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

FILE: B-220873.2 **DATE:** July 22, 1986

MATTER OF: Restorations to the Civil Service Retirement and Disability Fund

DIGEST:

1. Pub. L. No. 99-155, 99 Stat. 814, directs the Secretary of the Treasury to immediately restore securities disinvested from the Civil Service Retirement and Disability Fund (Fund) after September 30, 1985, and redeemed between September 30, 1985 and November 14, 1985, which had higher interest rates than Federal Financing Bank securities held by the Fund. The restoration should be made as of the first date the restoration would not have the effect of exceeding the public debt limit.

2. Section 272 of the Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. No. 99-177, 99 Stat. 1037, 1095-98, authorizes restoration of interest to the Civil Service Retirement and Disability Fund lost between September 1, 1985 and December 12, 1985, the date of the Act's enactment, resulting from redemption of Treasury securities instead of Federal Financing Bank securities with a lower interest yield. Section 272, however, does not authorize restoration of losses of interest occurring after December 12, 1985.

In responding to our letter of January 17, 1986, in which we asked the Secretary of the Treasury various questions about operation of the Civil Service Retirement and Disability Fund (Fund) during the fall of 1985, the Treasury Department asked us whether section 272 of the Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. No. 99-177, 99 Stat. 1037, 1095-98, authorizes it to compensate the Fund for certain losses arising out of the 1985 debt limit problem. The losses in question resulted from Treasury redeeming Treasury securities held by the Fund instead of Federal Financing Bank (FFB) securities with a lower interest yield.

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For the reasons given below, we find that Treasury can restore to the Fund the higher interest Treasury securities redeemed on or before November 14, 1985--the date of passage of Pub. L. No. 99-155, 99 Stat. 814, which temporarily increased the statutory debt limit. The restoration should be made as of the first date on which it would not have the effect of exceeding the public debt limit. At the latest this would be December 12, 1985. Moreover, the restoration together with the authority in section 272 would allow replenishing the Fund with any interest lost resulting from these redemptions. Treasury, however, cannot restore to the Fund higher interest-bearing Treasury securities redeemed after November 14, 1985. Furthermore, regarding these redemptions, section 272 only provides authority for replenishing the Fund with interest losses that occurred up to December 12, 1985. Interest losses occurring between December 13, 1985 and June 30, 1986 cannot be returned to the Fund without specific legislation providing therefore.

In the latter part of fiscal year 1985, the Treasury Department took a number of actions to prevent the statutory debt limit from being exceeded. Thus, on October 9, 1985, Treasury exchanged $5 billion in Treasury securities held by the Fund for $5 billion in FFB securities, since the FFB securities were not subject to the statutory limit on the public debt. B-138524, Oct. 30, 1985. Moreover, instead of immediately investing Fund receipts as required by statute, 5 U.S.C. § 8348(c), it held and invested them over the period September 30, 1985, through November 14, 1985, resulting in interest losses to the Fund but avoiding a breach of the debt limit.

Additionally, in November and December 1985, Treasury redeemed certain Treasury securities held by the Fund instead of lower interest-bearing FFB securities, both types maturing on June 30, 1986. Some of these redemptions occurred prior to November 14, 1985 and some after. Thus, our files show that on November 6 and November 8, 1985, these redemptions totaled approximately $118,340,000; and on December 2, 1985, approximately $49 million. It is these transactions which are the subject of this decision. These redemptions conflicted with Treasury's policy of first redeeming lower interest rate securities in groups of securities with the same maturity date. The loss of interest resulting from these transactions continued until June 30, 1986, the date the higher rate securities would have matured.

The issue raised requires considering both Pub. L. No. 99-155, _supra_, temporarily increasing the statutory limit on the public debt, and section 272 of Pub. L. No. 99-177, supra. Pub. L. No. 99-155 directed the Secretary, upon its enactment, to "immediately * * * restore to the Social Security Trust Funds, or any other trust funds established pursuant to Federal law, any securities disinvested since September 30, 1985." Section 272 directs the Secretary to pay the Fund an amount equal to the interest lost between September 1, 1985 and December 12, 1985 (the date Pub. L. No. 99-177 was enacted) as a result of securities transactions undertaken to avoid exceeding the debt limit. Pub. L. No. 99-177 also further increased the debt ceiling.

The legislative history of both these acts shows that the Congress intended to restore the trust funds affected by Treasury's actions to the position they would have been in had the debt ceiling problem not occurred. The explanatory statement for Pub. L. No. 99-155[1/] provided on the House floor by Congressman Gephardt said: "It is the intent of the committee that restoration of securities means to restore the identical amounts, maturities and investment yield of the disinvested securities." 131 Cong. Rec. H10146 (daily ed. Nov. 13, 1985). See also 131 Cong. Rec. H10139-40 (daily ed. Nov. 13, 1985) (statement of Congressman Bonior). The statement defined disinvestment as "redemption of securities which would not have occurred to meet the ordinary needs of the trust funds unaffected by the constraint of the debt limit."[2/] Id. at H10146 (daily ed. Nov. 13, 1985).

