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FEDERAL EMPLOYEES GROUP LIFE INSURANCE PROGRAM

Y 4. P 84/10: 103-41

Federal Employee Group Life Insuran... **RING**
BEFORE THE
SUBCOMMITTEE ON
COMPENSATION AND EMPLOYEE BENEFITS
OF THE
COMMITTEE ON
POST OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS

SECOND SESSION

APRIL 20, 1994

Serial No. 103-41

Printed for the use of the Committee on Post Office and Civil Service



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FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

WEDNESDAY, APRIL 20, 1994

HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room 311, Cannon House Office Building, Hon. Eleanor Norton (chair of the subcommittee) presiding.

Members present: Representatives Norton and Morella.

Ms. NORTON. I want to open this morning's hearing. Today, we hold an oversight hearing on the Federal Employees' Group Life Insurance Program. The last major revisions of the FEGLI Program were made in 1980. FEGLI is one of the most popular Federal employee benefit programs in which all Federal employees are eligible to participate. Approximately 90 percent of federal employees actually do elect to participate in FEGLI, in part because it offers life insurance at a very reasonable price, and without medical precertification. During this hearing, we will examine: first, the financial stability of the FEGLI Program; second, the degree of enrollee satisfaction with the program; third, whether OPM believes that there are any changes needed in the program; and fourth, the role of the Metropolitan Life Insurance Co. as claims administrator and other insurance companies that reinsure the program.

During this hearing, we will also examine three bills which would make changes in the current FEGLI Program. They are: H.R. 512, introduced by Congressman Ben Gilman, which provides "living" life insurance benefits to an insured individual who is terminally ill; H.R. 891, introduced by Congressman Barney Frank, which permits employees who retired before December 8, 1980, to resume coverage under FEGLI; and, three, H.R. 3297, introduced by our ranking member, Congresswoman Connie Morella, which extends the treatment currently afforded Article III Federal judges under FEGLI to certain other judicial officials as well.

In addition, I intend to examine the possibility of including long-term care insurance as an aspect of FEGLI coverage.

Each of the Federal employee, manager, and retiree organizations was invited to testify today. All but the National Association of Retired Federal Employees declined to appear. However, each will submit a statement for the record. These organizations have indicated to my staff that they are generally supportive of the FEGLI Program and the three bills under consideration.

I welcome all of today's witnesses, and look forward to their testimony.

I am especially pleased to welcome the first witness, our very distinguished colleague, and a member of this committee, who has served it so well in so many ways and has now introduced a very helpful bill, Congressman Ben Gilman.

STATEMENT OF HON. BENJAMIN A. GILMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. GILMAN. Thank you, Madam Chair, and thank you for your kind comments, and I want to commend you for conducting this oversight hearing on the FEGLI Program and some of the needs for revising and updating the program.

I want to particularly welcome this opportunity for permitting me to testify before the subcommittee on my bill, H.R. 512, the Federal Employees Group Life Insurance Living Benefits Act, and I ask consent that my prepared text be accepted for the record. I do have a few brief remarks that I would like to make.

Ms. NORTON. So ordered.

Mr. GILMAN. Thank you.

First, H.R. 512 is humane legislation. It is designed to help those most in need of financial resources during a difficult and trying time. A number of life insurance companies have taken this route in offering a living benefits package, and I strongly believe the Federal Government should follow suit. As a matter of fact, more than 150 life insurance companies already offer living benefits covering more than 3 million policyholders. Those companies include Kemper, Prudential, Northwestern Mutual, Aetna, Cigna, and a number of other major companies already offer this kind of assistance to those who are terminally ill.

Pursuant to my bill, Madam Chair, a participant in the Group Life Insurance Program the Federal Government provides for its employees could receive an early distribution of his or her basic life insurance amount if diagnosed with a terminal illness with a life expectancy of 9 or less months. Eligibility extends to both active employees and retirees, both regular, and those on disability retirement.

Second, I understand the tax consequences of an individual receiving a living benefit, such as the one intended, under H.R. 512 it is still uncertain. I hope we can work with the members of this subcommittee and our good friends on the Committee on Ways and Means to ensure a favorable tax treatment of living benefits.

And, third, I understand the Congressional Budget Office has scored H.R. 512 as having a direct spending consequence of some \$30 to \$60 million the first year following enactment. Although the bill's long-term consequences are negligible, the implications involving the first year of direct spending consequences may be a hurdle over which this legislation will have to jump, and I hope to work with our subcommittee to ensure that we can reach that goal.

The Congressional Budget Office indicates the direct spending consequences of the bill are a result of FEGLI fund paying, the fund paying out life insurance proceeds at an earlier date, precisely, 9 months that originally would be required, and although that disbursement is subject to an actuarial adjustment to account

for lost interest, those early payments constitute direct spending and must be offset in order to meet our budget rules.

So, please let me take this opportunity to explore with you some creative solutions to that problem. Presently, the Office of Personnel Management indicates there are more than 2.5 million FEGLI participants in our basic insurance option. And, since this is the only option for which a living benefit may be paid, I urge our subcommittee to consider a short-term financing mechanism to make up for the CBO direct spending implications that the insurance fund will experience during the first year of the living benefits program.

Specifically, if a small surcharge were to be placed on FEGLI participants during the first year of the living benefits program, which would sunset after the first year, the direct spending implications would be offset. How much of a surcharge would be necessary to offset the direct spending implications of \$30 million, well, approximately \$1 per month, per FEGLI participant.

While not an advocate of increasing life insurance premiums, I do believe that that would be a creative solution to any budgetary problems that this bill could raise, while ensuring a humane benefit for employees and retirees most in need of financial support during a particularly trying time during their final months.

I can't imagine a FEGLI participant opposing an extra \$1 per month adding to his or her premium in order to finance this kind of a benefit, if his or her terminally ill co-worker would be in desperate need.

In addition, I want to emphasize that this proposed \$1 premium surcharge would be intended to sunset following the first year of the program.

Madam Chair, I urge you and the members of the subcommittee to give personal attention to this solution. I know the staff is ably prepared to work out the details, and I look forward to the swift progress H.R. 512 will enjoy through your stewardship with this subcommittee.

Again, Madam Chair, I want to thank you for providing this opportunity to testify, and I'll be pleased to answer any questions that you or the subcommittee may have with regard to this legislation.

[The prepared statement of Hon. Benjamin A. Gilman follows:]

**PREPARED STATEMENT OF HON. BENJAMIN A. GILMAN, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NEW YORK**

Madam Chair and members of the subcommittee, thank you for your kind invitation to appear before the subcommittee to testify on behalf of my legislation, H.R. 512, the Federal Employees Group Life Insurance Living Benefits Act (FEGLI). H.R. 512 allows life insurance to live up to its name. Under my measure, covered employees who are diagnosed with a terminal illness with a life expectancy of 9 or less months may elect to receive their basic life insurance amount, less an actuarial reduction, as a living benefit.

Facing a terminal illness is morally and emotionally difficult in itself. However, the depletion of one's financial resources compounds the already serious ordeal facing the patient and his or her family. Living benefits help ease the financial burden placed on the insured while providing a needed source of income in order to allow the insured to live any remaining months of life with dignity and comfort.

Private sector life insurance companies first began to offer this humane benefit about ten years ago. Some insurance companies offer a lump sum payment while others impose lower limits on payouts to people who were over age 65 when the policy was purchased.

Most require a written statement from a certified medical authority that the policy holder has a life expectancy less than a specified period of time, usually 6 to 12 months.

Living benefits may be used at the discretion of the insured. However, most often these funds are used for providing care and medical treatment in the remaining period of life. While not substituting for the need for a comprehensive long term care policy, living benefits can help ease the financial burdens of nursing home and home health care for the terminally ill.

H.R. 512 provides a comprehensive framework for the Office of Personnel Management to issue regulations in designing a living benefits program for the Federal Employees Group Life Insurance Program.

A participant in FEGLI facing a terminal illness may elect to receive an accelerated insurance amount equal to his or her basic insurance amount, as adjusted actuarially. The application must contain certification by the appropriate medical authorities that the insured has a life expectancy of 9 or less months. OPM may issue regulations governing procedure

for the insured to submit to an independent medical examination at the direction of the employing agency or the Office of Federal Employees Group Life Insurance, which shall be of no expense to the insured.

Employees may make a partial election of the basic insurance amount in multiples of \$1,000. In return for electing the living benefit, the policyholder severs, to the extent an election was made, all rights any beneficiaries may have in the proceeds of the policy. H.R. 512 only affects the basic insurance amount and does not negate beneficiary rights in optional FEGLI amounts. The living benefits election is irrevocable and the policyholder is no longer liable for monthly premiums on the basic insurance amount.

In an age where complex problems demand even more complex, expensive solutions, H.R. 512 provides a needed benefit at a nominal charge. This legislation allows a terminally ill patient the opportunity to access a source of funds which could finance needed medical treatment and care in order to allow the individual to live his or her remaining days in comfort and dignity. It is not often Congress has the opportunity to enact humanitarian

legislation with such a reasonable price tag. I thank the Subcommittee for its invitation to appear before it today and I urge prompt consideration of H.R. 512.

Ms. NORTON. Thank you very much, Mr. Gilman. I know that you have a journal vote, and I will, therefore, keep my questions very short.

I want to commend you for a very creative approach to a very difficult problem, including the financial approach you've taken.

I wonder if the \$1 a month for this initial year would include retirees.

Mr. GILMAN. Yes. Madam Chair, the Congressional Budget Office indicated that the direct spending costs involved the early distributions of the accelerated death benefits 9 months prior to what they would be without the legislation.

And, in order to offset this direct spending implication, it was suggested that a small surcharge be placed on the FEGLI enrollees who are covered by the basic benefit option.

Since there are more than 2.5 million enrollees, the direct spending cost of \$30 million was divided by that number and the result was approximately \$12 per enrollee for the first year, \$1 a month.

The number would include retirees who participate in FEGLI, and I'd like to point out that retirees, as a group, are the ones most likely to utilize this benefit. Hence, I'd be surprised to find any objections from that group who are most likely to benefit from the program.

Ms. NORTON. And, for only a year at that.

Mr. GILMAN. Yes.

Ms. NORTON. In one of the statements submitted by one of the federal employee organizations, the suggestion was made to add language to your bill. It would require that in the event that an agency requests a second medical examination to show that the enrollee has a life expectancy of nine months or less, the agency must establish by clear and convincing evidence its basis for rejecting the first medical certification before the enrollee is required to submit to a second examination.

Would you support such a requirement?

Mr. GILMAN. Pursuant to my bill, the agency would have to pay for a second required exam. While we certainly don't want any agency to arbitrarily and capriciously reject a certified examination from the enrollee's own physician, I'm not sure a heightened evidentiary standard is necessary for the agency to request a second opinion. I'm certain you'll agree with me that we need to guard against any fraudulent claims, and I'm not so sure a heightened evidentiary standard that any agency must meet in order to request this second opinion is consistent with that goal.

Ms. NORTON. Thank you very much.

Mr. GILMAN. Thank you, Madam Chair.

Ms. NORTON. Congressman Gilman, I know you are rushing to a journal vote now. As it turns out, because the District of Columbia is not yet a State, there are still some items I can't vote on. I can vote on, perhaps, 95 percent of what the House does. Among the items I can't vote on are journal votes. That's almost enough to make you not want to become a State, since journal votes have nothing to do with the business of the House and are nuisance votes.

Therefore, I will continue the hearing while my colleagues run over there and run back. We have another member that was to testify as well, but she is undoubtedly voting.

Could I ask Judge Paul Mannes if he might come out of turn then, so that we might proceed without interruption.

**STATEMENT OF THE HONORABLE PAUL MANNES, CHIEF
BANKRUPTCY JUDGE, DISTRICT OF MARYLAND**

Judge MANNES. Thank you, Madam Chair and members of the staff of the subcommittee.

I am Paul Mannes, Chief Judge of the U.S. Bankruptcy Court for the District of Maryland. I sit in Rockville, MD. I am a former president of the Bar Association of Montgomery County, MD, and the National Conference of Bankruptcy Judges. I was born and raised in Washington, DC, and for 22 years I practiced as a trial lawyer in Washington and later in Rockville.

I am here to submit the views of the National Conference of Bankruptcy Judges on H.R. 3297, legislation to extend to Article I judges the treatment currently afforded to retiring Article II or life-tenured judges under the FEGLI Program. The National Conference represents the Nation's 326 bankruptcy judges and on their behalf advocates on issues relevant to the judicial system and the bankruptcy bench. We do not take positions on substantive bankruptcy law, but are pleased to offer opinions and expertise whenever requested.

I have submitted written testimony and respectfully request that it be included in the hearing record, and I will try to summarize.

First, I want to thank Congresswoman Morella and express the appreciation of the conference for her sponsoring this significant legislation to provide an equitable life insurance package for those Article I judges, more senior than I, who have reached the "landmark" of retirement age. Currently the retirement program for bankruptcy judges fails to provide them with either the retirement life insurance advantages offered to Article III judges or the early retirement offered to other Federal employees. Congresswoman Morella's bill addresses this inequity and creates a life insurance program for retiring bankruptcy and magistrate judges that is fair and cost-effective. We support this legislation and hope that it is enacted in this Congress.

