

Alert!

Chapter 52
National Treasury
Employees Union

April, 2004

Pay Parity Backers Win Key Vote

FedWeek, April 6, 2004

By a 299-126 margin, the House has voted in favor of setting federal raises for January 2005 at the same level as military raises, in effect a vote endorsing a 3.5 percent raise rather than the 1.5 percent the White House recommended. The vote, one of the rare times the full House or Senate has addressed the federal pay raise as a separate issue (rather than as one provision among many in a larger bill), was held after the House Budget Committee refused to include "pay parity" language in its version of a budget outline for fiscal 2005. Sponsors of the language argued that federal employees make contributions to the nation just as important as those of military personnel and that the practice of providing equal raises that has been followed in all but a few years in the past two decades should be maintained. The Senate earlier approved a budget outline that does contain pay parity language.

Agencies to Bear the Cost: Opponents of the pay parity measure--including the White House, which lobbied against it--argued that the additional cost of boosting the raise will amount to \$2.2 billion in the first year alone, plus the related costs of resulting increases in retirement benefits. However, supporters said that the additional cost would simply be absorbed out of existing agency overhead expenses--the "salaries and expenses" accounts. Imposing an additional funding burden on those accounts, though, could require some agencies to cut back in some areas. Traditionally, travel, training, office equipment and even staffing levels have been among the targets when such cutting is required.

More Decisions on Pay Lie Ahead: While the "pay parity" resolution is not binding--it only expresses the "sense of the House"--it does set a strong precedent for other budgetary action to come in the months ahead. The next main step will be approval of appropriations bills that contain the actual funding for agency operations in the upcoming fiscal year. In recent years the "parity" amount typically has been specified in those bills, sometimes added as an amendment in committee voting, sometimes included as part of the basic bill. Gaining enactment of the 3.5 percent figure may yet run into difficulty, at least in the House, since the chairman of the Transportation-Treasury appropriations subcommittee that handles general employee accounts, Rep. Ernest Istook, R-Okla., was the leading opponent of the pay parity resolution. Also still to be determined is whether Congress will accept the Bush administration's proposals for a total of \$500 million to be used as performance-based pay--\$300 million to go into the "human capital performance fund" that Congress created last year but did not fund, and \$200 million to be built into individual agency budgets to recognize performance.

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Thank you Sir, May I have Another?

By Alert! Editor, Mick Eskew

The Union has lobbied and got us all a much better pay raise than what was wanted by the administration. Next year's battle has already begun. So the news has been slow, so I thought I would speak to a memorandum recently received in the Collections Division. This is not meant to be mean or ill spirited but to express some concern which is often talked about around the coffee pot, so to speak. If you are not a Revenue Officer this article may not be of interest to you or be that exciting. Although, you may wish to commiserate with the collections employees. If you wish, you may also write an article for the *ALERT!* regarding a topic of interest in your area. If so, please send it in to the editor.

This is about a memorandum sent by Glenn E. Henderson, Compliance Area 10 Director, Subject: Trust Fund Compliance Expectations, to collection managers. I would like to share this memorandum with you and discuss some of its parts and possibly an alternate view. Mr. Henderson's comments will be in *Italics*.

"The purpose of this memorandum is to outline expectations for improvement in the trust fund compliance program and to address the problem of in-business taxpayers pyramiding employment tax liabilities. The Area 10 CQMS performance on pyramiding has improved from 53.2% in FY 2003 to 68.2% so far in 2004. The expectations outlined in this memorandum are designed to continue improvement in this area."

This is great, a 15% increase in improvement! If Mr. Henderson or your manager has failed to congratulate you, let me say "Job Well Done". If a private firm had a 15% increase in sales, I am sure their management would had be elated and shared the joy. On the other hand, Mr. Henderson says, "...expectations outlined...are designed to continue improvement in this area." I am sure he meant to say job well done.

"Pyramiding

Last year all collection managers were required to attend the Collection Pyramiding Strategy for Managers CPE course. The course emphasized the effective use of case reviews to address trust fund non-compliance. I expect all Area 10 revenue officer managers to use the new Consultation Initiative case review process to place special emphasis on in-business trust fund cases. IRM 1.4.50.2(2) b states the following as a mandatory review requirement: "Taxpayers who have pyramided since the case was assigned to the current revenue officer." Managers should be thoroughly familiar with and clearly address specific compliance with IRM 5.7 during their reviews on in-business trust fund cases. In addition, territory managers must include these types of cases as part of their operational reviews. Use of summons, lien filing and enforcement action should be timely and effective. The 45 day rule lien priority on accounts receivable and inventory should be enforced with third party lenders and factors where appropriate."

