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

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The Honorable James M. Hanley
Chairman, Committee on Post Office
and Civil Service
House of Representatives

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Dear Mr. Chairman:

You have requested our [comments on H. R. 5995] a bill to amend titles 5 and 37 of the United States Code to authorize the pay of Federal employees and uniformed service personnel to be continued during periods in which the enactment of appropriations is delayed.

The proposed legislation, if enacted, would constitute a permanent indefinite appropriation of whatever amount of funds is necessary to meet obligations to pay Federal employees when other appropriations for this pay have expired and new appropriations have not been enacted. The legislation would make these funds available automatically without any further action by the Congress.

TERMINOLOGY

We have several comments on the proposed legislation. First, although clearly defined in the bill, we suggest that use of the term "lapsed appropriations" be eliminated from the bill and replaced with the term "expired appropriations." The term "lapsed appropriations" is no longer used in government accounting. Current usage among the agencies favors the term "expired appropriation." This term is used in the 1976 edition of OMB Circular A-34. Moreover, the current version of the GAO booklet "Terms Used in the Budgetary Process," does not include the term "lapsed appropriation."

COVERAGE

As drafted, subsection (b), both of proposed 5 U.S.C. § 5527 and 37 U.S.C. § 1010, would limit continuation of pay to employees or members who remained in the same position or duty assignment after the expiration of appropriations as they were in immediately before the expiration. This language fulfills the apparent intent of the drafters of the bill to continue the status quo until regular appropriations are enacted.

On the other hand, this language would effectively preclude transfers or other changes of job after the expiration of appropriations because the affected employee or member would be ineligible for continuation of pay. Promotions involving a change of job title might be similarly affected. This language, therefore, greatly limits agencies' management flexibility.

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To maintain management flexibility, while still keeping the extent of the permanent appropriations under control, we recommend that the bill be amended to continue the pay of employees who remain employed by the same agency and members who remain members of the uniformed service. We suggest that lines 11 and 12 on page 3 of the bill be amended to read:

"of expired appropriations and who continues employed by the same agency."

We further suggest that lines 3 and 4 on page 5 of the bill be amended to read:

"and who continues in such status."

MEMBERS COVERED

In our opinion, proposed subsection 1010(b) of title 37 would continue the pay of members of the military reserve on inactive duty training as well as those members on active duty. If it is the intent of the legislation to limit the permanent appropriation to active duty personnel, we recommend that line 1 on page 5 of the bill be amended by adding "on active duty" after the words "who was serving."

PERMANENT APPROPRIATIONS

H. R. 5995 does not clearly state the period of availability of funds appropriated either by proposed 5 U.S.C. § 5527 or 37 U.S.C. § 1010. Although we would probably interpret the bill as making these funds available only for the period of expired appropriations, we recommend that the bill be amended to specifically state the period of availability of the appropriated funds. We suggest the following language to be added to section 2 of the bill:

"Funds appropriated by this section shall be available from the first day in the period of expired appropriations and shall remain available until the enactment into law of an appropriation act or joint resolution continuing appropriations, containing funds for the pay of the employee described in subsection (b)."

For section 3 we suggest the same language with the word "member" substituted for "employee."

H. R. 5995 also does not specify that funds made available under its provisions are to be charged against the agency's regular appropriation when it is enacted. Should the Congress eventually enact a regular appropriation for the agency without deducting the amount of funds already made available by the permanent appropriation, the agency will have an excess of funds for pay. We recommend that sections 2 and 3 of H. R. 5995 be amended to include a statement

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that expenditures made with funds appropriated under these provisions are to be charged to the applicable appropriation when it is enacted. We suggest the following language:

"Expenditures for pay made pursuant to this section shall be charged to the applicable appropriation whenever an act or joint resolution containing such an appropriation is enacted into law."

TECHNICAL MATTER

Section 2 of the bill states that it is amending Subchapter 55 of Title 5. We note that although Title 5 contains a Chapter 55, it does not contain a Subchapter 55. We recommend that line 2 on page 2 be amended to substitute the word "Chapter" for "Subchapter."

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States