

TRIBUTE TO LEON BRACHMAN

HON. KAY GRANGER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, June 9, 2000

Ms. GRANGER. Mr. Speaker, I rise today to pay tribute to Leon Brachman, one of Fort Worth, Texas' finest sons, in honor of his upcoming 80th birthday.

While he was born and raised in Marietta, OH, Mr. Brachman moved to Forth Worth in 1938. He married a Fort Worth girl from an old Forth Worth family and never left.

Mr. Brachman has served his adopted city in almost every civic capacity imaginable. In his service as a founder of the Fort Worth Symphony and the Fort Worth Chamber Music Society, an original board member of the Van Cliburn Quadrennial Piano Competition, and president of Casa Manana, he has shown his profound love of culture and his belief that all should be able to share in its beauty. By his decades long service as the treasurer, president, and chairman of the board of All Saints Hospital, as well as his chairmanship of the Steering Committee of the Public Health School of the University of North Texas, Health Science Center, Fort Worth, he has shown his devotion to the provision of quality health care to all citizens of our community. As the chairman of the Tarrant County Appraisal District, he devoted countless hours ensuring that Fort Worth and Tarrant County raised their required revenues in a way that was fair to all of its citizens.

To the Jewish community of our city and our entire country, Mr. Brachman has served in virtually every possible leadership role, giving of his time and his resources to keep their institutions strong, their communal needs met, their self-reliance vital. Having served as a vice chairman of the United Jewish Appeal, the president of Ahavath Sholom Synagogue, founder and president of the Hebrew Day School of Fort Worth, and countless other Jewish communal roles, each institution has been positively influenced by his involvement.

Whenever the community has called upon him, Mr. Brachman has never hesitated to take on the most thankless tasks. Wherever there has been an institution in a seemingly hopeless situation, Mr. Brachman has accepted the challenge to nurse it back to health. Our community is incredibly stronger for his presence. We are very lucky that he chose to adopt Fort Worth as his home.

I would like to congratulate Mr. Brachman, his wife of 58 years, Fay, his three children, nine grandchildren, and four great grandchildren and wish them all continued health and success.

It is important that the House of Representatives acknowledge and be thankful for the spirit of community responsibility embodied by Mr. Brachman. His life's work to make our world a better place demonstrates the best our country has to offer.

SENIOR FOREIGN SERVICE
RESERVE OFFICERS

HON. MIKE McINTYRE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, June 9, 2000

Mr. McINTYRE. Mr. Speaker, I rise today to express my thoughts on an issue that has been brought to my attention by a constituent of mine in southeastern North Carolina.

My constituent and his colleagues were Senior Foreign Service Reserve Officers, until they were involuntarily converted out of the Foreign Service by the Foreign Service Act of 1980. These officers were, in general, specialists in professional fields other than those commonly associated with overseas assignments.

When Congress wrote the law that was to become known as the Foreign Service Act of 1980 ("FSA"), Members of Congress spent many hours debating the question of providing safeguards for the careers of the Foreign Service Reserve Officers whose personnel status would be most affected by the newly drafted legislation. Therefore, the FSA guaranteed the permanent preservation of the grade and benefits of the employees.

Please allow me to read an excerpt from the Report of the Committee on Post Office and Civil Service, regarding the Foreign Service Act of 1980:

Converting employees from their present positions to new pay schedules and different personnel systems, including the Senior Service, cannot be accomplished without some difficulties. The policy governing this chapter is to minimize the disruption to the individual employees and to preserve the rights and benefits of employees subject to conversion. The Committee recognizes that minimizing disruption and saving rights and benefits entail cost to the Government. These costs are justified in view of the fact that by forcing conversions the Government, as the employer, is altering the legitimate expectations of the employees. Fairness requires that the Government cushion these employees against the hardships which will come in wake of forced conversion . . . Employees converted are provided with permanent saved grade and tenure rights comparable to what they had.

The Department of State did fulfill their obligation to protect the earned rights of these senior officers from the date of the Act until early 1990. Executive Order 12698 increased the salary of the Senior Foreign Service Officers ("SFS"). However, the Department of State did not adjust the salary of my constituent and his fellow SFS-4 officers. No explanation was given to the affected officers for this arbitrary action of the Department of State.

At about the same time, the Federal Employees Pay Comparability Act ("FEPBA") became law. This law eliminated all Civil Service grades above GS-15, substituting the designation of Senior Level ("SL"), and authorized the agencies to pay SL's a salary as high as SFS-6.

Initially the Department of State proposed to designate these former SFS-4 officers as Senior Level 8, at a salary equal to that of SFS-4. Without explanation and contradictory to the intent of Congress in the Foreign Service Act, the Department of State issued personnel actions designating these long-time,

professional and dedicated officers as SL-00, at a salary \$13,000 below that of SFS-4. This was, and is in my opinion, a distorted interpretation of the Foreign Service Act as passed by Congress and signed into law.

These officers then followed prescribed procedures to effect an administrative correction. The ruling of the Agency's Foreign Service Grievance Board stated that it lacked jurisdiction to interpret Section 2106 of the law, but they then denied the officer's claim, without a hearing.

