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[Entitlements to Cost of Living Allowances and Retirement Credits for Nonappropriated Fund Employees]. FCID-79-6; B-148581. November 29, 1978. 5 pp.

Report to Sen. Abraham Ribicoff; by H. L. Krieger, Director, Federal Personnel and Compensation Div.

Issue Area: Personnel Management and Compensation (300).

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Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of Defense.

Congressional Relevance: Sen. Abraham Ribicoff.

Authority: Overseas Differentials and Allowances Act (5 U.S.C. 5924). Executive Order 11137.

The entitlement of nonappropriated fund (NAF) employee stationed overseas, and particularly of George W. Deojay, to cost-of-living allowances (COLA) and retirement credits was questioned. Department of Defense (DOD) guidelines state that U.S. citizens recruited in the United States for NAF employment overseas are entitled to COLA, but NAF employees hired locally in an overseas area are not eligible. This distinction does not apply to appropriated fund employees. Mr. Deojay was hired locally in Germany by NAF activities and, therefore, was not granted the allowance. DOD decided against exceptions to regulations which would allow payment of COLA to local hires, citing additional costs. NAF employees are excluded by law from participation in the U.S. civil service retirement system. The NAF activities have established their own retirement systems, but pension rights among systems are not transferrable except under special circumstances. Mr. Deojay and many other employees lost retirement benefits by transferring between NAF activities. (HTW)



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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FEDERAL PERSONNEL AND
COMPENSATION DIVISION

B-148581

NOVEMBER 29, 1978

The Honorable Abraham Ribicoff
United States Senate

Dear Senator Ribicoff:

On July 26, 1978, you requested us to look into the entitlements for cost-of-living allowances (COLA) and retirement credits for nonappropriated fund (NAF) employees stationed overseas. Your particular interest, on behalf of a constituent, Mr. George W. Deojay, employed by the European Stars and Stripes in Germany, was the denial of COLA to certain NAF employees and the denial of previous retirement credits with the European Exchange System towards the Army's NAF retirement plan. We examined pertinent legislation and agency regulations affecting NAF personnel and discussed the issues with agency officials.

COLA PAYMENTS

Under the 1960 Overseas Differentials and Allowances Act (5 USC 5924), U.S. Government employees overseas are entitled to COLA--or more specifically post allowances--to offset cost-of-living differences between an overseas duty post and Washington, D.C. The Department of State determines when and where post allowances are needed through periodic cost-of-living surveys. Eligibility for post allowance payments to U.S. employees is prescribed in Section 220 of the State Department's Standardized Regulations.

In the absence of clear Congressional intent, Executive Order 11137 (January 7, 1964), extended coverage of the Overseas Differentials and Allowances Act to NAF civilian employees of the Department of Defense (DOD). However, the order also authorized the Secretary of each military department to establish regulations governing payments of the allowances. The only stipulations given the Department heads were that (1) the regulations be uniform among the services; (2) the regulations have the

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approval of the Secretary of Defense; and (3) the authorized allowances or differentials not exceed those prescribed for other U.S. employees in the same locality.

Subsequently, DOD issued guidance stating that U.S. citizens recruited in the continental U.S. for NAF employment overseas were entitled to the same allowances and differentials prescribed for employees paid from appropriated funds. However, NAF employees hired locally in an overseas area are not eligible. According to DOD and the Department of Army, the granting of allowances, such as post allowance, is intended to facilitate recruitment in the continental U.S. for skills needed by the U.S. Forces in foreign areas. No such incentive is required for those who already reside in a particular foreign area and are actively seeking employment.

On the other hand, State Department does not make a distinction between U.S. and locally recruited hires for determining post allowance entitlements for appropriated fund employees. The post allowance, in State Department's opinion, is considered a part of an employee's salary for the purpose of maintaining purchasing power at U.S. levels and is not given as an incentive to work overseas. Therefore, all U.S. employees are entitled to post allowance regardless of where they are hired.

In February 1978, the Department of State authorized a post allowance for the first time to civil service employees in most parts of Germany. The Department of Army authorized the same allowance to their NAF employees recruited in the continental U.S., but did not grant the allowance to locally hired NAF employees. Mr. Deojay, who was hired locally in Germany first by the European Exchange System in 1946 and later by Stars and Stripes in 1956, accordingly was not granted the allowance.

