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HEARING BEFORE THE SUBCOMMITTEE ON MENT AND EMPLOYEE BENEFITS OF THE COMMITTEE ON OFFICE AND CIVIL SERVICE USE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

H.R. 3650

A BILL TO CLARIFY THE APPLICATION OF SECTION 8344
OF TITLE 5, UNITED STATES CODE, RELATING TO CIVIL
SERVICE ANNUITIES AND PAY UPON REEMPLOYMENT, AND
FOR OTHER PURPOSES

APRIL 23, 1975

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(R:nald P. McCluskey, Assistant Counsel, Room B-345(d), Rayburn Building—Ext. 56831)

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SUMMARY OF RECOMMENDATIONS ON H.R. 3650

Mr. Thomas A. Tinsley, Director, Bureau of Retirement, Insurance, and Occupational Health, U.S. Civil Service Commission, Wednesday, April 23, 1975:

(1) Those payroll savings which agencies gain from reemployment of annuitants should be redeposited into the U.S. Treasury instead of the Civil Service Retirement Fund.

(IV)

REEMPLOYED ANNUITANT PROVISIONS

WEDNESDAY, APRIL 23, 1975

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON RETIREMENT AND EMPLOYEE BENEFITS,
Washington, D.C.

The subcommittee met at 9 a.m., in room 210 of the Cannon House Office Building, Hon. John W. Jenrette (acting chairman of the subcommittee) presiding.

Mr. JENRETTE. The subcommittee will come to order.

The subcommittee chairman, Mr. White, had to speak at the State Department this morning.

The subcommittee has convened this morning to open hearings on H.R. 3650 introduced by Congressman David N. Henderson, Democrat of North Carolina.

H.R. 3650 clarifies the application of section 8344 of title 5 of the United States Code relating to Federal Civil Service annuitants and their annuities and pay upon reemployment in the Federal service.

The bill would require agencies who reemploy annuitants to pay into the retirement fund the amount they deduct from an employee's pay when the employee is a reemployed annuitant.

This would, in effect, prevent agencies from getting expensive labor at the expense of the Federal service retirement fund, and at the same time would have the effect of increasing the assets of the fund.

Thus, H.R. 3650 will help not only to stem the ever-rising unfunded liability of the fund, which is presently at \$80 million, but may, in fact, help decrease the liability over an extended period of time.

This subcommittee appreciates the fact that the Federal civil service retirement fund is one of the few soluble funds the Government now has, and we recognize our duty to all present and future Federal workers who have earned an interest in the fund to keep it that way.

With this thought in mind, I would like to welcome Mr. Thomas A. Tinsley of the Civil Service Commission, Director of the Bureau of Retirement, Insurance, and Occupational Health, as our first witness.

Before we call on Mr. Tinsley, we have a statement by the full committee chairman, Mr. Henderson.

STATEMENT OF HON. DAVID N. HENDERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. HENDERSON. Mr. Chairman and members of the Subcommittee on Retirement and Employee Benefits, I am most appreciative of your courtesy and cooperation in scheduling hearings on my bill, H.R. 3650.

The primary purpose of the bill is twofold: (1) to clarify the intent of Congress with respect to the treatment of reemployed annuitants whose annuities are based upon involuntary separations, and (2) to require agencies to deposit in the retirement fund the amounts of annuity deducted from the salaries of reemployed annuitants.

First, the bill will have the effect of reaffirming the intent that annuitants whose rights were based upon involuntary separations not be permitted to receive full salaries and annuities upon reemployment in Government service. While the Civil Service Commission covers the question by its regulatory authority, the bill will authorize present practice by unmistakably clear legislative language.

Involuntary retirees who are reemployed in positions subject to the retirement law will have their annuities terminated and draw the full salary of the position; and those who are reemployed in positions not subject to the retirement law, such as temporary appointments, will continue to receive annuity payments, but have salary reduced by the amount of such annuity—the same as applies to reemployed annuitants who voluntarily retired.

Present law is deficient with respect to involuntary retirees whose salaries upon reemployment are reduced by the rate of annuity, in that it fails to provide them the supplemental benefit or recomputation right enjoyed by voluntary retirees. Provision is also made in the bill to correct this.

Secondly, the bill incorporates a provision to require that agencies deposit to the credit of the retirement fund an amount equal to the annuity deducted from a reemployed annuitant's pay.

H.R. 3650 incorporates several additional amendments of a minor remedial nature, eliminates certain obsolete language and dates, and realines the existing pertinent paragraphs of chapter 83 of title 5, United States Code, to improve its form.

The administration supported a bill similar to this in the last Congress, H.R. 11240. It is anticipated that it will continue to support most, if not all, of the provisions in H.R. 3650. Accordingly, I would urge the subcommittee to give this legislation its thorough consideration and early approval.

Mr. JENRETTE. Mr. Tinsley, it is good to have you before the subcommittee.

STATEMENT OF THOMAS A. TINSLEY, DIRECTOR, BUREAU OF RETIREMENT INSURANCE AND OCCUPATIONAL HEALTH, U.S. CIVIL SERVICE COMMISSION

Mr. TINSLEY. Thank you, Mr. Chairman. Again, I appreciate the opportunity to appear before the subcommittee to give the Commission's views on this bill.

