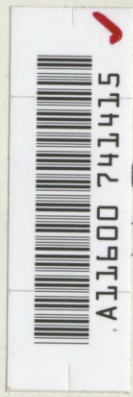


Y4 .P 84/10 R 31/19
GOVERNMENT COUNTERCLAIMS AGAINST AMOUNTS DUE
FROM CIVIL SERVICE RETIREMENT FUND

022
8044
784/10
R 31/19

GOVERNMENT
Storage



HEARING
BEFORE THE
COMMITTEE ON
POST OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES
EIGHTY-EIGHTH CONGRESS

FIRST SESSION
ON

H.R. 5390

A BILL TO AMEND THE CIVIL SERVICE RETIREMENT ACT TO PERMIT THE RECOVERY BY THE MUNICIPAL GOVERNMENT OF THE DISTRICT OF COLUMBIA OF AMOUNTS DUE SUCH GOVERNMENT IN THE ADJUDICATION OF CLAIMS UNDER SUCH ACT, AND FOR OTHER PURPOSES

H.R. 5569

A BILL TO AMEND THE CIVIL SERVICE RETIREMENT ACT TO PERMIT THE RECOVERY BY THE GOVERNMENT OF AMOUNTS DUE THE GOVERNMENT IN THE SETTLEMENT OF CLAIMS UNDER SUCH ACT, AND FOR OTHER PURPOSES

APRIL 23, 1963

Printed for the use of the Committee on Post Office and Civil Service



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1963

COMMITTEE ON POST OFFICE AND CIVIL SERVICE

TOM MURRAY, Tennessee, *Chairman*

JAMES H. MORRISON, Louisiana
THADDEUS J. DULSKI, New York
DAVID N. HENDERSON, North Carolina
ARNOLD OLSEN, Montana
MORRIS K. UDALL, Arizona
DOMINICK V. DANIELS, New Jersey
LINDLEY BECKWORTH, Texas
HARLEY O. STAGGERS, West Virginia
ROBERT N. C. NIX, Pennsylvania
EVERETT G. BURKHALTER, California
DON EDWARDS, California
JOE R. POOL, Texas
ALBERT W. WATSON, South Carolina

ROBERT J. CORBETT, Pennsylvania
H. R. GROSS, Iowa
JOEL T. BROYHILL, Virginia
AUGUST E. JOHANSEN, Michigan
GLENN CUNNINGHAM, Nebraska
GEORGE M. WALLHAUSER, New Jersey
ROBERT R. BARRY, New York
KATHARINE ST. GEORGE, New York
EDWARD J. DERWINSKI, Illinois
ROBERT F. ELLSWORTH, Kansas
HOMER E. ABELE, Ohio

SUBCOMMITTEE APPOINTED TO CONSIDER H.R. 5390 AND 5569

DOMINICK V. DANIELS, New Jersey, *Chairman*

LINDLEY BECKWORTH, Texas
ALBERT W. WATSON, South Carolina

ROBERT R. BARRY, New York
EDWARD J. DERWINSKI, Illinois

II

CONTENTS

Statement of—

	Page
Bryan, Irving, assistant corporation counsel, District of Columbia government, accompanied by Barney Farber, deputy accounting officer, and Samuel J. Kidd, chief, enforcement division-----	3
Pool, Hon. Joe R., of Texas, member of the full committee-----	2
Ruddock, Andrew E., director, Bureau of Retirement and Insurance, U.S. Civil Service Commission-----	9

CONTENTS

1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22
23	23
24	24
25	25
26	26
27	27
28	28
29	29
30	30
31	31
32	32
33	33
34	34
35	35
36	36
37	37
38	38
39	39
40	40
41	41
42	42
43	43
44	44
45	45
46	46
47	47
48	48
49	49
50	50
51	51
52	52
53	53
54	54
55	55
56	56
57	57
58	58
59	59
60	60
61	61
62	62
63	63
64	64
65	65
66	66
67	67
68	68
69	69
70	70
71	71
72	72
73	73
74	74
75	75
76	76
77	77
78	78
79	79
80	80
81	81
82	82
83	83
84	84
85	85
86	86
87	87
88	88
89	89
90	90
91	91
92	92
93	93
94	94
95	95
96	96
97	97
98	98
99	99
100	100

GOVERNMENT COUNTERCLAIMS AGAINST AMOUNTS DUE FROM CIVIL SERVICE RETIREMENT FUND

TUESDAY, APRIL 23, 1963

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 215, House Office Building, Hon. Dominick V. Daniels (subcommittee chairman) presiding.

