Civil Service Ret
OCC
84-1357

**EXECUTIVE OFFICE OF THE PRESIDENT**
**OFFICE OF MANAGEMENT AND BUDGET**
**WASHINGTON, D.C. 20503**

March 27, 1984

**LEGISLATIVE REFERRAL MEMORANDUM**

**TO:** **Legislative Liaison Officer**

Department of Defense
Department of State
Central Intelligence Agency

**SUBJECT:** OPM proposed report on H.R. 2300, the "Civil Service Spouse Retirement Equity Act."

**The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.**

**A response to this request for your views is needed no later than** April 20, 1984.

**Questions should be referred to** Elaine Rideout (395-6156 ) **or to** Hilda Schreiber ( 395-4650 ), **the legislative analyst in this office.**

Coord w/ OGC+ OP on 4/18/84 by telephone -- both agreed that CIA should "not object" to OPM testimony, consistent with our earlier "no objection" on OPM testimony on H.R. 2300.

On 4/19, phoned OMB and stated that CIA has "no objection" to OPM report.

Naomi R Sweeney

Naomi R. Sweeney for
**Assistant Director for Legislative Reference**

**Enclosures**

4/19/84

STAT

United States
**Office of**
**Personnel Management**
Washington, D.C. 20415

In Reply Refer To

Your Reference

Honorable William D. Ford
Chairman
Committee on Post Office
and Civil Service
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to your request for the views of the Office of Personnel Management on H.R. 2300, the "Civil Service Spouse Retirement Equity Act."

Section 3 of H.R. 2300 would automatically entitle a former spouse (defined as one who had been married to a Federal employee for at least ten years during the employee's Government service) to a pro rata share of half of the employee's Civil Service Retirement annuity, unless a court order or spousal agreement provides otherwise. The pro rata share would equal the ratio of (1) the number of years of Federal service during which the former spouse and the employee were married to (2) the total number of years of the employee's Federal service. The former spouse's right to this annuity would terminate if the former spouse remarried before age 60. The retired employee's annuity would be reduced by the annuity paid to the former spouse, but this reduction would be disregarded in calculating any survivor annuity. If a disability annuitant became reemployed by the Government, payment of annuity to his or her former spouse would continue, but the employee's pay would be reduced by the amount of the former spouse's annuity, and the employing agency would reimburse the Retirement Fund for the cost of the payments to the former spouse.

The former spouse would also be entitled to the same pro rata share of the survivor annuity that is payable based on the employee's Federal service, unless otherwise provided by a court order or spousal agreement. Any part of the survivor annuity not paid to a former spouse would be available for a surviving spouse, but the sum of the survivor annuities could not exceed 55 percent of the retiree's annuity. The right to a survivor annuity would terminate upon remarriage before age 60 but would be reinstated if the remarriage later ended. The retiree's annuity would be reduced to provide the survivor annuity. This reduction would be eliminated if the former spouse's right to a survivor annuity terminated because of death or remarriage. However, the retiree could elect to continue the reduction in order to increase the amount of the survivor annuity available to a subsequent spouse. No change would be made with respect to any survivor annuity to the retiree's surviving spouse if a former spouse's survivor annuity is terminated after the retiree's death.

A retiring employee who is married and/or has a former spouse would automatically have his or her annuity reduced to provide a survivor annuity for the spouse and/or former spouse. The survivor annuity could be waived or reduced by a joint election of the employee and the spouse or former spouse. The employee could make such an election alone if he or she could establish to OPM's satisfaction that the whereabouts of the former spouse could not be determined. OPM would be required, "to the maximum extent practicable," to inform spouses and former spouses of their rights to Civil Service Retirement benefits.

If a retiree has a former spouse who is entitled to a survivor annuity, the retiree could elect to provide an additional survivor annuity for his or her current spouse and/or any other former spouse. The total amount of additional annuities with respect to one retiree could not exceed 55 percent of the retiree's annuity. The retiree would have to pay for the entire actuarial value of the additional annuity, and could elect to provide such an annuity only if in good health. No cost-of-living adjustments would apply to additional survivor annuities unless authorized by OPM regulations. Section 8345(f) of title 5, United States Code, which establishes a floor on Civil Service annuities, would not apply to additional survivor annuities.