Under the current system, all Federal employees are eligible to buy "basic" life insurance in an amount equal to their annual salaries. One third of the premium is contributed by the employer. All employees may opt to pay for additional life insurance in an amount equal to 1 to 5 times their annual salaries; this is known as the "multiples of salary" life insurance. Under this option, employees pay life insurance premiums at monthly amounts which vary depending upon the levels of coverage and their ages. At age 60, for example, premiums double in cost. Upon retirement, premiums stop for this "multiples of salary" insurance, and the value of the policy decreases at a rate of 2 percent per month. Thus, in just over 4 years after retirement, the policy value is zero. A chart has been prepared and submitted by the Administrative Office of the U.S. Courts that illustrates this.

As I mentioned, bankruptcy and magistrate judges are treated differently, both from other Federal employees and Article III judges. Nonjudicial employees have the opportunity to retire at age 55 if they have 25 years service. Neither Article I nor Article III judges have that option, and I am here to bring to the committee's attention the fact that in 1984, when Congress sought to compensate judges for that inequity, it created a new inequity by giving only Article III judges the right to retain their life insurance at cost to them upon retirement.

H.R. 3297 gives bankruptcy and other Article I judges, such as magistrate and Federal Court of Claims judges, the option of continuing to pay premiums throughout their retirement and, thus, maintaining the value of their "multiples of salary" life insurance.

Upon the death of a judge who elects and pays for this coverage, the full value of the life insurance policy would be available for his or her survivor.

Our understanding from the Office of Personnel Management is that there is a surplus in the FEGLI Program covering judges, despite Congress giving the life-tenured Article III judges this option in 1984.

Those of my colleagues who have paid throughout their careers for additional life insurance in order to provide for their spouses and families after their death, currently lose this entire benefit in just a few years. As the law stands, upon retirement, despite paying substantial premiums for years, premiums which may be as much as \$1,000 per month at age 65, see a policy decreasing in value at 2 percent per month, and, again, to zero. The conference would like to have these judges to be able to keep this valuable protection that they have built up for their families.

H.R. 3297 would allow them to do that at their own expense, just as it allows Article III judges to do that.

I am told that the Congressional Budget Office analyzed H.R. 3297 and concluded that if there is low participation by Article I retirees there could be net savings to the government of \$1 to \$5 million. If there is heavy participation, there would be a corresponding cost to the Government of up to \$5 million.

In any event, the premiums would then be adjusted upward or downward to make the system actuarially sound.

I would like to acknowledge a colleague of mine who is here today, Judge Ralph Kelley of Chattanooga, TN. Ralph began his career at age 12 as a page to Speaker Sam Rayburn. He went on to serve as assistant attorney general for Hamilton County, TN, as a member of the Tennessee House of Representatives, and Ralph was elected mayor of Chattanooga in 1962. He was mayor of Chattanooga during the time that the civil rights movement reached its peak. He guided that city gently through its passage.

In 1969, Ralph went on to serve the Eastern District of Tennessee as a bankruptcy judge, a position he has held for 25 years.

Ralph has dedicated his life to public service. He is a model public servant for the Federal bench. He has opted to protect his lovely wife, Barbara, and family by investing for 25 years in a life insurance policy with the Federal Government. He currently pays nearly a thousand dollars a month to maintain this policy, but as soon as

he retires the value of his life insurance will decrease by 2 percent per month, and in 4 years it will zero out.

Ralph has paid into the system for years, so that he can be assured that his wife, who as he points it, has put up with him all these years, will be provided for him after his death.

This legislation will not affect a lot of people, but it will dramatically affect a few, such as Ralph Kelley, who have dedicated their lives to public service.

H.R. 3297 eliminates the discrepancy between retiring Article III judges and retiring Article I judges. It does so at little cost to the Government, and Congress can ensure that our spouses are protected at little cost.

The NCBJ urges the subcommittee to act on this legislation, H.R. 3297.

I appreciate the opportunity to testify before the Subcommittee on Compensation and Employee Benefits. I thank you for considering the views of the National Conference of Bankruptcy Judges.

If you have any questions for me, I would be pleased to answer them.

Thank you very much.

[The prepared statement of Judge Mannes follows:]

PREPARED STATEMENT OF HON. PAUL MANNES, CHIEF BANKRUPTCY JUDGE, DISTRICT OF MARYLAND

Madam Chair, Congresswoman Morella, and members of the subcommittee, I am Paul Mannes, the Chief Judge for the United States Bankruptcy Court for the District of Maryland. I sit in Rockville, Maryland. I am a former President of the Bar Association of Montgomery County, Maryland, and the National Conference of Bankruptcy Judges. I was born and raised in Washington, D.C. For 22 years I practiced as a trial lawyer, in Washington and later in Rockville.

I am here to submit the views of the National Conference of Bankruptcy Judges on H.R. 3297, legislation to extend to Article I judges the treatment currently afforded to retiring Article III or life-tenured judges under the Federal Employees Group Life Insurance (FEGLI) Program. The National Conference represents the nation's 326 bankruptcy judges and on their behalf advocates on issues relevant to the judicial system and the bankruptcy bench. The Conference does not take positions on substantive changes to the Bankruptcy Law, but is pleased to offer opinions and expertise whenever helpful.

I would like to thank Congresswoman Morella and express the appreciation of the Conference to her for sponsoring this significant legislation, to provide an equitable life insurance package for those Article I judges, more senior than I, who have reached that life "landmark" of retirement age. Currently the retirement program for bankruptcy judges fails to provide them with either the retirement life insurance advantages offered to Article III judges or the early retirement available to other federal employees. Congresswoman Morella's bill addresses this inequity and creates a life insurance program for retiring bankruptcy judges that is fair and cost-effective. We support this legislation and hope to see it enacted this Congress.

Under the current system, all federal employees receive "basic" life insurance in an amount equal to their annual salaries. All employees may opt to pay for additional life insurance at a value equivalent to one to five times their annual salaries; this is known as the "multiples of salary" life insurance. Under this option, employees pay life insurance premiums at monthly amounts which vary depending on the levels of coverage they choose, and their ages. At age 60, for instance, premiums double in cost. Upon retirement, premiums are no longer paid for this "multiples of salary" insurance, and the value of the policy decreases at a rate of 2% per month. Thus, in just over four years after retirement, the policy value is zero. I have attached a chart prepared by the Administrative Office of U.S. Courts that illustrates this decline.

As I mentioned, bankruptcy and magistrate judges are treated differently than both other federal employees and Article III judges. Non-judicial federal employees have the option to retire at the age of 55 if they have 25 years service. Neither Article I nor Article III judges have that option. I am here to bring to the Committee's attention the fact that in 1984, when Congress sought to compensate judges for that inequity,¹ it created a new one by giving only Article III judges the right to retain their life insurance, at cost to them, upon retirement.

¹To quote the Senate Judiciary Committee report: "That inequity is especially relevant because this group of government employees may not elect retirement until attaining the age of 65, whereas all other government employees may elect retirement at age 55....As long as the employee is willing to pay for the cost of continued coverage, the Committee believes that this conversion option should be available." (Sen. Rpt. 98-55, 98th Cong., 1st Sess. 29 (1983)).

Ms. NORTON. Thank you very much, Judge Mannes, and I appreciate that Judge Kelly is here as well.

Before asking you any questions, I would like to ask the sponsor of this legislation to speak to the bill before us, ranking member, Congresswoman Morella.

Mrs. MORELLA. Thank you very much, thank you, Madam Chair, and I know that you mentioned earlier that voting on the journal is so critically important that I had to cast my vote.

It's a pleasure to see you, Judge Mannes. Thank you for testifying, too.

Madam Chair, I really want to thank you for the interest that you and your staff have taken in scheduling this hearing on bills which will positively affect one of the few benefits that Federal employees have, the Federal Employee Group Life Insurance.

The bill that I've introduced that Judge Mannes spoke about, H.R. 3297, affects bankruptcy judges. However, as we looked closely at the legislation, I was contacted by certain groups expressing interest in the bill. Their concerns were convincing, and I had amendments drawn up to address these concerns.

In the interest of fairness, and in an effort to have the new language available for comment prior to a markup, I prepared an amendment in the nature of a substitute to H.R. 3295. I realize this is not the usual procedure. Generally, the amendment is offered at the time of the markup.

I took the liberty of circulating the amendment in the hope that those who would testify today would address some of the provisions that have been addressed in the revision. However, even as a substitute was circulated, some additional concerns arose, and even so, Madam Chair, the intent of the substitute amendment, which I will finalize soon, remains the same.

I might add that in preparation of these amendments we've used the legislation as a vehicle to make some needed technical corrections and to include Tax Court judges under the provisions of the bill, simply as a clarification of current Office of Personnel Management practice.

As a brief background, I'd just like to mention that under current law the Federal Employee Life Insurance, FEGLI, coverage begins to decrease at retirement, or when the employee reaches age 65, whichever comes later.

At this time, they also stop paying premiums. This triggers the decreasing of coverage at a rate of 2 percent a month until 25 percent of the original amount is reached.

Presently, Federal employees and judges pay life insurance premiums which vary according to the level of coverage which is chosen from 1 to 5 times the Federal salary to the nearest thousand, plus \$2,000. The Government pays part of the premium for the basic life insurance, which would be the amount of the salary to the nearest thousand, plus \$2,000, but not for the optional life insurance.

Employees who retire at age 65 may continue basic life insurance coverage, but at a premium over four times their previous payment amount.

And, since 1984, life-tenured judges who retire completely from judicial service under title 28, United States Code, section 371(a)

have been allowed to maintain full basic and optional insurance at the same cost as was borne by active and senior life-tenured judges. My legislation, Madam Chair, would permit bankruptcy judges the same options provided to retired Article III judges and the judges of the U.S. Court of Federal Claims, judges of the territorial district courts and magistrate judges.

The Judicial Conference was concerned about the diminution of benefits for retired judges, and so, at the end of last year a bill was passed which gave judges the right to pay the market price for life insurance. Bankruptcy and magistrate judges were named in the legislation, but as they are specifically covered under title V provisions, and the Committee on Post Office and Civil Service did not have time at the end of the session to evaluate the provisions, this small group of judges, 37 bankruptcy and magistrate judges, aged 60 or older with Option B coverage, were deleted from the legislation. At that time, Judge Mannes and I had a number of conversations trying to remedy the problem.

The inequity here, Madam Chair, is clear. These judges cannot retire until age 65, nor maintain full basic and option insurance at the same cost as that borne by active and senior life-tenured judges.

To compensate judges for the later retirement age, Public Law 98-353 was enacted to give judges the option of continuing their optional life insurance, at cost, upon retirement. Few, if any, life insurance policies are available in the private market at a reasonable premium for those who are aged 65 or older. It's easier and cheaper to buy life insurance at age 55, when one's health is better than at age 65.

Extending this benefit to bankruptcy judges, who have served the public sector for years, would be equitable, and I reiterate, the judge would bear the cost of the optional life insurance. The optional life insurance program is, essentially, a self-insurance program through the Office of Personnel Management, with a payout arrangement through the Metropolitan Life Insurance Co.

The Congressional Budget Office has made an estimate on the original H.R. 3297. Quoting from that preliminary report, "In sum, if retired judges elect coverage under active employee status, this bill would increase Government receipts because they would be paying premiums. If they then die, benefits payments would be made in amounts greater than that which would be paid under current law and costs would be incurred. It is assumed by the CBO that 20 judges will retire each year."

The final part of my amended bill would permit any Federal employees participating in the FEGLI Program to irrevocably assign all incident of ownership to the insurance to another individual as a gift, in order to exclude the insurance proceeds from the descendant's taxable estate.

The Internal Revenue Service has upheld the validity of a revocable assignment of life insurance policy proceeds as an appropriate instrument for estate planning, as long as it is permitted by the terms of the insurance policy and applicable state law. The laws in every state allow irrevocable assignment of group life insurance ownership, and this is a common feature under insurance policies.

Public Law 97-353, the Bankruptcy Court and Federal Judgeship Act of 1983, enacted the current provisions allowing irrevocable assignment of FEGLI proceeds only in cases of insured Federal judges because of committee jurisdictional reasons.

This amendment then is a matter of equity to bring Federal employees under the same provisions as the judges, the private sector and all other taxpayers.

Again, I apologize for the length of the explanation of the bill, but it's been long in coming, and I thank you again, Madam Chair, for your interest in this matter.

Ms. NORTON. Thank you very much, Mrs. Morella. It is your bill, and it is sufficiently complicated, so that I think that that explanation was useful, and I very much appreciate the time and energy you have put into what appears to be a matter of equity here.

Before I proceed to ask you and Judge Mannes any questions, may I note that the Administrative Office of the U.S. Courts supports this legislation, and I would like to have the letter from L. Ralph Mecham, Director, of April 19, 1994, put into the record.

[The information referred to follows:]

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTSL. RALPH MECHEAM
DIRECTORCLARENCE A. LEE, JR.
ASSOCIATE DIRECTOR

WASHINGTON, D.C. 20544

April 19, 1994

Honorable Eleanor Holmes Norton
Chairwoman, Subcommittee on Compensation
and Employee Benefits
Post Office and Civil Service Committee
209 Cannon House Office Building
1st and Independence Avenues, S.E.
Washington, D.C. 20515

RE: H.R. 3297

Dear Delegate Norton:

It has been brought to my attention that you have scheduled a hearing on the Federal Employees Group Life Insurance Program before your Subcommittee on April 20, 1994. I am further advised that H.R. 3297, a bill to permit certain non-life tenured judges to maintain their life insurance coverage without diminution following retirement, will be on the agenda for the hearing.

