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FOR RELEASE ON DELIVERY
EXPECTED AT 9:30 A.M.
FRIDAY, OCTOBER 28, 1977

094672

STATEMENT OF
H. L. KRIEGER, DIRECTOR
FEDERAL PERSONNEL AND COMPENSATION DIVISION
U.S. GENERAL ACCOUNTING OFFICE

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE AND GENERAL SERVICES
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS
U.S. SENATE

ON

SENATE RESOLUTION 244--A PROPOSED STUDY OF MAJOR FEDERAL RETIREMENT SYSTEMS--AND THREE BILLS AMENDING TITLE 5 OF THE UNITED STATES CODE

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A 38
A 210
A 439
A 487
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MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM PLEASED TO BE HERE TO PRESENT THE GENERAL ACCOUNTING OFFICE'S VIEWS ON SENATE RESOLUTION 244, H.R. 3447, H.R. 6975, AND H.R. 3755. IT IS OUR UNDERSTANDING THAT THE PRIMARY CONCERN OF THESE HEARINGS IS SENATE RESOLUTION 244; THEREFORE, I HAVE CONFINED MY REMARKS TO THAT RESOLUTION. MY STATEMENT, HOWEVER, DOES INCLUDE AS ATTACHMENTS LETTERS TO THE CHAIRMAN OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS PRESENTING OUR VIEWS ON H.R. 3447, H.R. 6975, AND H.R. 3755.

WE STRONGLY SUPPORT THE PURPOSE OF SENATE RESOLUTION 244 WHICH IS TO STUDY THE MAJOR FEDERAL RETIREMENT SYSTEMS, USING DYNAMIC ASSUMPTIONS, TO DETERMINE THE EXTENT OF THE PRESENT AND FUTURE UNFUNDED LIABILITY OF EACH SYSTEM, THE METHOD OF FINANCING EACH SYSTEM, AND THE ACTIONS NECESSARY TO BE TAKEN

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TO INSURE THE SOLVENCY OF EACH SYSTEM. THE STUDY IS TO BE MADE BY THE SECRETARY OF THE TREASURY, AND A REPORT, INCLUDING RECOMMENDATIONS FOR LEGISLATION, IS REQUIRED TO BE MADE TO THE CONGRESS BY JUNE 30, 1978.

THE SUBCOMMITTEE'S MEMBERS ARE UNDOUBTEDLY AWARE OF GAO'S DEEP CONCERN ABOUT FEDERAL RETIREMENT SYSTEMS. BEGINNING IN 1974, WE HAVE ISSUED A SERIES OF REPORTS COVERING A NUMBER OF ISSUES RELATED TO BASIC POLICIES, FINANCING, ADMINISTRATION, AND BENEFITS OF THE VARIOUS RETIREMENT PROGRAMS. OUR LATEST REPORT, ENTITLED "FEDERAL RETIREMENT SYSTEMS: UNRECOGNIZED COSTS, INADEQUATE FUNDING, INCONSISTENT BENEFITS," ISSUED ON AUGUST 3, 1977, REITERATED AN EARLIER RECOMMENDATION FOR ESTABLISHMENT OF AN OVERALL POLICY TO GUIDE DEVELOPMENT AND IMPROVEMENT OF GOVERNMENT RETIREMENT SYSTEMS. WITHOUT AN OVERALL POLICY, THE BENEFIT PROVISIONS AND FUNDING METHODS OF THE VARIOUS RETIREMENT SYSTEMS HAVE DEVELOPED ON AN INCONSISTENT BASIS.

AS THE RESOLUTION RECOGNIZES, FUNDING OF FEDERAL RETIREMENT SYSTEMS REMAINS A SERIOUS AND GROWING PROBLEM THAT NEEDS FURTHER ATTENTION. FEDERAL RETIREMENT SYSTEMS' FUNDING REQUIREMENTS VARY, AND IN MOST CASES ARE LESS STRINGENT THAN THOSE IMPOSED BY LAW ON PRIVATE PENSION PLANS. SOME SYSTEMS PROVIDE FOR FULLY FUNDING BENEFIT RIGHTS AS THEY ACCRUE, SOME PROVIDE FOR PARTIAL FUNDING, AND SOME ARE

COMPLETELY UNFUNDED. THE REPORTED UNFUNDED LIABILITIES FOR THREE MAJOR SYSTEMS HAVE GROWN FROM $157 BILLION IN 1970 TO $280 BILLION IN 1976, AN INCREASE OF 79 PERCENT. UNDER EXISTING FUNDING PROVISIONS, THE UNFUNDED LIABILITIES WILL CONTINUE TO GROW.