Mr. DANIELS. The subcommittee will come to order.

Mr. Beckworth and Mr. Barry have asked to be excused because they are engaged before other committees.

This subcommittee was appointed to consider H.R. 5390 and 5569, both sponsored by Mr. Pool.

Without objection, H.R. 5390 and 5569 will be included in the record at this point.

(H.R. 5390 and H.R. 5569 follow:)

[H.R. 5390, 88th Cong., 1st sess.]

A BILL To amend the Civil Service Retirement Act to permit the recovery by the municipal government of the District of Columbia of amounts due such government in the adjudication of claims under such Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 15 of the Civil Service Retirement Act, as amended (5 U.S.C. 2265), is amended by adding at the end thereof the following new subsection:

“(c) In the adjudication of claims payable under this Act, the Commission, notwithstanding any other provision of law, shall take appropriate action on counterclaims filed by the municipal government of the District of Columbia as setoffs against amounts in the fund to the same extent and in the same manner as counterclaims filed by the United States.”.

[H.R. 5569, 88th Cong., 1st sess.]

A BILL To amend the Civil Service Retirement Act to permit the recovery by the Government of amounts due the Government in the settlement of claims under such Act, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 15 of the Civil Service Retirement Act, as amended (5 U.S.C. 2265), is amended by adding at the end thereof the following new subsection:

“(c) Notwithstanding any other provision of law, the Commission is authorized to take appropriate action on counterclaims filed by the Government as set off against amounts otherwise due and payable from the fund to the debtors concerned.”

Mr. DANIELS. The purposes of these proposals is to permit amounts payable to a former employee from the civil service retirement fund to be used to liquidate amounts the former employee owes the Government.

H.R. 5390 is based on an official request to the Congress by the Board of Commissioners of the District of Columbia and applies only to amounts owed the municipal government of the District of Columbia by former employees of the District.

The Civil Service Commission was asked to furnish their comments on the proposal and the Commission reported that it would be desirable to have the amendment to the Retirement Act apply to all former employees of the Federal Government as well as to former employees of the District of Columbia.

H.R. 5569 was sponsored by Mr. Pool as a result of the recommendation of the Civil Service Commission and will apply to debts owed by either former Federal employees or former employees of the municipal government of the District of Columbia.

Mr. Pool, a member of the full committee, could not be here this morning and asked permission to have his statement included in the record. Without objection, Mr. Pool's statement will be included in the record.

We also have the letter of request from the president of the Board of Commissioners of the District of Columbia dated March 5, 1963, addressed to Hon. John W. McCormack, Speaker, which will also be included, without objection, at this point in the record.

(The documents follow:)

STATEMENT BY REPRESENTATIVE JOE R. POOL, OF TEXAS, APRIL 23, 1963

Mr. Chairman, I appreciate the opportunity the chairman of the House Post Office and Civil Service Committee, Hon. Tom Murray, has afforded me to sponsor H.R. 5390 as a result of an official recommendation of the Board of Commissioners of the District of Columbia. I also sponsored H.R. 5569 to carry out the amendment suggested by the Civil Service Commission.

I understand that amounts payable from the civil service retirement fund to a former employee had been used for many years to set off debts owed by the former employee to the Government. This rule was applied both in the case of former employees of the Federal Government and in the case of former employees of the municipal government of the District of Columbia. However, as to District of Columbia cases, this practice was overturned as a result of a court case on the basis that the District of Columbia is a distinct legal entity and not an agency of the U.S. Government, and, therefore, that there was no legal basis for deducting the amounts of claims of the District of Columbia for money due a former employee of the District of Columbia. As a result of the court case, the General Accounting Office advised the Civil Service Commission to discontinue the practice of setoff of funds payable from the civil service retirement fund in the case of former employees of the District of Columbia.

Either one of the bills I have sponsored will permit the municipal government of the District of Columbia to recover on debts owed to them by former employees in the event there is any amount payable from the civil service retirement fund.

Mr. Chairman, I am sure you and the other members of the subcommittee will agree that this is desirable legislation and I will leave it up to your good discretion as to which of the bills will more adequately serve the needs of the Government after you hear from the witnesses scheduled here today.

MARCH 5, 1963.

