR) and Sen. Ben Cardin (D-MD), related to SSA's relationships with

employee groups and the pursuit of “anti-labor” proposals similar to the Administration’s workforce executive orders that were ruled against last August by U.S. District Judge Ketanji Brown Jackson. The Trump administration has appealed that decision and the Federal Service Impasses Panel has asserted jurisdiction over the matter, with a decision expected in early June. Ranking Member Wyden urged Black (if confirmed) to “push to cease pursuing a legally questionable position,” and Black confirmed that “yes” he would do so.

Senator Catherine Cortez Masto (D-NV) echoed concerns about backlogs and indicated she hears about this all of the time in Nevada. She spoke specifically about a constituent who had been overpaid by SSA. Even after contacting SSA repeatedly, the situation continued for over a year. Sen. Cortez Masto mentioned the President’s Budget Request for SSA, reduced footprint and desk sizes for the agency, and asked Black how service delivery concerns would be addressed with reduced resources. Black responded that funding from Congress is essential and that if SSA needs more funding the agency will come to Congress and request it.

Senator Tom Carper (D-DE) focused on GAO’s high-risk list and improper payments, in particular payments to the deceased. He asked for Black’s support related to the issue in general, and in specific on legislation to address it.

Senator Robert Menendez (D-NJ) asked if SSA was meeting its obligations to the 10,000 baby boomers who retire each day and Black acknowledged that no, SSA is not, and there is room for improvement. Sen. Menendez also had a question related to criticism by GAO of SSA and the agency’s CIO, which Black indicated he would need to answer for the record.

There was also discussion initiated by Ranking Member Wyden (D-OR) of the top three threats facing SSA. Black responded that these threats change, but that sometimes they are as simple as calls by fraudsters. Ranking Member Wyden observed that unfortunately “the bad guys always seem to be one step ahead of the good guys.” Black did note that relative to the calls by fraudsters, “SSA will rarely call you, and will certainly not threaten you.”

Senator Maria Cantwell (D-WA) also raised the issue of Administrative Law Judge (ALJ) independence and concerns regarding the Administration’s Executive Order from July 2018. Black made a commitment to Senator Cantwell that SSA was only going to hire the best candidates, regardless of the process in place for selecting ALJs.

Senator Cantwell also pursued a line of questioning regarding field office closures and requested that Black commit to reviewing how field offices affect service. In response to Sen. Cantwell’s query as to how he would balance in-person and online services, Black mentioned that his mother still lives in rural North Dakota, with no internet or computer in her home, a one-hour drive to a field office and that he believes in balances in services.

Ranking Member Wyden (D-OR) followed up Senator Cantwell's comments regarding field offices and voiced that he has major concerns regarding the field offices. He noted that when he is home he hears a lot about wait times in field offices with lines around the block. Black responded that he couldn't provide specifics on exact minutes for wait times, but that he knows it is still a problem and it is a priority for both Andrew Saul and him, and that if confirmed he will "get out there and walk around." He also noted he will "get ideas from employees on how to make improvements."

Senator Sherrod Brown (D-OH) spoke strongly about concerns that he and Sen. Bob Casey (D-PA) have regarding a proposal for SSA to monitor people's social media accounts and that he feels this is "spying" and is questionable at best. Black committed (if confirmed) to testify again before the Committee if SSA is considering going forward with any proposal(s) in this area. Ranking Member Wyden made note of this and indicated Andrew Saul would also be included in any appearance before the Committee on this issue as well.

Ranking Member Wyden (D-OR) concluded the hearing and noted that any additional Questions for the Record are due by Tuesday, May 14.

The following links related to the hearing may be of interest:

- [May 9, 2019 Senate Finance Committee Hearing Webcast](#)
- [Opening Statement of Chairman Chuck Grassley \(R-IA\)](#)
- [Opening Statement of Ranking Member Ron Wyden \(D-OR\)](#)
- [Statement of David Fabian Black, Nominee for Deputy Commissioner, Social Security Administration](#)

The NCSSMA Executive Committee discussed the nominations for Andrew Saul and David Black with Senate Finance Committee staff when we were on the Hill in March. We will continue to communicate with the Hill on these nominations and provide updates.

Fiscal Year (FY) 2020 Appropriations Update

On Wednesday, May 8, the House Appropriations Committee approved its version of the FY 2020 Labor, Health and Human Services, Education, and Related Agencies (Labor-HHS) spending bill. The legislation was passed by a 30-23 party-line vote following a six-hour markup. A summary of the bill can be found [here](#), the text of the bill [here](#), and the report [here](#). The legislation provides \$189.9 billion in discretionary funding, an increase of \$11.8 billion over the FY 2019 enacted level and \$48 billion over the President's FY 2020 Budget Request.

Included in the legislation is a \$300 million increase over the FY 2019 enacted level for SSA's Limitation on Administrative Expenses (LAE) account. This recommended level of funding is \$298.945 million above the President's Budget Request. The Committee included the following language related to the recommended increase in their report:

The Committee includes an increase of \$300,000,000 for additional hires and resources to improve public service at SSA field offices and direct service operations, with \$22,000,000 specifically for hiring at teleservice center operations. 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. It is the Committee's expectation that this funding will be sufficient to replace all losses in the field offices, teleservice and processing centers, and build additional capacity so that offices can function at appropriate levels.