THE CONGRESS IS NOT BEING PROVIDED REALISTIC AND CONSISTENT INFORMATION ON THE COST OF FEDERAL RETIREMENT PROGRAMS, THUS ITS ABILITY TO MAKE SOUND FISCAL AND LEGISLATIVE DECISIONS ON ESTABLISHING, AMENDING, AND FUNDING RETIREMENT AND AGENCY PROGRAMS IS INHIBITED. THE COSTS AND LIABILITIES OF FEDERAL RETIREMENT PROGRAMS ARE MUCH GREATER THAN RECOGNIZED BY CURRENT COSTING AND FUNDING PROCEDURES. USUALLY, COSTS ARE DETERMINED ON A "STATIC" BASIS WITH LITTLE OR NO CONSIDERATION GIVEN TO THE EFFECT OF GENERAL PAY INCREASES AND ANNUITY ADJUSTMENTS ON ULTIMATE BENEFIT PAYMENTS, RESULTING IN A CONSIDERABLE UNDERSTATEMENT OF BENEFIT COSTS ACCRUING EACH YEAR. FOR THE CIVIL SERVICE RETIREMENT SYSTEM ALONE, UNRECOGNIZED RETIREMENT COSTS IN 1976 AMOUNTED TO AN ESTIMATED $7 BILLION. IN SOME PROGRAMS, NONE OF THE CURRENTLY ACCRUING COST IS RECOGNIZED.

COSTS NOT COVERED BY EMPLOYEE CONTRIBUTIONS MUST ULTIMATELY BE PAID BY THE GOVERNMENT. WHEN RETIREMENT COSTS ARE UNDERSTATED, THE COSTS OF GOVERNMENT OPERATIONS AND AGENCY PROGRAMS ARE ALSO UNDERSTATED. ONE SIDE EFFECT OF THE UNDERALLOCATION OF RETIREMENT COSTS TO AGENCY OPERATIONS IS THE UNRECOGNIZED SUBSIDY THAT ACCRUES TO GOVERNMENT ORGANIZATIONS WHOSE PROGRAMS

ARE REQUIRED BY LAW TO BE FINANCED BY THE USERS OF THEIR SERVICES. UNDERSTATEMENT OF RETIREMENT COSTS MAY ALSO RESULT IN A TENDENCY TO ADOPT BENEFITS WHICH COULD JEOPARDIZE THE AFFORDABILITY OF THE RETIREMENT SYSTEMS.

THE CONGRESS, EMPLOYEES, AND THE TAXPAYERS SHOULD NOT BE MISLED BY UNREALISTIC ESTIMATES OF RETIREMENT COSTS. OUR AUGUST 1977 REPORT RECOMMENDED THAT THE CONGRESS ENACT LEGISLATION REQUIRING THE COSTS ACCRUING UNDER ALL FEDERAL RETIREMENT SYSTEMS TO BE RECOGNIZED AND FUNDED ON A DYNAMIC BASIS WITH FULL CONSIDERATION OF THE EFFECT OF PAY AND ANNUITY INCREASES ON FUTURE BENEFIT PAYMENTS. WE FURTHER RECOMMENDED THAT THE DIFFERENCE BETWEEN THE DYNAMIC COSTS AND EMPLOYEE CONTRIBUTIONS BE CHARGED TO AGENCY OPERATIONS.

THE RESOLUTION LISTS 11 SYSTEMS TO BE COVERED BY THE STUDY INCLUDING 7 FEDERAL STAFF RETIREMENT SYSTEMS FOR CIVILIAN AND MILITARY PERSONNEL, 3 DISTRICT OF COLUMBIA RETIREMENT SYSTEMS, AND SOCIAL SECURITY. THE SYSTEMS ARE DESCRIBED AS "MAJOR FEDERAL RETIREMENT SYSTEMS." SOCIAL SECURITY IS NOT A RETIREMENT SYSTEM FOR FEDERAL PERSONNEL AND, IN OUR OPINION SHOULD NOT NECESSARILY BE CONSIDERED IN THE SAME CONTEXT AS FEDERAL STAFF RETIREMENT PROGRAMS. IN FACT, MOST FEDERAL CIVILIAN EMPLOYEES ARE PRECLUDED BY LAW FROM PARTICIPATING IN SOCIAL SECURITY THROUGH THEIR FEDERAL EMPLOYMENT. SIMILARLY, SOME FEDERAL EMPLOYEES PARTICIPATE IN THE DISTRICT OF COLUMBIA RETIREMENT SYSTEMS; HOWEVER, THE SYSTEMS ARE GENERALLY LIMITED

TO CERTAIN DISTRICT PERSONNEL. UNDER "HOME-RULE," THE DISTRICT HAS PRIMARY AUTHORITY OVER THE MANAGEMENT OF ITS RETIREMENT PROGRAMS.