The Honorable JOHN W. McCORMACK,
The Speaker, U.S. House of Representatives,
Washington, D.C.

MY DEAR MR. SPEAKER: The Commissioners have the honor to submit herewith a draft bill to amend the Civil Service Retirement Act of May 29, 1930.

The purpose of this bill is to permit the government of the District of Columbia to enter claims for setoff of money in the civil service retirement fund to the credit of former employees of the District government in liquidation of debts due and owing to the District by such employees. Although, in most instances, the District, by agreement with its employees, is able to obtain satisfaction of any

indebtedness due it by any such employee, legislation is required to permit setoff in those circumstances when an employee terminates his employment without discharging the indebtedness due the District.

The rule is well settled, and has been recognized by judicial precedents, that the amount in the civil service retirement fund to the credit of a former employee of the U.S. Government, or the amount of his retirement annuities, when either becomes payable, may be applied in liquidation of the employee's indebtedness to the United States. The rule is based on the common law right of every creditor to apply the moneys of his debtor in his possession in extinguishment of the creditor's claim against the debtor. However, the right of setoff applies only in cases where there exists a mutuality of parties and demands.

Although the District of Columbia government makes contributions to the civil service retirement fund for the benefit of its employees, in like manner as the Federal Government contributes to such fund for its employees, the District is considered a separate and distinct legal entity and not an agency of the U.S. Government. Therefore, funds in the civil service retirement fund for the benefit of District employees or former employees cannot, in the absence of authorizing legislation, be claimed as setoff by the District for debts due it from such employees.

Accordingly, the Commissioners recommend that the Civil Service Retirement Act be amended so as to permit the District to claim by way of setoff against civil service retirement credits held for the benefit of its employees or former employees for the payment of debts owed the District by such employees or former employees.

The Commissioners have been advised by the Bureau of the Budget that, from the standpoint of the administration's program, there is no objection to the submission of this legislation to the Congress.

Very sincerely yours,

WALTER N. TOBRINER,
President, Board of Commissioners, District of Columbia.

A BILL To amend the Civil Service Retirement Act of May 29, 1930

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That section 15 of the Civil Service Retirement Act, as renumbered by the Civil Service Retirement Act Amendments of 1956, 5 U.S.C. 2265, is amended by adding at the end thereof the following new subsection:

"(c) In adjudicating claims payable under this Act the Commission shall, notwithstanding any other provision of law, take appropriate action on counterclaims filed by the municipal government of the District of Columbia as setoffs against amounts in the retirement fund, to the same extent and in the same manner as counterclaims filed by the United States."

STATEMENT OF IRVING BRYAN, ASSISTANT CORPORATION COUNSEL, DISTRICT OF COLUMBIA GOVERNMENT, ACCOMPANIED BY BARNEY FARBER, DEPUTY ACCOUNTING OFFICER, AND SAMUEL J. KIDD, CHIEF, ENFORCEMENT DIVISION

Mr. DANIELS. Our first witness is Mr. Irving Bryan, assistant corporation counsel, District of Columbia. He is accompanied by Mr. Barney Farber, deputy accounting officer.

Mr. BRYAN. I also have with me Mr. Samuel J. Kidd, who is Chief of the Enforcement Section of the Finance Office of the District government.

Mr. DANIELS. Mr. Bryan, if you have a prepared statement you may read from your statement or summarize your testimony.

Mr. BRYAN. Mr. Chairman, I do not have a prepared statement. I have a few brief comments to make.

The legislation, as you have indicated, resulted from the request of the Board of Commissioners of the District of Columbia addressed to the Speaker of the House under date of March 5, 1963. H.R.

5390 was introduced at the request of the Commissioners and H.R. 5569 at the request of the Civil Service Commission.

The legislation has been cleared by the Bureau of the Budget. The Commissioners very strongly urge enactment of this legislation. We particularly prefer H.R. 5569, the Civil Service Commission draft, as being more appropriate to cover the subject. The District of Columbia government found itself in a very unusual situation a number of years ago when it attempted to collect through setoff an amount due from an annuitant for his hospital bill which the District of Columbia paid for this annuitant. This annuitant went to St. Elizabeths Hospital and the District of Columbia paid the bill. After the annuitant died the District attempted to collect what was owing to it from the money to the credit of the annuitant in the civil service retirement fund and the Civil Service Commission honored the District's claim. However, the administrator of the annuitant's estate went to court and contested the right of the District to have the money and the court ruled for the administrator. Subsequently the Comptroller General ruled in 36 Comp. Gen. 457 that the District of Columbia was not eligible to have setoffs against any amounts due and owing former employees of the District government for the same reason that the court ruled against the District in the *Sedgwick* case that I mentioned.