I have no prepared statement, Mr. Chairman. However, the Commission has presented its views on the bill in a letter to the chairman of the full committee, and with your permission I would suggest that the letter be inserted in the record.

Mr. JENRETTE. The letter from Chairman Hampton of April 23, 1975, will be placed in the record at the end of your remarks.

Mr. TINSLEY. The bill, Mr. Chairman, is a relatively simple bill. Section 1 of the bill deals with reemployed annuitants who receive both Federal pay and annuity.

As you indicated in this situation no deductions for the civil service retirement and disability fund are withheld from his or her pay, and the employing agency deducts an amount from the pay equal to the annuity payable for the period of actual employment.

This offset assures that the annuitant will not receive his full salary concurrently with his annuity.

However, it enables the reemploying agency to save money out of funds appropriated to it for the payment of salaries.

By reemploying an annuitant, an employing agency retains the amount of pay that is offset by the annuity.

Under this bill agencies that reemploy annuitants would be required to deposit in the Treasury of the United States to the credit of the civil service retirement and disability fund the amount that it offsets and deducts from the reemployed annuitant's pay.

The Commission agrees that the agency should bear the full cost of salaries of reemployed annuitants. However, we recommend that the salary withholdings be deposited in the general fund of the Treasury.

Additionally, section 1 of the bill would amend section 8344 to make a number of technical, perfecting, and other clarifying amendments relating to the treatment of pay and annuity for a reemployed annuitant.

Section 2 would also allow credit for post-1956 military service in the computation of civil service retirement annuity for certain individuals who before becoming eligible for military retired pay leave active military service to accept an appointment by the President to a Federal civil service position requiring Senate confirmation.

Briefly, Mr. Chairman, that is a summary of the Commission's position as expressed in Chairman Hampton's letter.

I will be glad to furnish any additional information or respond to any questions you or the other subcommittee members may have.

Mr. JENRETTE. Mr. Tinsley, you say the administration position would be to go into the Treasury rather than to the fund. How would that help the fund in any way to increase its present situation?

Mr. TINSLEY. This would not help the fund, Mr. Chairman. I believe the theory advanced for depositing it in the general fund of the Treasury is that this is where the money came from originally. It was an appropriation made to the agency to pay salaries and expenses and, therefore, should be returned to the general fund and Treasury.

However, you are correct, Mr. Chairman, this in no way would improve the financial condition of the retirement fund.

Mr. JENRETTE. Would you support an amendment or proposition whereby a percentage was given to the fund and a percentage given to the Treasury?

Mr. TINSLEY. I think that would become a complicated matter, Mr. Chairman. Frankly, I think it should go either one place or the other.

Mr. JENRETTE. Mr. Tinsley, do you have any idea of the number of people that we would be talking about if we were counting as of today?

Mr. TINSLEY. This is a very difficult situation to keep track of because they are on and off agency rolls. Reemployed annuitants rarely work for extended periods of time in any large numbers.

We estimate that at most points in time there are approximately 3,000 reemployed annuitants on the roll.

Now, that 3,000 would probably change. They would be different individuals next month from some of the ones this month.

Mr. JENRETTE. Are these reemployed, and I might be getting out of your normal category, but are they given any sort of preferential treatment by these agencies? Is there preferential treatment?

Mr. TINSLEY. No, Mr. Chairman. If anything, it is not an advantage to the individual to be reemployed because when you are a reemployed annuitant, one, you suffer the setoff against your salary; two, you serve at the pleasure of the appointing official, which means at quitting time any day he can just tell you don't come in tomorrow. So it has those disadvantages.

Now, at the present time what has happened, or what is happening and what some people view as being a defect in the system and not necessarily the retirement system, but the pay system, is that a number of individuals in frozen salaries, namely the Government executives, are retiring, if they are eligible to retire, in order to gain the advantage of the cost-of-living increases provided in the Retirement Act and are coming back and serving as reemployed annuitants.

In doing this in today's economic climate the individual would receive a greater retirement benefit because of the cost-of-living increases than he would if he remained in service at his frozen salary level.

So today that is the only conceivable advantage that an individual would have in becoming a reemployed annuitant.

Mr. JENRETTE. If he came back at a greater salary than his annuity he would be building up future annuity increases, would he not?

Mr. TINSLEY. If you are speaking of the cost-of-living increases on the retirement system, that would increase his annuity more than any period of service that he would have, if he is at that frozen salary level. He only receives 2 percent for each year of service. And when you compare that with the 6.5 percent and 7.3 percent cost-of-living increases in the last year, and with another one due the first of August which undoubtedly will not be that high, but these certainly at that level produce a greater retirement benefit than staying on the Federal payroll at \$36,000 a year. You would have to stay quite a few years in order to improve your retirement position.

Mr. JENRETTE. I have as a member on my staff a retired employee who worked for a former Member. He came back with me when I was elected under the circumstances that you just went over, and I am not able to pay him the full amount. What would this bill do to Members of Congress and their staff employees, if anything? Would the Member be required to pay to the Treasury under your proposition the difference between the—

Mr. TINSLEY. As I understand the bill, yes, Mr. Chairman. Congress would not be exempt.

Mr. JENRETTE. I just lost an employee, in fact three now. I guess it would be a fair statement to say that the agencies have not used this as a tool to circumvent a number requirement or a funding requirement by Congress: or have they?

