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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-179810

DECEMBER 4, 1979

The Honorable Gladys Neen Spellman
Chair, Subcommittee on Compensation and
Employee Benefits
Committee on Post Office and Civil Service
House of Representatives

HS 207908

Dear Madam Chair:

Subject: [Pay for Holidays Under Compressed Work Schedules]
(FPCD-80-21)

This is in response to your August 29, 1979, letter asking us to examine the Office of Personnel Management's (OPM's) administration of pay for holidays under the compressed work schedule authority of the Federal Employees' Flexible and Compressed Work Schedules Act of 1978 (Public Law 95-390). You expressed concern about the equity and costs of OPM's implementing regulations that provide extra paid time off for holidays to employees on a compressed work schedule.

FLEXIBLE AND COMPRESSED WORK
SCHEDULE EXPERIMENTS

The Congress authorized experiments with flexible and compressed work schedules because it believed that new private sector trends in the use of flexible work hours and other variations in workday and workweek schedules showed sufficient promise to warrant controlled Federal experimentation for a 3-year period. The act's basic purpose is to determine what impact, both positive and negative, these alternatives to traditional work schedules may have on (1) efficiency of Government operations, (2) service to the public, (3) mass transit facilities and traffic, (4) levels of energy consumption, (5) increased opportunities for full-time and part-time employment, and (6) individuals and families in general. The act requires OPM to study and evaluate the impact of alternative work schedules in selected agencies during a 3-year experimental period and report its findings to the Congress.

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The act defines a compressed work schedule as a biweekly basic work requirement (normally 80 hours) which is scheduled for less than 10 workdays. Thus, compressed schedules can include the (1) 4-day week (4 days of 10 hours each), (2) 3-day week (3 days of 13 hours and 20 minutes each), and (3) 5-4/9 plan under which employees are required to complete the 80-hour biweekly work requirement in 9 days (for example, eight 9-hour days and one 8-hour day). Employees are required to complete the basic work requirement or account for it through annual leave, sick leave, or other officially approved absence.

The OPM implementing regulations (Federal Personnel Manual Letter 620-2, June 4, 1979) provide that employees on a compressed work schedule receive pay for a holiday equal to pay for the number of hours they would ordinarily be required to work on that day. For example, an employee on a 4-day workweek would receive 10 hours' pay for the holiday. As authorized by the OPM implementing regulations, holidays that occur on an employee's nonworkday would, depending on the work schedule, be observed on the workday immediately preceding or succeeding that day.

COMPRESSED SCHEDULE EMPLOYEES
RECEIVE EXTRA PAID TIME OFF

Federal employees participating in the compressed work schedule experiments authorized by title II of the act will receive extra paid time off from work for each of the nine legal public holidays that other employees will not receive. Their workweek will not only be compressed, it will be reduced in the biweekly periods in which holidays occur. For example, each employee on a 4-day workweek will receive 18 extra paid hours off from work each year. By comparison, employees working a regular 5-day week and those on a flexible work schedule authorized by title I of the act will receive only 8 hours' pay for each holiday and will not enjoy any reduced workweeks. For example, employees on a flexible 5-4/9 plan will receive only 8 hours' pay for each holiday, 1/ but employees on a compressed 5-4/9 plan can receive 9 hours. This is inequitable.

1/Employees on flexible and compressed work schedules can, and many do, work the same schedule. The basic difference is that employees on a flexible schedule can choose the days/hours they want to work; those on a compressed schedule are required to work a fixed schedule.

Title I of the act specifies that, notwithstanding sections 6103 and 6104 of title 5, United States Code, employees under a flexible work schedule are entitled to only 8 hours' pay for a holiday. The act's legislative history suggests that the Congress intended to insure that employees get no more or no less fringe benefits than those available under the traditional work schedule. According to the House and Senate legislative committee reports on the act, 1/ this provision is intended to insure that an employee's entitlement to pay for a holiday under the act will be consistent with the existing law. Also, for purposes of administering Federal leave and retirement provisions for employees on a flexible or compressed work schedule, the act provides that existing statutory references to a day mean 8 hours. The House and Senate legislative committees 1/ said that provision is intended to neither increase nor decrease any employee's existing entitlement to leave or creditable service for retirement purposes.

Title II of the act is silent, however, about pay for holidays not worked under compressed schedules, but the OPM implementing regulations are consistent with a longstanding provision of law (5 U.S.C. 6104) which provides an ordinary day's pay for a holiday. The OPM regulations are also consistent with section 203(d) of the act which provides that a compressed schedule employee who works on a holiday is entitled to holiday premium pay for the hours worked that do not exceed the daily basic work requirement; hours worked on a holiday in excess of the daily work requirement would be compensated as overtime. Thus, an employee on a 4-day work-week would receive up to 10 hours' holiday premium pay for working on a holiday.