Additional language of interest from the report related to the LAE account:

The Committee acknowledges SSA's progress in reducing excessive and harmful delays for people waiting for a hearing before an Administrative Law Judge and is pleased to hear that SSA is on track to eliminate its hearing backlog in fiscal year 2021. This progress has been facilitated by \$290,000,000 in dedicated funding provided in fiscal years 2017 through 2019, and the Committee designates \$50,000,000 in this bill for activities that will continue to address the disability hearing backlog.

The bill continues to provide \$45,000,000 in dedicated funding for Information Technology Modernization.

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 SSA to submit a report within 60 days of enactment of this Act to the Committees on Appropriations, Ways and Means, and Oversight and Reform, explaining the process, qualification standards, and criteria used to recruit, evaluate and hire ALJs under the executive order.

Beneficiary Education.—The Committee recommends SSA include more complete information in the annual Social Security Benefit Verification Letter on the coverage decisions individuals have when turning age 65 and enrolling, or re-enrolling, in Medicare through informational materials shared with individuals as they become Medicare-eligible. The Verification Letter should provide a brief description of the process for obtaining information and enrolling in either Original Medicare or Medicare Advantage, as well as information on, and the enrollment process for, additional coverage, including through a Medicare Advantage -Part D plan, stand-alone Part D prescription drug plan, or supplemental coverage under Part G. The Verification Letter should include language that refers beneficiaries to Centers for Medicare & Medicaid Services' online, print, telephone and in-person resources.

Collective Bargaining.—The Committee strongly supports the rights of federal employees to bargain collectively. Presidential Executive Orders 13836, 13837, and 13839 undermine those rights, which is why a Federal court invalidated many provisions of those executive orders and enjoined Federal agencies from implementing them. The Committee is very concerned about reports that SSA, during recent contract negotiations with its union, insisted on proposals that closely resemble the invalidated provisions of the executive orders. The Committee understands that several of the articles still in dispute have been referred to the Federal Service Impasses Panel (FSIP) and are awaiting a final determination. Within 30 days of enactment of this Act, the Committee directs SSA to submit a report and brief the Committees on Appropriations, Ways and Means, and Oversight and Reform on all articles in dispute with the unions as of April 16, 2019. The report shall include the modifications SSA made to each of the articles in dispute in order to comply with the court order.

Additionally, it is the Committee's understanding that parties can continue to discuss open matters while awaiting a final determination from FSIP. The Committee directs SSA to do so and to engage the Federal Mediation and Conciliation Service (FMCS) in order to address these issues through mediation.

SSA is directed to resume contract negotiations with its union in good faith and to present proposals that do not mirror District Court discredited provisions of the aforementioned executive orders. If after a reasonable period of good faith bargaining has been conducted, FMCS determines that a contract impasse exists, the parties will jointly select an independent mediator-arbitrator from a list of mediators-arbitrators supplied by the FMCS. Such mediator-arbitrator will conduct mediation and, if needed, an arbitration hearing with the authority to decide the final contract.

Headache Disorders.—The Committee supports efforts to ensure consistent decision-making with regard to how to appropriately and correctly apply the current Listing of Impairments to headache disorders-related impairments.

Information Technology.—The Committee continues to monitor the Information Technology Modernization Plan and remains concerned that while SSA undertakes information technology upgrades and improvements, the agency must also maintain an appropriate balance between SSA's various service delivery options. As the agency continues to focus on modernizing information technology and systems, the Committee strongly encourages SSA to focus on enhancements that positively affect service to the public and add efficiency to administration of its programs. In addition, the Committee encourages involvement of agency front-line staff, those most familiar with the use of such programs, in all aspects of development, testing and deployment. The Committee requests an update of the plan referenced under this heading in House Report 114–699.

Mailing Paper Statements.—The Committee is concerned that SSA is not mailing 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 Administration is directed to brief the Committee within 60 days of

enactment of this Act on progress to date on implementing the law as written, and to include in its fiscal year 2021 Congressional Budget Justification an estimate of costs associated with the mailing of paper statements as required by law.

Muscular Dystrophy.— The Committee requests SSA include in the fiscal year 2021 Congressional Budget Justification the rate at which persons with Duchenne and Becker Muscular Dystrophy utilize SSA programs, particularly those focused on promoting employment and community independence such as the Ticket to Work Program.

Occupational Information System.—SSA is developing a new Occupational Information System (OIS) that will replace the Dictionary of Occupational Titles as the primary source of occupational information used in SSA’s disability adjudication process. The Committee directs SSA to continue to include in its annual Report on the Occupational Information System Project the estimated costs for each future fiscal year until the project is expected to be completed, as well as the estimated cost for a five-year data refresh cycle.