That is the genesis of this proposed legislation, Mr. Chairman. If there are any questions by any member, I shall attempt to answer.

MR. DANIELS. You made reference to a case reported in 36 Comp. Gen. 457.

MR. BRYAN. The Comptroller General's decision, yes. Another case was involved, but the Comptroller General referred to and relied upon the decision of the court in the case of *Sedgwick v. Young*.

MR. DANIELS. I have before me a copy of that decision. It appears on the letterhead of the Comptroller General of the United States and bears the date of December 6, 1956. I would like to offer for the record the Comptroller General's report of March 27, 1963, forwarding a copy of the decision to the committee, and a copy of a report from the Civil Service Commission. Without objection the reports will be included in the record at this point.

(The reports follow:)

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 27, 1963.

Hon. TOM MURRAY,
Chairman, Committee on Post Office and Civil Service,
House of Representatives.

DEAR MR. CHAIRMAN: Your letter of March 14, 1963, acknowledged March 19, requests our comments concerning the necessity for and the adequacy of the draft language of a legislative proposal you received from the Commissioners of the District of Columbia, which would authorize the setoff of money in the civil service retirement and disability fund to the credit or former District of Columbia employees in liquidation of their indebtednesses to the District of Columbia.

In our decision of December 6, 1956, 36 Comp. Gen. 457, we advised the Civil Service Commission that because the District of Columbia is a legal entity, separate and distinct from the Government of the United States, amounts in the civil services retirement and disability fund to the credit of former District of Columbia employees could not be set off—in the absence of a statute so authorizing—by the Civil Service Commission in satisfaction of debts owing the District of Columbia government by such former employees. A copy of that decision is enclosed for convenient reference. Consonant with the holding in that decision, our opinion is that the enactment of legislation is necessary to authorize the Civil Service Commission to effect setoffs when requested by the municipal government of the District of Columbia.

In response to a request by the acting corporation counsel of the District of Columbia, submitted in June 1962, for our views upon the necessity for and the form of a legislative proposal to permit the Civil Service Commission to effect setoffs for the benefit of the municipal government of the District of Columbia, we advised the corporation counsel that enactment of authorizing legislation would be necessary and we suggested draft language substantially in the form of that appearing in the draft of the bill submitted to you by the District of Columbia Commissioners. We consider that the language of such draft is adequate to accomplish the desired objective of the proposed legislation.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., December 6, 1956.

Hon. PHILIP YOUNG,
Chairman, U.S. Civil Service Commission.

DEAR MR. YOUNG: Your letter of November 20, 1956, requests our decision whether further claims of the District of Columbia for setoff of moneys in the civil service retirement fund should be honored in view of the opinion of the U.S. District Court for the District of Columbia, filed December 15, 1955, in the case of *Sedgwick v. Young*, civil action No. 917-55.

We understand that the *Sedgwick* case involved a patient at St. Elizabeths Hospital, now deceased, for whose care the District of Columbia paid St. Elizabeths Hospital. The patient was a civil service annuitant and, after his death, the District of Columbia asked your Commission to apply the amount to his credit in the retirement fund against his indebtedness to the District of Columbia. That request was honored by your Commission. The administrator of Mr. Sedgwick's estate filed an action in the U.S. District Court for the District of Columbia to require payment of the retirement money to him. The court's opinion is to the effect that the retirement fund credit should be paid to the administrator of the estate without prejudice to the right of the District of Columbia to file claim with the administrator for hospital care.

As stated in your letter, it is true that our Office decision, 10 Comp. Gen. 225, held that the amount in the civil service retirement fund to the credit of a former employee of the District of Columbia may be set off in liquidation of a debt due the District of Columbia from the former employee. However, our Office ruled subsequently that the District of Columbia government is a distinct legal entity—not an agency of the U.S. Government—and, therefore, no legal basis exists for deducting the amounts of claims of the District of Columbia from moneys due contractors of the United States. See our decision of February 10, 1944, B-39254. We also have taken the position that, since the District of Columbia government is a legal entity separate and distinct from the U.S. Government, the accounting officers of the United States have no jurisdiction to settle claims by or against the government of the District of Columbia. (See our decisions of February 7, 1952, B-106771, and of July 8, 1955, B-120734.)