I write today on behalf of the Judicial Conference of the United States to advise you that the Conference has in the past considered and approved provisions virtually identical to those contained in H.R. 3297. Specifically, on April 29, 1991, I transmitted a draft bill to the House and Senate Judiciary Committee entitled the "Judicial Survivors Annuities Improvement Act of 1991." The draft bill, at section 3, also contained almost identical language to that contained in Congresswoman Morella's bill, H.R. 3297. The language in section 3 was approved by the Judicial Conference of the United States at its March 1991 Session, at page 19 of the Report.

Included in my transmittal of the draft Judicial Survivors Annuities Bill was a section detailing certain special considerations affecting bankruptcy judges and magistrate judges. The comments regarding the life insurance provisions are as relevant today as they were in 1991. The following excerpt from those comments briefly summarizes the need for this legislation:



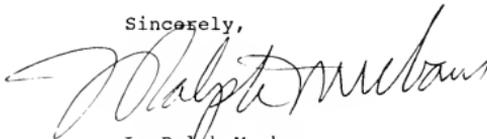
A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY

Honorable Eleanor Holmes Norton
Page Two

The life insurance coverage under the federal plan continues throughout the service of the employee. Article III judges may continue full coverage until death. The coverage for bankruptcy and magistrate judges, however, begins to diminish at age 65 and is totally eliminated at age 69. The continuation of this protection, without diminishment, would add a safeguard to the surviving dependents and spouse of a bankruptcy or magistrate judge.

Thank you for any consideration you may give to these matters. If I may answer any questions regarding this, or any other concerns please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. Ralph Mecham".

L. Ralph Mecham
Director

cc: Representative Constance Morella

Ms. NORTON. One of the things most important to do when one tries to remedy an apparent inequity or oversight is to make sure that one can answer the questions that may have arisen at the time. What I do not understand is why Article I judges were treated differently in the first place. And, I wonder if either Congresswoman Morella or Judge Mannes can offer any insight into why the distinction was made initially.

Mrs. MORELLA. Since Judge Mannes is so attuned to this, and has chaired, or did chair, the Judicial Conference Advisory Committee on Bankruptcy Rules, and has been on it since 1987, and is a very distinguished citizen of the 8th District of Maryland, I would like to defer to him. Does that sound political?

Ms. NORTON. It just sounds like hometown stuff to me.

Judge MANNES. I was educated in the public schools of the District of Columbia.

Ms. NORTON. So, I claim him.

Judge MANNES. I wish I could give you a logical explanation for that. I cannot.

Ms. NORTON. Do you think it was oversight? The reason I probe this is because, and, Judge Mannes, you will appreciate as a member of the bar, you want to know what the opposition will say before they say it, and I simply am trying to find out if along the way toward the floor with this bill somebody will hop up with an objection that none of us has foreseen that may go to the distinction that was initially made between the two groups of judges.

Judge MANNES. I think it was oversight, and I cannot think of any reason that magistrate judges, and bankruptcy judges, and other judges who are within this protection were originally excluded.

Ms. NORTON. Well, that's entirely credible. When people go at judges, they often think of Article III judges, and miss the very important work that other members of the judiciary, the equally important work that they do.

Now, Congresswoman Morella will appreciate that direct spending costs raise issues always in the House. Indeed, we barely got the buyout bill out of here, even though it was going to save huge amounts of money relative to the minor costs. So, could I ask, I suppose the ranking member, to the extent that there are direct spending costs, how do you propose to answer objections?

I'm not sure if I heard Judge Mannes mention the surplus in FEGLI itself, but I wonder if you've given any thought to that, either of you.

Mrs. MORELLA. I was just looking for the statement from OPM that does not give what the dollar sign would be, but as Judge Mannes mentioned, and as I mentioned in the testimony, it really—it depends if more people want to stay in the system, there would be more money going to the Federal Government than as it is then paid out. I think right here—I don't think it would be very much, and it's very difficult to ascertain even any kind of a figure.

There will be receipts coming into the Federal Government, then, of course, there will be some expenditures.

Judge Mannes, do you have any handle on that?

Judge MANNES. My understanding is that the rates would be adjusted, that like any market for life insurance, that if the experi-

ence were such that more money was going out, that there would be an upward adjustment in the premiums, or downward, if the system continues to build a surplus, as it appears to be doing now.

Ms. NORTON. So, you are saying that there would be no direct spending cost to the Government above and beyond what has been experienced, what is now being experienced.

Judge MANNES. That's my understanding. There might be, as with any sort of insurance, there might be a given year, or there might be a virus that hits judges who have this optional coverage, and we may lose a number. But, if that is the case, and if there is bad experience rating, then the premiums are similarly adjusted.

Ms. NORTON. As we go from subcommittee to committee, I'd like to work with my ranking member to make sure that—your answer sounds like one of the few instances where we might, indeed, not incur a spending cost, if, in fact, the program has worked that way in the past.

But, I will work with the ranking member to make sure that that, in fact, is the case, and, if not, to see if there are other ways that any direct spending costs could be covered.

Mrs. MORELLA. And, Madam Chair, in that line, you are right, OPM was able to reduce the cost of the premiums under the FEGLI program. Employees share the premiums for basic life is now .165 cents biweekly for each thousand dollars of insurance, .02 cents for \$1,000 lower than the previous rate.

So, many employees also benefitted from premium reductions for optional insurance, so OPM has said they were able to reduce premiums because of a combination of lower mortality trends, the accumulation of reserves due to favorable interest rates earned by the life insurance trust fund. What I'm saying is that, there is a possibility for negotiating so they may increase, and they had been doing very well in keeping those costs down, as you mentioned. So, I'd be happy to work with you on it.

Ms. NORTON. Thank you very much, and thank you very much, Judge Mannes.

Judge MANNES. Thank you very much, Madam Chair and the committee.

Ms. NORTON. I'd like to call now Curtis J. Smith, Associate Director for the Retirement Insurance Group, Office of Personnel Management.

STATEMENT OF CURTIS J. SMITH, ASSOCIATE DIRECTOR, RETIREMENT INSURANCE GROUP, OFFICE OF PERSONNEL MANAGEMENT

Mr. SMITH. Good morning. I'm pleased to be here to talk about the Federal Employees' Group Life Insurance Program.

With your permission, I'll submit my formal statement for the record and briefly summarize our comments.

The FEGLI Program, we think, is running well. Nothing is without its faults, but by and large it goes well, and I'm pleased to be able to talk about it and to briefly tell you where we are on the three bills that the subcommittee has under consideration.

We think that H.R. 512, which would offer a living benefit, is a good idea. We would like to be able to support it, but because of "pay-go" problems we are not able to do that. We would certainly

be open to trying to find solutions to those problems, but we have not seen any at this point.

We oppose the second of the bills, H.R. 891, to allow retroactive enrollments for retirees for the new life insurance options, in part because so much time has passed since 1980, that the premiums that are due would be prohibitive for the retirees. And, what that usually means in the insurance business is that only the people who are very sick would find it worthwhile to pay those high back payments, and that would increase the cost to the life insurance system and ultimately affect the premiums of everyone else.

And, finally, on H.R. 3297, on the treatment of judges, we defer to the judicial branch and to the subcommittee about how these people should be treated. We have worked with Congresswoman Morella and are interested ourselves in seeing extended to all Federal employees the current right to assign their life insurance benefits that the judges now have. This is desirable both for estate planning purposes, and as we have seen from our administrative experiences, in domestic divorce settlements as a way to guarantee that those benefits go where the settlement directs them to go and that changes are not made later.

I thank you for the opportunity to be here, and I'm happy to answer questions.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF CURTIS J. SMITH, ASSOCIATE DIRECTOR, RETIREMENT
INSURANCE GROUP, OFFICE OF PERSONNEL MANAGEMENT

MADAM CHAIR AND MEMBERS OF THE SUBCOMMITTEE:

THANK YOU VERY MUCH FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO DISCUSS THE FEDERAL EMPLOYEES' GROUP LIFE INSURANCE (FEGLI) PROGRAM, AND, IN PARTICULAR, THREE BILLS THAT WOULD MAKE CERTAIN CHANGES IN THE PROGRAM.

THE FEGLI PROGRAM, WHICH INSURES FEDERAL EMPLOYEES AND RETIREES, WAS CREATED IN 1954. EMPLOYEES ENROLLED IN FEGLI ARE INSURED FOR A BASIC INSURANCE AMOUNT EQUAL TO THEIR ANNUAL SALARY ROUNDED TO THE NEXT HIGHEST \$1,000, PLUS \$2,000. EMPLOYEES UNDER AGE 45 ARE INSURED FOR A HIGHER AMOUNT, RANGING FROM 1.1 TIMES THEIR BASIC INSURANCE AMOUNT TO TWICE THEIR BASIC INSURANCE AMOUNT, DEPENDING ON THEIR AGE, AT NO ADDED COST. THE FEDERAL GOVERNMENT CONTRIBUTES ONE-THIRD OF THE COST OF THIS BASIC INSURANCE, WHILE EMPLOYEES PAY THE REMAINING TWO-THIRDS. IN ADDITION, EMPLOYEES WITH BASIC INSURANCE MAY CHOOSE FROM AMONG THREE SUPPLEMENTAL OPTIONS. EMPLOYEES ELECTING OPTIONAL INSURANCE BEAR THE ENTIRE COST THEMSELVES.

THE POPULARITY OF THE FEGLI PROGRAM IS REFLECTED BY THE FACT THAT NEARLY 90 PERCENT OF THE FEDERAL WORKFORCE IS NOW ENROLLED IN THE PROGRAM. EMPLOYEES ARE ATTRACTED BY THE HIGH DEGREE OF PROTECTION FEGLI OFFERS THEM AT LOW GROUP RATES AND THE CONVENIENCE OF PREMIUM PAYMENTS THROUGH PAYROLL DEDUCTIONS, ALONG WITH POST-RETIREMENT COVERAGE.

LAST YEAR OPM WAS ABLE TO REDUCE THE COST OF PREMIUMS UNDER THE FEGLI PROGRAM. THE EMPLOYEE SHARE OF THE PREMIUMS FOR BASIC LIFE INSURANCE IS NOW 16 AND A HALF CENTS BIWEEKLY FOR EACH \$1,000 OF INSURANCE, TWO CENTS PER \$1,000 LOWER THAN THE PREVIOUS RATE. MANY EMPLOYEES ALSO BENEFITED FROM PREMIUM REDUCTIONS FOR OPTIONAL INSURANCE. WE WERE ABLE TO REDUCE PREMIUMS BECAUSE OF A COMBINATION OF LOWERED MORTALITY TRENDS AND THE ACCUMULATION OF RESERVES DUE TO FAVORABLE INTEREST RATES EARNED BY THE LIFE INSURANCE TRUST FUND.

WHEN THE RATES CHANGED, WE HELD AN OPEN ENROLLMENT PERIOD DURING THE MONTH OF APRIL 1993, THE FIRST OPEN SEASON IN SEVEN YEARS. DURING THIS PERIOD, EMPLOYEES WHO HAD DECLINED FEGLI COVERAGE IN THE PAST COULD ELECT TO ENROLL IN THE PROGRAM, AND EMPLOYEES ALREADY IN THE PROGRAM COULD INCREASE THEIR COVERAGE, WITHOUT PRODUCING MEDICAL EVIDENCE OF INSURABILITY. THE PERCENTAGE OF ELIGIBLE EMPLOYEES ELECTING BASIC FEGLI COVERAGE INCREASED FROM 88.4 PERCENT BEFORE THE OPEN SEASON TO 89.9 PERCENT AFTER THE OPEN SEASON. EVEN MORE EMPLOYEES ELECTED OPTIONAL INSURANCE. FOR

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EXAMPLE, ENROLLMENT IN OPTION B, WHICH PROVIDES INSURANCE IN MULTIPLES OF THE EMPLOYEE'S SALARY, ROSE DURING THE OPEN SEASON FROM 36.1 PERCENT TO 46.5 PERCENT OF ELIGIBLE EMPLOYEES.

AT THIS TIME, I'D LIKE TO COMMENT BRIEFLY ON THE THREE BILLS YOU ARE CONSIDERING TODAY. H.R. 512, THE "FEGLI LIVING BENEFITS ACT," WOULD ALLOW LIFE INSURANCE BENEFITS UNDER FEGLI TO BE PAID OUT TO AN INSURED INDIVIDUAL WHO IS TERMINALLY ILL AND WHO IS EXPECTED TO LIVE NO LONGER THAN 9 MONTHS. THIS OPTION WOULD APPLY ONLY TO BASIC INSURANCE, AND NOT TO ANY OPTIONAL FEGLI COVERAGE THE INDIVIDUAL MAY HAVE. ELIGIBLE ANNUITANTS WHO ELECTED THE BENEFIT WOULD RECEIVE THE BASIC INSURANCE AMOUNT, WHILE ELIGIBLE CURRENT EMPLOYEES COULD ELECT TO RECEIVE EITHER THEIR BASIC INSURANCE AMOUNT OR ANY PORTION OF THAT AMOUNT, IN MULTIPLES OF \$1,000. IN ALL CASES, THE BILL WOULD REQUIRE OPM TO REDUCE THE BENEFIT TO ENSURE THAT THE ACTUARIAL VALUE OF THE BENEFIT WOULD NOT INCREASE BECAUSE OF THE EARLY PAYMENT. THE BILL ALSO PROVIDES FOR A NEW OPEN SEASON TO ALLOW UNENROLLED EMPLOYEES TO ENROLL IN THE FEGLI PROGRAM AND TO ALLOW EMPLOYEES ALREADY ENROLLED TO INCREASE THEIR COVERAGE. WE NOTE THAT ANOTHER OPEN ENROLLMENT PERIOD WOULD REQUIRE OPM TO INCUR SUBSTANTIAL COSTS. WE WOULD PREFER TO MAKE THE LIVING BENEFITS OPTION AVAILABLE TO CURRENT PROGRAM PARTICIPANTS, WITHOUT HAVING ANOTHER OPEN ENROLLMENT PERIOD, IF H.R. 572 WERE ENACTED.