Section 3 of the bill would also entitle a former spouse to a pro rata share of half of an employee's lump-sum retirement credit in case the employee separates from the service and takes a refund of his or her retirement contributions, or the unexpended balance to the employee's or annuitant's credit in the Fund in case he or she dies.

The provisions of H.R. 2300 would take effect 120 days after enactment and, with certain exceptions, would apply in cases where divorce, annulment, or legal separation occurred after the effective date. In cases where the marriage dissolved before the effective date, a survivor annuity would be provided to the former spouse only if a court order or spousal agreement so provides. Court orders and spousal agreements could be made at any time before retirement, in the case of current employees, and within whatever period after the effective date that OPM prescribes, in the case of current retirees. If the employee or former employee is married on the effective date and has been married for more than one year, his or her current spouse would have to concur in an election to provide a survivor annuity for a former spouse. Finally, H.R. 2300 would provide a survivor annuity to the former spouse of a retiree who died before the effective date, if the retiree was married to the former spouse at the time of retirement, failed to elect not to provide a survivor annuity, subsequently became divorced, and did not leave a surviving spouse who was entitled to a Civil Service survivor annuity.

The Office of Personnel Management opposes enactment of H.R. 2300.

Current law (5 U.S.C. 8345(j)) already enables OPM to recognize State court orders awarding some or all of an employee's annuity to a former spouse, and we believe this is an adequate protection of the rights of former spouses with respect to the employee's annuity, since it recognizes the primary responsibility of State courts to determine, on a case-by-case basis, a former spouse's entitlement to a portion of the employee's retirement benefits as a part of the courts' decision on all aspects of the divorce. Creating a statutory assumption of automatic entitlement by the former spouse regardless of the circumstances of a particular case, as H.R. 2300 would do, could foster new inequities in some cases.

H.R. 2300 resembles provisions of the Foreign Service Act of 1980 and the Intelligence Authorization Act for Fiscal Year 1983, providing benefits for former spouses of Foreign Service officers and CIA employees serving overseas, respectively. The Congressional consideration of the relevant portions of these two statutes focused in large part on the effects on a former spouse that follow from the unique nature of employment in the Foreign Service and overseas employment with the CIA--residence in foreign countries, frequent relocations, the spouse's involvement with the employee's duties, and the consequent likelihood that a spouse is unable to pursue his or her own career and establish separate retirement benefits. These conditions do not characterize the careers of most employees covered under the Civil Service Retirement System.

Although this bill is designed to benefit former spouses who were completely financially dependent on their Federally-employed spouses throughout long-term marriages, it would also impose an unreasonable and inequitable burden on many Government employees whose former spouses' incomes are equal to or greater than their own. H.R. 2300 implicitly recognizes this potential inequity by providing that the automatic provision of benefits to a divorced spouse may be superseded by a court order or spousal agreement. We agree that variables must be considered in individual cases, such as the financial status of both parties, property settlements, children involved, and the reasons for the divorce. Thus, we do not see a reason to abandon the present law, which simply provides for disposition of Civil Service Retirement benefits by State courts on a case-by-case basis.

We also note that new costs would be incurred by the Retirement System, largely because of the bill's retroactivity. The reduction in the employee's annuity to provide for a survivor annuity (2 1/2 percent of the first $3600, plus 10 percent of the remainder) falls far short of the true cost of the survivor annuity. We estimate that the annuity reduction pays only one-third of the cost of the survivor's benefit. Because H.R. 2300 would require survivor annuities to be paid in many cases where none would be paid under current law (either because the employee never remarried after being divorced, or elected not to provide a survivor annuity for his or her spouse at the time of retirement), it would increase the cost to the Retirement System of providing survivor benefits. While it

is impossible for us to know how many former spouses would become entitled to benefits if H.R. 2300 were enacted, the number could be significant, particularly because the bill would provide survivor annuities to former spouses of employees who have been retired or dead for several years. Each one-percent increase in the number of survivor annuities payable would cost about $50 million a year. In cases where the retiree died before the bill's effective date, the reduction in the retiree's annuity to provide a survivor annuity presumably would have been eliminated at the time of divorce, further increasing the cost to the Government of providing the annuity.