In view of the holdings in our decisions rendered subsequent to 10 Comp. Gen. 225, our decision in 10 Comp. Gen. 225 no longer should be followed. Accordingly, your Commission no longer should honor claims by the District of Columbia for setoff of moneys in the retirement fund in liquidation of debts due the District of Columbia government.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., April 3, 1963.

Hon. TOM MURRAY,
*Chairman, Committee on Post Office and Civil Service,
House of Representatives.*

DEAR MR. CHAIRMAN: This is in response to your letter of March 14 enclosing proposed legislation to permit the government of the District of Columbia to enter claims for setoff of money from the civil service retirement fund for liquida-

tion of debts of former District employees. You requested advice as to whether the legislation is necessary and, if so, whether the language will carry out the purpose intended.

A long line of decisions by the Comptroller General of the United States establishes existing procedure whereby money due from the retirement fund may be used to satisfy an indebtedness to the United States in the case. The right of the Government to apply retirement money to satisfy an indebtedness has been upheld by (1) the U.S. Circuit Court of Appeals for the Second Circuit on February 4, 1941, in the case of *Edward E. Boerner v. United States* (117 Fed. 2d 387), (2) the U.S. District Court for the Southern Division of the Northern District of Alabama on June 24, 1943, in the case of *Bryan Watson v. United States*, and (3) the U.S. District Court for the Southern District of New York on May 18, 1944, in the case of *Emilio Marrero v. United States*.

This procedure is not applicable as regards an indebtedness to the municipal government of the District of Columbia, as noted in Comptroller General's decision dated December 6, 1956 (36 Comp. Gen. 457), based materially on opinion of the U.S. District Court for the District of Columbia, filed December 15, 1955, in the case of *Sedgwick v. Young*, civil action No. 917-55. In the light of these holdings, the result sought would appear to be available only through legislative enactment.

President Tobriner's letter to you indicates the bill's purpose as allowing setoff of retirement money to liquidate debts owed by former District government personnel. However, the draft bill would amend the Civil Service Retirement Act to authorize setoff, against annuity or refund otherwise payable thereunder, to satisfy a District of Columbia government indebtedness owed by either a former District employee or a former Federal employee. While the Commission dislikes being in the position of a collection agency, no reason is apparent why the District government as a creditor should not be on a par with Federal establishments.

Some slight technical changes in the draft appear desirable. Since the Civil Service Retirement Act enacted in 1956 completely superseded the former May 29, 1930, law and its amendments, the words "of May 29, 1930," should not appear in the heading. For purposes of clarity and completeness, it is believed that any statutory amendment in this area should spell out also the Federal Government's right to effect setoff. The Commission therefore recommends that the draft bill be reworded to read:

"A BILL To amend the Civil Service Retirement Act

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 15 of the Civil Service Retirement Act is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding any other provision of law, the Commission is authorized to take appropriate action on counterclaims filed by departments and agencies of the United States Government and by the municipal government of the District of Columbia as setoff against amounts otherwise due and payable from the fund to the debtors involved."

By direction of the Commission.

Sincerely yours,

JOHN W. MACY, Jr., *Chairman.*

Mr. DANIELS. Heretofore, the Federal Government had the right to set off any claim it had against a Federal employee out of the annuitant's funds?

Mr. BRYAN. As I understand, that is true and the District of Columbia government is asking to be put in the same status as the Federal Government in that respect.

Mr. DANIELS. This would apply only to a sum liquidated. That is, a specific amount of money due, where there can be no dispute as to the amount owed?

Mr. BRYAN. I think that is correct. The language says, "Amounts otherwise due and payable from the fund." Against that may be set off amounts which the District of Columbia claims. I would say "Yes" to your question as to whether it applies to liquidated amounts.

Mr. DANIELS. Should there be a dispute between the District and

the annuitant or former employee as to whether or not the claim is justly owed, what would the situation be?

Mr. BRYAN. It would seem to me the Civil Service Commission under this legislation would be in a position to decide the question as to whether the amount was due and owing.

Mr. DANIELS. I think that is a very important question as to whether or not there is a dispute. I don't think the Civil Service Commission should set itself up as a judge.

Mr. BRYAN. I don't know whether they would or not.

Mr. DANIELS. Would you want to correct your previous answer?