At that time, the Commander in Chief, U.S. Army Europe requested from the Department of Army an exception to Army regulations enabling payment of post allowances to full-time locally hired U.S. employees. The Commander justified the request by citing inconsistent treatment of U.S. employees, potential increases in turnover rates, and financial hardships from rising living costs.

DOD and the services decided that any exception should apply to NAF employees in all services, and asked for estimates of the annual cost of paying the authorized post allowance to locally hired NAF employees. They were as follows:

<u>Activity</u>	<u>Number of full-time local NAF employees</u>	<u>Additional costs</u>	<u>Average allowance per employee</u>
Army	2,344	\$800,640	\$342
Air Force	848	245,000	289
AAFES	<u>2,176</u>	<u>1,001,250</u>	<u>460</u>
Totals	<u>5,368</u>	<u>\$2,046,890</u>	<u>\$381</u>

NAF activities estimated additional funding would be required to meet the extra costs. For example, Army NAF activities estimated they could absorb only about \$192,650 of the \$800,640 required. Army also stated there was no evidence of a need to increase pay or allowances in order to recruit and/or retain an adequate number of employees for nonappropriated fund activities. Therefore, DOD and the service components decided not to pay post allowance to local hires.

Although the services acted within their legal authority to deny post allowances to locally recruited NAF employees, this issue is one of many in how conditions of employment differ for NAF employees. In 1977, we reported ^{1/} that NAF employees were treated inconsistently with respect to other Federal employees, both legally and administratively. In certain instances they are considered Federal employees, under others they are not. A copy of that report is enclosed.

The position of DOD on these matters is that Congress has recognized that nonappropriated fund activities are largely supported by their own revenues rather than appropriations, and that, as a result, their employees have been exempted from some laws that apply to other Federal workers. Unless the Congress chooses to change its position, employment inconsistencies will continue to raise legitimate questions such as that posed by Mr. Deojay.

DENIAL OF RETIREMENT CREDITS

Nonappropriated fund employees are excluded by law from participation in the U.S. civil service retirement system.

^{1/}"Methods of Setting Pay For Nonappropriated Fund Employees Should Be Improved," (FPCD-77-51, December 14, 1977)

Therefore, NAF activities have established their own retirement plans. Historically, NAF activities in the Department of Defense have been decentralized, with operating responsibilities and policy-making delegated to lower management levels. One result of this practice is that there are six separate NAF retirement plans in the Department today--Army, Air Force, Navy, and Marine Corps plus separate plans for the two major military exchange systems, the Navy Resale System Office and the Army and Air Force Exchange Service (AAFES). Each plan was established at different times between 1946 (AAFES) and 1976 (Air Force). The creation of independent NAF retirement systems has created many problems including the lack of transfer of pension rights between systems.

In 1974 DOD established exceptions which allowed transfer of retirement credits among NAF systems, but only when a reduction-in-force or transfer of functions between NAF activities are involved. A major reason why portability has not been generally adopted is that such transfers can add an unfunded liability to the receiving NAF system. That would have occurred in this case because at the time Mr. Deojay was employed by the European Exchange System it had no retirement plan.

Mr. Deojay worked for the European Exchange System--now a part of AAFES--from December 1946 to September 1950. From 1956 until now he has worked for the Stars and Stripes newspaper, an Army NAF activity. The Army established its NAF retirement plan in 1966 and Stars and Stripes employees were allowed to participate. Mr. Deojay enrolled and received retirement credit back to his date of hire in 1956. However, in keeping with the separate nature of the NAF organizations and retirement plans, he was not allowed credit for his earlier employment with the European Exchange System.

There are undoubtedly many employees like Mr. Deojay who have lost benefits by transferring between NAF activities. We are presently completing a comprehensive review of Federal retirement systems including the six NAF plans in the Department of Defense. We examined into the lack of portability as well as many other inconsistencies which exist because the plans were developed independently. We will send you a copy of the report on that review when it is available.

The Department of Defense is in the planning stage of a study of their NAF retirement systems, and we were informed emphasis will be given to the portability issue. It is too early to say what action may be taken.

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As agreed with your office we did not request formal agency comments, but are providing copies of this letter to the Department of Defense.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "H. L. Krieger".

H. L. Krieger
Director

Enclosure