THE OFFICE OF PERSONNEL MANAGEMENT RECOGNIZES H.R. 512 AS AN INNOVATIVE RESPONSE TO THE NEEDS OF THE TERMINALLY ILL. SINCE A

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LIVING BENEFIT OF THIS KIND WOULD HELP COVERED EMPLOYEES AND ANNUITANTS COPE WITH THE ADDED MEDICAL EXPENSES THAT OFTEN ACCOMPANY A TERMINAL ILLNESS, WE BELIEVE IT WOULD BE FAVORABLY RECEIVED BY FEGLI PARTICIPANTS. WE ARE AWARE THAT SOME PRIVATE SECTOR LIFE INSURANCE PROVIDERS HAVE BEGUN TO OFFER LIVING BENEFITS IN RECENT YEARS FOR TERM INSURANCE, AND IF H.R. 512 WERE ENACTED, WE WOULD STUDY THE PRIVATE SECTOR'S EXPERIENCE WITH THESE BENEFITS. BECAUSE OF THESE CONSIDERATIONS, WE WOULD LIKE TO SUPPORT THE BILL. HOWEVER, THE BUDGET ENFORCEMENT ACT EFFECTIVELY PREVENTS US FROM DOING SO. UNDER THAT ACT, ANY DIRECT SPENDING THAT IS NOT FULLY OFFSET WITHIN THE SAME FISCAL YEAR WOULD TRIGGER A SEQUESTER. H.R. 512, IF ENACTED, WOULD INCREASE "PAY-AS-YOU-GO" COSTS, DUE TO THE ADVANCED OUTLAY OF PAYMENTS FROM THE FEGLI FUND DURING THE FIRST YEAR OF IMPLEMENTATION. BEYOND THE FIRST YEAR OF IMPLEMENTATION, THIS BILL WOULD HAVE NO EFFECT ON PROGRAM OUTLAYS, ASSUMING THE NUMBER OF PEOPLE PARTICIPATING IN THE PROGRAM DOES NOT INCREASE.

NOW I'D LIKE TO TURN TO THE SECOND BILL YOU ARE CONSIDERING TODAY. H.R. 891 WOULD PERMIT CERTAIN FEDERAL EMPLOYEES WHO RETIRED OR BECAME ENTITLED TO RECEIVE WORKER'S COMPENSATION BENEFITS BEFORE DECEMBER 9, 1980, TO ELECT ENHANCED FEGLI COVERAGE THAT WAS NOT AVAILABLE TO THEM AT THE TIME THEY LEFT ACTIVE EMPLOYMENT. THE INSURANCE COVERAGE WOULD TAKE EFFECT RETROACTIVELY, BEGINNING ON THE DATE THEIR ANNUITY OR COMPENSATION PAYMENTS BEGAN. THE BILL IS DESIGNED TO EXTEND THE BENEFITS OF THE FEDERAL EMPLOYEES' GROUP LIFE INSURANCE ACT OF 1980 TO INDIVIDUALS WHO WERE ALREADY RETIRED

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WHEN THAT LAW WAS ENACTED. THE 1980 LAW SUBSTANTIALLY ENHANCED THE FEGLI PROGRAM, MAKING NEW OPTIONAL BENEFITS AVAILABLE TO INDIVIDUALS WHO WERE FEDERALLY EMPLOYED WHEN THE NEW LAW TOOK EFFECT ON DECEMBER 9, 1980.

ANNUITANTS OR COMPENSATIONERS ELECTING FEGLI COVERAGE UNDER THE BILL WOULD HAVE TO DEPOSIT IN THE FEGLI FUND AN AMOUNT EQUAL TO THE AMOUNT OF WITHHOLDINGS THAT WOULD HAVE BEEN MADE FROM THEIR RETIREMENT OR INJURY COMPENSATION BENEFITS TO PAY FOR THE ADDITIONAL COVERAGE HAD THE COVERAGE BEEN IN EFFECT SINCE THEY RETIRED. OPM WOULD HAVE TO GIVE ALL INDIVIDUALS WHO WOULD BECOME ELIGIBLE FOR FEGLI COVERAGE UNDER THIS BILL WRITTEN NOTIFICATION OF THEIR RIGHT TO ELECT COVERAGE.

THE OFFICE OF PERSONNEL MANAGEMENT MUST OPPOSE ENACTMENT OF H.R. 891. OPM HAS HAD A LONG-STANDING OBJECTION IN PRINCIPLE TO PROVIDING RETIREES WITH RETROACTIVE BENEFITS THAT WERE NOT AVAILABLE WHEN THOSE INDIVIDUALS WERE EMPLOYED IN THE FEDERAL SERVICE. LEGISLATION LIBERALIZING EXISTING BENEFITS OR CREATING NEW BENEFITS NECESSARILY HAS AN EFFECTIVE DATE AND THEREFORE INEVITABLY EXCLUDES CERTAIN INDIVIDUALS AT THE SAME TIME THAT IT BENEFITS OTHERS. BENEFITS ARE DEFERRED COMPENSATION FOR SERVICE; THERE IS NO LOGICAL BASIS FOR AN EMPLOYER TO INCREASE THE BENEFITS OF A RETIREE WHO NO LONGER WORKS FOR THE EMPLOYER.

MOREOVER, EXTENDING THE BENEFITS OF THE 1980 FEGLI ACT RETROACTIVELY TO INDIVIDUALS WHO HAVE BEEN RETIRED FOR MANY YEARS

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WOULD BE EXTRAORDINARILY COSTLY. THE PREMIUM STRUCTURE OF THE FEGLI PROGRAM IS NOT DESIGNED TO INCORPORATE NEW ENROLLEES AFTER THEY HAVE BEEN RETIRED FOR MANY YEARS. POST-RETIREMENT BENEFITS UNDER FEGLI ARE PRE-FUNDED BY PARTICIPATION BEFORE RETIREMENT. PROVIDING COVERAGE TO INDIVIDUALS WHO DID NOT PARTICIPATE IN THE PROGRAM AS ACTIVE EMPLOYEES UNDERMINES ONE OF THE FUNDAMENTAL CONCEPTS UNDERLYING INSURANCE.

FINALLY, THE HIGH COST TO RETIREES OF THE BENEFIT OFFERED BY H.R. 891 WOULD ENCOURAGE WHAT IS KNOWN IN THE INSURANCE BUSINESS AS "ADVERSE SELECTION." RETROACTIVE PREMIUMS FOR MANY YEARS WOULD BE SO EXPENSIVE THAT IT SEEMS SAFE TO ASSUME ONLY RETIREES WHO KNOW THEY ARE NEAR DEATH WOULD ELECT THE ADDITIONAL BENEFITS MADE AVAILABLE UNDER THE BILL. OPM WOULD ALSO OPPOSE ENACTMENT OF THIS BILL BECAUSE IT WOULD VIOLATE THE PAY-AS-YOU-GO REQUIREMENT OF THE BUDGET ENFORCEMENT ACT.

NOW I'D LIKE TO TURN TO THE THIRD BILL BEFORE YOU TODAY, H.R. 3297, WHICH WOULD EXTEND THE TREATMENT CURRENTLY AFFORDED TO FEDERAL JUDGES UNDER THE FEGLI PROGRAM TO CERTAIN OTHER JUDICIAL OFFICIALS, SUCH AS TAX COURT JUDGES, BANKRUPTCY JUDGES, TERRITORIAL JUDGES, AND CLAIMS COURT JUDGES. FOR MOST RETIRED EMPLOYEES, FEGLI BEGINS TO REDUCE WHEN THE RETIREE REACHES AGE 65, AND IT CONTINUES TO REDUCE UNTIL THE VALUE OF THE BASIC INSURANCE IS ONE-QUARTER OF ITS ORIGINAL VALUE. FOR FEDERAL JUDGES, ON THE OTHER HAND, UNDER SPECIAL PROVISIONS OF LAW, FEGLI BASIC INSURANCE NEVER REDUCES IN VALUE.

THE SPECIAL TREATMENT FEDERAL JUDGES RECEIVE UNDER FEGLI IS BASED ON THE FACT THAT THEY ARE CONSIDERED TO RETAIN THEIR OFFICES AS JUDGES FOR LIFE. RETIRED FEDERAL JUDGES ARE SUBJECT TO RECALL AND, UNDER THE CONSTITUTION, THEIR COMPENSATION CANNOT BE REDUCED. THEREFORE, FEDERAL JUDGES WHO RETIRE SUBJECT TO RECALL ARE TREATED UNDER THE FEGLI LAW AS ACTIVE EMPLOYEES. H.R. 3297 WOULD ENSURE THAT THE OTHER JUDICIAL OFFICIALS NAMED WOULD BE TREATED THE SAME AS FEDERAL JUDGES UNDER FEGLI ONCE THEY RETIRE.

WHILE WE WOULD OPPOSE SUCH A PROVISION IF IT WERE TO BE APPLIED TO EXECUTIVE BRANCH ADJUDICATORY EMPLOYEES, WE DEFER TO THE JUDICIAL BRANCH AS TO WHETHER THESE OTHER JUDICIAL OFFICERS SHOULD RECEIVE THE SAME TREATMENT AS FEDERAL JUDGES. HOWEVER, THERE ARE SOME TECHNICAL PROBLEMS IN THE BILL THAT OPM STAFF HAS BEEN DISCUSSING WITH THE COMMITTEE'S STAFF.

IN ADDITION, I WOULD URGE YOU TO INCLUDE IN H.R. 3297 AN AMENDMENT TO EXTEND TO ALL INDIVIDUALS COVERED BY FEGLI A RIGHT CURRENTLY LIMITED TO FEDERAL JUDGES. I AM REFERRING TO THE RIGHT UNDER THE FEGLI LAW TO MAKE AN IRREVOCABLE ASSIGNMENT OF LIFE INSURANCE TO ANOTHER INDIVIDUAL. AS A MATTER OF EQUITY, ALL FEDERAL EMPLOYEES SHOULD HAVE ACCESS TO THIS MECHANISM, WHICH IS A NORMAL ASPECT OF LIFE INSURANCE PROGRAMS ELSEWHERE.

AGAIN, THANK YOU FOR INVITING ME HERE TODAY. I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Ms. NORTON. Congresswoman Morella, I'll allow you to begin here.

Mrs. MORELLA. You know, as I mentioned, I was actually quoting from your statement when I talked about keeping the costs down and the work that has been done by OPM to reduce the cost of the premium under the FEGLI Program.

Do you want to offer any suggestions with regard to offsetting any increases if you see any? My point is, I'd like to invite you to continue to work with us in this area. I wondered if you wanted to offer anything for the record now.

Mr. SMITH. Yes. And, I don't now see the solution, but would certainly be happy to keep working towards it, on the living benefit particularly. It seems just such a worthwhile thing to do, that it would be gratifying to be able to find a way around the technical "pay-go" problem, but we've not found it yet.

Ms. NORTON. Would the gentlelady yield for a moment?

I'm sorry, I'm not sure I heard you address Judge Mannes' suggestion, does that simply have nothing to do with paying for the direct?

Mr. SMITH. The suggestion that there are sufficient reserves in the life insurance—

Ms. NORTON. Or, adjustments in the premiums themselves.

Mr. SMITH. And, that's why I say the "pay-go" problem is technical, it's really the first year outlay and what is happening there, as opposed to long term.

With the living benefit, particularly, there is no long-term cost. You, yourself, used the buyout bill example, and it's the same kind of frustration there. The living benefit would be actuarially adjusted to be equivalent to what would have been paid had it gone out at the time of death. And so, there is no cost to the program long term.

You change the time at which the money goes out. In the first year, you pay people you would not otherwise have paid that year, and so you have an additional outlay, and that's what's being held against us on the "pay-go" side.

Ms. NORTON. Could you comment on Mr. Gilman's \$1, for his bill, \$1 approach, \$1 per enrollee approach?

Mr. SMITH. Yes. I would like an opportunity to look at that. I haven't done the math to know if a dollar is the right amount. I'm a little bit reluctant because we have so recently been able to reduce the rates and encourage people to sign up for life insurance who hadn't been covered before, that to so soon come at them with a kind of involuntary surcharge concerns me a little bit, but that's a very quick reaction and I would appreciate some time to think about that and other solutions.

Ms. NORTON. Of course, if you had some indication from the representatives of these groups that they preferred that, that problem would diminish, apparently.

Mr. SMITH. We would certainly be trying to represent the interests of all the people who are involved in that, yes.

Ms. NORTON. They said you know, assess us a \$1 and go ahead and do it, I take it that would eliminate that problem.