These officers, frustrated by the Department of State's refusal to uphold the law that protected what they had earned as senior officers of the Department of State, filed an action in the Federal Court for the District of Columbia. The Department of State attorneys with the assistance of lawyers from the Department of Justice resisted to a de novo hearing of the facts. After months of delays, the presiding judge dismissed the case without granting a hearing.

I am equally concerned that the Department of State did not provide a copy of a June 25, 1991, Memorandum from the Office of the Legal Advisor of the Office of the Director General when responding to a request for production of documents by the attorney representing these officers. That document had a direct and dire effect on the status of these officers. The document was kept secret from these officers, and an attempt was made to suppress the document in court. The document, contrary to the clear intent of the law, stated, "Owing to their conversion to the Civil Service, their rights are governed by the Civil Service statutes and regulations." This appears to be the authority used to justify the improper personnel actions that deprived these former Senior Foreign Service officers their guarantees as stated in the Foreign Service Act of 1980.

I seek the support of my fellow colleagues, especially those who also have former Foreign Service Reserve Officers living in their districts, to assist me in putting forth an effort to bring about the restoration of the rank and benefits to which officers are entitled.

I hope that Secretary Albright, in keeping with her May 21, 1996 Department Notice to All Under Secretaries, Assistant Secretaries, Ambassadors, Principal Officers dealing with long term employees disputes, will take a direct interest in resolving this matter and avoid the necessity of remedial legislation.

**IMPROVING SOCIAL SECURITY'S
PAYMENT SYSTEM FOR CLAIM-
ANT REPRESENTATIVES**

HON. E. CLAY SHAW, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, June 9, 2000

Mr. SHAW. Mr. Speaker, today I am introducing legislation that if enacted would update and improve Social Security's payment systems for claimant representatives.

Currently, many would-be beneficiaries hire attorneys to help them file applications for Social Security retirement and, most commonly, disability benefits. That this process is so complex people feel obligated to hire an attorney to help them is in itself a serious problem. It is especially troubling given the expected rapid

growth in the number of applicants and beneficiaries with the aging and eventual retirement of the Baby Boomers. So much work remains in the area of simplifying the application process, which will benefit applicants, SSA, and ultimately taxpayers. For now, though, a good start would be finding a better way to pay claimants' representatives and to have SSA process this workload as quickly and efficiently as possible.

First some background. Some Members may be aware that attorneys can choose to have SSA directly pay their fees for representing claimants for Social Security disability benefits. In such cases, when the claimant is awarded past-due benefits SSA withholds the appropriate attorney's fee from the benefits that are owned the claimant, and sends the fee directly to the attorney. Prior to this year, no charge was made for SSA costs in processing, withholding, and forwarding this fee.

This was changed under a proposal originally made by the Clinton Administration that was incorporated in the Ticket to Work and Work Incentives Improvement Law, which is designed to help disabled individuals enter or return to the workforce. This law provides new medical and employment services to help individuals with disabilities find and keep jobs without fear of losing important benefits once they leave the disability rolls. That's a critical goal, and one that requires additional resources. In determining ways to pay for the added benefits in the "Ticket" law, many people on both sides of the aisle thought that having lawyers—rather than the Social Security trust funds—pick up the tab for Social Security's costs in processing their paychecks was appropriate. Thus a version of the original Administration proposal on attorney fees was included in the final conference agreement on the Ticket bill approved by the House of Representatives 418-2 on November 18, 1999.

As this legislation progressed, several changes were made that improved the original proposal. For example, the General Accounting Office is required to study whether the assessment should be linked to how quickly SSA processes fees and whether the assessment will reduce the number of claimant representatives available to assist these claimants, among other issues.

The legislation I am introducing addresses this issue and thus can serve as the basis for further discussion and possible legislation on this point. In short, my legislation would specify that Social Security could impose an assessment on an attorney's fee only if the fee was processed and approved for payments within 30 days after the Commissioner certifies the payment of the claimant's benefits. This will encourage Social Security to handle this work promptly. If they don't SSA will lose money and attorneys will not be charged their assessment. Hopefully it will not come to that, but in the past SSA has not had a stellar record in terms of processing this workload in a timely fashion.

Introducing this legislation now will serve to further discussion on this topic, especially in anticipation of an upcoming hearing I plan to hold in the Social Security Subcommittee on additional process reforms. Suggested reforms include: the consideration of a flat fee as opposed to a percentage of past-due benefits, the extension of the attorney's fee direct payment provisions to the Supplemental Security

Income program, the issuance of past-due benefits and the attorney's fee in a joint check made payable to the beneficiary and the attorney and the application of Prompt Payment Act provisions to past-due benefits and attorney fee payments. These suggested reforms follow this statement in legislative form.

I would appreciate any comments or suggestions for additional provisions my colleagues or other informed individuals may have on this issue, and of course would welcome cosponsors to this legislation. Already we have heard from many claimant representatives, and I would expect to hear from many more as we move on with this issue.

