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

B-205366

December 22, 1981

The Honorable Marjorie S. Holt
House of Representatives

Dear Mrs. Holt:

This is in reply to your communication of October 20, 1981, with enclosures, requesting a report on matters mentioned in a letter to you dated October 2, 1981, from

[REDACTED]

His question concerns the possible application to his situation of our decision B-189029, September 2, 1980 (59 Comp. Gen. 691), involving military retired pay.

It appears from [REDACTED] letter that he is a civilian employee of the Federal Government who is now considering retiring and he is concerned that his retirement annuity will be less than if he had retired last year (the so-called "retired pay inversion"). If [REDACTED] is a civilian employee, the decision in question, 59 Comp. Gen. 691, copy enclosed, would not be applicable to him. That decision construes certain of the provisions contained in 10 U.S.C. 1401a, which concern military retired pay computations in relation to changes in the Consumer Price Index. That decision applies only to service members who remain on active duty after becoming eligible to retire; it does not apply to civilian employees. Under the provisions of 10 U.S.C. 1401a discussed in that decision, generally, military members who remain on active duty after they become eligible for retirement, when they later retire, are permitted to compute their retired pay on the pay rates which were in effect on their earlier retirement eligibility date. Subsequent Consumer Price Index increases are then added to the retired pay computation thereby preventing the retired service member from receiving a lower retired pay rate than if he had retired earlier and, thus, avoiding the retired pay "inversion."

The laws upon which that decision was based do not apply to retirement annuities of civilian employees of the Federal Government. The provisions of law governing adjustments of Civil Service annuities to reflect Consumer Price Index increases are contained in 5 U.S.C. 8340(c). Since the administration of that statute is a matter within the jurisdiction of the Office of Personnel Management, not our Office, [REDACTED] may contact that

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office for an authoritative determination as to how his annuity will be computed. However, the following information may be helpful to him.

During 1980 when [REDACTED] was previously contemplating retirement, 5 U.S.C. 8340(c) provided some limited relief from the inversion problem for retiring civilian employees. Under the provisions then in effect, if a civilian employee retired between the effective dates of Consumer Price Index increases to retirement annuities, his Civil Service annuity could be recalculated effective the preceding Consumer Price Index adjustment date. If that recalculation produced a greater annuity, the retiree would receive that annuity.

However, section 401(a), Public Law 96-499, December 5, 1980, 94 Stat. 2599, 2605, eliminated the provision of 5 U.S.C. 8340(c) which permitted recalculation based on the preceding Consumer Price Index adjustment. Section 401(b)(1) of that act made that amendment to the law apply to annuities commencing after the 45th day after enactment of Public Law 96-499; that is, those commencing after January 19, 1981.

As a result, in order for an individual retiring from the Federal Government to be permitted to have his annuity recalculated to reflect the preceding Consumer Price Index, such annuity had to commence on or before January 19, 1981. From [REDACTED] letter, it appears that he was eligible to retire, but he failed to do so prior to the January 19 cut-off date.

We trust this will serve the purpose of your inquiry. We are returning [REDACTED] letter as requested.

Sincerely yours,

Harry R. Cline

For Comptroller General
of the United States

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