Regarding new IBTF modules that accrue in any quarters after the case was assigned to the RO; caution must be used when determining if a case pyramided in an RO's inventory. Example, if the case was assigned in mid to late March, and the TP has not made any FTDs it is very doubtful that these deposits could be made up by the end of the quarter. Many

times returns are in the service center pipe line before the case is assigned. This type of "pyramiding" occurred before RO intervention and the RO cannot be held accountable. If the TP continues to pyramid, the RO must first send a letter 1058 and wait 45 days (one-half of a quarter) before any enforcement can be taken. Then there is no guarantee that any funds will be attached and the TP will react positively. Seizures of businesses are very time consuming, with management historically taken months to review and sign off on the levy. It has been known that management would take so long to review seizure paperwork that the levy would have to be sent back for an update on the accruals. Procedures, time lines, potential effects to RO and general lack of support from management make harsh enforcement ineffective and cumbersome. The RO cannot make the TP do anything; only encourage him or her through a series of enforcement techniques.

A war story: A Revenue Officer recently, in the last six months, sent a business seizure forward for management approval. An upper management person, title and name will go undisclosed, sent the case back advising the RO to "levy on credit cards" and levy on wife's wages. For those in exam who have read this far, you can't levy on a person's credit cards, and the wage levy would have been okay, except the file indicated the wife did not work. The manager advised the RO to take more stringent levy action. If seizing a person's business is not stringent then what is?

On the 45 day rule lien priority, let us count the number of times this has played an important part of our collection agenda. You can read the IRM 5.12.2.4.1 and 5.17.2.5.4 to see how convoluted and difficult that can be.

The new Consultation Initiative case review process is designed to allow the manager and employee to discuss the cases in inventory. The manager is to mentor and help the employee find ways to resolve the case, not find another avenue for review.

"Fraud

Managers are to be alert to indicators of potential fraud and have employees contact their Fraud Referral Specialist when appropriate. IRM 5.7.2 discusses monthly filing and special deposits, including criminal referrals as well as civil referrals for injunctions. IRM 25.1, Fraud Handbook, also addresses trust fund violations as well as evasion of payment statutes. All decisions regarding potential fraud should be discussed with a Revenue Officer Fraud Referral Specialist and documented in the case history. Managers and employees can consult the Fraud Web Site on the IRWeb for more information."

I appalled the work it takes to develop a good fraud case and those who commit the offense should be punished. Fraud cases take a lot of work and time to do correctly and thoroughly, therefore, Revenue Officer should not be punished by remarks in his/her appraisal about untimely follow-ups and contacts on other cases. Management is unwilling to discuss a reduction in targeted inventory levels, how can management do this type of processes and maintain high end inventories? Proper consideration must be given to the overall work load and not to an arbitrary inventory level number.

"Injunctions

Consideration of an injunction should be given and documented on egregious trust fund repeater cases where traditional collection methods have been exhausted or ineffective. Managers should discuss potential injunctions with their local Technical Support and Area Counsel on a case-by-case basis."

Sounds great! I was once told by a District Counsel person it would be difficult to find a judge who would be willing to forbid a person to pursue their means of making a living, it's called distraint of trade. This is not to mention that going through all the steps required to begin a referral is very burdensome on the Revenue Officer and generally not effective. But, maybe times have changed. What about a drop in inventory levels when you work cases like this?

I would like to thank Mr. Henderson for sharing his thoughts and ideas with us and hope to have many discussions regarding his expectations. It is unfortunate that so much is expected of Revenue Officers and there is so little time in a day. Maybe this is why some employees take work home with them so they can just keep up with today's expectations, never mind about tomorrow's. Unfortunately, I am sure this can be said about many of our professional employees.

"Stop taxpayers from Pyramiding!" easily said but expecting more and faster, with little support and more requirements almost daily it is extremely difficult to get anything accomplished. Remember the "Gap Cases"?