Section 3(b) of H.R. 2300 concerns service credit under 5 U.S.C. 8332(k) and 8334(d). The former requires that employees on leave-without-pay while serving full-time with an employee organization must make retirement contributions for such periods after July 17, 1966, in order to receive credit for those periods. For such periods before July 18, 1966, a maximum of 6 months in a calendar year may be credited if the employee fails to make a deposit. Section 8334(d) requires an employee who has received a refund of Civil Service Retirement contributions to redeposit the refund, with interest, in order to receive credit for the period of service covered by the refund. Under section 3(b) of H.R. 2300, these periods could be used in computing annuities for former spouses, even if they were not covered by retirement contributions of the employee. This provision is unreasonable and inequitable, since it would allow a former spouse to receive credit for periods for which neither the employee nor the employee's surviving spouse could receive credit. Accordingly, this provision could enable the former spouse to receive more than a pro rata share of the employee's annuity and the survivor annuity.

Finally, it should be noted that the provision concerning additional survivor annuities is impractical and unrealistic. The employee would have to pay the full actuarial value of such an annuity, which would already have been reduced by 2 1/2 percent of the first $3600 and 10 percent of the remainder in order to provide the basic survivor annuity. Moreover, it is likely that the employee's annuity will have been apportioned between the employee and the former spouse. From this already reduced annuity, yet a further reduction would be required to provide the second spouse with an additional survivor annuity, and even where the employee and second spouse are the same age, this reduction would have to be approximately 20 percent of the employee's unreduced annuity. Thus, few employees would be willing or financially able to provide an additional benefit for the second spouse.

In addition to these substantive objections to H.R. 2300, we would like to point out the following technical deficiencies in the bill's provisions:

(1) The use of a capital letter in denoting a section ("8341A") is inconsistent with the style used throughout title 5, U.S. Code. "8341a" should be used instead.

(2) The definition of "court" should stipulate whether or not territorial courts are included.

(3) Proposed section 8341A(c)(3)(C) of title 5, U.S.Code, should be amended by inserting "or spouse" after "If a former spouse". This change is needed in order to reflect that an additional survivor annuity may be provided either for a former spouse or a current spouse. Similarly, in section 8341A(c)(4), "spouse's or" should be inserted before "former spouse's death".

(4) Proposed section 8341A(c)(3)(C) provides that, if a former spouse predeceases the employee or remarries before age 60, the annuity reduction or salary allotment by which the employee is providing for an additional survivor annuity will be terminated and whatever contributions the employee has made for this purpose will be refunded, but only to the extent that the employee's contributions have exceeded the actuarial cost of providing additional survivor benefits for the period such benefits were provided. The latter clause is confusing. There is no actuarial cost of providing an additional survivor annuity unless such an annuity is actually paid. If such an annuity has been paid, the retiree must be deceased, so it is unclear to whom his or her contributions would be refunded. In any event, this kind of payment should never be refunded, since it, in essence, amounts to a purchase of insurance.

(5) In the proposed new 5 U.S.C. 8339(j)(4)(B), as added by section 4(a) of the bill, "or" should be changed to "and".

(6) Section 6(d) of the bill refers erroneously to 5 U.S.C. 8339(b)(2). This should be changed to 5 U.S.C. 8339(j)(2).

Although the Office of Personnel Management cannot support H.R. 2300 for the reasons we have cited, there are two defects in the Civil Service Retirement System with respect to survivor benefits which we strongly believe should be corrected. One of these defects is that, although the Civil Service Retirement law since 1980 has required retiring employees who waive survivor benefits to inform their spouses of the waiver, spousal consent to the waiver is not required. The President's proposed Pension Equity Act (H.R. 4032) would require such consent under private pension plans, and we favor amending the Civil Service Retirement law to impose a similar requirement under the Civil Service Retirement System.

Second, while current law allows us to apportion a retired employee's annuity to a former spouse, subject to a court order, there is no authority under which we can pay a survivor annuity to a former spouse. The Office of Personnel Management would support an amendment authorizing payment of survivor benefits to former spouses pursuant to a court order in the same way we can pay a portion of a retired employee's annuity to a former spouse. Such a provision would conform to the requirements the President's proposed Pension Equity Act would impose on private-sector pension plans.

We believe these changes would significantly enhance the equity of the Retirement System with respect to spouses and former spouses of Federal employees, and we would be pleased to work with the Committee on drafting such changes.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Donald J. Devine
Director