

Legislative Bulletin Addendum.....May 12, 2004

Contents:

- **Pomeroy Motion to Instruct Conferees on S.Con.Res. 95, the FY 05 Budget Resolution**
- **George Miller Motion to Instruct Conferees on H.R. 2660, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2004**

Pomeroy Motion to Instruct Conferees on S.Con.Res. 95, the FY 05 Budget Resolution

On Tuesday, May 11th, Mr. Pomeroy (D-ND) announced his intention to offer the following motion to instruct conferees: “Mr. Speaker, I move that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the House amendment to the concurrent resolution S. Con. Res. 95 be instructed to agree to the pay-as-you-go enforcement provisions within the scope of the conference regarding direct spending increases and tax cuts in the House and Senate. In complying with this instruction, such managers shall be instructed to recede to the Senate on the provisions contained in section 408 of the Senate concurrent resolution (relating to the pay-as-you-go point of order regarding all legislation increasing the deficit as a result of direct spending increases and tax cuts).”

Section 408 of the Senate bill would impose a point of order only waivable by 60 votes for any new mandatory spending or revenue reductions that would increase the deficit, even if such spending or revenue reductions were assumed in the Budget Resolution. The point of order would expire after 5 years.

An identical motion offered by Rep. Moore (D-KS) was defeated last Wednesday by a vote of 208 to 215: <http://clerk.house.gov/evs/2004/roll145.xml>

Key points Members may wish to consider:

- The Senate provision does not reinstate traditional "paygo". Traditional paygo was a statutory requirement that automatically offset legislation that increased the deficit through automatic spending cuts (sequestration). The Senate provision simply creates another Senate rule that can be waived by 60 votes.

- The House will have an opportunity to establish a workable statutory paygo system when we consider budget enforcement legislation. The House is set to consider such legislation in the near future.
- The Senate provision does not exempt the extension of expiring tax provisions, such as the child tax credit, marriage penalty relief and the 10% bracket. Ironically, existing spending programs that have much higher costs in future years would be exempt from paygo, yet continuing existing tax policies would be subject to paygo because they sunset.
- The Senate paygo provision is much stricter than the proposals introduced in the House, including the paygo provision in the budget reform and enforcement bill introduced by Rep. Kirk.

Below is additional information on this topic from the Heritage Foundation that discusses why reinstating this type of paygo would mean tax increases and high spending:

<http://www.heritage.org/Research/Budget/wm447.cfm>

In addition, Members may wish to note that some of the staunchest proponents in the Senate of preserving the Senate language voted yesterday to waive the “pay-go” point of order in order to spend an additional \$8 billion for unemployment benefits. Senators who voted to waive the point of order who according to media reports are not currently willing to compromise on the Senate Budget Resolution language (the one issue preventing us from completing the Conference Report on the Budget) include: Senators McCain, Snowe, Collins, Chafee and Nelson.

George Miller Motion to Instruct Conferees on H.R. 2660, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2004

NOTE: The FY 04 Labor /HHS / Education Appropriations Bill was incorporated into the enacted FY 04 Omnibus, however, since the bill was not enacted stand-alone and the formal Conference on the bill was never dissolved, the House-passed bill and the Senate Amendment are still technically in Conference. Obviously there is no need or plan for the Conferees to meet. The Miller motion simply takes advantage of the fact that there is still technically a Conference in order to force a vote on the topic of the motion. It should be noted that the motion to instruct is subject to a motion to table.

On Tuesday, May 11th, Mr. George Miller (D-CA) offered the following motion to instruct Conferees: “Mr. Speaker, I move that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 2660 be instructed to insist on reporting an amendment to prohibit the Department of Labor from using funds under the Act to implement any portion of a regulation that would make any employee ineligible for overtime pay who would otherwise qualify for overtime pay under regulations under section 13 of the Fair Labor Standards Act in effect September 3, 2003, except that nothing in the amendment shall affect the increased salary requirements provided in such

regulations as specified in section 541 of title 29 of the Code of Federal Regulations, as promulgated on April 23, 2004.”

When the Department of Labor released their final rule on April 23, 2004, the following information was circulated by the Administration:

Strengthening Overtime

- The Bush Administration’s final rule will guarantee overtime protections to 6.7 million workers earning \$23,660 per year or less by nearly tripling the minimum salary level.
 - With the enhanced overtime protections in the final rule, 1.3 million salaried “white collar” workers, who were not entitled to overtime pay under the previous regulations, will gain up to \$375 million in additional earnings every year.
 - Another 5.4 million salaried workers, who under the previous regulations were unsure if they should be paid overtime, get an ironclad guarantee of overtime rights under the final rule — regardless of their job duties.
- The final rule strengthens overtime protections for licensed practical nurses and first responders, such as police officers, fire fighters, paramedics, and emergency medical technicians, by clearly stating for the first time that these workers are entitled to overtime.
- The final rule retains terms used in the previous regulations, but makes them easier to understand and apply to the 21st Century workplace by better reflect existing federal case law. In addition, the overall length of the regulations has been reduced from 31,000 words to just 15,000.