It's the Law, Rules and Regulations! You Be the Judge

By Alert! Editor, Mick Eskew

The filing of Federal Tax Liens has been a hot topic of discussion in the collections division lately. Below I have presented law, rules and regulations that I know that speaks to this subject. I have underlined a few of the points which I think are pertinent. You take a look and see what you think.

IRM 5.12.2.5 (03-01-2004) Considerations Before Filing

- (1) The government's interest must be protected.
- (2) Consider all aspects of the taxpayer's circumstances before deciding to file a NFTL.
- (3) Exercise judgment in deciding whether a NFTL should be filed.

IRM 5.12.2.7 (03-01-2004) Taxpayer Contact

- (1) Make reasonable efforts, before filing the NFTL to contact the taxpayer to advise that a NFTL may be filed if payment is not made.
- (2) Contact may be made by:
 - (a) Telephone

- (b) Delivered in person
- (c) Mailing a notice or letter to the last known address
- (3) Give the taxpayer an opportunity to make payment or other security arrangements. Explain the effects of the NFTL filing on normal business operations or their credit rating.
- (4) Certain restrictions have been placed on the Service regarding contact with taxpayers. See IRC 6304, Fair Tax Collection Practices.
- (5) If the taxpayer disagrees with the proposed lien filing, advise the taxpayer of the right to appeal. Discuss both the Collection Appeals Program (CAP) and the Collection Due Process (CDP) under IRC 6320. See IRM 5.12.1

IRM 5.12.2.8 (03-01-2004) **Notice of Federal Tax Lien Determination**

- (1) The employee assigned the balance due case is responsible for safeguarding the government's interest. There are no rules to meet all Notice of Federal Tax Lien (NFTL) filing situations.
- (2) Persons assigned balance due cases must exercise judgment in deciding whether or not a NFTL should be filed.

Section 1203 of RRA 98

Termination of Employment for Misconduct

1203 (b) (6) - violations of the Internal Revenue Code of 1986, Department of Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer, taxpayer representative or other employee of the Internal Revenue Service;

National Agreement 2002, Article 5, Section 14

An employee must obey lawful orders from management officials in his or her chain of command. However, no employee will be subject to disciplinary or adverse action for refusing to obey an unlawful order.

You should know that Appeals will and have already released liens filed where the Revenue Officer did not follow the proper procedures. Having a "Comfort Letter" may not and probably will not keep you out of harms way when things get rough and the fingers start to point. Do not rely on the Nuremburg Defense, "I was only following orders" to get you out of a jam. The Union will have a very difficult, if not impossible time helping someone when they have knowingly violated the law. You should seek advice if you are not comfortable with what you have been told to do. So there's the law, you be the judge.



THE FUNDS – TSP Rates of Return

Rates of Return were updated on **April 1, 2004**.

	G Fund	F Fund	C Fund	S Fund	I Fund
March 2004	0.29%	0.69%	(1.50%)	0.38%	0.60%
Last 12 Months* (4/1/2003 - 3/31/2004)	4.09%	5.29%	34.93%	56.44%	56.56%

* The G, F, C, S, and I Fund returns for the last 12 months assume unchanging balances (time-weighting) from month to month, and assume that earnings are compounded on a monthly basis

TSP Open Season Underway

FedWeek, April 6, 2004

One of the twice-yearly TSP open seasons began April 15 and runs through June 30. During an open season, investors may change the amounts of their investments. Investors under the FERS system may invest 14 percent of salary and those under the CSRS system may invest 9 percent, subject to the tax code dollar cap of \$13,000. Highly-paid investors under the FERS system may need to adjust their investments during the open season to make sure they don't hit the dollar cap until the end of the year. If they hit it earlier, their contributions shut off and so do the government matching contributions the government makes for FERS investors (the automatic 1 percent of salary contribution for FERS employees would continue, however).

(Editor's Note: to change the allocation of your investment among the five funds, go to www.tsp.gov. To change the percentage to be withheld from your salary, go to www.employeexpress.gov. You will need a PIN or password with each.)

Catch-Ups Also Allowed

FedWeek, April 6, 2004

The TSP last year started allowing actively employed investors age 50 and older to start making "catch-up" contributions, with a maximum \$3,000 this year. Catch-up contributions are over and above the percentage of salary or dollar contribution limits that otherwise apply, and are made by filing a separate form, the TSP-1-C; contrary to what some investors still believe, catch-ups are not made by increasing regular contributions. Catch-up elections do not need to be made during an open season but instead can be made at any time during the year. Also, investors don't have to be 50 before making the contribution but are eligible so long as they will be 50 during the calendar year. Retirees are not eligible to make catch-up or regular contributions.

