

IMMIGRATION IN THE NATIONAL INTEREST ACT OF 1995

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MARCH 7, 1996.—Ordered to be printed
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Mr. CLINGER, from the Committee on Government Reform and Oversight, submitted the following

REPORT

[To accompany H.R. 2202]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform and Oversight, to whom was referred the bill (H.R. 2202) to amend the Immigration and Nationality Act to improve deterrence of illegal immigration to the United States by increasing border patrol and investigative personnel, by increasing penalties for alien smuggling and for document fraud, by reforming exclusion and deportation law and procedures, by improving the verification system for eligibility for employment, and through other measures, to reform the legal immigration system and facilitate legal entries into the United States, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Strike section 356 (page 198, line 17, through page 200, line 16), and make all necessary technical and conforming changes.

Strike section 523 (page 270, line 16, through page 273, line 10), and make all necessary technical and conforming changes.

I. BACKGROUND AND NEED FOR THIS LEGISLATION

Sections 356 and 523 of H.R. 2202 would have provided the Immigration and Naturalization Service (INS) authority to hire retired Federal employees without a reduction in salary to offset the amount of their Federal pensions. Section 356 would authorize the employment of up to 300 persons for no more than two years to provide support for the Institutional Hearing Program, a program established to facilitate the deportation of criminal aliens. Section

523 would have authorized the re-employment of up to 300 persons for no more than two years to assist the INS in the processing of backlogged asylum applications. Annuitants re-employed under these provisions would have been compensated at full salary in addition to their annuities. They would not, however, have accumulated additional retirement credit for this service.

A. Current use of re-employed annuitants by Federal agencies

OPM reported that Federal agencies currently rely upon 73,446 re-employed annuitants. These include 1,794 Civil Service Retirement System (CSRS) annuitants, 196 Federal Employee Retirement System (FERS) annuitants, and 9,588 retired military officers. The vast majority of other re-employed annuitants are retired enlisted military personnel. Under provisions of 5 U.S.C. § 8344, if a retired CSRS employee becomes re-employed in either elective or appointive office, the re-employed annuitant's salary for the position is to be reduced by an amount equal to the annuity. Comparable provisions govern reductions for FERS employees under a formula established in 5 U.S.C. § 8421(a). The proposed sections of the immigration bill would supersede these reductions, enabling annuitants re-employed under these provisions to collect full salaries and full pensions during their period of re-employment. At minimum, these provisions would establish a basis for inequitable treatment of employees who are re-employed under current law mandating pension offset and those who might be hired under this authority.

B. Provisions of current regulations

Under regulations promulgated at 5 C.F.R. § 553.201, agencies may petition the Office of Personnel Management (OPM) for authority to re-employ individual annuitants without a reduction in annuities. Re-employment in such individual cases is intended for emergency situations, and requires a request from the agency's headquarters to the Director of OPM. These provisions would bypass OPM scrutiny and grant direct authority for a significant number of individuals to perform support functions that would not necessarily meet the rigorous knowledge, skills, and abilities requirements of current regulations governing these situations. Because existing statutes and regulations already provide administrative authority to grant the exceptions being proposed, the administration informed the Committee on the Judiciary that it considers these provisions unnecessary.

C. INS' applications for authority to re-employ annuitants

The INS is currently hiring numerous Border Patrol officers, Immigration Investigators, and Immigration Inspectors. It has submitted a request to OPM seeking authority to re-employ annuitants to assist with the training of these personnel. It has not sought authority to re-employ annuitants to perform the functions identified in these provisions. Although the INS has a substantial backlog of asylum applications, standards for adjudicating asylum cases were revised following the adoption of new asylum regulations in 1990 and the settlement of the court case, *American Baptist Churches v. Thornburgh*. The pool of retired Immigration Examiners who had

received training in the new asylum procedures would be small, so annuitants who would be refired to accomplish this function would be required to undergo a three-week training program to learn new legal standards for the work.

Although these sections are intended to provide additional staffing for the designated functions, they appear likely to have wider unanticipated consequences. By eliminating the salary reduction that offsets re-employed annuitants' pensions, the legislation would enable current employees of these offices who might be eligible for retirement to increase their income substantially by retiring and returning as re-employed annuitants. This factor could present especially severe problems for the Institutional Hearing Program, where the support envisioned is less technical than the asylum adjudication responsibilities and where the agency has a larger cadre of senior investigators.

Beyond the incentives that might adversely affect the current workforce, the option to re-employ annuitants without reductions in salaries could establish undesirable precedent and generate pressure to extend comparable benefits government-wide. The precedent would increase incentives for retirement among employees having critical skills in a way that would expose agencies to the vulnerability of losing valuable employees unless the government was willing to pay both salaries and retirement annuities for the same work.

D. Need for the legislation

These provisions were included in the Immigration in the National Interest Act reported by the Committee on the Judiciary. The Committee on the Judiciary could not identify the sponsor of these provisions, provided no hearing record or analysis to support inclusion of these provisions in the bill as reported, and did not object when informed of the Civil Service Subcommittee's findings of their inconsistency with other provisions of Title 5, United States Code.