Mr. TINSLEY. We do not have any proof that agencies are using this to do this or that any abuse exists. We did a study in 1973 shortly after July to determine what the situation was. We are presently in the

process of doing a study at the request of the majority leader of the Senate, Mr. Mansfield, and the chairman of the Senate Post Office and Civil Service Committee, Senator McGee. It will take us several months to complete that study.

At that point we will be able to compare our findings now as to the situation that existed in 1973. The summer of 1973. At that time most of the reemployed annuitants were in the Department of Defense and a great many of them that were there at that point in time were there because of the fact that there were a number of base closings, so they took advantage of early retirement right before a cost-of-living increase which was sizable, and in the meantime a number of them had to remain on in finishing off the base closings.

At that time, most of those reemployed annuitants that we found, both in Defense and other places, were employed for relatively short periods of time, 3 months, 6 months at most; a few longer. But we didn't find any real abuse in the system.

Now, it is true that the potential for abuse exists because if an agency wished it could very well, after Congress, or the Office of Management and Budget, or someone else had reduced their funds on the theory that they were going to reduce the number of people working for them, turn around and by increasing the number of reemployed annuitants, use the salary and expense money for other purposes or for higher staffing levels.

The potential is there, Mr. Chairman.

Mr. JENRETTE. Do you have evidence that any annuitants have come back, in great number, in a consultant capacity under an executive II level or whatever it might be, and how does that affect the funds above—if he gets \$162 a day as a consultant, that would be \$36,000, whatever the top pay of the executive, he would retire at the \$25,000 level, what happens to the difference if he comes back as a consultant, if anything?

Mr. TINSLEY. If he comes back as an expert consultant, in most instances—or if he comes back as an independent contractor—there would be no effect on his annuity. He would receive both.

If he came back under a personnel service contract and was clearly under the control and supervision of the employing agency, whatever he was receiving would have to be reduced by the amount of his annuity.

There are certain agencies who are able to employ, even on a personnel service contract, experts or consultants without any reduction in annuity.

These agencies include, I believe, the Agency for International Development, Peace Corps has some exclusions, or did have, several others in the Foreign Service area.

I will be glad to furnish for the record, Mr. Chairman, a list of those agencies that do have exclusions. There are a number of independent types.

Mr. JENRETTE. It appears from the letter by the Chairman and your statement that the administration does take a pretty hard line view as to where the funds should go, and apparently that is going to be where we really come to some area of possible compromise; and you see no way that a percentage basis could be worked out with any degree of equity or any degree of lack of confusion?

Mr. TINSLEY. In this situation? Normally there are areas of compromise. In this situation I don't believe that it would do anything other than complicate the situation if you decide to divide whatever it was. It would create a problem for the agencies and, quite frankly, while this is the administration's position that they feel that that is where it belongs, I think in the last Congress, just as now, there are a number of people who just as strongly feel it belongs over in the retirement fund.

Basically the only reason that the situation is handled the way it is, is for administrative convenience. We would find it difficult knowing who was reemployed while we were paying an annuity.

We could, as we do in other situations, suspend the annuity or terminate it while the individual is reemployed, and it would have the same effect. In that case the money would stay in the retirement fund.

So it is largely because the agency knows initially who they have as a reemployed annuitant, his salary, how long he will be employed, that we continue to pay the annuity, and they reduce the salary, it is largely just for that reason.

Mr. JENRETTE. For my personal information on the reverse that you mentioned, if you cease paying the annuity and the individual came back drawing his full amount, he would accrue the 2 percent per year, but would not be allowed to have the cost of living that he would if he were drawing his retirement; is that correct?

Mr. TINSLEY. His annuity would continue as of the date of his first separation. Now, the only way he could get any more annuity on top of that would be what we call a supplemental annuity, and a supplemental annuity would only be payable if he continued in employment for 1 full year. After that he would be entitled to supplemental annuity.

However, that would not affect his basic annuity which would have the cost-of-living increases added to it. It would after that date.

Mr. JENRETTE. You misunderstood me or I misunderstood you. I believe you said administratively you could stop the annuity and pay the man a full pay. If that be the case, he would, in effect, during the time of employment, lose his cost-of-living benefits, or would that be accrued and paid to him when he went back?

Mr. TINSLEY. They would be lost, insofar as any that occurred during the period. His annuity would be resumed in the same amount.

Mr. JENRETTE. At that time?

Mr. TINSLEY. Yes. With the supplemental annuity if he was there for 1 year. If he stayed for 5 years, we would recompute the whole annuity.

Mr. JENRETTE. Mr. McCluskey, assistant counsel, has a couple of questions.

Mr. McCLUSKEY. Mr. Tinsley, going over the bill real quickly and looking at Mr. Henderson's statement, I would just like to reaffirm the chairman I think has brought out that it is the intent of this bill and the intent of the author, and I think of the subcommittee, that this money would be deposited into the retirement fund to help build up the assets of that fund.

In your personal opinion do you think this bill would affect the hiring of annuitants? In other words, you have said that presently these agencies are able to save some money. If this bill is passed, they are not going to be able to save any money.

Mr. TINSLEY. I believe the bill would have the effect of where the agency was doing this for the purpose of using it or if you want, to abuse and take advantage of the system, I think it would deter them from doing that.

