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

B-197059

FEB 5 1980

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

Dear Mr. Chairman:

Comments on

You have requested our views on H.R. 5704, a bill to amend titles 5 and 37 of the United States Code to provide authority to continue the pay of Federal employees and military personnel during periods in which the enactment of appropriations is delayed. The purpose of this bill is to assure that Federal civilian and military personnel continue to receive their pay at the start of a new fiscal year, whether or not the Congress has enacted regular appropriation acts or continuing resolutions providing funds for the pay.

The proposed legislation, if enacted, would constitute a permanent indefinite appropriation of whatever amount of funds is necessary for Federal employees' pay when other appropriations for this pay 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 appropriation" 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, paragraph (a) in sections 2 and 3 of the bill 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 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 assignments 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.

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 6 and 7 on page 2 of the bill be amended to read--

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

We further suggest that lines 18 and 19 on page 3 be amended to read--

"and who continues in such status."

LIMITATIONS ON PAY INCREASES

The language of paragraph (b)(1), both in section 2 and section 3 of the bill, does not make it clear whether the limitation on pay increases applies to all such increases, including pay comparability increases, promotions, and within grade increases. In our opinion, to keep the permanent appropriations under control, the limitation should apply to all types of pay increases; the pay of the employee or member should be continued at the same rate as before the period of expired appropriations. We recommend that paragraph (b)(1) in both sections be amended to make this intent clear.

For section 2 we suggest the following language:

"(b)(1) This section does not authorize expenditure of funds during any period of expired appropriations for the pay of any employee at a rate in excess of the rate payable to that employee immediately preceding that period."

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

DEFINITION OF EMPLOYEE

It is not clear that the definition of "employee" in proposed 5 U.S.C. § 5509(c)(1) covers all employees of the Government. Although existing section 2105 of Title 5 can be interpreted as including employees of the

legislative and judicial branches as well as the executive branch, the presence of a separate definition for Congressional employees in section 2107 of the title casts some doubt on this interpretation. Further, the use of the term "Executive agency" in proposed 5 U.S.C. § 5509(c)(3) might indicate that employees of the other branches are not included. If the legislation is designed to continue the pay of all Federal employees, we recommend that proposed paragraph 5509(c)(2) be amended to make this intent clear. We suggest the following language:

"'Employee' means any individual in the executive, judicial, or legislative branches of the Government of the United States covered by any of the terms defined in sections 2105, 2106, and 2107 of this title."

We also recommend that the word "Executive" be deleted from line 5 of paragraph 5509(c)(3).

MEMBERS COVERED

In our opinion proposed subsection 1010(a) of Title 33 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 16 on page 3 be amended by adding "on active duty" after the words "who was serving."

PERMANENT APPROPRIATIONS

H.R. 5704 does not clearly state the period of availability of funds appropriated either by proposed 5 U.S.C. § 5509 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 (a)."

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

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H.R. 5704 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 the funds already made available by the permanent appropriation, the agency will have an excess of funds for salaries. We recommend that sections 2 and 3 of H.R. 5704 be amended to include a statement that expenditures of 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 MATTERS

Section 2 of the bill amends Title 5 United States Code by adding a new section 5509. We note that Title 5 already contains a section 5509 and the enactment of H.R. 5704 would result in two sections of the title with the same number. We recommend the bill be amended to eliminate this possibility.

Also, in line 17 on page 4 "5508" should be changed to "1009."

Sincerely yours,

R. F. Keller

Deputy Comptroller General
of the United States