Mr. BRYAN. If I didn't say I feel the Commission would have the power, I would like the record to show that that is my answer.

Mr. DANIELS. That is your opinion but you are not sure?

Mr. BRYAN. That is my opinion that the Commission would have the power. As to whether they would exercise the power in a particular case I just cannot answer. Perhaps the Commission can decide that on the basis of each case.

Mr. DANIELS. I would like to feel that the amount due and owing should be not only a specific amount but there should be no dispute as to the right of the District to claim the amount of money from the employee. If there is any dispute I don't think that dispute should be resolved by the person who claims the money as a credit for it.

Mr. BRYAN. Disputes can arise in any case or every case, depending upon the inclination of the employee or the District official involved.

Mr. DANIELS. You made reference to a case where a person went to the hospital and received treatment. There can be no dispute there because the services were rendered and there is a schedule of fees and charges and you just have to multiply the number of days by the charges per day that the person was in the hospital plus the other scheduled fees. There can be no dispute as to the amount owing.

Mr. BRYAN. Generally speaking, the nature of the claims we feel this legislation is needed for primarily are claims by the District against employees who owe the District for hospital care or for income tax. I would say in most of those cases there is not likely to be any dispute as to whether the money is owing and how much is owing.

Mr. DANIELS. Are there questions, Mr. Watson?

Mr. WATSON. No questions.

Mr. DANIELS. Mr. Derwinski?

Mr. DERWINSKI. How many claims or incidents do you have annually that would be affected by this bill?

Mr. BRYAN. Mr. Derwinski, may I ask Mr. Kidd, the enforcement officer in the Finance Office to answer the question, please?

Mr. DERWINSKI. Yes.

Mr. KIDD. I believe there would probably be no more than 200 of these claims asserted by the District each year.

Mr. DANIELS. What would be the nature of those claims?

Mr. KIDD. The majority of them, sir, would be for income tax owed the District.

Mr. DANIELS. How would the District determine the exact amount?

Mr. KIDD. In the case of taxes, of course, this would be based on a filed return by the employee.

Mr. DANIELS. In these cases where you profess to have a claim, would their return be on file or would the District have to determine what the amount would be due and owing?

Mr. KIDD. No, sir. In most of the cases a return would be on file with the District government.

Mr. DANIELS. And that return would show what the person would owe?

Mr. BRYAN. Yes, sir.

Mr. DANIELS. Then there can be no dispute as to the amount owing?

Mr. KIDD. No, sir.

Mr. FARBER. Mr. Chairman, may I say in all my experience I have never heard a question as to the amount or as to the debt. Our only problem arose when we could not set off. We have various types of claims and those include possibly overpayment of lump-sum leave when the employee leaves, due to an error in the calculation of their annual leave, but never have I heard a question as to the amounts or a dispute as to whether the claim is owed or not. Our problem arose when we tried to obtain a setoff against the civil service retirement fund.

Mr. WATSON. Perhaps my question should be directed to Mr. Ruddock of the Civil Service Commission, but perhaps you could give the answer. In the event you have a claim of—just pulling a figure out of the air—\$1,000 against a former employee and the annuity which he is receiving amounts to \$100 per month, would you take the entire \$100, or what would be the basis? I have a particular case in mind right now, as the gentleman mentioned a moment ago of an overpayment upon separation and then this man now is faced with the proposition of having his entire annuity taken up until this overpayment has been completely repaid. I was just wondering what your disposition toward that would be, of just having him pay back a certain percentage of his annuity, or do you take the full amount until such time as the claim is paid?

Mr. FARBER. I can answer that in reference to how we would handle our current employees in case there is an error. We make arrangements with the employee to pay an amount which he can afford. We have no desire on our part to reduce the income to an amount where he cannot live. They arrange for him to pay a minimum amount spread over a period of time in order to collect. I cannot speak for the Civil Service Commission as to their actions but I think we would be satisfied if we had a means of recovery.

Mr. WATSON. A reasonable means. But generally you would expect the Civil Service Commission—perhaps Mr. Ruddock can take care of this but they would honor any arrangement you entered into with the former employee with regard to method of repayment.

Mr. FARBER. I am sure the District would not want to put the person in a position where he did not have sufficient means with which to live.

Mr. DANIELS. Thank you, gentlemen.

Our next witness is Mr. Andrew E. Ruddock, Director, Bureau of Retirement and Insurance.

