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STATEMENT OF

WILLIAM E. FLYNN, III, ASSOCIATE DIRECTOR
FOR RETIREMENT AND INSURANCE
OFFICE OF PERSONNEL MANAGEMENT

at a hearing of the

SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

on

RETIREMENT BENEFITS FOR LAW ENFORCEMENT OFFICERS,
FIREFIGHTERS, AND OTHER SPECIAL GROUPS

SEPTEMBER 9, 1999

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM PLEASED TO APPEAR TODAY TO DISCUSS THE SPECIAL RETIREMENT PROVISIONS APPLICABLE TO LAW ENFORCEMENT OFFICERS, FIREFIGHTERS, AND OTHER SPECIAL GROUPS. THE ADMINISTRATION DEEPLY APPRECIATES THE MYRIAD CONTRIBUTIONS TO THE NATION'S WELFARE BY THE DEDICATED EMPLOYEES WHO ARE CURRENTLY COVERED BY THE SPECIAL RETIREMENT PROVISIONS, AS WELL AS THOSE WHO SEEK SUCH COVERAGE.

WE BELIEVE THAT TO SIMPLY CONSIDER WHETHER TO ADD CERTAIN SPECIFIED GROUPS TO COVERAGE UNDER THE EXISTING PROVISIONS IS MUCH TOO LIMITED AN INQUIRY.

INSTEAD, IT IS TIME TO REEXAMINE THE PROGRAM AND ITS HISTORY. WE MUST FIRST DETERMINE WHAT HUMAN RESOURCES MANAGEMENT NEEDS ARE INTENDED TO BE ADDRESSED. THEN, WE MUST ANALYZE HOW THOSE NEEDS CAN BEST BE ADDRESSED IN A COST-EFFECTIVE MANNER THAT IS FAIR TO BOTH EMPLOYEES AND THE TAXPAYERS.

WHILE I AM SURE YOU WILL NOT OBJECT IF I OMIT READING IT THIS MORNING, THE FOLLOWING MATERIAL IN MY PREPARED TESTIMONY IS A BRIEF CHRONOLOGY OF SIGNIFICANT ITEMS IN THE HISTORY OF THE SPECIAL RETIREMENT PROVISIONS.

1947 PUBLIC LAW 80-168 EXTENDED SPECIAL RETIREMENT BENEFITS TO SPECIAL AGENTS AND CERTAIN OTHER EMPLOYEES OF THE FBI. COVERED INDIVIDUALS COULD RETIRE WITH THE APPROVAL OF THE ATTORNEY GENERAL AT AGE 50 AFTER 20 YEARS OF SERVICE WITH AN ANNUITY OF 2% PER YEAR OF SERVICE AND A MAXIMUM BENEFIT OF 60% OF AVERAGE SALARY.

1948 PUBLIC LAW 80-879 EXTENDED THE PROVISION TO OTHER EMPLOYEES, THE DUTIES OF WHOSE POSITIONS "ARE PRIMARILY THE INVESTIGATION, APPREHENSION, OR DETENTION OF PERSONS SUSPECTED OR CONVICTED OF OFFENSES AGAINST THE CRIMINAL LAWS OF THE UNITED STATES. . ." EACH RETIREMENT REQUIRED THE RECOMMENDATION OF THE AGENCY HEAD AND THE APPROVAL OF THE CIVIL SERVICE COMMISSION.

1956 PUBLIC LAW 84-854 EXTENDED THE PROVISION TO OTHER NON-CUSTODIAL CORRECTIONAL EMPLOYEES WITH FREQUENT AND DIRECT PRISONER CONTACT. IT ALSO INCREASED THE MAXIMUM ANNUITY BENEFIT TO 80% OF AVERAGE SALARY FOR ALL RETIREES.