Mr. SMITH. It would certainly—

Ms. NORTON. It wouldn't be involuntary if the associations representing these groups—

Mr. SMITH. It would be important to know that.

Mrs. MORELLA. I really don't have any questions except I think it points out we will find a way.

Thank you. Thank you, Madam Chair.

Ms. NORTON. Thank you, and we'd appreciate your being back to us soon on the question of the dollar per enrollee and whether that might also work for any of the other bills.

Mr. SMITH. May I say on the bill that concerns the judges, we have not found a "pay-go" problem.

Ms. NORTON. Oh, you have no "pay-go" problem?

Mr. SMITH. No. OMB has not asserted a "pay-go" problem as concerns the judges. CBO has, but not OMB.

Ms. NORTON. I see, so if OMB and CBO can sit down together, we might be able to work that one out. CBO, of course, is king of that hill, but there still might be a way there. That's encouraging to see that we are at least that close.

On the program in general, you mentioned the reluctance to institute an involuntary surcharge, even for the good of at least some of the beneficiaries. I wonder if you have, with such a large enrollment in the Federal Government, if you have ever conducted a customer satisfaction survey on the program, such as the one you are currently doing on the FEHBP.

Mr. SMITH. We have not ourselves done a customer service satisfaction survey on the life insurance program. It's certainly a worthy suggestion.

We have, for about 4 years, done customer service surveys on the retirement side, where we directly administer the program ourselves, and, as you know, we are now working on the health insurance side.

The evidence that we have about life insurance does not tell us that we have a lot of problems or a lot of customer dissatisfaction, just from hearing the exceptional things that come in. So, we haven't felt urgent about that.

Ms. NORTON. And, of course, your high enrollment.

Mr. SMITH. Yes, and Metropolitan Life Insurance, the contractor who administers the program, does do customer survey work itself with relatively decent results, but I think it would probably be worthwhile when we finish with the health insurance survey to ourselves do something to confirm that things are as good as we think that they are.

Ms. NORTON. I have a series of questions that—inasmuch as this is the first oversight hearing that has been held for some time—I have a series of detailed questions that I would like to submit to you and ask you to submit them back to us within 30 days.

Mr. SMITH. Of course.

[The information referred to follows:]

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ELEANOR HOLMES NORTON
TO CURTIS J. SMITH

GENERAL

Question 1. While you infer enrollee satisfaction with the program based on the fact that 90% of the workforce is enrolled, I would like to know whether you have

ever conducted a customer satisfaction survey on the program like you are currently doing with FEHBP?

Answer. We have not ourselves done a customer service satisfaction survey on the life insurance program. It is certainly a worthy suggestion.

For the past four years we have done customer service surveys on the retirement side, where we directly administer the program, and, as you know, we are now working on a health insurance survey.

We have not experienced a lot of problems or customer dissatisfaction with the life insurance program. When we do hear of something, the circumstances are truly exceptional. Since Metropolitan Life, the contractor who administers the program, does do customer surveys, with decent results, it has not seemed urgent for us to do so. After we finish the health insurance survey, I think it might be worthwhile to conduct our own survey to confirm that things are as good as we think they are.

Question 2. Does OPM have any recommendations for revisions or additions to the FEGLI Program?

Answer. While the Program does not require any major revision, there are a few changes that we believe would be helpful to enrollees.

We favor extending the right of irrevocable assignment of FEGLI to all Federal employees and annuitants. We believe that all Federal employees and annuitants should be able to enjoy the same tax advantage presently enjoyed by judges. Further, assignment of life insurance could be used as an option in divorce proceedings to guarantee former spouses and children a measure of financial relief.

We also favor amending 5 U.S.C. 8705(a) to permit OPM to accept a designation of beneficiary that was received before death by an annuitant's former employing office. As the law is currently written, an annuitant's designation of beneficiary must be received by OPM prior to death. Occasionally, a relative of a dying annuitant will deliver a designation of beneficiary to the former employing office rather than send it to OPM. We have had cases where the annuitant's last wishes were denied because the annuitant died before the designation reached OPM.

The FEGLI contract has a two year incontestability clause. We can abide by its provisions except in a situation where the law has specific requirements, for example, that an employee be enrolled for the five years prior to retirement in order to carry the coverage into retirement. In order to implement the contractual provision consistently and in the best interest of our enrollees when the Government has made an error, we favor an amendment to provide that coverage in effect for two or more years shall remain in effect unless cancelled by the enrollee.

In situations when it is necessary for Metropolitan to issue a post mortem conversion policy and, therefore, the enrollee has not had the opportunity to designate a beneficiary for the conversion contract prior to dying, the provisions of the conversion contract may result in someone other than the designee under the FEGLI policy receiving the benefit. In order to ensure that the enrollee's wishes are carried out, we favor an amendment that specifies that the FEGLI designation remain in effect in cases of post mortem conversion.

Question 3. Last month, during a briefing on the FEGLI Program which OPM conducted for subcommittee staff, seven tables were used to present information for 1993 on FEGLI enrollment, the number of deaths claims, the distribution of employees and annuitants between the various insurance options, assets and liabilities, and cash flow. Can you briefly summarize the information contained in each table which I will insert in the record following your comments on them?

Answer. Note: Copies of the tables are attached.

Table 1. This table summarizes the number of enrollees and average insurance in force by FEGLI option (Basic, Option A, Option B or Option C) and employment status (active versus retiree) as of September 30, 1993.

TABLE 1.—1993 FEGLI ENROLLMENTS

Employees			Annuitants			Total		
Option	Number	Average insurance in force	Option	Number	Average insurance in force	Option	Number	Average insurance in force
Basic	2,503,769	\$37,960	Basic	1,544,393	\$17,760	Basic	4,048,162	\$30,254
Option A	1,144,516	10,000	Option A	264,953	6,676	Option A	1,409,469	9,375
Option B	1,247,623	124,964	Option B	85,338	55,104	Option B	1,332,961	120,491
Option C	1,117,464	¹ 9,000	Option C	253,532	3,930	Option C	1,370,996	8,062

¹ Estimate assumes \$5,000 for spouse and \$2,500 for an average of 1.6 children.

Source: OPM/RIG/Office of Actuaries.

Table 2. This table lists actual death claims in Fiscal Year 1993. It breaks down the number and average insurance paid by employment status (employee vs. annuitant) and FEGLI option.

TABLE 2.—1993 ENROLLEE DEATH CLAIMS

Employees			Annuitants			Total		
Option	Number	Average insurance in force	Option	Number	Average insurance in force	Option	Number	Average insurance in force
Basic	4,910	\$43,870	Basic	56,445	\$10,345	Basic	61,355	\$13,027
Option A	2,176	10,000	Option A	6,696	5,496	Option A	8,872	6,601
Option B	1,993	118,063	Option B	1,651	69,715	Option B	3,644	96,158
Option C	3,938	4,342	Option C	1,626	3,936	Option C	5,564	4,224

Source: OPM/RIG/Office of Actuaries.

Table 3. Table 3 shows the effects of the 1993 FEGLI open enrollment period. It gives the before (1992) and after (1993) enrollments and average insurance in force by option.

TABLE 3.—EMPLOYEE ENROLLMENT

(Before and after open season)

1993			1992		
Option	Number	Average insurance in force	Option	Number	Average insurance in force
Basic	2,503,769	\$37,960	Basic	2,587,608	\$36,270
Option A	1,144,516	10,000	Option A	1,104,578	10,000
Option B	1,247,623	124,964	Option B	1,072,601	113,322
Option C	1,117,464	9,000	Option C	1,082,098	9,000

¹ Estimate assumes \$5,000 for spouse and \$2,500 for an average of 1.6 children.

Source: OPM/RIG/Office of Actuaries.

Table 4. This table summarizes FEGLI assets and liabilities for 1992 and 1993. It breaks down the current fund and present value of the net liability for all the options.

TABLE 4.—FEGLI ASSETS AND LIABILITIES

Option	(1) Present value future benefits	(2) Present value future contributions	(3) Current fund	(1)—[(2)+(3)] Net liability
1993:				
Basic	\$23,018,000,000	\$12,352,000,000	\$11,424,000,000	(\$758,000,000)
Option A	1,216,000,000	669,000,000	1,228,000,000	(681,000,000)
Option B	24,707,000,000	16,018,000,000	1,345,000,000	7,344,000,000
Option C	381,000,000	306,000,000	114,000,000	(39,000,000)
Total	49,322,000,000	29,345,000,000	14,111,000,000	5,866,000,000
1992:				
Basic	24,615,000,000	15,801,000,000	10,592,000,000	(1,778,000,000)
Option A	1,141,000,000	736,000,000	1,228,000,000	(823,000,000)
Option B	18,679,000,000	15,504,000,000	1,177,000,000	1,998,000,000
Option C	357,000,000	320,000,000	95,000,000	(58,000,000)
Total	44,792,000,000	32,361,000,000	13,092,000,000	(661,000,000)

Source: OPM/RIG/Office of Actuaries.

Table 5. Table 5 gives the enrollee distribution among the five multiples of salary levels of FEGLI Option B.

TABLE 5.—OPTION B DISTRIBUTION

[Between multiple options in 1993]

Option	Number	Percentage of total taking option B
1 times Salary	202,336	15.2
2 times Salary	249,138	18.7
3 times Salary	204,684	15.4
4 times Salary	80,724	6.1
5 times Salary	596,079	44.7
Total	1,332,961	

Source: OPM/RIG/Office of Actuaries.

Table 6. Table 6 lists the annuitants' distribution of life insurance coverage. It gives the number with each of the Basic Insurance's three reduction options (0%, 50% and 75% reductions) and those without insurance as of September 30, 1993.

TABLE 6.—ANNUITANT DISTRIBUTION

[Between basic options in 1993]

Option	Number	Percentage of total with insurance	Percentage of total annuitants
No Reduction	115,948	7.5	6.8
50% Reduction	187,320	12.1	11.0
75% Reduction	1,241,125	80.4	72.6
Subtotal	1,544,393		90.3
No Insurance	166,147		9.7
Total	1,710,540		

Source: OPM/RIG/Office of Actuaries.

Table 7. This table shows an estimation of the cash flow during 1993 of the FEGLI Funds. It gives the beginning balances, income (premiums and investments), paid death claims, expenses (OPM and carrier administration), and ending balances of all the FEGLI Options.

TABLE 7.—FEGLI INSURANCE FUNDS

(Estimation of cash flow during 1993—In millions of dollars)

Option	Beginning balances	Income	Paid claims	OPM ex-penses	Admin. ex-penses	Ending balances
Basic	\$10,592.0	\$1,686.3	\$849.1	\$1.0	\$4.2	\$11,424.0
Option A	1,228.0	68.2	67.5	0.4	0.3	1,228.0
Option B	1,177.0	532.5	362.3	0.4	1.8	1,345.0
Option C	95.0	43.2	23.7	0.4	0.1	114.0
Totals	13,092.0	2,330.2	1,302.6	2.2	6.4	14,111.0

Source: OPM/RIG/Office of Actuaries.

Question 4A. I understand that OPM invests the FEGLI premium payments in Government securities. Explain the manner in which these investments are made.

Answer. The law requires that the Treasury invest FEGLI funds in interest-bearing obligations of the United States. As with many Government accounts, Treasury's policy for FEGLI investments is that they be in special-issue securities that are based on or mirror marketable Treasury issues.

FEGLI funds may be invested in special-issue securities based on any outstanding Treasury marketable issue, the purchase price being the current market price of the companion marketable issue. The current FEGLI investment approach is to place most FEGLI funds into securities with 3 and 10 years to maturity. This provides a portfolio balanced between shorter and longer—term securities and a reasonable rate of return. OPM generally holds all securities to maturity, isolating the portfolio from gains or losses due to the fluctuation of the value of the companion marketable securities.

Question 4B. Does OPM utilize any financial consultants in making determinations concerning these investments?

Answer A. Since FEGLI investments are limited to Treasury securities, investment decisions are essentially pro forma. The options are exceedingly limited and we have little latitude for choice. Securities are almost always held to maturity and redeemed at par value. Given our investment parameters, we do not believe that consulting services would be either appropriate or cost-effective.

Question 5A. In your testimony, you indicate that OPM was able to reduce the cost of premiums because of favorable returns on the invested premium amounts and a lower mortality rate. Was that the reason OPM decided to hold an open season for FEGLI enrollment in April 1993?

A. Yes.

Question 5B. If circumstance in the future resulted in another opportunity to reduce premium rates, would OPM conduct another open season?

Answer. A. In all likelihood, yes. However, there may be some instances where the reduction is so small as to be inconsequential.

Question 5C. Are there any other circumstances that would cause OPM to conduct an open season?

Answer. A. The only reason we can foresee other than premium reductions would be major structural changes to the program as a result of legislation.

MET LIFE

Question 1A. Met Life serves as the prime carrier for FEGLI. How long has this relationship existed?

Answer. Metropolitan has been the prime insurance carrier for FEGLI since the inception of the Program in 1954.

Question 1B. Is there competition for this position? Why not?

Answer. The FEGLI law exempts the FEGLI contract from competitive bidding [5 U.S.C. 8709(a)]. Congress in 1954 recognized the impracticality of doing business with hundreds of different life insurance companies and the difficulty of choosing one or two companies to the exclusion of all others. Therefore, Congress decided the best solution was to contract with one major insurance company with substantial experience in the field of group insurance and require that company to reinsure portions of the total insurance with other companies having a share of the group coverage market. Nevertheless, we have written recent procurement regulations to accommodate selecting another administrator or administrators should the need arise.