STATEMENT OF ANDREW E. RUDDOCK, DIRECTOR, BUREAU OF
RETIREMENT AND INSURANCE, U.S. CIVIL SERVICE COMMISSION

Mr. RUDDOCK. Mr. Chairman and members of the subcommittee, it is a pleasure for me to appear this morning to represent the Civil Service Commission in this hearing. I do not have a prepared statement. I would like to make just a few brief remarks.

The Civil Service Commission has reported on these bills by letter dated April 22 to Hon. Tom Murray, chairman of the Committee on Post Office and Civil Service.

With your permission, Mr. Chairman, I would suggest that that report be made a part of the record.

Mr. DANIELS. Without objection, the report will be made a part of the record.

(The report follows:)

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., April 22, 1963.

Hon. TOM MURRAY,

*Chairman, Committee on Post Office and Civil Service,
House of Representatives.*

DEAR MR. CHAIRMAN: This refers to your requests for Commission report on H.R. 5390 and 5569, bills to amend the Civil Service Retirement Act to allow setoff against amounts due from the retirement fund to cover an indebtedness due the District of Columbia government.

A long line of decisions by the Comptroller General of the United States establishes existing procedure whereby money due from the retirement fund may be used to satisfy an indebtedness to the United States in the case. The right of the Government to apply retirement money to satisfy an indebtedness has been upheld by (1) the U.S. Circuit Court of Appeals for the Second Circuit on February 4, 1941, in the case of *Edward E. Boerner v. United States* (117 Fed. 2d 387), (2) the U.S. District Court for the Southern Division of the Northern District of Alabama on June 24, 1943, in the case of *Bryan Watson v. United States*, and (3) the U.S. District Court for the Southern District of New York on May 18, 1944, in the case of *Emilio Marrero v. United States*.

This procedure is not applicable as regards an indebtedness to the municipal government of the District of Columbia, as noted in Comptroller General's decision dated December 6, 1956 (36 Comp. Gen. 457), based materially on opinion of the U.S. District Court for the District of Columbia, filed December 15, 1955, in the case of *Sedgwick v. Young*, civil action No. 917-55.

Either of these bills, if enacted, would amend the Civil Service Retirement Act to authorize setoff, against annuity or refund otherwise payable thereunder, to satisfy a District of Columbia government indebtedness owed by either a former District employee or a former Federal employee. While the Commission dislikes being in the position of a collection agency, no reason is apparent why the District government as a creditor should not be on a par with Federal establishments.

Either bill will accomplish the result indicated, but the Commission considers that H.R. 5569 is in preferred form. For purposes of clarity and completeness it is believed that any statutory amendment in this area should specify also the Federal Government's right to effect setoff. H.R. 5569 does this by authorizing setoff action on counterclaims filed by the "Government," a term defined in section 1(k) of the Retirement Act as including the three branches of the U.S. Government, Government-owned or controlled corporations, federally supported Gallaudet College, and the District of Columbia government.

The Commission offers no objection to the enactment of either of these bills.

The Bureau of the Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission.

Sincerely yours,

(Signed) JOHN W. MACY, Jr., *Chairman.*

Mr. RUDDOCK. As this letter indicates, the Commission believes that of the two bills, H.R. 5569 is in preferred form because it is broad enough to cover both Federal and District of Columbia governments. Either bill would accomplish the stated objective.

This report also indicates that the Civil Service commission has no objection to the enactment of this legislation. As a matter of fact we did make setoffs from retirement funds to recover amounts of indebtedness to the District of Columbia government from 1920 until 1955. There has already been reference to the case of *Sedgwick v. Young*, which was in the District Court of the United States and to the decision by the Comptroller General in 1956 that it was not appropriate to make setoffs to recover indebtedness to the District of Columbia government.

Enactment of this legislation then would be merely a return to the practice which was followed from 1920 until 1955.

A question has been asked which I think I can help to clear up: The Civil Service Commission upon request for recovery does not adjudicate either the validity of the indebtedness or the amount of the indebtedness. Claim is filed by the creditor agency, and we are doing this for all agencies of the Federal Government at the present time. When there is an amount payable from the retirement fund to the individual, the debtor, we recover the exact amount which has been requested by the creditor agency. We advise the individual if he has any question as to the validity of the debt or the amount of the debt he should first take it up with the creditor agency and if he does not receive satisfaction from that source he has the right to appeal to the Comptroller General. The Comptroller General in cases of this kind will make a firm determination of the validity of the indebtedness, and of the amount of the indebtedness.