1972 PUBLIC LAW 92-382 EXTENDED THE SPECIAL RETIREMENT PROVISIONS TO FIREFIGHTERS.

1974 PUBLIC LAW 93-350 MADE MAJOR CHANGES TO THE SPECIAL RETIREMENT PROVISIONS.

- MANDATORY RETIREMENT AT AGE 55 WAS REQUIRED.
- THE COMPUTATION WAS INCREASED TO 2 1/2% FOR EACH OF THE FIRST 20 YEARS OF SERVICE AND 2% PER YEAR OF ADDITIONAL SERVICE.
- FOR THE FIRST TIME, THE TERM "LAW ENFORCEMENT OFFICER" APPEARED.
- THE REQUIREMENT THAT THE AGENCY HEAD RECOMMEND AND THE CSC APPROVE EACH RETIREMENT WAS ELIMINATED.
- PROVISION WAS MADE FOR MAXIMUM ENTRY AGE SO THAT INDIVIDUALS WOULD COMPLETE THE REQUIREMENTS FOR RETIREMENT BY THE TIME THEY REACHED MANDATORY RETIREMENT AGE.
- THE EMPLOYEE DEDUCTION AND AGENCY CONTRIBUTION RATES WERE EACH INCREASED BY 1/2 %, INCREASING TO 7 1/2%. PREVIOUSLY, BOTH WERE AT THE REGULAR EMPLOYEES RATES.

1979 THE COURT OF CLAIMS OVERTURNED THE LONG-STANDING POLICY THAT SPECIAL RETIREMENT ELIGIBILITY COULD BE BASED ONLY ON THE OFFICIAL DUTIES OF AN EMPLOYEE'S POSITION OF RECORD. (*ELLIS V. U.S.*, 610 F.2D 760 (CT.CL.1979))

1986 PUBLIC LAW 99-335 ESTABLISHED THE FEDERAL EMPLOYEES RETIREMENT SYSTEM, UNDER WHICH THE SPECIAL RETIREMENT BENEFITS WERE MODIFIED WITHOUT CHANGING THE CSRS RULES. UNDER FERS--

- THERE IS RETIREMENT ELIGIBILITY AT AGE 50 WITH 20 YEARS OF SERVICE, OR AT ANY AGE WITH 25 YEARS OF SERVICE.
- THE BENEFIT IS 1.7% FOR EACH OF THE FIRST 20 YEARS OF SERVICE AND 1% PER YEAR OF ADDITIONAL SERVICE.
- EMPLOYEES WHO PROTECT FEDERAL OFFICIALS AGAINST THREATS TO PERSONAL SAFETY WERE ADDED TO THE CLASS.
- CERTAIN FEDERAL EMPLOYEES WERE ADDED TO THE CLASS WHO (PRIOR TO FERS) WOULD HAVE BEEN COVERED BY THE DISTRICT OF COLUMBIA POLICE AND FIREFIGHTERS' RETIREMENT SYSTEM.

1990 PUBLIC LAW 101-428 EXTENDED THE SPECIAL RETIREMENT PROVISIONS TO CAPITOL POLICE AS A SEPARATE GROUP NOT WITHIN THE DEFINITION OF LAW ENFORCEMENT OFFICER.

1990 PUBLIC LAW 101-509 RAISED THE MANDATORY RETIREMENT AGE FROM 55 TO 57 FOR LAW ENFORCEMENT OFFICERS BUT LEFT IT AT 55 FOR FIREFIGHTERS AND CAPITOL POLICE.

1994 PUBLIC LAW 103-283 RAISED THE MANDATORY RETIREMENT AGE FROM 55 TO 57 FOR CAPITOL POLICE.

1993-95 IN A SERIES OF CASES, THE MERIT SYSTEMS PROTECTION BOARD ESTABLISHES A NUMBER OF "INDICIA" OF LAW ENFORCEMENT EMPLOYMENT. APPELLATE REVIEW SHIFTS FROM EXAMINATION OF DUTIES TO REVIEW OF INDICIA.

