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*H. R. ...*  
*7/11/78*

**DECISION**



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

FILE: B-191785

DATE: August 14, 1978

MATTER OF: Waiver of overpayments of Foreign  
Service annuities

- DIGEST:
1. Section 1112(c) of title 22, United States Code, provides for recovery of overpayments of annuities to Foreign Service annuitants who are reemployed by the Federal Government. Such overpayments may be considered for waiver under 22 U.S.C. 1076a(d) since such subsection provides for waiver of overpayments of Foreign Service annuities under subchapter VIII of title 22, United States Code, when the individual is without fault and recovery would be against equity and good conscience or administratively infeasible, and section 1112 is contained in subchapter VIII.
  2. Overpayments of Foreign Service annuities under 22 U.S.C. 1112 may be waived under 22 U.S.C. 1076a(d), on and after October 1, 1976 (effective date of waiver statute), even though such overpayments were made before October 1, 1976; however, refund may not be made of amounts of overpayments already recovered from annuitants since 22 U.S.C. 1076a contains no such refund provisions.

This action is in response to a letter dated April 21, 1978, with enclosures, from the Honorable Ben H. Read, Deputy Under Secretary of State for Management, requesting the views of this Office concerning the applicability of the waiver provisions contained in section 822(d) of the Foreign Service Act (22 U.S.C. 1076a(d)) (1976), as added by Section 506 of Title V, Foreign Relations Authorization Act, fiscal year 1977, Public Law 94-350, approved July 12, 1976, 90 Stat. 823, 838, to the provisions governing overpayment of annuities contained in section 872 of the Foreign Service Act (22 U.S.C. 1112 (1976)). Additionally, it is requested that should it be concluded that the waiver provisions are applicable, our guidance is sought on several additional questions.

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With regard to the basic question, the submission states that as a result of an April 6, 1976 memorandum sent to all Foreign Service annuitants concerning limitations on the receipt of annuities, a number of cases were identified in which a Government agency other than the Department of State had reemployed a retired officer or employee of the Foreign Service but had failed to notify the Department of State as required by section 872(b) of that Act (22 U.S.C. 1112(b)). In one such case, an annuitant who received payments in excess of those permitted under section 872(a) claims that such overpayments should not be recovered as authorized under section 872(c) because the annuitant qualified as being "without fault and recovery would be against equity and good conscience" under section 822(d).

We understand that the basic departmental reaction to the position taken by that annuitant is that when section 822(d) was enacted, its purpose was to take care of computational errors made administratively, thus avoiding the necessity of recovering relatively small overpayments of annuities, comparable to the waiver actions by the Civil Service Commission regarding Civil Service annuity overpayments. The submission states that section 872, by virtue of its language, was considered as creating a special repayment obligation in order to correct a particular kind of annuity overpayment, i.e., one which could only arise in the case of a Foreign Service annuitant who is reemployed elsewhere in the Federal Government service, and there was no intention that such a specific repayment obligation be governed by a general provision of law such as section 822(d). In this connection, the material enclosed with the submission suggests that if section 872 is considered to be a special provision and if section 822(d) is considered applicable to it, section 822(d) in effect, would constitute an implied amendment to section 872, which is contrary to established rules of a statutory construction. In this connection, the material cited Rodgers v. United States, 185 U.S. 83, 87-89 (1902); Morton v. Mancari, 417 U.S. 535 (1974); and sections 23.10 and 51.05 of Sutherland Statutory Construction (4th ed. Sands).

The contrasting point of view expressed in the submission is that there is virtually no legislative history on section 822(d) which would demonstrate an intention to exclude section 872 from its purview. As a result, it is suggested that from the strictly

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legal standpoint, section 822(d) should apply to annuity overpayments which arise under section 872 since section 822(d) by its very language refers to annuity overpayments under title VIII of the Foreign Service Act, supra, which is entitled "Retirement and Disability System."

The rule of statutory construction referred to in the submission involves general and special laws which are in pari materia. Generally, where one law deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two laws should be construed together and harmonized, if possible. In situations where it appears that there is conflict, the rule, as expressed in the Rodgers case states:

"\* \* \* a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute. In other words, where there are two statutes, the earlier special and the later general \* \* \* the fact that the one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, and the general will not be understood as repealing the special, unless a repeal is expressly named, or unless the provisions of the general are manifestly inconsistent with those of the special. \* \* \*"

Title VIII of the Foreign Service Act of 1946, as amended, enacted the current retirement and disability system for the Foreign Service, which provisions are contained in subchapter VIII of title 22, United States Code (1976), 22 U.S.C. 1061-1121. Section 872 of that act (22 U.S.C. 1112) as added by section 44 of Public Law 86-723, approved September 8, 1960, 74 Stat. 831, 846, and amended by section 708(2) of Public Law 87-195, approved September 4, 1961, 75 Stat. 424, 464, relating to the reemployment of Foreign Service annuitants, provides in pertinent part:

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"(a) Appointive position

\* \* \* any officer or employee of the service, who has retired under this chapter and is receiving an annuity pursuant thereto, and who is reemployed in the Federal Government service \* \* \* shall be entitled to receive the salary of the position in which he is serving plus so much of his annuity payable under this chapter which when combined with such salary does not exceed during any calendar year the basic salary such officer or employee was entitled to receive \* \* \* on the date of his retirement from the service. \* \* \*

"(b) Notice

When any such retired officer or employee of the service is reemployed, the employer shall send a notice to the Department of State of such reemployment together with all pertinent information relating thereto, and shall pay directly to such officer or employee the salary of the position in which he is serving.