I think where the agency legitimately needed the services of an individual, where the individual had something to contribute—and there are many instances where this is the case—that it would not in anyway affect that.

I think it would just be another step in the direction of removing any chance that anybody is going to use this to their advantage.

Mr. JENRETTE. That would be the case under either situation; for the Treasury or back to the fund.

Mr. TINSLEY. That's correct.

Mr. JENRETTE. So I think that the underlying principle of the bill, you agree with.

Mr. TINSLEY. Oh, yes, certainly.

Mr. JENRETTE. We have been in limbo too long.

Mr. TINSLEY. Yes. I think for the last 6 years we have been attempting to get legislation along this line. So certainly I think the legislation is desirable and needed. And I might point out that in this area, in the case of a Member of Congress who becomes reemployed, we suspend his annuity. Or in the case of a Member of Congress who comes in under the retirement fund into the system again in the executive branch, the money for his retirement would go into the retirement fund. It is going into the retirement fund now. It is going into the Treasury.

Mr. JENRETTE. Do you have any statistics on approximately how many in any given time?

Mr. TINSLEY. I don't know how many former Members of Congress are now employed in the executive branch in this situation.

Mr. JENRETTE. Is an annuity affected if a former Member is in jail?

Mr. TINSLEY. It depends on what he is in jail for. The only time we can deny an individual an annuity or suspend annuity is if he is convicted of certain crimes specified in the law, and those crimes are the ones that normally involve national security.

Mr. JENRETTE. The gentleman from Virginia.

Mr. HARRIS. No questions. I just want to welcome Mr. Tinsley.

Mr. TINSLEY. Thank you, Mr. Harris. It is a pleasure to be here.

Mr. JENRETTE. Do you have any closing statement, Mr. Tinsley, or anything further that you wish to add?

Mr. TINSLEY. No, Mr. Chairman. I would be glad, if the subcommittee desires, to furnish any additional information for the record, or respond to any additional questions that they might want to submit to me.

Mr. JENRETTE. Thank you, Mr. Tinsley.

The subcommittee will adjourn.

[Whereupon, at 9:35 a.m., the subcommittee hearing was adjourned.]

[The letters and statements which follow were received for inclusion in the record:]

U.S. CIVIL SERVICE COMMISSION,
BUREAU OF RETIREMENT, INSURANCE, AND OCCUPATIONAL HEALTH,
Washington, D.C., April 28, 1975.

Hon. RICHARD WHITE,
Chairman, Subcommittee on Retirement and Employee Benefits of the Committee on
Post Office and Civil Service, Rayburn House Office Building, Washington, D.C.

DEAR MR. WHITE: A hearing was held on H.R. 3650 on April 23, 1975, and I was asked to forward for the record a list of exclusions to the pay reduction provision of reemployment of annuitants.

The enclosed copy of "A Study of Reemployed Annuitants" is for your information. The requested list is shown in Appendix B of that study.

Sincerely yours,

THOMAS A. TINSLEY,
Director.

STATUTORY EXCLUSIONS FROM OPERATION OF REEMPLOYMENT OF ANNUITANT PROVISION OF RETIREMENT
LAW REQUIRING REDUCTION OF SALARY BY AN ANNUITY EQUIVALENT

Boxing Commission, District of Columbia.	Public Law 81-720, Aug. 19, 1950 (64 Stat. 466).	Persons appointed to Boxing Commission.
Board of Elections, District of Columbia.	Public Law 84-376, Aug. 12, 1955 (69 Stat. 695).	Board member and employees of Board.
Teachers, District of Columbia.....	Public Law 85-385, Apr. 24, 1958 (72 Stat. 98).	Retired teachers under D.C. Teachers Act and Civil Service Retirement Act reemployed as temporary substitute teachers in D.C. Schools.
Jefferson National Expansion Memorial.	Public Law 83-361, May 17, 1954 (86 Stat. 98) sec. 2(a).	Architects, engineers, artists, other expert consultants, etc. See 38 Comp. Gen 850.
Mutual Security Act of 1954.....	Public Law 83-665, Aug. 26, 1954 (68 Stat. 859) sec. 523.....	Member, International Development Advisory board established under sec. 308, and experts and consultants appointed under sec. 530(a).
Foreign Assistance Act of 1961.....	Public Law 87-195, Sept. 4, 1961: (1) Sec. 626(b) 22 U.S.C. 2386(b), supp. V. (2) Sec. 636(a)(3), 22 U.S.C. 2396(a) (3) supp. V.	Experts and consultants, as authorized by 5 U.S.C. 3109 employed under sec. 626(a). Contract for personal services abroad other than for military assistance purposes under pt. II.
Peace Corps Act.....	Public Law 87-392, Sept. 22, 1961: (1) sec. 13(b)..... (2) sec. 10(a)(4).....	Peace Corps National Advisory Council members, experts and consultants. Contract for personal services abroad and with aliens for personal services within the United States.
Arms Control and Disarmament Act.	Public Law 87-297, Sept. 26, 1961, sec. 44.	General Advisory Committee member, advisory board member, experts, consultants or individuals of outstanding ability.
Members and patients Veterans' Administration hospitals.	Public Law 87-574, Aug. 6, 1962, sec. 2..	Inserts in title 38, USC, a new sec. 618 "Therapeutic and rehabilitative activities" stating that members and patients employed for these purposes shall not be employees of United States for any purpose.
Voting Rights Act of 1965.....	Public Law 89-110, Aug. 6, 1965, sec. 6..	Service of examiners and other persons under this act shall not be considered employment for purposes of any statute administered by CSC, except 5 U.S.C. 7324 prohibiting partisan political activity.
Economic Stabilization Act Amendments of 1971.	Public Law 92-210, Dec. 22, 1971, sec. 213.	Service of experts and consultants—Price Commission.

