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

B-83477

JAN 17 1980

The Honorable Abraham A. Ribicoff
Chairman, Committee on Governmental Affairs
United States Senate *SEN 06600*

Dear Mr. Chairman:

Subject: *[*Comments on S.879*]* (FPC-96-1-20)

This is in response to your request for our comments on S. 879, a bill "To provide lump-sum death benefits for certain Federal law officers and firefighters killed in the line of duty, and for other purposes."

Section 1(a) of the bill would provide a lump-sum payment of \$50,000 to the survivor(s) of any Federal law enforcement officer or firefighter who dies as a result of injuries sustained in the performance of duty.

Several programs already exist under the Federal employee compensation system which provide survivor benefits upon the death of Federal civilian personnel. We have no information upon which to base an opinion as to whether reasonable grounds exist for the additional death benefits proposed by the bill for law enforcement and firefighter personnel.

Under 5 U.S.C. 8133, the surviving spouse of a civil service employee whose death is job related receives a non-taxable monthly benefit equal to 45 percent of the current pay of the employee's position, plus 15 percent for each child, up to a maximum of 75 percent. Employees may also elect to be covered by the Federal Employees Group Life Insurance program in amounts equal to their annual rate of pay rounded to the next higher \$1,000, plus \$2,000, with a minimum coverage of \$10,000. The Government pays one-third of the premium, and the employee pays the remaining two-thirds. Employees may purchase additional coverage of \$10,000, with no Government contributions. In cases of accidental death, double indemnity applies. Moreover, the civil service retirement system provides monthly payments to the survivors of deceased employees and retirees based on the amount of their salary or annuity.

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We are unaware of any major difficulties being experienced in attracting and retaining Federal law enforcement and firefighter personnel. However, if it is necessary for recruitment, retention, or other purposes to provide additional compensation for certain Federal jobs because of such factors, we believe that additional compensation should be reflected in pay, not in benefit programs. There is potential hazard in other Federal occupations, and we have generally opposed any legislation like S. 879 which grants preferential treatment to any particular group of employees in the absence of a compelling reason. In this regard we recognize that, under 42 U.S.C. 3796, a \$50,000 death benefit is available to the survivors of State and local government law enforcement and firefighter personnel who are killed in the line of duty. It could be argued that the \$50,000 death benefit proposed by S. 879 for Federal law enforcement and firefighter personnel would be consistent with that earlier legislation.

Should the Congress decide to enact this portion of S. 879, we recommend that certain technical revisions be made, as explained in this and the following paragraphs. The last sentence in section 1(a) of the bill purports to authorize the expenditure of 1979 fiscal year funds to pay the \$50,000 death benefit. We do not believe that appropriation language should properly be included in the language of a subsection of a substantive title of the United States Code. In any event, we note that fiscal year 1979 funds have lapsed.

Section 3 provides that the \$50,000 death benefit shall be payable with respect to any law enforcement officer or firefighter who dies on or after January 1, 1976. However, section 1(a) provides that no payment shall be made unless a claim is received within 4 years after the date of the death of an employee. We assume that it is the intent of the bill to provide death benefits for the survivors of any employee who may have been killed in the line of duty during 1976. Since the 4-year limitation will begin to run on January 1, 1980, we suggest that the following language be substituted for the next to last sentence of section 1(a) in order to preserve any claims made after that date for deaths occurring before the date of enactment of the act: "No payment shall be made under this subsection unless a claim for payment by a person entitled under this subsection is made within 4 years after the date of the death of the employee or 4 years after the date of enactment of this act, whichever is later."

Section 1(b) of the bill would amend section 8331(20) of title 5, U.S.C., to include Federal protective officers employed by the General Services Administration or any non-uniformed special police under the special, more generous retirement provisions available to certain law enforcement and firefighter personnel under the civil service retirement system. We cannot support this change.

Federal employees whose primary duties are (1) investigating, apprehending or detaining persons suspected or convicted of Federal crimes, or (2) controlling and extinguishing fires or maintaining and using firefighting apparatus and equipment, are permitted to voluntarily retire at age 50 after 20 years of such service. These employees' annuities are computed at the rate of 2.5 percent of average pay (average high-3 years' pay including administratively uncontrollable overtime for law enforcement officers) for the first 20 years of service plus 2 percent of average pay for each year of covered service over 20.

In comparison, under the regular civil service retirement provisions, Federal employees are generally eligible for voluntary retirement at age 55 after 30 years of service or at age 60 after 20 years. Their annuities are computed at the rate of 1.5 percent of average pay (generally excluding all premium pay) for the first 5 years of service, 1.75 percent for the next 5 years, and 2 percent for each year of service beyond 10 years.

The legislative purpose of providing early retirement to law enforcement and firefighter personnel was to improve the quality of these services by helping to maintain a young and vigorous work force, and therefore the more generous annuities were needed to make earlier retirement economically feasible. The special annuity formula was not intended to reward employees for performing demanding or hazardous services.

In a report entitled, "Special Retirement Policy for Federal Law Enforcement and Firefighter Personnel Needs Reevaluation," (FPCD-76-97, Feb. 24, 1977), we examined the early retirement policy in terms of its reasonableness, effectiveness, and costs and concluded that the need for continuing it was questionable. The primary reason for this conclusion was the fact that employees covered by the special policy do not retire much earlier than those who are not covered by it, and the costs of covered employees' benefits are considerably greater.

We found that over the policy's 30-year history, the average retirement age of covered employees has ranged from only 1 to 3 years below that of employees retiring under regular civil service optional retirement provisions. To achieve this 1 to 3 year reduction, the Government pays heavily. Based on actuarial estimates, the annual cost for the early retirement benefits is 61 percent more than the cost would be to provide the same employees with regular benefits.

When the Congress established the special retirement policy, certain job characteristics were considered to require exceptionally vigorous personnel in law enforcement and firefighter positions:

- Working long hours under arduous or environmentally adverse conditions.
- Working under significant physical, mental, and emotional stress.
- Being exposed to hazard during the day-to-day performance of the job.
- Maintaining irregular eating and rest schedules.
- Being absent from home and family for extended periods.
- Being continually on call to respond to emergencies.
- Having to meet stringent physical demands.

The duties of a Federal protective officer, primarily protecting property, do not meet these criteria. Furthermore, OPM regulations specifically exclude from the early retirement program employees whose primary duties involve (1) maintaining law and order, (2) protecting life and property, or (3) guarding against or inspecting for violations of law or investigating persons other than those suspected of violating criminal laws. Also excluded are employees whose duties only occasionally or incidentally require the investigation, apprehension, or detention of persons suspected or convicted of violating the criminal laws of the United States.

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Section (2) of the bill would amend section 1114 of title 18, U.S.C., to include Federal protective officers employed by the General Service Administration or any non-uniformed special police among those Federal officials afforded the protection of the Federal statutes pertaining to punishment for the murder, manslaughter, or assault of such officials. Since it is currently a Federal offense to commit such an action against personnel of Justice, Post Office, Treasury, Agriculture, Interior, etc., who are engaged in judicial, investigatory, enforcement, correctional, protective, and other potentially hazardous duties, we see no reason not to include these additional officers and employees in the scope of this protection.

Sincerely yours,

R. F. KELLER

Deputy Comptroller General
 of the United States