"(c) Overpayment

In the event of any overpayment under this section, such overpayment shall be recovered \* \* \* from the salary payable to such reemployed officer or employee, or from any other moneys, including his annuity, payable in accordance with the provisions of this subchapter."

Section 822 of Public Law 94-350 (22 U.S.C. 1076a), supra, as added to the Foreign Service Act, supra, which became effective October 1, 1976, provides in part:

"(d) Recovery of overpayments under this title may not be made from an individual when, in the judgment of the Secretary /of State/,

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the individual is without fault and recovery would be against equity and good conscience or administratively infeasible."

The legislative history of Public Law 94-350 provides little information relating specifically to the scope and purpose of section 822(d). It is indicated, however, that the purpose of the legislative package enacted as the Foreign Service Retirement Amendments of 1976 (Title V of Public Law 94-350), was to maintain the existing areas of conformity between the Civil Service Foreign Service retirement systems. See section 503 of Public Law 94-350, 90 Stat. 835, 22 U.S.C. 1065 (1976).

It appears that the special emphasis of section 872(c) is not so much on recovery as it is the establishment of methods by which recovery of overpayments may be effected and the sources of funds which may be used for such purpose. Clearly, where a payment is made by the Government in excess of that authorized by law, the basic right of recovery by the Government would exist even if subsection (c) had not been enacted. Therefore, it is our view that subsection (c) does not create any right of recovery not previously enjoyed, rather it authorizes the methods and the sources of funds from which recovery may be made.

In contrast to the foregoing, it is to be observed that prior to enactment of section 822(d), there was no authority whereby recovery of overpayments of Foreign Service annuities could be waived for any reason, irrespective of how the error arose, the amount of the overpayment, or how inequitable recovery might be. The language of section 822(d) makes specific reference to "overpayments under this title" (Title VIII of the Foreign Service Act, which became subchapter VIII of title 22, United States Code). Upon insertion of that section into the Code as 22 U.S.C. 1073a(d) (1976), a language change was made from "under this title" to "under this subchapter" to conform to the Code's scheme.

Thus, since section 822(d) is couched in all encompassing terms and there is nothing contained in it or its legislative history which suggests a limitation on its applicability, and since section 872 is in fact part of Title VIII of the Foreign Service Act, it appears that all annuity overpayments which arise thereunder come within the purview of section 822(d), subject,

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of course, to Secretarial determinations on a case-by-case basis that "the individual is without fault and recovery would be against equity and good conscience or administratively infeasible."

As previously noted, the Deputy Under Secretary has asked several additional questions if we conclude that the waiver provisions are applicable. Those questions are as follows:

"(1) Overpayments are made prior to October 1, 1976 (the effective date of section 822(d) - may we refrain from recovery of those overpayments?

"(2) If the answer to (1) is yes, in the case where recovery has been made, by withholding from annuity or otherwise, since October 1, 1976, may we cancel the recovery and restore the withheld funds (some recovery has taken place since October 1, 1976, because of the Department's initial position that section 822(d) did not apply and recovery was required)?

"(3) In cases similar to that in (2), except that recovery was made prior to October 1, 1976, may we cancel the recovery and restore the withheld funds?"

It is a general rule that a statute is effective on and after the date of its enactment unless it is clear from its language or by necessary implication that a different effective date was intended. See 34 Comp. Gen. 404 (1955); 38 Comp. Gen. 103 (1958); and 39 Comp. Gen. 286, 290 (1959).

As was pointed out in the submission, while Public Law 94-350 was enacted July 12, 1976, section 524(a) thereof provides that:

"Unless otherwise specified, this title shall be effective upon enactment or on October 1, 1976, whichever is later."

Since neither section 822(d) of that act, nor any other subsection of section 524, specifies an effective date, it is our view that section 524(a) provisions are controlling and that the waiver

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provisions of 822(d) apply only to repayment obligations of overpaid Foreign Service annuitants which existed on and after October 1, 1976. In this regard, it is to be observed that the language of section 822(d) authorizes waiver consideration of the "recovery of overpayments." Therefore, in cases where an indebtedness arises as a result of the overpayment of a Foreign Service annuity and such debt remains unrecovered on and after October 1, 1976, it is our view that a Secretarial finding of no fault, etc., may be made and recovery of that debt waived, even though the overpayment was made prior to that date. The first question, therefore, is answered in the affirmative.

With regard to questions 2 and 3, unlike the provisions of general waiver statutes (5 U.S.C. 5584 (1976)--civilian employees and 10 U.S.C. 2774 (1976)--military members), no language is contained in section 822(d) authorizing the refund of monies already recovered. In B-134532, September 16, 1975, involving waiver consideration of an overpayment of a Survivor Benefit Plan annuity under the provisions of 10 U.S.C. 1453 (1976), which provisions contain language substantially similar to that contained in section 822(d), we held that:

"\* \* \* the waiver authority \* \* \* relates to 'recovery' of overpayments of SDP annuity payments and contains no authority whereby amounts recovered prior to the receipt of a request for waiver may be refunded. In the absence of specific statutory authority so permitting, any monies properly recovered from an annuitant prior to receipt of a request for waiver \* \* \* may not be included in such waiver action for the purpose of authorizing repayment of those funds to an annuitant. \* \* \*"

Therefore, in response to questions 2 and 3, while it may be proper to exercise Secretarial discretion and waive recovery upon making a finding as authorized by section 822(d) in appropriate cases, we are unaware of any statutory authority whereby annuity overpayments already recovered may be refunded to an annuitant. This would apply to recoveries made before or after October 1, 1976, irrespective of whether such recovery was partial or complete.

  
Deputy Comptroller General  
of the United States