II. LEGISLATIVE HEARINGS AND COMMITTEE ACTIONS

H.R. 2202, Sections 356 and 523 were referred to the Committee on Government Reform and Oversight. The bill was marked-up in the Civil Service Subcommittee on March 5, 1996, where Subcommittee Member Rep. Burton of Indiana presented an amendment to strike sections 356 and 523. This amendment was considered and adopted without objection. The Committee met on March 7, 1996, and ordered reported the bill H.R. 2202, as amended by voice vote.

III. COMMITTEE HEARINGS AND WRITTEN TESTIMONY

The Civil Service Subcommittee held no formal hearings on H.R. 2202.

IV. EXPLANATION OF THE BILL

The amendment simply strikes section 356 and section 523 of H.R. 2202, thereby leaving in place existing law.

V. COMPLIANCE WITH RULE XI

Pursuant to rule XI, 2(l)(3)(A), of the Rules of the House of Representatives, under the authority of rule X, clause 2(b)(1) and clause 3(f), the results and findings from those oversight activities are incorporated in the recommendations found in the bill and in this report.

VI. BUDGET ANALYSIS AND PROJECTIONS

This Act provides for no new authorization or budget authority or tax expenditures. Consequently, the provisions of section 308(a) of the Congressional Budget Act are not applicable.

VII. COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

VIII. INFLATIONARY IMPACT STATEMENT

In accordance with rule XI, clause 2(l)(4) of the Rules of the House of Representatives, this legislation is assessed to have no inflationary effect on prices and costs in the operations of the national economy.

IX. CHANGES IN EXISTING LAW

The bill was referred to this committee for consideration of such provisions of the bill as fall within the jurisdiction of this committee pursuant to clause 1(g) of rule X of the Rules of the House of Representatives. The changes made to existing law by the amendment reported by the Committee on the Judiciary are shown in the report filed by that committee (Rept. 104-469, Part 1). The amendments made by this committee do not make any changes in existing law.

X. COMMITTEE RECOMMENDATIONS

On March 7, 1996, a quorum being present, the Committee ordered the bill favorably reported.

Committee on Government Reform and Oversight—104th Congress rollcall

Date: March 7, 1996.

Final Passage of H.R. 2202, as amended.

Offered by: Hon. William F. Clinger, Jr. (R-PA).

Voice Vote: Yea.

XI. CONGRESSIONAL ACCOUNTABILITY ACT; PUBLIC LAW 104-1;
SECTION 102(B)(3)

H.R. 2202 as amended by the committee is inapplicable to the legislative branch because it does not relate to any terms or conditions of employment or access to public services or accommodations.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 7, 1996.

Hon. WILLIAM F. CLINGER, JR.,
*Chairman, Committee on Government Reform and Oversight,
U.S. House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office (CBO) has prepared the enclosed cost estimate for H.R. 2202, the Immigration in the National Interest Act of 1995, as amended by the Committee on Government Reform and Oversight on March 7, 1996. The amendment strikes from H.R. 2202 sections 356 and 523, which deal with federal employee retirement.

Attached is a table summarizing the estimated spending and revenue effects of H.R. 2202, as amended. CBO estimates that striking sections 356 and 523 would increase net direct spending savings by \$2 million to \$4 million a year in 1997 through 1999. These provisions would permit certain civilian and military retirees to collect their full pensions in addition to their salary if they are reemployed by the Department of Justice to help tackle a backlog of asylum applications or support the Institutional Hearing Program. A more detailed description of the provisions that were stricken is included in the CBO cost estimate sent to Chairman Henry J. Hyde of the House Committee on the Judiciary dated March 4, 1996. That cost estimate also includes detail on the estimated budgetary impact of the other provisions of the bill. Striking sections 356 and 523 would not affect the cost of intergovernmental or private sector mandates in H.R. 2202.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Wayne Boyington.

Sincerely,

JUNE E. O'NEILL,
Director.

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
SPENDING SUBJECT TO APPROPRIATIONS ACTION							
Authorizations:							
Estimated Authorizations Level	129	699	774	856	960	978	996
Estimated Outlays	0	532	637	940	994	956	976
MANDATORY SPENDING AND RECEIPTS							
Revenues:							
New Criminal Fines and Forfeiture	0	1	1	1	1	1	1
Earned Income Tax Credit	0	14	13	12	13	13	13
Change in Revenues	0	14	13	12	13	13	13
Direct Spending:							
New Criminal Fines and Forfeiture	0	1	1	1	1	1	1
Immigration Enforcement Account	0	1	1	1	1	1	1
Supplemental Security Income	0	-10	-80	-160	-260	-370	-670
Food Stamps	0	0	-15	-45	-100	-170	-250
Family Support	0	-1	-13	-23	-48	-63	-78
Medicaid	0	-5	-110	-240	-390	-570	-830
Earned Income Tax Credit	0	-216	-214	-218	-222	-224	-229
Change in Direct Spending Outlays ..	0	-232	-432	-686	-1,020	-1,397	-2,057

¹ Less than \$500,000.