The conference report explaining section 272 states it was intended to complete the process begun in Pub. L. No. 99-155 of restoring the various trust and retirement funds administered by the Secretary of the Treasury to the position in which they would have been had a debt limit increase been enacted before September 3, 1985. H.R. Rep. No. 433, 99th Cong., 1st Sess. 117-18 (1985). The report says that the Fund, among other trust funds, was to be made whole for Fund investments that were to be made on September 30, October 1, and November 1, 1985, but were delayed in some cases until November 14, and for accelerated Fund redemptions in November that were necessary to assure

1/ No committee reports accompanied the law.

2/ Congressman Gephardt also indicated that the bill would not restore to the trust funds the interest payments they would have received under normal conditions, suggesting that the Balanced Budget and Emergency Deficit Control bill would do this. 131 Cong. Rec. H10145 (daily ed. Nov. 13, 1985).

payment of benefits. Further, though not mentioning the Fund in this group, the report also said that various funds should be made whole for interest losses resulting from premature redemption of high interest securities. Id. at 119.

Treasury suggests that it was the intent of Congress in enacting section 272 to have Treasury compensate the Fund for all losses arising out of the 1985 debt limit problem. Nevertheless, it suggests that the literal language of the law only allows for restoration of interest lost between September 1, 1985 and December 12, 1985, the date of enactment of the Balanced Budget and Emergency Deficit Control Act of 1985, and would not cover interest losses arising after that date. These interest losses continued until June 30, 1986, the date the higher interest bearing Treasury securities would have matured.

Informally, Treasury also has told us that when Pub. L. No. 99-155 was enacted, it was not aware of the problem about redemption of the higher interest bearing Treasury securities. Although Treasury does not dispute that at the time of its enactment Pub. L. No. 99-155 did cover restoration of those securities redeemed on or before November 14, 1985, it questions whether it can make the restoration now since the Act called for an "immediate restoration." Treasury also states that if the restoration were to be made as of November 14, 1985, the debt limit set forth in Pub. L. No. 99-155 would be exceeded on various days between November 14, 1985 and December 12, 1985.3/ Treasury informs us, however, that a restoration now would not cause the current debt ceiling, set forth in Public Law 99-177, to be exceeded. Treasury also states that Public Law 99-155 provides no authority to make restorations of the higher interest Treasury securities redeemed after November 14, 1985.

It is evident from the legislative histories of Pub. L. Nos. 99-155 and 99-177, that, among other things, the laws were intended to make whole the trust funds affected by Treasury's actions to ameliorate the debt ceiling problem. Further, the explanatory statement accompanying the former act clearly contemplated the term "disinvestment" to cover redemption of higher interest bearing Treasury securities such as those described above. As those securities were

3/ This would occur because of other transactions effected during that period which increased the public debt.

redeemed because of debt limit considerations, consistent with Pub. L. No. 99-155, they should have immediately been restored to the Fund.

Since Treasury did not make the required restoration when it should have, it should do so as of the first date the restoration would not have the effect of exceeding the public debt limit. At the latest this would be December 12, 1985, the date the debt limit was increased by Pub. L. No. 99-177. Although Pub. L. No. 99-155 directed an "immediate" restoration, we see nothing in the Act or its legislative history that would preclude the restoration consistent with our conclusion. Such a restoration would be consistent with the intention of both Pub. L. No. 99-155 and the Balanced Budget Act to make the trust funds whole. As Pub. L. No. 99-155 only covered disinvestments that occurred between September 30, 1985 and November 14, 1985, the latter the date of its enactment, we agree with Treasury that the restoration would only apply to Treasury securities redeemed on or before November 14, 1985.

Section 272 of Pub. L. No. 99-177 authorizes restoration of interest to the Fund, but not restoration of disinvested securities. This authority would cover interest lost from redemption of the Treasury securities in question, but the section clearly limits the period covered for interest losses to that beginning September 1, 1985 and ending with the date of the Act's enactment--December 12, 1985. Although the conference report explaining the section suggests that the trust funds affected by Treasury's actions were to be made whole, without referring to the period set forth in section 272, we think the section can be read only to permit restoration of all interest lost during that period but not subsequent interest losses.

Thus, since the higher interest Treasury securities redeemed before November 14, 1985 are to be restored at the latest by December 12, 1985, any interest lost between the date of redemption and the date of restoration could be replenished under the authority in section 272.[4/] On the other hand, regarding the Treasury securities redeemed after November 14, which, as discussed above, cannot be restored

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4/ Since June 30, 1986 has passed, the "restoration" described is effectively equivalent to replenishment of any interest lost to the Fund resulting from these redemptions.

to the Fund, section 272 would authorize replenishment of interest losses occurring up to December 12, 1985. Interest losses occurring between December 13, 1985 and June 30, 1986, the date the higher interest Treasury securities would have matured, cannot be returned to the Fund without specific legislation providing therefor.

for Milton J. Socolar
Comptroller General
of the United States