Pilot Program Metrics.—The Committee appreciates the information on pilot program metrics provided in the fiscal year 2020 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 submit a report to the Committees on Appropriations, the Committee on Ways and Means, and the Committee on Finance not later than 90 days after the enactment of this Act with a description of all pilots conducted in fiscal years 2019 and 2020, or proposed for fiscal year 2021; 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. Similar information should be provided in the fiscal year 2021 Congressional Budget Justification. All SSA pilots should be included in the requested report and justification, including those undertaken as part of the Compassionate and Responsive Service (CARES) plan and in other parts of the agency. The report (and section in the justification) does not need to include programmatic demonstrations, such as those involving changes in program eligibility rules.

Reconsideration.—The Committee is concerned that SSA is reinstating reconsideration in ten States despite bipartisan, bicameral concern about the quality of the reconsideration process and the delays it causes, and without any plan to improve decision-making at the initial or reconsideration levels. The Committee directs SSA to provide a plan to the Committee on Appropriations and the Committee on Ways and Means within 180 days of enactment of this Act to improve the Disability Determination

Services processes, including research topics and potential pilots to improve the disability process, including the reconsideration appeal step, to help ensure the correct decision is made as early as possible, avoiding the need for eligible individuals to seek a hearing in order to receive the benefits for which they are eligible.

Replacement Card Fees.—The Committee considers the proposal to charge a fee to replace a lost or stolen Social Security card incomplete and ill-considered. It is an inappropriate attempt to circumvent the Federal rulemaking process and the agency is directed not to 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 2021 Congressional Budget Justification include a historical table of costs and fiscal year 2021 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.

Social Media.—The Committee is concerned about the proposal in the budget request to permit SSA disability adjudicators to use social media postings and other Internet-based sources as part of evaluating whether the individual meets the disability eligibility criteria. The reliability of social media is often low and hard to determine and SSA adjudicators lack the time, resources, and expertise to properly review, evaluate, and corroborate social media posts. SSA should not pursue this strategy, but instead continue with its existing process of referring cases of suspected fraud to investigators at SSA’s Office of Inspector General, who are trained to investigate information found on the Internet or social media and corroborate it against other sources.

Video Hearings.—The Committee is concerned that SSA’s proposal in the Notice of Proposed Rulemaking “Setting the Manner for the Appearance of Parties and Witnesses at a Hearing” (83 Fed. Reg. 57368, November 15, 2018) eliminates an individual’s right to an in-person hearing before an SSA Administrative Law Judge (ALJ). This change would deprive millions of Americans of their right to due process and could result in hearings which are less fair and less efficient. The Committee strongly urges SSA to maintain its current policy, which allows claimants 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 Experts.—The Committee directs SSA to provide an update to the Committee on Appropriations and the Committee on Ways and Means within 90 days of enactment of this Act on the status of its plans to strengthen Vocational Expert (VE) qualification standards and to pay fees that are sufficient to hire VEs with the necessary expertise and current knowledge. The Committee directs SSA to ensure that anyone testifying as a vocational expert under a Blanket Purchase Agreement meets the qualification standards; and explain how SSA’s new fees will reflect VE qualification standards and take into account the fees paid for VE services by other Federal agencies and the private sector.

The plan should be developed in consultation with knowledgeable stakeholders, including VEs.

Vocational Factors.—The Committee considers the recent Notice of Proposed Rulemaking “Removing Inability to Communicate in English as an Education Category” (84 Fed. Reg 1006, February 1, 2019) to be a harmful and unjustified attempt to deny Social Security and SSI disability benefits to older workers with long-term or fatal medical impairments who are severely limited in their functional capacity and who cannot communicate in English. The rule does not provide any valid evidence that there is a sufficient occupational base of jobs that this narrow group of severely disabled individuals can perform despite their pervasive limitations. The Committee understands that of the 157 organizations who submitted or signed comments, all but one commented in opposition to the rule. In light of the harm that would be caused by this policy change, the Committee strongly urges SSA to withdraw this proposed rule.

Per the tables included in the Committee’s report, the FY 2020 President’s Budget Request for SSA’s Limitation on Administrative Expenses (LAE) account is \$12.772 billion, the FY 2019 enacted funding level is \$12.871 billion. The House bill provides \$13.071 billion. It is important to note that the Committee recommends \$1.582 billion for Continuing Disability Reviews (CDRs) and redeterminations, the maximum cap adjustment authorized in the Budget Control Act (BCA). This represents a \$101 million decrease below the FY 2019 enacted level. As a result, the net total increase for SSA’s FY 2020 administrative expenses recommended by the House Appropriations Committee is \$199 million over the FY 2019 enacted level.

The House is expected to consider this legislation on the floor in June. The Senate Appropriations Committee is expected to mark up their version of the FY 2020 Labor-HHS spending bill in early June, but that is tentative. The Senate Appropriations Committee has not yet decided on a topline funding level for their appropriations bills, but it is anticipated that their Labor-HHS allocation will likely be smaller than the House. We will continue to communicate with the Hill regarding SSA’s administrative funding needs and provide updates.

NCSSMA Twitter Account

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