WE WOULD ALSO POINT OUT THAT THE GOVERNMENT OPERATES FIVE OTHER RETIREMENT SYSTEMS FOR ITS PERSONNEL IN ADDITION TO THE SEVEN SYSTEMS LISTED IN THE RESOLUTION. THESE ARE (1) CENTRAL INTELLIGENCE AGENCY, (2) PRESIDENT, (3) DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS, (4) DIRECTOR OF THE FEDERAL JUDICIAL CENTER, AND (5) COMPTROLLER GENERAL. ALTHOUGH MOST OF THESE SYSTEMS ARE SMALL, YOU MAY WISH TO ADD THESE SYSTEMS TO THE SCOPE OF THE STUDY AND THEREBY COVER ALL RETIREMENT SYSTEMS FOR FEDERAL PERSONNEL.

THIS CONCLUDES MY STATEMENT, MR. CHAIRMAN, AND I AND MY COLLEAGUES WILL BE PLEASED TO ANSWER QUESTIONS.

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

OCT 17 1977

B-130503
FPC-77-74

The Honorable Abraham Ribicoff
Chairman, Committee on
Governmental Affairs
United States Senate

Dear Mr. Chairman:

Your letter of August 25, 1977, asked for our views regarding the provisions of H.R. 6975 and any recommendations we may have concerning possible committee action. H.R. 6975 is to amend title 5, United States Code, to provide that hearing examiners shall be known as Administrative Law Judges (ALJs), and to increase the number of such positions which the Civil Service Commission may establish and place at GS-16 of the General Schedule.

Changing the title from hearing examiner to Administrative Law Judge would formalize in statute the Administrative title change promulgated by the Commission in August 1972. The bill would also raise the statutory limit on GS-16 ALJ positions from 240 to 340, thereby authorizing 100 additional GS-16 ALJ positions. The actual net increase in GS-16 ALJ positions will be only 60 since at present the Commission has allocated 40 GS-16 positions from the Government-wide "supergrade pool." If the bill is enacted the Commission will be able to return the 40 "borrowed" positions to the pool. The Commission has indicated that the 60 remaining positions will be allocated in those situations where the need for additional GS-16 positions is clearly established.

The House Post Office and Civil Service Committee intends that the Commission to be "tight fisted" with regard to reviewing and placing these positions. The Committee does not intend for this bill to be a carte blanche for the Commission to immediately create 100 new GS-16 hearing examiners, nor give grade increases to 100 hearing examiners. The Committee believes these positions will give the Commission the flexibility to manage the pool better, and, as new agencies are created or agencies suffer severe case backlogs or new responsibilities, provide a method to get the people to eliminate the problems at hand. However, the Committee expects the Commission to follow the proper criteria in creating new GS-16 ALJ positions. These criteria are:

1. Number and complexity of cases assigned hearing examiners are handling.

2. Use of nonquota GS-15 hearing examiners.

3. Sharing of hearing examiners by agencies.

4. Eliminating nonproductive members of the hearing examiners corps.

Our current review of ALJ practices indicates that the Commission believes its role in most phases of personnel management is limited by Section 11 of the Administrative Procedures Act. We have found indications that the Commission:

1. does not receive regular reports showing the number and complexity of cases assigned hearing examiners,

2. does not independently verify agency needs for additional ALJs,

3. has not actively encouraged agencies nor have agencies been aggressive in eliminating nonproductive GS-16 members of the hearing examiners corps,

4. did not receive justification clearly establishing the need for additional GS-16 ALJ positions.

Also we believe that there may be greater opportunity to use nonquota GS-15 hearing examiners than is now done.

Our review has shown that agencies do have data showing the number of cases assigned an ALJ but that the data is not regularly provided the Commission. We have found that agencies have ALJs who have consistently heard and decided cases in numbers far below their office average. We have also found indications that one agency does not have enough work to keep all its ALJs productive. The ALJs could be used temporarily at other agencies to reduce backlogs or transferred permanently to agencies with a greater need. In addition, the Commission does not make personnel management evaluations of ALJ operations. Evaluations would provide information on how effectively ALJ's are used by the agencies.

Thus, we recommend that H.R. 6975 not be enacted until the Commission can assure the Congress that the proper criteria can be met. While we are not opposed to formalizing in statute the Commission's administrative title change and the 40 GS-16 positions to "pay back" the Government-wide supergrade pool, we do think the 60 additional positions should not be granted until the Commission takes a more active role in the personnel management of ALJs. While increasing the statutory limit would provide the Commission with more flexibility, we feel the Commission should demonstrate that they have a system which ensures the proper criteria will be met before being able to allocate new GS-16 positions to the agencies.

