



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

84-0831

SPECIAL

March 8, 1984

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

- Department of Commerce*
- Department of Health and Human Services*
- Department of Justice
- Department of State
- Department of Transportation
- Central Intelligence Agency

*Please comment on coverage of Commissioned Officers of NOAA and PHS, respectively.

SUBJECT: "Advance" DOD comments on Justice Department substitute draft language for OPM draft bill prohibiting payment of civilian annuities and military retired pay to Federal employees convicted of certain felonies.

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 March 23, 1984. We understand that there is Senate Committee interest in expediting legislation along these lines.

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

Naomi R Sweeney

Naomi R. Sweeney for
Assistant Director for
Legislative Reference

Enclosures

Per phone call to Hilda Schreiber, OMB, on March 21, 1984, [unclear] stated CJFF has "no comment" on these DOD comments. ROP 3/24/84

10

Honorable David A. Stockman
 Director, Office of Management
 and Budget
 Washington, D. C. 20513

ADVANCE 3/8/84 WED

Dear Mr. Stockman:

This is to present the views of the Department of Defense on the Justice Department proposed revisions to the Office of Personnel Management (OPM) legislative proposal "To amend section 8312 of title 5, United States Code, to provide that an individual may not be paid an annuity under the civil service retirement system or other retirement system of the Government of the United States for service as a Federal employee if convicted of any felony which occurred in connection with his employment as a Federal employee and is punishable by imprisonment for two or more years, and for other purposes.

The Department of Justice recommends that the amendment of 5 U.S.C. 8312 contain a general description of the types of violations which are appropriate for pension denial and authority for the Attorney General to promulgate regulations listing specific provisions of law for the categories described by the statute. The list of violations in the regulations would include any offense which involves:

"(1) intentional misuse of public office punishable by imprisonment for a term of 3 or more years;

"(2) intentional violence or injury to another person punishable by imprisonment for a term of 5 or more years if committed in connection with the individual's employment;

"(3) intentional damage to or destruction of federal property punishable by imprisonment for a term of 5 or more years if committed in connection with the individual's employment;

"(4) the manufacture, distribution, or dispensing, or the possession with intent to manufacture, distribute, or dispense, a controlled substance, punishable by imprisonment for a term of 3 or more years if committed in connection with the individual's employment; or

"(5) an attempt or conspiracy to commit any of the above.

The draft amendment proposed by the Justice Department would establish a parallel denial of military retired pay by the Department of Defense. It would also provide for the prospective application of the new areas of pension denial so that Federal employees will be on notice prior to the commission of an included offense that they may be subject to the loss of pension rights which have otherwise accrued to them. In addition, under

the Justice Department proposal, OPM and the Department of Defense would have discretion to impose pension denial following conviction of an offense listed in the regulation. Thus, even if the criteria for pension denial are met, discretion may be exercised not to impose this penalty. Justice believes that one of the factors OPM and Defense should weigh in exercising their discretion to impose pension denial is the impact such denial would have on innocent third parties.

We disagree with the Justice Department proposal in two areas. The first pertains to the kinds of violations included. The purpose of the legislation is to deny a Government annuity to a Federal employee who breaks faith with the American people by using his or her office to engage in felonious conduct for personal gain. Therefore, of the five violations listed above, only (1) and (5) are appropriate.

*no
comment*
*no
objection*

The second area of concern is the potential application of the legislation to retired military personnel working in civilian positions. The proposal could be interpreted to provide for the denial of military retired pay upon conviction of a felony in connection with service as a civilian employee. The entitlement to military retired pay is based on military service performed to acceptable standards. By contrast, the proposal would introduce a new standard for continued entitlement based on other than a military standard or duty. It has been a long-standing position of the Department that military retired pay is based on military service and should not be interrupted for non-military reasons. We see no reason to alter that position.

*no
objection*

With the above exceptions, we agree with the Justice Department proposal

Sincerely,