Question 1C. What are the advantages and disadvantages of maintaining OPM's longstanding relationship with Met Life as the prime carrier for FEGLI?

Answer. We are very satisfied with Metropolitan's performance. There is no reason to disrupt the current arrangement, since Metropolitan's service to beneficiaries as well as to the Government is excellent. Metropolitan processes over 65,000 claims annually, and we get almost no complaints. If we were to compete the contract, it would disrupt a process that is efficient and works consistently well. Further, it would require extra expenditures because we would have to reprint all of the forms, brochures, etc., that contain the OFEGLI address.

Question 2A. I understand that the Government reimburses Met Life for all of the direct costs resulting from the administrative services it provides, along with an allocation for overhead costs. What was the amount of these costs for FY 1993? Could you provide this information for the record for each of the years 1989 through 1992?

Answer. The administrative costs for 1993 were \$6,428,926. The figures for 1989 through 1992 are: \$4,607,515, \$4,171,913, \$4,744,563, and \$5,423,003 respectively. The cost was higher in FY 1993 because of open season expenses and additional auditing expenses.

Question 2B. What if any review or auditing of these costs is performed by OPM?

Answer. The FEGLI contract is audited by the OPM Inspector General on a five year cycle. We also require Met to have its FEGLI line of business audited by an independent CPA firm.

Question 3. Since the Government is contractually obligated to reimburse the prime insurer for all FEGLI claims, why is it necessary for OPM to continue to maintain the \$50 million advance on claims as a reserve held by Met Life?

Answer. This "special contingency reserve" is required by 5 USC 8712 to be held by the company administering FEGLI. The amount (\$50 million) of the reserve is not mandated by law, but is set administratively by OPM to be the amount that makes "satisfactory provision for adverse fluctuation in future charges under the policy". The amount of the reserve has varied over the years; for instance, it was originally set at \$100 million, approximating one year's premium.

As originally conceived, the FEGLI Fund would pay to Met Life the amount necessary to bring the reserve up to the established level. Similarly, Met Life would "refund" to the FEGLI Fund the excess when the reserve exceeded that amount. For many years now, no money has actually changed hands; OPM and Met Life simply make bookkeeping entries to bring the reserve the established level.

We would have no objection to the elimination of the requirement in the law that this special contingency reserve be held by the company administering FEGLI.

STATE STREET BANK

Question 1A. Effective January 1994, OPM and Met Life implemented a change in the manner in which life insurance claims are distributed to beneficiaries. Met Life began automatically opening a money market option account in the beneficiaries name at State Street Bank from which the beneficiary can disburse or cash-out the claim. Describe how this new disbursement program operates and the reasons for this change?

Answer. For claims of \$7500 or more (per individual beneficiary) a money market account is opened and checkbook issued. The funds are immediately available and interest is credited to the beneficiaries' accounts. Met Life suggested this arrangement because many of its other large groups use this method and it is a free enhancement.

Question 1B. What is the benefit to the beneficiaries of this change in method of payment?

Answer. The beneficiaries get their funds in an interest bearing form. The funds are immediately available for bereavement or other expenses. Investment decisions can wait until the immediate shock of the death decreases.

Question 1C. Does OPM benefit in any way from this change?

Answer. This arrangement saves the Program money because the usual postage and draft charges are borne by the money market program instead of the FEGLI Program.

Question 1D. Do either Met Life or the State Street Bank benefit financially from this arrangement?

Answer. There is a profit motive in any business arrangement. Met Life can benefit financially if the rate of interest guaranteed on the money market funds is less than what is earned. The State Street Bank earns its usual administrative fees.

REINSURANCE

Question 1A. I understand that both small and large insurance companies participate in the risk pool, that the companies involved assume varying degrees of risk and are compensated at varying rates. What is the amount of risk assumed by Met Life and the amount of compensation it receives as a result?

Answer. Met Life's risk was higher in the early days of the FEGLI program. Today, there is a large Fund that will likely cover most claims. There is still the risk of unlikely but possible events such as major, adverse changes in mortality brought on by an epidemic or similar calamity.

Nevertheless, in 1990, OPM and Metropolitan agreed to waive the \$850,000 risk charge indefinitely. Under new procedures, when the FEGLI Fund balance is greater than five times annual claims, OPM and Metropolitan may agree that Met will relinquish the risk charge in favor of a profit opportunity in the form of a service charge.

During negotiations with Met in conjunction with the risk charge waiver, OPM agreed to pay each reinsurer a minimal amount of \$500 annually to cover its administrative expense. There are currently 60 reinsurers in the Program. Thus, the \$850,000 has been reduced to \$30,000.

Question 1B. Describe the terms of agreement between OPM and the insurance companies which participate in the reinsurance pool.

Answer. The law requires OPM to make arrangements with the prime contractor for reinsurance agreements. OPM and Metropolitan worked out an arrangement whereby the reinsurance agreements are made directly between Metropolitan and the insurance companies. Metropolitan sends the proposed agreements to OPM for review and ultimate approval.

Question 1C. Describe the process by which OPM selects the companies that participate as reinsurers?

Answer. In accordance with the law, OPM and Metropolitan worked out an arrangement whereby Metropolitan selects the reinsurers companies. Metropolitan sends the proposed agreements to OPM for review and ultimate approval.

Question 1D. How is each company's share of risk allocation determined?

Answer. Each company's share of the risk is determined according to a formula set forth in the FEGLI law (5 U.S.C. Chapter 87). The formula requires each company's share to be based upon the total amount of its group life insurance in force. Reinsurance is reallocated annually based upon standard criteria.

Thus, if a company's group life insurance in force changes over the year, its reinsurance share for the next year will be adjusted.

Question 2A. A 1988 House Government Operations Committee report indicated that since 1972, the Government has been paying a total of \$850,000 per year to insurance companies who participate in the FEGLI risk pool. What is the current amount of the reinsurance or risk charge paid by the Government to insurance companies under FEGLI and how is it determined?

Answer. In 1990, OPM and Metropolitan agreed to waive the \$850,000 risk charge indefinitely. Under new procedures, when the FEGLI Fund balance is greater than five times annual claims OPM and Metropolitan may agree that Met will relinquish the risk charge in favor of a profit opportunity in the form of a service charge. When the balance in the FEGLI Fund falls below five times annual claims, a risk charge is paid. It is determined by negotiated agreement between the contractor and OPM and is specified in the contract.

Question 2B. Has a reinsurer ever had to pay a claim out of its own funds since the inception of FEGLI?

Answer. No.

Question 2C. Since the Government is in effect a self-insurer of the FEGLI Program, why is it necessary to pay this amount to companies that are not at risk?

Answer. Met's risk was higher in the early days of the FEGLI Program. Today, there is a large Fund that will likely cover most claims. There is still the risk of unlikely but possible events such as major, adverse changes in mortality brought on by an epidemic or similar calamity.

Also, we negotiate an annual premium payment to Met from the Fund which in any one year may leave the insurer in cash flow difficulties, although adjustments are made subsequently if necessary.

Nevertheless, in 1990, OPM and Metropolitan agreed to waive the \$850,000 risk charge indefinitely. Under new procedures, when the FEGLI Fund balance is greater than five times annual claims OPM and Metropolitan may agree that Met will relinquish the risk charge in favor of a profit opportunity in the form of a service charge. During negotiations with Met in conjunction with the risk charge waiver, OPM agreed to pay each reinsurer a minimal amount of \$500 annually to cover its administrative expenses. There are currently 60 reinsurers in the Program. Thus, the \$850,000 has been reduced to \$30,000.

Question 2D. In its 1988 report, the House Government Operations Committee recommended that the statutory obligations to pay reinsurance be rescinded. Would OPM support repeal of the statutory requirement that the Government reinsure (5 U.S.C. 8710)?

Answer. OPM does not reinsure the FEGLI contract. Rather, in accordance with 5 U.S.C. 8710, it arranges with Metropolitan to reinsure the contract.

We would oppose eliminating the reinsurance arrangement at this time for the following reasons:

Currently, 28% of the FEGLI conversion contracts are provided by the reinsurers. If the reinsurance pool is eliminated, we would need authority to create a conversion pool.

It may have adverse effects for Metropolitan (or any FEGLI contractor) if eliminating the reinsurers affects the amount of reserves required to be maintained in some states. Further, there may be other consequences for the contractor that should be considered to properly evaluate the impact of an elimination of the reinsurance arrangements. We would like to explore this in depth with Metropolitan.

If a risk charge arrangement with Metropolitan is reinstated because the FEGLI Fund balance drops below five times annual claims, we would like the flexibility of having the reinsurers available to help absorb the risk.

Question 2E. What would be the tax consequences of the government self-insuring?

Answer. We have some concerns about the possible tax consequences on the Program's beneficiaries of such a move. Under a self-insurance arrangement, the death benefits paid may not receive the same favorable treatment generally accorded distribution from life insurance policies. The employer-paid portion of the benefit, which in our case equals one-third of the basic insurance amount, may be subject to tax if it exceeds \$5,000 and is not paid out under a life insurance contract.

Question 1. You object to holding a new open season as H.R. 512 provides because of the "substantial cost" that OPM would incur as a result. This would only make it possible for current enrollees to take advantage of this new benefit. What alternative administrative approach would you take to enable nonenrollees to establish their interest in the FEGLI program because of this new benefit?

Answer. We have considered a limited open enrollment period that would allow employees to cancel their waivers of Basic Life Insurance coverage, but not allow them to elect optional coverage. Instead of complete program literature for everyone, we could provide agencies with language for an employee letter explaining Basic Life Insurance, including the living benefit.

At present, almost 90 percent of the eligible Federal employees are covered by Basic Life Insurance. Unlike health benefits and optional life insurance, employees have basic life insurance automatically unless they waive it. Therefore, the 10 percent of the employees who do not have Basic Life Insurance coverage had to take positive action in order to avoid having coverage. Since we had an open season only a year ago, holding an open season to give that group a chance to get Basic Life Insurance with living benefits will result in a high level of adverse selection. That is, employees who have learned that they have a serious illness since the last open season are the ones most likely to cancel their waiver.

We believe that most employees, having had a chance to adjust their FEGLI coverage just last year, are satisfied with the level of coverage they now have. Those who would be likely to enroll or increase their coverage as a result of this legislation would, for the most part, be those who had some expectation of using the living benefit. We don't believe that the cost of any type of open season and the resulting exposure of the FEGLI Program to adverse selection is justifiable at this time.

Question 2A. Congressman Gilman suggested an approach to solving this bill's pay-go problem in his oral statement. He proposed requiring enrollees to pay an additional premium of \$1 per month for one year to produce receipts sufficient to offset the increase in direct spending which would occur in the first year following enactment. Does OPM support this proposal?

Answer. No, OPM does not support this proposal because we held an open season only a year ago on the basis of a reduction in rates. We are concerned that, despite the nominal amount of the surcharge, employees would consider this an act of bad faith by the Government.

Question 2B. Does OPM have any alternative suggestions to address the pay?

Answer. No, we do not have any alternatives to address the paygo effect of this proposal, but OPM would be willing to review any proposals the Committee may have that offset the paygo costs of H.R. 512.

NOTE: In December 1992, the U.S. Department of the Treasury published proposed regulations concerning tax consequences of accelerated death benefit riders to insurance contracts. Further, section 7703 of H.R. 3600, The Health Security Act, would codify provisions similar to those set forth in Treasury's proposed regulations. These accelerated death benefit riders are comparable to living benefits under H.R. 512, except that under H.R. 512 death must be anticipated within 9 months, while under the provisions related to accelerated death benefits riders, the death must be anticipated within 12 months. Since both the proposed regulations and H.R. 3600 remain pending, the taxability of benefits that would be received under H.R. 512 is not clear.

Question 1. You indicate that OPM has a longstanding policy of opposing retroactive benefits to retirees. Notwithstanding your policy, has the Congress ever approved retroactive benefits for retirees?

Answer. Yes. Congress has enacted a number of provisions giving retirement benefits to individuals who retired, or survivors on the rolls, before a change in law occurred. However, these were not retroactive in the same sense as the proposed change in the FEGLI law. Rather, they gave a new benefit prospectively to people retired or on the rolls as survivors before the law changed. For example:

A law increasing the annuity for those entitled to annuity beginning before April 5, 1952.

A law increasing annuity to those entitled to annuity beginning October 2, 1956, through December 31, 1965.

A law to increase the annuity for unremarried widows of employees and retirees with ten or more years of service who died before February 29, 1948.

A law that retroactively applied current annuity computation to employees who retired between April 1, 1948, and September 29, 1949.

Similarly, Public Law 98-615, as amended, included a number of provisions that gave prospective benefits to people already on the annuity roll. Survivor annuitants no longer faced termination of their annuities if they remarried after age 55, but the change only applied to remarriages occurring after enactment of the change. Retirees already on the rolls were permitted to elect to provide a survivor annuity for a former spouse but only upon payment of the amount by which their annuity would have been reduced if the election had been made at retirement, plus interest. In fact, the effective date section of the law continues to expressly exclude from its coverage court-awarded survivor benefits for divorces terminating post-retirement marriages if the retirement occurred before the law's effective date unless the retiree had elected to provide a survivor annuity for that spouse by the effective date. The law did provide one special benefit to former spouses of employees retired before its enactment if the former spouse satisfied certain requirements. However, even this special benefit was without cost to the Retirement Fund. The statute provided that each year the Retirement Fund recoups the cost of the special former spouse benefit from the Treasury.