We will be glad to brief the Committee on the results of our review of ALJ practices. Our work is to be completed December 1977, and we will be able to provide the Committee more comprehensive information at that time.

Sincerely yours,

Acting Comptroller General
of the United States

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

OCT 26 1977

B-83477
FPC-77-71
FPC-77-72

The Honorable Abraham Ribicoff
Chairman, Committee on
Governmental Affairs
United States Senate

Dear Mr. Chairman:

By letters dated August 23, 1977, you requested our comments on S. 1559 and H.R. 3755, identical bills "To provide for the reinstatement of civil service retirement survivor annuities for certain widows and widowers whose remarriages occurred before July 18, 1966, and for other purposes."

By an amendment of July 18, 1966, to the Civil Service Retirement Act (5 U.S.C. 8341), widows and widowers age 60 and over who remarry continue to receive their survivor annuities. Widows and widowers who remarry before age 60 lose their survivor benefits. However, if their remarriage occurred on or after July 18, 1966, their survivor annuities are restored upon termination of the remarriage. Prior to the amendment, all survivor annuity payments ceased upon remarriage, regardless of age, and could not be restored.

S. 1559 and H.R. 3755 propose to extend the rights provided by the amendment to widows and widowers of former employees who were remarried before July 18, 1966.

We have no basis upon which to comment on the merits of the proposed legislation. We would point out, however, that retirement system liberalizations and improvements, such as the July 1966 amendment, as well as benefit reductions have traditionally been made to apply prospectively only. S. 1559 and H.R. 3755 would, in effect, be a retroactive application of a retirement change which might establish an undesirable precedent for future consideration.

It is our understanding that the number of individuals who would be affected by these bills is unknown. The Civil Service Commission estimates

that, if 3,500 persons are involved, enactment of either bill would increase the unfunded liability of the civil service retirement system by about $47 million.

Sincerely yours,

Deputy Comptroller General
of the United States

COMPTROLLER GENERAL OF THE UNITED
WASHINGTON, D.C. 20548

OCT 26 1977

B-83477
FPC-77-70

The Honorable Abraham Ribicoff
Chairman, Committee on
Governmental Affairs
United States Senate

Dear Mr. Chairman:

Your letter dated August 23, 1977, requested our comments on H.R. 3447, a bill which proposes to amend certain survivorship provisions of the civil service retirement system.

Existing law (5 U.S.C. 8339(j)) provides that a married annuitant receiving a reduced annuity because of the survivor benefits election, will have his/her full annuity restored upon termination of the marriage. Should the annuitant remarry, the annuity is automatically reduced the first month after remarriage by the same reductions that were in effect at the time of retirement and the new spouse becomes eligible for survivor benefits. If an annuitant is not married at the time of retirement and later becomes married, the law (5 U.S.C. 8339(k)(2)) provides that he/she may elect survivorship coverage within 1 year after marriage. The retiree's annuity is then reduced the first month after the election is made, regardless of when married.

H.R. 3447 proposes to give an annuitant who remarries, and who had elected survivor benefits for his/her previous spouse, 1 year in which to elect survivorship benefits for the new spouse. Under the bill, the annuity would not be subject to a reduction until the end of 1 year after such remarriage. The bill also proposes that an annuitant who was unmarried at the time of retirement, but who later marries and elects survivor benefits, will not be subject to an annuity reduction until the end of 1 year after such marriage.

At the time of retirement an employee has the option of electing survivorship benefits for his/her spouse. We believe it is reasonable, as proposed by H.R. 3447, to allow the same option of electing survivor benefits for any new spouse acquired after retirement. We do, however, question the provision which allows the annuitant to continue receiving full annuity for 1 year after remarriage. An employee electing survivor benefits at the time of retirement is subject to an immediate annuity reduction, therefore, it seems more equitable that an annuitant electing

survivorship coverage after retirement be subject to annuity reductions from the date of remarriage.

Under current law (5 U.S.C. 8339(k)(1)) an unmarried employee at the time of retirement may elect a reduced annuity in order to provide survivorship benefits to an individual with an insurable interest. The law, however, does not provide for restoration of that annuity should the individual with the insurable interest predecease the annuitant.

H.R. 3447 proposes to restore the full annuity to unmarried annuitants electing survivorship coverage in cases where the individual with the insurable interest predeceases the annuitant. We fully support this proposed change because we believe it is reasonable and equitable to put unmarried annuitants on a par with married annuitants.

The Civil Service Commission estimates that if H.R. 3447 were enacted, it would decrease the unfunded liability of the civil service retirement system by about $58 million. If annuitants electing survivor benefits after retirement were not given the 1 year grace period before annuity reductions, the unfunded liability of the retirement fund would be further reduced.

Sincerely yours,

R.F. Keller

Deputy Comptroller General
of the United States