The extra paid absences for holidays will be costly. The extra paid time off will result in either reduced services and productivity or additional personnel costs if overtime or additional employment is required to compensate for the lost hours. The extra costs could, of course, be minimized or negated if overall productivity increases substantially; however, that will not be known for some time. Because many agencies are still finalizing their work schedule

1/House of Representatives, 95th Congress, 2d Session, Report No. 95-912 and United States Senate, 95th Congress, 2d Session, Report No. 95-1143.

experiments and submitting plan data to OPM for approval, OPM told us in mid-October 1979 that it would be several weeks before it would know how many employees will be participating in the various work schedule experiments.

OPM records indicated that about 38,000 employees are on a 4-day workweek and about 48,000 employees are on a compressed 5-4/9 plan, but the final totals are expected to be higher. Instead of the 8 hours' pay for a holiday that other employees receive, the 38,000 Federal employees working a 4-day week will receive 10 hours' pay for each of the 9 holidays and the 48,000, 5-4/9 employees could, depending on when the holidays occur, receive 9 hours' pay for each holiday. This could cause the Federal Government to lose over 1 million work hours valued at almost \$9 million in salary costs. The costs could be higher if more employees participate in the experiment.

According to available information, private sector firms that have adopted compressed work schedules handle paid holidays and leave in two different ways. Some continue to provide the same number of hours of paid absences as before; in terms of days they provide less. (If they provided 10 days of 8 hours each before, they would provide 8 days of 10 hours each on the compressed schedule.) Others continue to provide the same number of days of paid absences as before, an added fringe benefit, on the assumption that overall productivity would increase enough because of the compressed workweek to offset the added fringe benefit costs. We do not know which approach is more prevalent.

OPM program officials believe that their implementing regulations for pay for holidays not worked under compressed work schedules are consistent with the intent of the authorizing legislation and with section 6104 of title 5, United States Code which provides an ordinary day's pay for a holiday. They pointed out that title II of the act, unlike title I, does not contain a limitation on pay for a holiday not worked. They also pointed out that employees on a 4-day week or other compressed work schedule are required to charge annual or sick leave for an ordinary day's work (i.e., 10 hours for employees on a 4-day week) when they are absent from work and that this is consistent with the act's provisions regarding pay for working on a holiday.

CONCLUSION

As you know, we strongly endorsed the experiments with flexible and compressed work schedules and continue to believe their advantages and disadvantages should be carefully

studied. We recognize that compressed work schedules are experimental and not permanent, but we are concerned about the added fringe benefit (extra paid time off for holidays) that approximately 86,000 Federal employees on a compressed work schedule will receive because of the law's pay for holiday provisions.

OPM's implementing regulations which provide an ordinary day's pay for a holiday to employees on a compressed work schedule are totally consistent with the language of title II of the act. But since the act and its legislative history is silent about pay for holidays not worked under compressed work schedules, we do not know whether or not the Congress was fully aware that the act would result in additional paid time off for employees on a compressed work schedule.

This added fringe benefit is inequitable to other employees. In our opinion, employees on a compressed work schedule should receive no more or no less paid absences from work than their counterparts on flexible or traditional work schedules. It is particularly unfair and an unnecessary cost for employees working a "compressed" schedule to receive more paid time off during the year than other employees who may be otherwise working the same schedule but on a "flexible" basis.

MATTER FOR THE CONGRESS

The Congress should reconsider title II of the act with a view toward eliminating the extra fringe benefit by limiting the pay for holidays to 8 hours.

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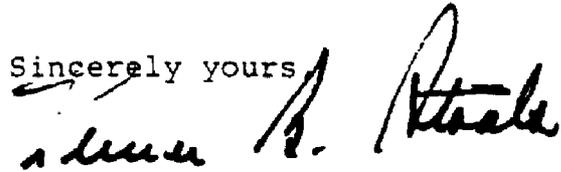
As arranged with your office, we did not obtain OPM's formal comments on this report but discussed our position with OPM program officials and considered their views in preparing it.

Also as arranged, unless you publicly announce its contents earlier, we plan no further distribution until 7 days from the date of this report. At that time we will send copies of this report to the Directors, Office of Personnel

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Management and Office of Management and Budget and other congressional committees, and we will make copies available to others upon request.

Sincerely yours

A handwritten signature in cursive script, appearing to read "James A. Stroh". The signature is written in dark ink and is positioned to the right of the typed name.

Comptroller General
of the United States

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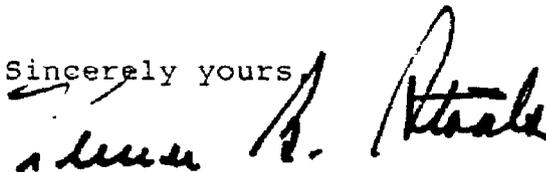
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Sincerely yours,

A handwritten signature in black ink, appearing to read "James A. Stoen". The signature is written in a cursive style with a large, prominent initial "S" or "A" at the end.

Comptroller General
of the United States