SUGGESTED PROVISIONS FOR ATTORNEY FEE
PAYMENT LEGISLATION
STREAMLINING OF ATTORNEY FEE PAYMENT
SYSTEM

(a) MAXIMUM LIMIT ON ASSESSMENTS.—Section 206(d)(2)(A) of the Social Security Act (42 U.S.C. 406(d)(2)(A)) is amended—

(1) by striking "equal to" and inserting "equal to the lesser of—";

(2) by striking "the product obtained" and inserting the following: "(i) the product obtained";

(3) by striking "subparagraph (B)." and inserting "subparagraph (B), or"; and

(4) by adding at the end the following new clause: "(ii) \$25.00."

(b) ISSUANCE OF JOINT CHECKS.—

(1) IN GENERAL.—Section 206 of such Act (42 U.S.C. 406) is amended by adding at the end the following new subsection:

"(e) ISSUANCE OF JOINT CHECKS.—In any case in which a claimant is determined to be entitled to past-due benefits, and such claimant is represented by an attorney for whom a fee for services is required to be certified under this section in connection with such benefits, the payment of such past-due benefits shall be in the form of a joint check made payable to both the claimant and the attorney in an amount equal to the total amount of such past due benefits, which shall be sent to the claimant's attorney. Receipt by the claimant's attorney of the proceeds of such check in an amount equal to the fee for services certified for payment by the Commissioner pursuant to subsection (a)(4)(A) or (b)(1)(A) in connection with such past-due benefits shall constitute receipt by the attorney of such fee."

(2) ASSESSMENT ON ATTORNEY CONTINGENT UPON TIMELY RECEIPT OF PAYMENT.—Section 206(d)(3) of such Act (42 U.S.C. 406(d)(3)) is amended—Section 206(d)(3) of such Act (42 U.S.C. 406(d)(3)) is amended—

(1) by striking "The Commissioner" and inserting the following:

"(A) IN GENERAL.—The Commissioner"; and

(2) by adding at the end the following new subparagraph:

"(B) IMPOSITION AND COLLECTION OF ASSESSMENT CONTINGENT UPON TIMELY RECEIPT OF CHECK.—The Commissioner may impose and collect the assessment under this subsection in connection with any past-due benefits only if the joint check required under subsection (e) in connection with such benefits is received by the attorney within 45 days after the certification by the Commissioner for payment of such benefits."

EXTENSION OF ATTORNEY FEE PAYMENT
SYSTEM TO TITLE XVI CLAIMS

(a) IN GENERAL.—Section 1631(d)(2)(A) of the Social Security Act (42 U.S.C. 1383(d)(2)(A)) is amended—

(1) by striking "paragraph (2)" and inserting "subsections (a)(2) and (b)(1)(B)";

(2) by striking "section 406(a) (other than in paragraph (4) thereof)" and inserting "section 406";

(3) in clause (i), by striking "subparagraphs (A)(ii)(I) and (C)(i)" and inserting "subsections (a)(2)(A)(ii)(I), (a)(2)(D)(i), and (b)(1)(B)", by striking "as determined", by striking "1127(a)" and inserting "1127(a)", and by striking "the parenthetical phrase contained therein" and inserting "the phrase 'before any applicable reduction under section 1127(a)'; and

(4) in clause (ii), by inserting ", in subsections (a)(2)(B) and (b)(1)(A)(i), the phrase" after "substituting", and by inserting "the phrase" after "for".

EXTENSION OF THE PROMPT PAYMENT ACT TO THE SOCIAL SECURITY ADMINISTRATION'S CLAIMS AND ATTORNEY FEE PAYMENT SYSTEMS

(a) IN GENERAL.—Section 3901 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(e)(1) This chapter applies to the Social Security Administration with regard to delays in the payment of claims under Title II and Title XVI of the Social Security Act and to the certification for the payment of fees to attorneys under sections 206 and 1631(d)(2) of the Social Security Act (treating, for purposes of this chapter, the required certification by the Commissioner of Social Security for payment of any fees as a required payment by the Commissioner of such fees).

"(2) In applying this chapter to the Social Security Administration pursuant to paragraph (1)—

"(A) the date of issuance of the award certificate by the Social Security Administration shall be deemed to start the payment period under 5 CFR 1315.4(f); and

"(B) the documentation required by the Social Security Administration to certify a claim or fee payment under title 42, United States Code shall be deemed to satisfy the documentation requirement of 5 CFR 1315.9".

DEPARTMENTS OF LABOR,
HEALTH AND HUMAN SERVICES,
AND EDUCATION, AND RELATED
AGENCIES APPROPRIATIONS
ACT, 2001

SPEECH OF

HON. RUBEN HINOJOSA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 8, 2000

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4577) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2001, and for other purposes.

Mr. HINOJOSA. Mr. Chairman, I rise today in strong support of the amendment on 21st century community learning centers.

I have been involved with education issues for almost 30 years. This experience has strongly reinforced for me that all children, regardless of income level or race have the same potential for high achievement and healthy development when provided appropriate opportunities.

Thus, our goal must be to support the development of quality afterschool programs for all children, but especially those in low-income communities.

Our goal should also be to see the expanded-day programs linked to the core school day.