There is, of course, one further recourse: If an individual is not satisfied with the decision of the Comptroller General he does have the right to take the matter to court for a review of the decision by the Comptroller General.

Over the years some definite procedures for effecting these offsets have been worked out by the Civil Service Commission and prescribed by the Comptroller General. Our primary mission, as you know, is one of administering the Retirement Act rather than serving as a collection agency for various Federal or District of Columbia agencies.

Under these procedures—and the same procedures would apply to the District of Columbia government if this legislation is enacted—we do not accept a request for offset of an indebtedness of less than \$5. This is because of the determination by the Comptroller General that, if you get into claims smaller than \$5 you are going to spend more money in the collection process than you are going to recover.

Another point is that we do not relieve the creditor agency of its primary responsibility for making debt collections. Collections by offset from retirement funds are supposed to be the last resort and the process is supposed to be used only after all other attempts to recover the indebtedness have failed.

An earlier witness this morning has mentioned the collection of District of Columbia income tax. Where an employee of the District of Columbia has not paid his District of Columbia income tax, there is a definite responsibility on the part of the District of Columbia government to make every effort to collect the amount while the

individual is employed and without filing anything with the Civil Service Commission. But if the individual, for example, says, "I am not going to pay you and here is my resignation," so that they are losing all hold of him as an employee, this is the point at which it would be appropriate to file a claim for recovery against his retirement account.

The question that you asked, Mr. Watson, as to whether we would recover by withholding the entire amount of the annuity, this would depend somewhat on the circumstances of the case. You mention an incident in which the individual is going to receive an annuity of approximately \$100 a month. He probably has somewhere between \$1,500 and \$2,000 to his credit in the retirement fund, so that we could collect at a lesser rate than the total annuity, recognizing that this balance to his credit is available in the event the annuity is terminated by death or for some other reason so that recovery would be certain.

If we have a case in which we cannot be assured of recovery by virtue of his own individual credit in the retirement fund, we would have him ask the creditor agency to consent to collecting a lesser amount than the total indebtedness, or rather collect it in partial payments over a period of time, rather than to work a hardship on the individual. In practically every instance the creditor agency is willing to cooperate in a schedule of collection which is less than the total annuity.

Mr. DANIELS. Mr. Ruddock, has the Civil Service Commission many of these cases each year?

Mr. RUDDOCK. Our estimate, Mr. Daniels, is that we get a little over 3,000 claims in the course of a year. The average amount of indebtedness seems to work out to about \$200 per individual. Of course many of these are smaller amounts and some of them are larger amounts.

The principal reasons for the debt seem to be overdrawn leave, overpayment of salary, nonpayment of taxes, and travel advance which has not been liquidated. We have rare cases which involve embezzlement. Any situation which would create a valid debt would be subject to recovery through this process.

Mr. DANIELS. Could you, Mr. Ruddock, explain to this committee any differences in procedure between the method of collection that you employ in the case of overpayment of salary and overpayment through the military?

Mr. RUDDOCK. I cannot answer that, sir, because I am not familiar with the collection procedures used by the military.

Mr. DANIELS. The Commission, according to your testimony has been following this procedure, which we now wish to extend to the District of Columbia, since 1920 and it has worked out very satisfactorily.

Mr. RUDDOCK. Yes, sir.

Mr. DANIELS. This bill will implement the practice you have been engaged in in accordance with decisions heretofore handed down; is that correct?

Mr. RUDDOCK. That is right.

Mr. DANIELS. By this legislation we are merely extending the practice that the Federal Government has been engaged in, to the District of Columbia?

Mr. RUDDOCK. That is right.

Mr. WATSON. The District does not have a withholding tax system?

Mr. FARBER. We do, sir.

Mr. WATSON. If you have a withholding system, why the shortage of income tax insofar as Federal employees are concerned?

Mr. BRYAN. I wouldn't want to commit the District on this point but it might be caused by a person overstating the number of dependents possibly, exemptions, or having other income which he doesn't report than for which we did not withhold so that his withholding is less than the actual tax. That might be the case.

Mr. DANIELS. Thank you very much.

That concludes our hearing this morning.

(Whereupon, at 10:30 a.m., Tuesday, April 23, 1963, the subcommittee adjourned.)