1997 THE COURT OF APPEALS DENIES AN APPEAL FROM A DISALLOWANCE OF LAW ENFORCEMENT RETIREMENT, RELYING UPON THE MSPB INDICIA. AS A RESULT OF THIS DECISION, THE MSPB NOW USES THE INDICIA AS A BASIS TO ALLOW LAW ENFORCEMENT CREDIT WITHOUT REGARD TO THE OVERALL DUTIES OF THE INDIVIDUAL. (*BINGAMAN, V. TREASURY*, 127 F.3D 1431 (FED. CIR.1997))

1998 PUBLIC LAW 105-261 EXTENDED THE SPECIAL RETIREMENT PROVISIONS TO NUCLEAR MATERIALS COURIERS AS A SEPARATE GROUP NOT WITHIN THE DEFINITION OF LAW ENFORCEMENT OFFICER.

IN SUMMARY, SPECIAL RETIREMENT ELIGIBILITY AND COMPUTATIONAL PROVISIONS WERE FIRST ENACTED IN 1947 FOR FBI SPECIAL AGENTS. OVER THE YEARS, THE PROVISIONS HAVE BEEN MODIFIED ON A NUMBER OF OCCASIONS. GROUPS ADDED INCLUDE CRIMINAL INVESTIGATORS, PRISON GUARDS, NON-GUARD PRISON EMPLOYEES, FIREFIGHTERS, CAPITOL POLICE, AND NUCLEAR COURIERS.

THE STATED PURPOSE FOR THE SPECIAL PROVISIONS HAS

BEEN TO MAKE IT POSSIBLE FOR THE GOVERNMENT TO MAINTAIN A YOUNG AND VIGOROUS WORKFORCE IN CERTAIN OCCUPATIONS REQUIRING SUCH EMPLOYEES. THE SPECIAL PROVISIONS HAVE NEVER BEEN INTENDED AS A REWARD OR COMPENSATION TO EMPLOYEES FOR HAVING PERFORMED A CERTAIN TYPE OF WORK. GENERALLY SPEAKING, THE APPROPRIATE MANNER TO CONSIDER FACTORS RELATING TO THE TYPE OF WORK PERFORMED IS IN THE PAY-SETTING PROCESS.

IN THIS REGARD, IT IS NOTEWORTHY THAT, PRIOR TO 1974, THE BENEFIT COMPUTATION FOR THESE SPECIAL GROUPS WAS ONLY marginally more generous than the regular retirement formula. THE MORE LIBERAL CURRENT FORMULA WAS ONLY ADDED TO THE LAW IN ORDER TO ENABLE THE AFFECTED INDIVIDUALS WHO WERE SUBJECT TO MANDATORY RETIREMENT TO RETIRE WITHOUT EXPERIENCING ECONOMIC HARDSHIP.

FROM INCEPTION UNTIL 1974, EACH EMPLOYEE'S RETIREMENT REQUIRED THE RECOMMENDATION OF THE AGENCY HEAD AND THE APPROVAL OF THE CIVIL SERVICE COMMISSION (PREDECESSOR OF OPM). RETIREMENTS WERE APPROVED ONLY WHEN SERVING THE HUMAN RESOURCES MANAGEMENT PURPOSES OF THE LAW.

THE APPELLATE AND JUDICIAL AUTHORITIES REVIEWING COVERAGE ISSUES FORMERLY GAVE DEFERENCE TO THE INTERPRETATION OF THE LEGISLATION BY THE EXECUTIVE BRANCH, WHICH USED THE PURPOSE OF THE LEGISLATION AS A PRINCIPAL TOOL OF INTERPRETATION. HOWEVER, IN RECENT YEARS, THE APPELLATE AND JUDICIAL AUTHORITIES HAVE TENDED TOWARDS ANALYZING ELIGIBILITY MORE AS AN ENTITLEMENT ISSUE. ACCORDINGLY, THE GOVERNMENTAL PURPOSES OF THE PROVISIONS HAVE NOT RECEIVED THE CONSIDERATION THEY ONCE DID.