STATEMENT OF CLYDE M. WEBBER, PRESIDENT, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES

AFGE is grateful to be afforded the opportunity to present its views on Mr. Henderson's bill, H.R. 3650, relating to Civil Service retirement annuities and pay on reemployment.

Under present law, a Federal employee who retires may be reemployed by the Government. Such an employee continues to receive his Civil Service annuity, but the employing agency is required to reduce the salary paid by an amount equal to the annuity allocable to the period of actual reemployment. For reemployed Members of Congress, section 8334(b)(2) of title 5, United States Code, provides that the amount of the annuity withheld from Members' salaries shall be deposited to the credit of the Retirement Fund in the United States Treasury.

No provision exists for the disposition of the annuity equivalents for other reemployed annuitants.

H.R. 3650 would require that the funds deducted by employing agencies be deposited in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund as is already the procedure for salaries paid reemployed Members of Congress. AFGE agrees that agencies which reemploy annuitants should bear the full payroll costs of their salaries. Agencies should not retain funds equivalent to amounts earned by annuitants, and agencies should not profit at the expense of the annuity fund.

The Civil Service Commission has recommended that the salary withholdings be deposited to the General Fund of the Treasury rather than to the credit of the Retirement Fund. AFGE understands that the Civil Service Commission does not want it to appear that the CSC is giving annuities with one hand and taking them back with another. Arguments can be made both ways for disposition of salary withholdings, but AFGE prefers that the funds be deposited to the credit of the Civil Service Retirement and Disability Fund rather than returning them to general appropriations funds. Since the main point of this legislation is the requirement that agencies be charged the total payroll costs for reemploying annuitants, AFGE recommends that H.R. 3650 be swiftly enacted.

The remaining sections of H.R. 3650 provide for certain technical corrections of 5 U.S.C. 8344 which are supported by AFGE.

We thank the Subcommittee and Chairman White for the opportunity to testify on this legislation which we believe to be a positive step toward equitable disposition of retirement funds upon reemployment.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., April 23, 1975.

HON. DAVID N. HENDERSON,
*Chairman, Committee on Post Office and Civil Service, House of Representatives,
Cannon House Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to the committee's request for the views of this Office on H.R. 3650, "To clarify the application of section 8344 of title 5, United States Code, relating to civil service annuities and pay upon reemployment, and for other purposes."

The purpose of the bill is to require that amounts withheld from the salaries of reemployed annuitants be deposited to the credit of the Civil Service Retirement Fund. In its report the Civil Service Commission states its reasons for recommending enactment of the bill and recommends that the amounts withheld be deposited to the General Fund of the Treasury rather than to the credit of the Retirement Fund.

We concur in the views expressed by the Civil Service Commission and, accordingly, recommend enactment of H.R. 3650 provided it is amended as indicated above.

Sincerely,

JAMES M. FREY,
Assistant Director for Legislative Reference.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., April 23, 1975.

HON. DAVID N. HENDERSON,
*Chairman, Committee on Post Office and Civil Service, House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further reply to your request for the Commission's views on H.R. 3650, a bill "To clarify the application of section 8344 of title 5, United States Code, relating to civil service retirement annuities and pay on reemployment, and for other purposes."

An employee who retires under the Civil Service Retirement law is not barred from reemployment by the Government because of retired status and, generally, continues to receive annuity during reemployment. The employing agency, however, is required to reduce the salary paid by an amount equal to the annuity allocable to the period(s) of reemployment. Neither the retirement law nor its

legislative history gives any direction as to the disposition of the annuity equivalent withheld by the agency from the salary of a reemployed annuitant, except with regard to certain reemployed retired Members of Congress.

In the case of a retired Member of Congress, section 8344(b)(2) of title 5, United States Code, provides that if reemployment is on an intermittent basis (generally, reemployment in an appointive or elective position results in suspension of annuity payments during the reemployment period), (1) the Member's annuity payments are continued during reemployment, (2) the reemployment salary is reduced by the amounts of annuity paid during the actual period(s) of reemployment, and (3) the equivalent of the annuity payments so withheld from the Member's salary by the employing agency is deposited in the United States Treasury to the credit of the Retirement Fund. The reason for requiring agencies to deposit these withholdings in the Retirement Fund is to assure that the total cost of any salary expense for intermittently reemployed Members of Congress be charged as a payroll cost to the agency, rather than be charged in whole or in part to the Civil Service Retirement and Disability Fund (H.R. Rep. No. 832, 86th Cong., 1st Sess. 3 (1959)). This is the only type of case in which the equivalent of annuity payments withheld from reemployment salary is deposited in the Retirement Fund. In all other cases where such withholdings are made, employing agencies retain the salary savings in their appropriations, with the result that the total salary cost for reemployed retired employees (unlike such cost for reemployed Members of Congress) is not being charged as a payroll expense to agencies.

