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House of Representatives

Committee on Post Office and Civil Service

Washington, DC 20515

TELEPHONE (202) 225-4054

February 19, 1987

Honorable Constance Horner
Director
Office of Personnel Management
1900 E Street, N.W.
Washington, D. C. 20415

Dear Mrs. Horner:

We are writing in objection to a proposed regulation issued by the Office of Personnel Management (OPM) on January 15, 1987, 52 Fed. Reg. 1621 (1987) (to be codified at 5 C.F.R. section 831.703). It concerns section 15204 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Public Law 99-272), which amended the civil service retirement law. We are convinced, both through our active involvement with this legislation and our review of legislative history, that the OPM has interpreted this law improperly and would be contravening Congressional intent by permitting the regulation, as proposed, to take effect.

The purpose of section 15204 was to revise the formula used to calculate retirement benefits for part-time employees. The previous formula's fault lay in its failure to prorate service credit; by relying solely on pay rates for full- and part-time employment as the basis for reflecting actual service performed, the formula provided an unintended benefit to certain employees who, by switching to full-time employment late in their careers, were able to use full-time final pay rates in the benefit formula and thereby disguise the largely part-time nature of their service.

Congress addressed this problem by devising a separate formula for individuals whose service includes part-time employment. This formula deems both service and salary to be that which would be creditable or payable for full-time employment, but then multiplies the resulting benefit by a fraction reflecting the employee's actual service as compared with that which would have been performed on a full-time basis.

As in many other instances involving benefits, Congress chose to protect or to "grandfather" past service -- to apply the new benefit formula only to future service rather than previously performed service under the older, more generous formula. This policy is often adopted to avoid penalizing individuals through the retroactive application of changes not anticipated by them. (As a measure of fairness, the policy of prospectivity is often applied to benefit improvements as well.) Congress made its intent unambiguously clear in subsection (c) of section 15204, stating that, "The amendments made by this section shall be effective with respect to service performed on or after the date of enactment of this Act (emphasis added)."

The term "service" is critical here. The OPM plainly misreads the law by proposing to apply the formula against all benefits earned, regardless of date of service, so long as the employee performs any part-time work on or after April 7, 1986, the date of enactment. The OPM's confusion arises from the fact that it focuses only on language in the statute used to trigger the new formula and ignores other language used to limit the new formula's application. The triggering language, 5 U.S.C. 8339(o), as added by COBRA section 15204(a), describes the type of employment which triggers use of the new formula -- employment that includes part-time service. The limiting language is found in the concluding subsection, section 15204(c), which states that the new formula shall apply only with respect to service performed on or after April 7.

The face of the Act makes readily clear OPM's mistaken reliance on the term "employee" under section 8339(o) of title 5 to construct its rule, and its neglect of section 15204(c), which actually gives the law its effect and which speaks in terms of "service" alone. In this light, we urge you to give deference to the historical rule of statutory construction, which binds us to the plain meaning of legislative language unless it is manifest from the general intent of the statute that injustice or absurdity would result. (Caminetti v. United States, 242 U.S. 470, 485 (1917), United States v. Public Utilities Commission of California, 345 U.S. 295, 315 (1953)).

It is significant that Congress' intent to apply the new formula prospectively to benefits earned on or after April 7, 1986, is manifested repeatedly throughout the legislative history. The part-time formula provision originated in the Senate and first appeared as section 815 of S. 1730, as reported by the Committee on the Budget. That portion of the provision which provides for prospective application of the new formula remained virtually unchanged from its first appearance as section 815 of S. 1730 until its enactment as section 15204 of the COBRA. The Committee on the Budget report accompanying S. 1730 states: "The provisions of this section apply prospectively to any part time service after the date of enactment (emphasis added)." (S. Rept. 99-146, 99th Cong., 1st

Sess., p. 433 (1985)). The cost estimate prepared by the Congressional Budget Office and included in the report states, in relevant part, "This would apply to service performed after enactment of this proposal... (emphasis added)." (id. at 436).

There is no doubt that the meaning and intent of section 15204 are clear beyond any reasonable question. In practical application, an employee's part-time employment up to April 7, 1986, is to be calculated according to the old formula, applying final full-time salary to service accumulated through that date; part-time service subsequently performed is subject to the new formula, applying final full-time salary to post-enactment service and then multiplying by a fraction representing actual credit earned.

We cannot overemphasize our concerns regarding the OPM's proposed regulation. If the OPM insists on misapplying section 15204, you can anticipate further Congressional action.

With kind regards,

Sincerely,



WILLIAM D. FORD
Chairman



GENE TAYLOR
Ranking Minority Member

cc: Honorable John Glenn, Chairman
Committee on Governmental Affairs

Honorable David Pryor, Chairman
Subcommittee on Federal Services, Post Office, and
Civil Service

Honorable William V. Roth, Jr., Ranking Minority Member
Committee on Governmental Affairs

Honorable Ted Stevens, Ranking Minority Member
Subcommittee on Federal Services, Post Office, and
Civil Service

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