THE EVOLUTION OF SPECIAL RETIREMENT COVERAGE HAS CREATED A SITUATION THAT APPEARS TO HAVE DEPARTED FROM FUNDAMENTAL HUMAN RESOURCE MANAGEMENT CONSIDERATIONS. THERE ARE A VARIETY OF COVERAGE DECISIONS THAT ARE NOT ALWAYS CONSISTENT, AND ARE

REGARDED IN SOME CASES AS INEQUITABLE. WHILE THE INDICIA OF ELIGIBILITY ARE INTENDED TO CREATE CONSISTENCY, IN PRACTICE THEY SOMETIMES YIELD ANOMALOUS RESULTS. A FURTHER RESULT IS CONFUSION AS TO ELIGIBILITY AMONG AGENCIES AND EMPLOYEES. CONSEQUENTLY, THE USE OF THE SPECIAL RETIREMENT PROVISIONS AS A HUMAN RESOURCES MANAGEMENT TOOL HAS BEEN SUBSTANTIALLY UNDERMINED.

MR. CHAIRMAN, IN THE FACE OF ALL THIS, YOU RAISED A NUMBER OF QUESTIONS RELATED TO HUMAN RESOURCES MANAGEMENT IN YOUR LETTER OF INVITATION. WE AGREE THAT THE APPROPRIATE MEANS OF IMPROVING THE PROGRAM IS A RETURN TO AN EMPHASIS ON ANALYSIS IN THE CONTEXT OF HUMAN RESOURCES MANAGEMENT. OTHERWISE, EXPENDITURES FROM THE AGENCIES' BUDGETS AND THE RETIREMENT FUND MAY NOT SERVE TO CONSISTENTLY ADVANCE THE INTERESTS FOR WHICH THEY ARE INTENDED.

THE DETERMINATION OF WHAT TYPES OF POSITIONS ARE TO BE COVERED MUST BE BASED UPON OBJECTIVELY DEMONSTRATED NECESSITY AND EFFICACY. THERE SHOULD NOT BE A MAJOR CHANGE IN THE COMPOSITION OF THE COVERED CLASSES WITHOUT A CHANGE IN THE AUTHORIZING LEGISLATION. MOREOVER, IT IS IMPORTANT THAT WE BE CIRCUMSPECT IN THE PROCESS OF COVERAGE DECISION-MAKING. ALL MATTERS THAT MIGHT AFFECT OR BE AFFECTED BY A CHANGE IN THE RETIREMENT BENEFIT STRUCTURE SHOULD BE TAKEN INTO ACCOUNT. MATTERS TO BE CONSIDERED SHOULD INCLUDE RECRUITMENT, RETENTION, PHYSICAL AND MENTAL DEMANDS OF EMPLOYMENT, EFFECTS OF THE AGING PROCESS, TREATMENT OF OTHER TYPES OF EMPLOYEES WITH SIMILAR CIRCUMSTANCES, WHAT HUMAN RESOURCES MANAGEMENT PROBLEMS (IF ANY) EXIST UNDER CURRENT PROVISIONS, AND HOW ANY PROPOSED MODIFICATION OF THE RETIREMENT PROVISIONS WOULD AFFECT THE CURRENT CIRCUMSTANCES. WHILE YOUR LETTER OF INVITATION ASKS A NUMBER OF QUESTIONS IN THESE AREAS, WE BELIEVE MORE STUDY AND ANALYSIS IS NEEDED TO PROVIDE USEFUL ANSWERS.

ONCE THE POLICIES HAVE BEEN DECIDED, THE LEGISLATION SHOULD BE DRAFTED IN SUCH A MANNER THAT APPLICATION OF THOSE POLICIES IS CLEAR-CUT AND OBJECTIVE. WHILE IT GOES WITHOUT SAYING THAT AFFECTED INDIVIDUALS SHOULD ALWAYS BE PROVIDED APPROPRIATE DUE PROCESS, THE FRAMEWORK OF THE PROGRAM SHOULD BE SUFFICIENTLY CLEAR THAT THE REVIEW PROCESS WILL YIELD CONSISTENT AND EQUITABLE RESULTS.