Protecting Overtime Can’t Wait on Politics or Costly Litigation

- Under previous law, only workers earning less than \$8,060 were guaranteed overtime pay because the minimum salary level had not been updated for nearly 30 years.
- The descriptions of job duties required for the overtime exemption had been frozen in time for nearly 50 years, resulting in confusion and uncertainty for both workers and employers.
- The previous regulations were outdated, confusing and complex, and have led to an explosion of lawsuits. Federal court class actions for FLSA cases have tripled since 1997, and now outnumber discrimination class actions.
- Low-wage and middle-income workers should not have to wait another 50 years for rules that protect their overtime pay, and should not have to spend years in federal court to receive their fair pay. Action is needed now to ensure workers receive their overtime pay in real time.

- The final rule ensures that employees can understand their rights to overtime pay; employers can readily determine their legal obligations and comply with the law; and the Department of Labor can more vigorously enforce the law.

Safeguards for Workers

- The final rule increases the minimum salary level required for exemption to \$455 per week (\$23,660 annually) – an historic \$300 per week increase over the existing regulations.
- New section 541.3(a) provides that “blue collar” workers are entitled to overtime pay.
- New section 541.3(b) provides that police officers, fire fighters, paramedics, emergency medical technicians and similar public safety employees are entitled to overtime pay.
- New section 541.4 states that neither the FLSA nor the final rule relieves employers from their contractual obligations under collective bargaining agreements.
 - The “highly compensated” test in the final rule applies only to employees who earn at least \$100,000 per year *and* who “customarily and regularly” perform exempt duties.
 - The final rule deletes the special rules for exemption applicable to “sole charge” executives, strengthening protections for workers under the executive duties test.
 - The final rule adds the requirement that employees who own at least a *bona fide* 20 percent equity interest in a business are exempt *only* if they are “actively engaged in its management.”
 - The final rule maintains the previous requirement that exempt administrative employees must exercise discretion and independent judgment.
 - Final section 541.301(e)(2) states that licensed practical nurses and other similar health care employees are entitled to overtime. The final rule retains previous law regarding the overtime rights of registered nurses.
 - The final rule clarifies the Department’s intent not to change the educational requirements for the professional exemption, and defines “work requiring advanced knowledge” as “work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment.”
- The final rule retains terms used in the previous regulations, but makes them easier to understand and apply to the 21st Century workplace by better reflecting existing federal case law. In addition, the overall length of the regulations has been reduced from 31,000 words to just 15,000.

Minimum Salary Level for Exemption		
Current Regulation	Proposed Regulation	Final Regulation
\$155 per week \$8,060 annual	\$425 per week \$22,100 annual	\$455 per week \$23,660 annual

Concerns Raised in Public Comments:

1. The \$22,100 annual (\$425/week) minimum salary level for exemption is too low.
2. Middle-income workers will be harmed because workers earning more than \$65,000 per year might not be entitled to overtime pay.
3. Too many workers would be denied overtime protections.
4. “Blue collar” workers will lose their right to overtime.
5. Police, fire fighters, paramedics, emergency medical technicians (EMTs) and other first responders will lose their right to overtime.
6. Nurses will lose their right to overtime.
7. Veterans will lose their right to overtime.
8. Technicians, cooks and other skilled employees who do not have four-year college degrees will lose their right to overtime.
9. Every worker who holds a “position of responsibility” or has a “high level of skill or training” will lose their right to overtime.
10. Low-level employees who do not have discretion in their jobs will qualify for exemption and lose their right to overtime.

Change in the Final Regulation:

- ➔ The final rule requires a minimum salary level of \$23,660 (\$455/week) – a \$300/week increase over the current minimum of \$8,060 (\$155/week).
- ➔ To be considered exempt from overtime, “highly compensated” employees in the final rule must earn at least \$100,000 per year, *and* “customarily and regularly” perform exempt duties.
- ➔ The new highly compensated test for employees who earn \$100,000 per year *and* perform exempt duties *could* affect up to 107,000 higher-income workers. However, 6.7 million workers earning less than \$23,660 will have their overtime protections guaranteed. For workers in the middle, the final rule is more protective, or at least as protective, of their overtime rights than the old rule.
- ➔ New § 541.3(a) clearly states that “blue collar” workers are entitled to overtime pay.
- ➔ New § 541.3(b) states that first responders such as police, fire fighters, paramedics and EMTs are entitled to overtime pay.
- ➔ The final § 541.301(e)(2) states that licensed practical nurses and other similar health care employees do not qualify as exempt professionals. The final rule retains the previous law regarding registered nurses.
- ➔ The reference to “training in the armed forces” has been removed from final § 541.301(d) to clarify that veteran status does not affect overtime pay.
- ➔ The final rule clarifies that there is no change to the educational requirements for the professional exemption. These workers will keep their existing overtime protections.
- ➔ The “position of responsibility” and “high level of skill or training” proposed language has been removed from the administrative duties test.
- ➔ The final rule retains the discretion standards from the previous administrative and professional duties test.

Additional information can be found at: www.dol.gov/fairpay