Question 2A. CBO has not yet been able to provide this subcommittee with an estimate on this bill. You indicate in your testimony that it would be "extraordinarily costly" to implement H.R. 891. Has either OPM or OMB prepared an estimate of the bill's cost? If so, what does it indicate?

Answer. We estimate that claims could increase by \$288 million. This would be offset by an increase in premiums of \$175 million. Therefore, the net cost increase would be \$113 million. These numbers are based on a calculation that while over 650,000 retirees would be eligible to select retroactive FEGLI coverage under H.R. 891, the prohibitive costs to retirees of paying years' worth of retroactive premiums would limit participation to only 3 percent of those eligible.

Question 2B. Do you have any suggestions on how to resolve the bill's pay-go problem?

Answer. In view of the costs to both the Program and the retirees, we have not attempted to address the pay-go problem.

Question 3. Your statement indicates that providing coverage to individuals who did not participate in the FEGLI Program as active employees undermines one of the fundamental concepts of insurance. Yet the preamble of the bill indicates that it would enable employees who retired before 12/9/80 "To elect to resume coverage" under FEGLI. Do you read the bill to provide the opportunity for persons who had not participated in FEGLI prior to retirement to now do so?

Answer. As we understand it, those who retired or went on OWCP from November 2, 1978, through December 8, 1980, had to meet the 5-year requirement. Therefore, they would already have at least Basic coverage. Employees retiring before November 2, 1978, generally needed 12 years of creditable service to continue coverage. Some of the pre-1978 retirees could have lost coverage because they lacked 12 years of service. That is the group we believe could resume coverage under H.R. 891.

H.R. 3297

Question 1. You stated there are some technical problems with this bill which OPM has been discussing with subcommittee staff. Could you identify what they are for the record?

Answer. We want to revise the definition of "employee" at 1(a)(11) to clarify to whom the bill applies.

There are redundancies in Sections 8714a(c)(3) and 8714b(c)(1) concerning conversion opportunities for judges who resign without meeting the requirements of 371(a). A conversion opportunity is provided for all separating employees under 5 U.S.C. 8706. Therefore, we requested that the redundancies be removed.

The original bill has an effective date retroactive to August 1, 1987, meaning that judges who retired after August 1, 1987, and are now given active employee status would owe thousands of dollars in premiums and OPM would have to make retroactive adjustments in premiums. We suggested that the basic changes contained in the bill be effective prospectively.

We requested language that would expressly preserve the treatment currently offered administratively to judges, to ensure that no one would suffer a diminution in benefits as a result of the bill.

We requested that the bill reinstate several provisions relating to unreduced optional life insurance for Article III judges which were inadvertently deleted under Public Law 99-335.

These technical problems were discussed with the subcommittee staff and a discussion draft amendment in the nature of a substitute to H.R. 3297 was drawn up.

Question 2. What are benefits to an enrollee of being able to assign their life insurance to another person?

Answer. Assignments of insurance are generally made for personal financial planning purposes. If an assignment is made at least 3 years before an individual's death, the insurance is considered a gift to the assignee, rather than a part of the insured's estate. Current Federal estate tax law allows an unlimited marital deduction for that portion of the gross estate passed to a surviving spouse. Thus, there is no apparent immediate tax advantage to assigning ownership of a life insurance policy to a spouse. However, State tax laws vary and tax savings under Federal or State law can be considerable if the estate is large and ownership of a life insurance policy is assigned to children or to a trust.

Further, it could be used as an option in divorce proceedings to guarantee former spouses and children a measure of financial relief. An enrollee may be required by court order to keep his or her FEGLI coverage and designate a former spouse and/or children as beneficiaries. Under FEGLI law, these court orders have no effect. Too frequently, the enrollee cancels the policy or the designation or changes beneficiaries, leaving the former spouse and/or children without any financial support. If the enrollee assigns the FEGLI policy to a former spouse or child(ren), on the other hand, the enrollee would no longer control the policy and could not cancel the policy or the designation, or name a new beneficiary.

Question 3A. You did not comment in your testimony on the cost of this bill. CBO's estimate indicates that it raises pay-go issues because it will increase receipts as well as direct spending costs. Unfortunately, CBO's estimate did not reflect a dollar amount for either. Has either OPM or OMB prepared an estimate of this bill? If so, what does it indicate?

Answer. With regard to extending the unreduced insurance benefit to judicial officials enumerated in this bill, the Life Insurance Fund would benefit in the near term from generally higher premium payments from this group; however, such payments would be more than offset over the long term by the increase in claims paid from the Fund due to unreduced FEGLI benefits. For the period 1995 to 1999, we would expect to see the following:

Additional Premiums Collected	\$400,371
LESS: Additional Claims Paid	(1,121,522)
Difference	(721,151)

The numbers are based on 20 additional judges per year retiring, with an 87% rate of participation in FEGLI.

Question 38. If it has a pay-go problem, would you oppose it on that basis as you have the other two bills before us today?

Answer. Yes, unless the pay-as-you-go costs of H.R. 3297 are offset, we would have to oppose it for violating the requirements of the Budget Enforcement Act.

Ms. NORTON. Thank you very much, unless the ranking member has any further questions.

Mr. SMITH. Thank you.

Ms. NORTON. Finally, Mr. Al Jones Golato, national vice president, National Association of Retired Federal Employees. Pleased to welcome you.

STATEMENT OF AL GOLATO, VICE PRESIDENT, NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES

Mr. GOLATO. Madam Chairwoman, I am Al Golato, vice president of the National Association of Retired Federal Employees. On behalf of the half million members of NARFE, I want to commend and thank you for your advocacy of this country's Federal civil service employees and retirees. The scheduling of today's hearing to review the equity and adequacy of the Federal Employees' Group Life Insurance Program clearly shows your active interest in the employee benefit programs under this subcommittee's jurisdiction.

We appreciate the opportunity to comment on several bills pending before this subcommittee which would amend the FEGLI Act. However, before I address these proposals, I would like to say that,

in general, NARFE has been pleased with the benefits and administration of this employee benefit program.

When this hearing was called, I conferred with our retirement benefits department staff to see if there were aspects of the FEGLI Program which generated complaints or questions from our membership. I was advised that, aside from routine questions about checking or changing beneficiary designations and procedures for filing claims, there were very few complaints. The most common complaint is from members who retired before December 1980 and are forced to accept the gradual reduction of their basic policy to 25 percent of its face value at retirement.

Under the enactment of Public Law 96-427, effective December 9, 1980, the basic life insurance policy of an insured annuitant began to reduce by 2 percent per month after age 65 to a minimum of 25 percent of its value. The new law offered persons retiring on or after the effective date three election options. They could: First, pay no premiums after retirement and accept the 75 percent reduction; second, continue a premium payment for a one percent per month reduction to 50 percent of face value; or third, continue a higher premium payment and accept no reduction in coverage. In addition, that law stipulated that persons retiring after December 31, 1989, would be required to continue premium payments until they reached age 65, with the premiums set according to the reduction formula which was elected.

While we welcomed the reduction choices provided by the 1980 act, we believed the options should have been made available to persons already retired. We immediately began advocating extension of the options to persons retired before December 9, 1980. Congressman Barney Frank later introduced legislation to achieve that goal, and he has graciously reintroduced it in each succeeding Congress, including the current one.

Mr. Frank's bill, H.R. 891, would extend the current FEGLI options to persons who retired or were injured and covered by the Federal Employees Compensation Act, before December 9, 1980. The bill would provide a 1-year period for affected retirees to make a new life insurance election, and it would require electing annuitants to pay aggregate premiums to the employees' life insurance fund in an amount equal to what would have been to the chosen option.

During the 1980's, delegates to our biennial conventions consistently voted to make the extension of FEGLI options to earlier retirees a part of our official legislative program. However, when more than a decade passed without relief, delegates to the 1992 convention expressed concern about the cost-effectiveness of the proposal, which now would require some 14 years of aggregate premium payments for those who wished to take advantage of a new election offer.

Therefore, Madam Chairwoman, while NARFE supports the intent of Congressman Frank's bill, H.R. 891, we believe that the passage of time has greatly diminished the value of its provisions for all but a few former employees.

I also want to express our support for H.R. 521, Congressman Gilman's bill to amend the FEGLI Act to allow certain policyholders to collect their basic life insurance benefits while they are

living. As we know, all too often in the final days of life individuals require care and incur expenses well beyond their normal living costs. The availability of the insured's own basic life insurance in many cases could mean the difference between living those final days in dignity instead of destitution.

H.R. 521 would make this available to policyholders diagnosed as terminally ill with a life expectancy of 9 months or less. NARFE urges that this legislation be expanded so that the "living benefits" could be made in situations where the policyholder is certified with a chronic illness requiring long-term care, at home or in a nursing home. There are many instances in which persons, very often living alone, need home assistance or nursing home care even though they might not be immediately diagnosed as having a terminal illness. They, too, should be able to use their own life insurance money to help meet their long-term care needs.

I can assure you that nothing frightens a very sick individual more than the possibility of needing care or assistance they cannot afford and which is not covered by their health insurance. Having some life insurance money available is necessary to help meet these catastrophic costs and would go a long way in providing, not only medical care, but also peace of mind.

Madam Chairwoman, we are well aware that the living benefits we propose could not and should not replace the need for comprehensive health care or long-term care insurance. We fully intend to continue our advocacy of adequate and affordable health and long-term care coverage through the national health care reform debate and beyond. But we understand that many insurance companies already allow for the payment of living benefits for long-term care in certain cases of chronic illness or disability, as well as for strictly terminal illness, and we urge that the FEGLI Act be amended to provide similar options.

Another FEGLI change is provided for in Mrs. Morella's bill, H.R. 3297. While NARFE does not have a formal position on this proposal to equalize the life insurance options of various categories of judicial officials, we support the equity it is designed to achieve. We understand that this bill may be amended to extend to all FEGLI-insured employees and annuitants the option to make an irrevocable assignment of ownership of their policies. NARFE, of course, would support that amendment.

Again, I want to thank you for giving us this opportunity to comment on the FEGLI Program in general, and on particular pending amendments. We shall be happy to work with this subcommittee, your staff, and other interested parties to find ways and means for improving any and all aspects of the program in the future.

I have with me today two staffers, Judy Park, our legislative director, and Bill Smith, our retirement benefits specialist, who will help with any questions that you may have.

Thank you very much.

[The prepared statement of Mr. Golato follows:]



NARFE

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**STATEMENT OF AL GOLATO, VICE PRESIDENT
 NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES
 BEFORE THE
 SUBCOMMITTEE ON COMPENSATION & EMPLOYEE BENEFITS
 COMMITTEE ON POST OFFICE AND CIVIL SERVICE
 U. S. HOUSE OF REPRESENTATIVES
 OVERSIGHT HEARINGS ON THE
 FEDERAL EMPLOYEES GROUP LIFE INSURANCE PROGRAM
 APRIL 20, 1994**

Madam Chairwoman, I am Al Golato, Vice President of the National Association of Retired Federal Employees (NARFE). On behalf of the half million members of NARFE, I want to commend and thank you for your advocacy of this country's federal civil service employees and retirees. The scheduling of today's hearing to review the equity and adequacy of the Federal Employees Group Life Insurance (FEGLI) Program is evidence of your active interest in the employee benefit programs under this subcommittee's jurisdiction.

NARFE appreciates the opportunity to comment on several bills pending before this subcommittee which would amend the FEGLI Act. However, before I address these proposals, I would like to say that, in general, NARFE has been pleased with the benefits and administration of this important employee benefit program.

National Association of Retired Federal Employees

When this hearing was called, I conferred with the staff of NARFE's Retirement Benefits Department to see if there were aspects of the FEGLI Program which generated complaints and/or questions from our membership. I was advised that, aside from routine questions about checking or changing beneficiary designations and procedures for filing claims, there were few complaints. The most common complaint is from members who retired before December 1980 and are forced to accept the gradual reduction of their basic policy to 25 percent of its face value at retirement.

Until the enactment of P.L. 96-427, effective December 9, 1980, the basic life insurance policy of an insured annuitant began to reduce by 2 percent per month after age 65 to a minimum of 25 percent of its value. The new law offered persons retiring on or after the effective date three election options. They could: (1) pay no premiums after retirement and accept the 75 percent reduction; (2) continue a premium payment for a 1 percent per month reduction to 50 percent of face value; or (3) continue a higher premium payment and accept no reduction in coverage. In addition, that law stipulated that persons retiring after December 31, 1989 would be required to continue premium payments until they reached age 65, with the premiums set according to the reduction formula elected.

While NARFE welcomed the reduction choices provided by the 1980 law, we believed the options should have been made available to persons already retired. We immediately began advocating extension of the options to persons retired before December 9, 1980. Congressman Barney Frank later introduced legislation to achieve that goal, and he has graciously reintroduced it in each succeeding Congress, including the current one.

Mr. Frank's bill, HR 89I, would extend the current FEGLI options to persons who retired or were injured and covered by the Federal Employees Compensation Act (FECA), before December 9, 1980. The bill would provide a one year period for affected retirees to make a new life insurance election, and it would require electing annuitants to pay aggregate premiums to the Employees' Life Insurance Fund in an amount equal to what would have been due for the chosen option.