Section 1 of H.R. 3650 would, among other things, amend 5 U.S.C. 8344(a) to require that the amounts so deducted by the agencies be deposited in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund.

The Commission agrees that agencies should bear the full payroll costs of the salaries of reemployed annuitants. However, we recommend that the salary withholdings be deposited to the General Fund of the Treasury.

Additionally, section 1 of the bill would further amend 5 U.S.C. 8344 to make a number of technical perfecting and clarifying amendments relating to the treatment of pay and annuity for a reemployed annuitant. Section 2 of the bill would amend 5 U.S.C. 8332 to allow credit for post-1956 military service in the computation of Civil Service Retirement annuity for certain individuals who, before becoming eligible for military retired pay, leave active military service to accept a Federal civil service appointment by the President which requires Senate confirmation. The Commission has no objection to these amendments.

In summary, the Commission supports enactment of H.R. 3650, modified as indicated above.

The Office of Management and 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,

ROBERT E. HAMPTON,
Chairman.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., April 24, 1975.

HON. DAVID N. HENDERSON,
*Chairman, Committee on Post Office and Civil Service,
House of Representatives.*

DEAR MR. CHAIRMAN: In your letter of March 3, 1975, you requested our report on H.R. 3650, 94th Congress, a bill "To clarify the application of section 8344 of title 5, United States Code, relating to civil service annuities and pay upon reemployment, and for other purposes."

The bill would make one major substantive amendment: it would require reimbursement of the Civil Service Retirement and Disability Fund in an amount equal to the annuity payments made to reemployed annuitants and withheld from the pay due them in the positions in which reemployed. In addition the bill would make certain clarifying amendments and minor revisions to 5 U.S.C. 8344 concerning the annuities and compensation of reemployed annuitants.

Section 1 of the bill would amend 5 U.S.C. 8344(a) to provide that an amount equal to the annuity allocable to the period of actual employment which under current law must be deducted from the annuitant's pay in a position in which he is reemployed shall be deposited in the Treasury of the United States to the credit of the Retirement Fund under such procedure as the Comptroller General of the

United States shall prescribe. At present agencies are permitted to retain the savings realized from the deduction requirement, thus, in effect, permitting the retirement fund to subsidize agency operations. We support this provision of H.R. 3650, since it would require the agencies to pay the full cost of employees' services; would result in agency budgets that reflect the true costs of operation, and it would make the retirement fund whole.

H.R. 3650 provides that the annuity of a reemployed annuitant who served on a part-time basis for periods equivalent to at least 1 year of full-time service be increased on termination of employment by an amount based on the period of employment and the basic pay, before deduction, averaged during that employment. Under current law, an annuitant must be reemployed on a *full-time* basis for at least 1 year to qualify for a supplemental annuity. Whether equivalent part-time service should also qualify for an increased annuity is a matter on which we have no specific comments.

H.R. 3650 provides that if an annuitant whose annuity is based on an involuntary separation becomes reemployed, the annuity terminates upon reemployment. According to the Civil Service Commission, this practice is already in effect by administrative regulation, and existing legislation does not give specific guidance on the matter. The effect of this treatment of involuntarily-retired annuitants upon reemployment is that they are able to have their annuities redetermined when the reemployment ends thereby being able to take advantage of any increases in their pay average, benefit liberalizations, etc., occurring since their previous retirement. This practice appears equitable in view of the fact that the annuitants were initially retired involuntarily and presumably would otherwise have remained employed.

H.R. 3650 provides that if an annuitant is appointed by the President to a position subject to the reemployment provisions, payment of his annuity terminates on reemployment. The effect of this change would be to grant Presidential appointees the advantage of having their annuities recalculated at the end of the reemployment period. This is a matter on which we have no comments.

H.R. 3650 would delete the current provision that the reemployment rules do not apply to a retired Member of Congress if he is appointed to a position that does not require confirmation by the Senate. Under current law, the annuity of a retired Member of Congress who subsequently serves in an appointive or elective position is discontinued during the employment period and resumed in the same amount at termination. The Member may elect to have his annuity recomputed as if the additional service had been performed before his retirement. These provisions do not apply, however, to a Member who is appointed by the President to a position not requiring Senate confirmation. H.R. 3650 would apply the same reemployment provisions to all retired Members of Congress regardless of whether appointment required Senate confirmation. This is a matter on which we have no comments.

H.R. 3650 would provide that creditable service used in calculating the civil service annuity payable to a retiree at age 62 shall include military service performed by an individual who, for purposes of accepting an appointment by the President to a position requiring Senate confirmation, obtained a discharge or separation prior to becoming entitled to military retired pay. In general, periods of military service are considered as creditable service in determining civil service retirement annuities. Current law provides, however, that the annuity must be recalculated when the annuitant becomes age 62 to exclude such service if he is entitled to old age or survivors insurance benefits (Social Security). The change proposed by H.R. 3650 appears to be intended to provide an inducement for military personnel to forego military retirement benefits to accept a Presidential appointment to a position covered by civil service retirement. The Civil Service Commission has been able to identify only two individuals who would be currently affected by this change—former astronauts Andrews and Collins.