REGARDLESS OF THE BENEFIT AND COVERAGE DECISIONS THAT RESULT, IT IS ESSENTIAL THAT FUNDING OF THE COSTS BE PROVIDED FOR IN A RESPONSIBLE MANNER. IT IS IMPORTANT THAT THE PROSPECTIVE COSTS OF BENEFITS BE RECOGNIZED AT THE TIME THEY ARE INCURRED AS AN EXPENSE OF THE PROGRAM THAT BENEFITS FROM THEM. FURTHER, PROVISION MUST BE MADE FOR THE ADDITIONAL COST OF BENEFITS RESULTING FROM A CHANGE IN THE TREATMENT OF PRIOR SERVICE. TO CREATE AN EXPENSE WITHOUT A FUNDING MECHANISM FAILS TO PLACE RESPONSIBILITY FOR THOSE COSTS WHERE THEY BELONG, AND REQUIRES THOSE COSTS TO BE ADDRESSED IN THE FUTURE.

THE CURRENT FERS DYNAMIC NORMAL COST IS 11.5% FOR REGULAR EMPLOYEES. THE CURRENT FERS DYNAMIC NORMAL COST IS 24.6% FOR LAW ENFORCEMENT OFFICERS, FIREFIGHTERS, AND OTHER SPECIAL RETIREMENT EMPLOYEES. UNDER CSRS, THE DYNAMIC NORMAL COST IS 24.2% FOR REGULAR EMPLOYEES AND 40.0% FOR LAW ENFORCEMENT OFFICERS, FIREFIGHTERS, AND OTHER SPECIAL RETIREMENT EMPLOYEES. MOREOVER, IT IS IMPORTANT TO UNDERSTAND THAT THOSE RATES FUND ONLY THE COSTS OF THE SERVICE TO WHICH THEY APPLY, AND DO NOT FUND CREDIT FOR PRIOR SERVICE.

YOU REQUESTED AN ESTIMATE OF WHAT IT WOULD COST TO COVER ALL OF THE GROUPS SEEKING INCLUSION. A FEW MONTHS AGO, OUR ACTUARY'S OFFICE PREPARED SUCH AN ESTIMATE. ALTHOUGH IT IS BASED IN LARGE PART UPON MATERIAL PREPARED IN THE EARLY 1990'S THAT HAS NOT BEEN UPDATED AND SHOULD NOT BE CONSIDERED AS PRECISELY ACCURATE, IT IS STILL MOST ILLUSTRATIVE OF

THE SCALE OF THE COSTS INVOLVED.

THE GROUPS INCLUDED POLICE, GUARDS (OTHER THAN CURRENTLY COVERED PRISON GUARDS), INS INSPECTORS, CUSTOMS INSPECTORS, PARK RANGERS, ATF INSPECTORS, AND A FEW OTHER SMALL GROUPS. THE ESTIMATE IS THAT TO INCLUDE SUCH GROUPS WITH CREDIT FOR PAST SERVICE WOULD RESULT IN AN INCREASE IN THE RETIREMENT FUND UNFUNDED LIABILITY OF \$1.499 BILLION. THAT ESTIMATE TAKES INTO ACCOUNT, BUT DOES NOT INCLUDE, THE ADDITIONAL COSTS TO EMPLOYING AGENCIES OF RETIREMENT DEDUCTIONS AT THE HIGHER LAW ENFORCEMENT CONTRIBUTION RATES. THAT IS TO SAY, TO INCLUDE ALL THESE GROUPS WOULD COST ABOUT \$1.5 BILLION PLUS THE FUTURE ADDITIONAL EMPLOYING AGENCY AND EMPLOYEE CONTRIBUTIONS AT THE HIGHER RATES.

IN CONCLUSION, MR. CHAIRMAN, I THANK YOU FOR INVITING THE OFFICE OF PERSONNEL MANAGEMENT TO TESTIFY ON THIS MATTER. I WILL BE GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

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