New TSP Fund Idea Moves Ahead

FedWeek, march 23, 2004

The Thrift Savings Plan governing board is continuing to push ahead with the idea of adding a new fund or funds to the program that would create desired percentage mixes of the existing five investment funds, with automatic adjustments to maintain that ratio. The main reason for adding the new funds is that after studying TSP investor behavior officials have concluded that many participants invest too conservatively--35 percent have all their money in the low risk but low potential return government securities fund--while others take excessive risks--about 11 percent have all of their money in one or more of the stock funds. Only 6 percent of investors have money spread among all five funds. Further, TSP data show, investors tend not to rebalance their portfolios to take investment results into account--only about 16 percent of investors made an interfund transfer in the most recent year studied, 2002--and when they do, they tend to chase returns by shifting money to funds that have performed well recently. The result, according to an analysis prepared for the board, is that investors are getting too little return for the risk they are taking on; or, looked at another way, they are taking on too much risk for the returns they are getting.

Lifestyle versus Lifecycle Funds: One type of fund under consideration would be a lifestyle fund, in which the investor would decide a preferred level of investment risk and a portfolio would be crafted among the TSP stock and bond funds to reflect that risk. In the other, called a lifecycle fund, investors would project when they expect to withdraw the funds--not necessarily at retirement--and a portfolio would be crafted and then adjusted to become more conservative as the withdrawal date approached. According to an analysis prepared for the board, the latter type of fund has several advantages in that it is easier for investors to understand and does not require the investor to reconsider the desired mix of investments over time. Whether the TSP will add one or both likely won't be decided for several months, and it likely would be months after that before any new fund or funds became available.

Testimony of TSP Officials: Top officials of the Thrift Savings Plan recently testified before the Senate Governmental Affairs Committee in a rare hearing involving the TSP. While their testimony focused primarily on assuring the panel that the TSP was not vulnerable to the types of investing abuses uncovered recently in some actively managed mutual funds, other topics also were discussed.

Around the Office

By Alert! editor Mick Eskew

- I hoped you noticed but there was no *Alert!* published in last month. March was a very busy month for the Chapter; we just ran out of time and energy. Many of our stewards attended three days of National NTEU sponsored training in Austin, Texas. It is always good to hear the National Officers talk about what is going on in Washington DC and the efforts they are making to protect our rights from those on the Hill. As often as I have been, I always learn something that I can immediately take back to help the Chapter or a particular individual.
- A lot of our time and energy in March was spent on preparation of an Oral Reply for an adverse action. An Oral Reply is when the Union rebuts the allegations of management when it attempts to take action to suspend or remove an employee.
- Employee interview with TIGTA continue on various subjects matter. If you are notified by TIGTA or your manager that your presence is requested, call or contact your assigned steward or call the Union office. You should never go to an interview without representation; we can help you navigate through these stressful times. The first thing I tell the employees and repeat many times during our initial talk is "Never, ever lie to TIGTA during the interview". I hope you never have to hear the rest of my speech.
- Finally, the San Antonio office will be moving to the new facilities at 8700 Tesoro Dr. The new location is near the San Antonio International Airport, between Nacogdoches Road and Broadway, adjacent to Loop 410. All employees should be out of the Summit Tower by mid June.

TOM'S HUMOR PAGE

In case you were wondering why you have a job.

While the Statue of Liberty remains shuttered for lack of \$5 million in post September 11 upgrades, Congress mandated \$10.7 billion in "earmarked" projects (also known as home-state "pork"), including: \$50 million for an indoor rain forest in Iowa, \$50 million to make sure a Florida beach resort bridge remains toll-free, \$450,000 to decipher the gene structure of rainbow trout, \$225,000 to repair a public swimming pool whose drain U.S. Rep. Jim Gibbons of Nevada clogged with tadpoles when he was a kid, \$200,000 to introduce golf to youngsters, \$90,000 for the Cowgirl Hall of Fame, and ironically, \$500,000 for an University of Akron program that analyzes how Congress makes difficult budget decisions. (Funny Times, April 2004)



Chapter 52 *Alert!*, all the news that is fit to be copied!

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