We understand that the primary intent of the subject bill is to correct an anomalous situation which, due to an omission in the retirement law, permits agencies to retain the difference between a reemployed annuitant's salary and annuity. Although we believe that the correction of this anomaly is advisable for the previously stated reasons and it may also encourage agencies to reemploy annuitants only where they are essential to carrying out the agency's mission, we believe that this anomaly represents only one employment problem growing out of a more serious problem which we think merits Congressional action. This is the question of the rehiring of retired annuitants for longer than is necessary to satisfy an emergency situation which a particular agency may face. We have

come to the conclusion that this practice constitutes a circumvention of the legal intent of Congress in establishing the freeze on the salaries of high-level officials in the Government. This situation arose out of the spiraling high rate of inflation coupled with the automatic cost-of-living increases for annuitants and the freeze on salaries. For the reasons stated, we believe that legislation which would correct this problem deserves the consideration of the Congress.

Enclosed for your consideration is a proposed amendment to 5 U.S.C. 3323(b) which we believe should be considered by the committee.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

Enclosure.

(Suggested Amendment to 5 U.S.C. 3323(b))

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3323(b) of title 5, United States Code, is amended by inserting between the first and second sentences the following new sentence:

"An agency may rehire such an annuitant if he otherwise qualifies as an expert or consultant, but in no event may such an annuitant be rehired for a period of employment in excess of 130 days in any one year."

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, D.C., April 29, 1975.

HON. DAVID N. HENDERSON,
*Chairman, Committee on Post Office and Civil Service, Cannon House Office Building,
U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your letter of April 3, 1975 requesting comments from the Committee on House Administration on H.R. 3650.

Attached is a Ramseyer draft of a portion of subparagraph (4) on Page 2, lines 8 through 23, reflecting some additional suggested language that would be applicable to the Congress.

In addition it may be appropriate to include within the accompanying report on this bill that the procedures prescribed by the Committee on House Administration may well include, but not limited to, payments from the contingent fund to cover "amounts so deducted" to be deposited in the Treasury of the United States to the credit of the fund.

With kind regards, I am

Very sincerely yours,

WAYNE L. HAYS,
Chairman.

Attachment.

"(4) a Member receiving annuity from the Fund; becomes employed in an appointive or elective position, his service on and after the date he is so employed is covered by this subchapter. Deductions for the Fund may not be withheld from his pay. An amount equal to the annuity allocable to the period of actual employment shall be deducted from his pay, except for lump-sum leave payment purposes under section 5531 of this title. The amounts so deducted shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Comptroller General of the United States shall prescribe, except that the Committee on House Administration shall prescribe such procedures for the United States House of Representatives and the Committee on Rules and Administration shall prescribe such procedures for the United States Senate. If the annuitant serves in a full-time basis, except as President, for at least 1 year, or on a part-time basis for periods equivalent to at least 1 year of full-time service, in employment not excluding him from coverage under section 8331 1)(i) or (ii) of this title—

U.S. HOUSE OF REPRESENTATIVES,
OFFICE OF THE CLERK,
May 9, 1975.

Subject: Report on H.R. 3650.

From: W. Pat Jennings, Clerk, U.S. House of Representatives.

To: Honorable David N. Henderson, Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives.

H.R. 3650 amends Section 8344 of Title 5, U.S. Code, which governs payments to reemployed annuitants. My report outlines two important ramifications pertaining to annuitants reemployed in the U.S. House of Representatives.

The first major change requires an agency which reemploys an annuitant to reimburse the Civil Service Retirement Fund an amount equal to the annuity received by the reemployed annuitant. Therefore, it would become necessary to reimburse the Retirement Fund from appropriated funds of the House for the amount of the annuity paid to reemployed annuitants. As an example, rather than reemploying an annuitant who has a \$5,000 annual annuity at a rate of \$15,000 per annum and paying him only \$10,000 from House appropriated funds, this legislation would require the House to reimburse the Retirement Fund in the amount of \$5,000, representing the amount of the annuity.

The following schedule illustrates the recent growth in the number of reemployed annuitants on the House of Representatives' payrolls and the respective dollar amount of their annuity:

	Number of reemployed annuitants	Monthly annuity	Annual annuity
June 30, 1972.....	54	\$42, 580	\$510, 960
June 30, 1973.....	71	61, 969	743, 628
June 30, 1974.....	113	117, 950	1, 415, 500

As of January 31, 1975, the number of reemployed annuitants on the House payrolls was one hundred thirty six persons receiving total annuity payments of \$167,269 per month or \$2,007,228 annually.

H.R. 3650 also changes existing procedures allowing reemployed annuitants to earn supplemental annuity benefits. A supplemental annuity is in addition to the regular annuity, received upon separation, if the employee has at least one year of continuous service as a reemployed annuitant. Under existing interpretation of the law, only those individuals who retired voluntarily were eligible for supplemental annuities. H.R. 3650 extends this privilege to an annuitant who *retires* involuntarily. If passed, this may encourage involuntary retirees to try for reemployment to establish entitlement to the supplemental annuity.

Inasmuch as it affords involuntary retirees the privileges of voluntary retirees, this bill is a relaxation of age and service requirements for retirement for Congressional employees.

94TH CONGRESS
1ST SESSION

H. R. 3650

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 1975

Mr. HENDERSON introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To clarify the application of section 8344 of title 5, United States Code, relating to civil service annuities and pay upon reemployment, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That (a) section 8344 (a) of title 5, United States Code, is
4 amended to read as follows:

5 “(a) If an annuitant receiving annuity from the Fund,
6 except—

7 “(1) a disability annuitant whose annuity is termi-
8 nated because of his recovery or restoration of earning
9 capacity;

I

1 “(2) an annuitant whose annuity, based on an in-
 2 voluntary separation (other than an automatic separation
 3 or an involuntary separation for cause on charges of mis-
 4 conduct or delinquency), is terminated under subsection
 5 (b) of this section;

6 “(3) an annuitant whose annuity is terminated
 7 under subsection (c) of this section; or

8 “(4) a Member receiving annuity from the Fund;
 9 becomes employed in an appointive or elective position,
 10 his service on and after the date he is so employed is cov-
 11 ered by this subchapter. Deductions for the Fund may not
 12 be withheld from his pay. An amount equal to the annuity
 13 allocable to the period of actual employment shall be de-
 14 ducted from his pay, except for lump-sum leave payment
 15 purposes under section 5551 of this title. The amounts so
 16 deducted shall be deposited in the Treasury of the United
 17 States to the credit of the Fund under such procedures as
 18 the Comptroller General of the United States shall prescribe.
 19 If the annuitant serves on a full-time basis, except as Presi-
 20 dent, for at least 1 year, or on a part-time basis for periods
 21 equivalent to at least 1 year of full-time service, in employ-
 22 ment not excluding him from coverage under section 8331
 23 (1) (i) or (ii) of this title—

24 “(A) his annuity on termination of employment is
 25 increased by an annuity computed under section 8339

1 (a), (b), (d), (e), (h), and (i) of this title as may
 2 apply based on the period of employment and the basic
 3 pay, before deduction, averaged during that employ-
 4 ment; and

5 “(B) his lump-sum credit may not be reduced by
 6 annuity paid during that employment.

7 If the annuitant is receiving a reduced annuity as provided
 8 in section 8339 (j) or section 8339 (k) (2) of this title, the
 9 increase in annuity payable under subparagraph (A) of this
 10 subsection is reduced by 10 percent and the survivor annuity
 11 payable under section 8341 (b) of this title is increased by
 12 55 percent of the increase in annuity payable under such sub-
 13 paragraph (A), unless, at the time of claiming the increase
 14 payable under such subparagraph (A), the annuitant noti-
 15 fies the Commission in writing that he does not desire the
 16 survivor annuity to be increased. If the annuitant dies while
 17 still reemployed, the survivor annuity payable is increased as
 18 though the reemployment had otherwise terminated. If the
 19 described employment of the annuitant continues for at least
 20 5 years, or the equivalent of 5 years in the case of part-time
 21 employment, he may elect, instead of the benefit provided
 22 by subparagraph (A) of this subsection, to deposit in the
 23 Fund an amount computed under section 8334 (c) of this
 24 title covering that employment and have his rights redeter-
 25 mined under this subchapter. If the annuitant dies while still

1 reemployed and the described employment had continued for
 2 at least 5 years, or the equivalent of 5 years in the case of
 3 part-time employment, the person entitled to survivor an-
 4 nuity under section 8341 (b) of this title may elect to de-
 5 posit in the Fund and have his rights redetermined under
 6 this subchapter.”.

7 (b) Section 8344 of title 5, United States Code, is
 8 amended—

9 (1) by redesignating subsections (b) and (c)
 10 thereof as subsections (d) and (e), respectively; and

11 (2) by inserting immediately after subsection (a)
 12 thereof the following new subsections:

13 “(b) If an annuitant whose annuity is based on an
 14 involuntary separation (other than an automatic separation
 15 or an involuntary separation for cause or charges of miscon-
 16 duct or delinquency) is reemployed in a position in which
 17 he is subject to this subchapter, payment of the annuity ter-
 18 minates on reemployment.

19 “(c) If an annuitant is appointed by the President to a
 20 position in which he is subject to this subchapter, payment
 21 of the annuity terminates on reemployment.”.

22 (c) Section 8344 (d) of title 5, United States Code,
 23 as redesignated by this Act, is amended by striking out the
 24 last sentence.

25 (d) Section 8339 (f) (2) (C) of title 5, United States

1 Code, is amended by striking out "8344 (b) (1)" and insert-
2 ing in lieu thereof "8344 (d) (1)".

3 SEC. 2. Section 8332 (j) of title 5, United States Code,
4 is amended—

5 (1) by striking out in the first sentence ", except"
6 and inserting in lieu thereof "(except"; and

7 (2) by inserting in the first sentence, immediately
8 after "civilian position," the following: "or military
9 service performed by an individual who, for purposes of
10 accepting an appointment by the President to a position
11 requiring Senate confirmation, obtained a discharge or
12 separation prior to becoming entitled to retired pay on
13 account of such military service)".

14 SEC. 3. (a) Except as provided under subsection (b)
15 of this section, the amendments made by this Act shall be-
16 come effective on the date of enactment of this Act and shall
17 apply to annuitants serving in appointive or elective positions
18 on and after the date of enactment of this Act.

19 (b) The amendment made by subsection (e) of the first
20 section of this Act shall become effective on the date of enact-
21 ment of this Act but shall not apply to any annuitant reem-
22 ployed prior to the date of enactment of this Act.