During the 1980's, delegates to NARFE's biennial conventions consistently voted to make the extension of FEGLI options to earlier retirees a part of our official legislative program. However, when more than a decade passed without relief, delegates to the 1992 convention expressed concern about the cost-effectiveness of the proposal, which now would require some 14 years of aggregate premium payments for those who wished to take advantage of a new election offer.

Therefore, Madam Chairwoman, while NARFE supports the intent of Congressman Frank's bill, HR 89I, we believe that the passage of time has greatly diminished the value of its provisions for all but a few former employees.

I also want to express NARFE's support for HR 521, Congressman Gilman's bill to amend the FEGLI Act to allow certain policyholders to collect their basic life insurance benefits while they are living. As we know, all too often in the final days of life individuals require care and incur expenses well beyond their normal living costs. The availability of the insured's own basic life insurance in many cases could mean the difference between living those final days in dignity instead of destitution.

HR 521 would make this available to policyholders diagnosed as terminally ill with a life expectancy of 9 months or less. NARFE urges that this legislation be expanded so that the "living benefits" could be made in situations where the policyholder is certified with a chronic illness requiring long-term care, at home or in a nursing home. There are many instances in which persons, very often living alone, need home assistance or nursing home care even though they might not be immediately diagnosed as having a terminal illness. They, too, should be able to use their own life insurance money to help meet their long-term care needs.

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Madam Chairwoman, NARFE is well aware that the living benefits we propose could not and should not replace the need for comprehensive health or long-term care insurance. We fully intend to continue our advocacy of adequate and affordable health and long-term care coverage through the national health care reform debate and beyond, if necessary. But we understand that many insurance companies allow for the payment of living benefits for long-term care in certain cases of chronic illness or disability, as well as for strictly terminal illness, and we urge that the FEGLI Act be amended to provide similar options.

Another FEGLI change is provided for in Mrs. Morella's bill, HR 3297. While NARFE does not have a formal position on this proposal to equalize the life insurance options of various categories of judicial officials, we support the equity it is designed to achieve. We understand that this bill may be amended to extend to all FEGLI-insured employees and annuitants the option to make an irrevocable assignment of ownership of their policies. NARFE would have no objection to such a provision.

Again, I want to thank you for giving us this opportunity to comment on the FEGLI Program in general, and on particular pending amendments. We shall be happy to work with this subcommittee, your staff and other interested parties to find ways and means for improving any and all aspects of the Program in the future.

I shall be happy to answer any questions you may have.

Ms. NORTON. Thank you very much, Mr. Golato, for that very helpful testimony.

You heard the testimony of Congressman Gilman, and I would appreciate your reaction to the notion of the 1 year only, \$1 surcharge per month, in order to pay for the spending costs for election by the terminally ill to take their insurance.

Mr. GOLATO. I have no doubt that NARFE would officially support that small cost to accomplish such a great benefit.

Ms. NORTON. Appreciate that.

I wonder if you could help us in figuring out how many people may be affected by some of these changes. For example, how many federal retirees continue to pay a portion of their FEGLI premium after retirement, in order to keep the benefit level from diminishing? How many elect to receive their life insurance, would elect to receive their life insurance benefits as a living benefit under Congressman Gilman's legislation? Do you have any idea about those figures, even rough ideas?

Mr. GOLATO. Madam Chairwoman, I don't personally, but if I may have your permission to ask our staffers to comment on that?

Ms. NORTON. By all means, please, if they could come to the table. Are we talking about a lot of people, a few people, are we talking about x percent, I mean, what are we talking about?

Mr. GOLATO. OK. This is Bill Smith, our retirement benefits specialist, Madam Chairwoman.

Mr. SMITH. Thank you, Al.

I don't have a specific answer to your questions about how many. I do know that in the past few years the number of retirees who elect to retain their life insurance after retirement has increased significantly, and I believe the Office of Personnel Management has some figures, that something like 65 percent of the increase in coverage is amongst that group of retirees.

So, there are all indications that more and more retirees are retaining life insurance than they have in the past, and from my position at NARFE and answering questions from retirees, I believe that many of them, as Al said, would be interested in the living benefit provision for sure, and I suspect in any other provisions that relate specifically to retirees and their well-being.

But, aside from that, I can't offer any specifics. We could probably do some research and provide information if you'd like.

Ms. NORTON. Indeed, I'm going to appreciate that response. I'm going to submit a set of questions to you, just to get your expert response as we go forward. Otherwise, you know, the way CBO and OMB do these things, they are on models, and I'm not sure that's anymore reliable. I suspect it's less reliable than looking to what your actual experience has been.

One more question. In light of the fact that financial resources determine eligibility for Medicaid's long-term care benefits, if FEGLI were to permit Federal employees to utilize their life insurance benefits for purposes of their own long-term care, do you think this would disadvantage them with respect to qualifying for long-term care benefits through Medicaid? In other words, would the availability of life insurance funds count as financial resources for Federal employees, whether they wanted to cash in these benefits or not?

Mr. GOLATO. I'll answer a portion of that, and I'll ask Bill, then to continue. One thing, for long-term care in nursing homes, particularly, many people, as you know of course, have to spend down and become poor in order to qualify for Medicaid.

I have personal experience on this with some family members, and as a result can state that were these family members—as it would occur to most people—have some resources of their own they would be able to go into some nursing homes probably short-term, without having to resort to spending down in order to qualify for Medicaid.

And so, that's what this insurance would do to a great extent to some of them.

As far as whether that insurance should be considered as part of the assets for Medicaid purposes, are you familiar with that, Bill? I don't recall that.

Mr. SMITH. My guess is it probably would, but as you know I'm sure, Medicaid is a State-by-State thing, and some States probably allow more than others. Well, I know they do.

But, I would support what Al said, that if they had this money to pay for the nursing home, Medicaid may not be a problem, it may be they ever need to have Medicaid if they had this money up front from the life insurance to pay for whatever period of time they were in a nursing home.

Ms. NORTON. Thank you. That's something we'll look into further as well.

Could I ask the ranking member, Mrs. Morella, if she has any questions?

Mrs. MORELLA. Thank you.

It's a pleasure to have you here, Mr. Golato, Mr. Smith. Thank you very much for NARFE's always being involved in these issues that affect the Federal retirees, sometimes even before Congress is involved.

I appreciated your comments on the three bills that we looked at today. With regard to Barney Frank's bill, H.R. 891, I think you said that time has diminished the value of its provisions for all but a few, and that's because of the cost of the buy back, would you not say that, because that is so hefty, it's a very expensive proposition.

Mr. GOLATO. Yes, that's right. We are paying back all of those years, the accumulation of it, the aggregate premium has become so much that few of our people remain who would want to take advantage of it, although, there still are some, obviously.

Mrs. MORELLA. There may be some, yes.

And then, with the bill that Ben Gilman has introduced that we were just discussing now, I think it's a splendid concept of using it for long-term care. And as the questioning was going on, it appeared to me that it would even lower some of our health care costs if one is resorting to Medicaid and maybe doing more in-home kind of nursing care. And, I think it gives many people a sense of dignity knowing that they are utilizing what they have put aside, you know, ultimately, as a death benefit.

What would it do to the irrevocable assignment? Would it affect that in some way? I think it would, but to what degree?

Mr. GOLATO. You know, it might, but as I said, it might because there's an asset there, and if you irrevocably assign it to someone, you are, in effect, losing that opportunity of using it for the other bill, for the purpose. So, it might.

At the same time, however, I think that more of our people, that's one of those things, you know, on the one hand, and then on the other, and I would venture a guess and say that most of our people would want to use it for that potential for long-term care need, rather than the other, which is to assign it to someone and, frankly—well, my background would indicate that the best thing about that assignment is the fact that it would not be included in the estate.

Mrs. MORELLA. That is a very interesting proposition, and, as I say, I wonder if your NARFE members have an opportunity to respond to some of these issues. For instance, when you suggest that it be used for long-term care, in-home care, does your constituency feel that way? Have you done any polling on it, or do you just sense because long-term care is a very important issue to NARFE members and others, that, perhaps, this could be an extension? How do you arrive at support?

Mr. GOLATO. Well, it's as you said, the latter.

Mrs. MORELLA. The latter?

Mr. GOLATO. Yes.

Mrs. MORELLA. You just assume that this might be something.

Mr. GOLATO. And, you know, what we could do, frankly, some of these issues that are brought up here today, except for the long-term care attachments to that particular bill, we've never given real deep thought to them. And, the Chairwoman has some questions, and we didn't have a precise answer for her, I would be pleased to try to explore to see whether we could get a sense somehow of how our members feel.

Mrs. MORELLA. I'm really very interested in that kind of expansion concept, particularly, because as we look at the health care reform packages before us, other than the single payer, we have not seen any that really does much with long-term care. The administration's package does up to a point, but there is nothing that really remedies that grave concern that people have.

And so, this may be something we want to look at a little further.

Mr. GOLATO. If I may, may I comment on that just a moment?

Mrs. MORELLA. Yes.

Mr. GOLATO. Well, there's no assurance that long-term care will be included in the health care reform that's being considered by Congress right now.

Mrs. MORELLA. Absolutely.

Mr. GOLATO. As a matter of fact, the conversation, the debate, and all the controversy surrounding it, it's very difficult to even find any references to long-term care, and that concerns us, and that's why we have to take this position, we want something for long-term care.

Mrs. MORELLA. I value that concern, which is one that I certainly share. Indeed, I'm a long-distance caregiver, and we're reaching a very difficult point in that.

And, I want to also thank you for the fact that you can see equity merits in the bill that I've introduced, H.R. 3297. I hope that we can move ahead with passage of that.

So, again, I very much value the fact that NARFE is here testifying and continues to work with us, and so, I thank you very much, Madam Chair.

And, may I also, for the record, ask permission to have a statement of support of H.R. 3297 from the Magistrate Judges Association be included in the record, Madam Chair?

Ms. NORTON. So ordered, Mrs. Morella

[The prepared statement of the Magistrate Judges Association follows:]

PREPARED STATEMENT OF ILA JEANNE SENSENICH, PRESIDENT, MAGISTRATE JUDGES
ASSOCIATION

On behalf of the Federal Magistrate Judges Association, I would like to sincerely thank Chairwoman Norton, and the members of the subcommittee for holding this hearing. I would also like to extend our appreciation to Congresswoman Connie Morella for sponsoring this significant legislation. HR 3297 will extend to retiring magistrate judges the same treatment currently afforded to retiring Article III or life-tenured judges under the Federal Employees Group Life Insurance (FEGLI) Program, and will provide much-needed parity for magistrate, bankruptcy, and U.S. claims Court judges with District Court judges.

During the 102nd Congress, President Bush signed into law the Judicial Survivors' Annuity System (JSAS) that included a provision that gave judges the right to pay the market price for life insurance. Unfortunately, magistrate and bankruptcy judges were deleted from the legislation. At that time, Representative Morella spoke in strong support for the deleted retiring Article I judges, and encouraged her colleagues to act in the 103rd Congress to pass a proposal to address the inequity of the situation.

For her effort, and that of her fellow subcommittee colleagues, we want to express our appreciation for all of the hard work and dedication that has been put into bringing the issue once again to this pivotal point. H.R.3297 would create a life insurance program for retiring Article I judges that is both fair and cost-effective by allowing them to retain their life insurance coverage, at pre-retirement level costs, upon retirement, as is currently afforded only to Article III judges.

Ms. NORTON. I want also to introduce in the record a series of tables on FEGLI that have been provided by the OPM.

[The information referred to appears on pages 31-33.]

Ms. NORTON. I want to thank Mr. Golato, Mr. Smith, for coming, and for your very useful testimony, and I want to thank all the witnesses who appeared today.

This hearing is adjourned.

Mr. GOLATO. Thank you very much.

Mrs. MORELLA. Madam Chair, as a postscript, I just wanted to introduce John Buchanaan, another former member who is here from Alabama, living in Montgomery County, MD.

Ms. NORTON. Thank you. We welcome Mr. Buchanaan. Always pleased to see him in his old house.

[Whereupon, at 11:15 a.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

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STATEMENT FOR THE RECORD

THE HONORABLE BARNEY FRANK

REPRESENTATIVE OF THE FOURTH DISTRICT, MASSACHUSETTS

BEFORE THE SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS

Thank you madam Chair for the opportunity to bring this important issue before the committee.

Since 1954, group life insurance has been made available to Federal employees under the Federal Employees' Group Life Insurance program FEGLI. In fact, more than 80 percent of those eligible participate in the program.

In 1980, Congress approved major reforms for Federal employees covered by the Federal Employees Group Life Insurance program. These reforms included increasing the amount of coverage available to both active employees and retirees. Unfortunately, employees who retired before these reforms were enacted do not have the same options available to them.

That is why I introduced legislation that would allow retired Federal employees who retired before December 9, 1980, to elect to resume coverage under the Federal Employees' Group Life Insurance program.

I have met with many constituents who made me aware of the problems they have experienced with the current law. It is very difficult and costly for a 65 to 70 year old person to obtain life insurance. In some cases, retirees have found that their life insurance decreased in value by \$6,000 in one year. Unfortunately, Federal retirees, who left government service before the 1980 reforms, did not have the opportunity to maintain their life insurance at full value.

My bill, H.R. 891, would allow pre-1980 Federal retirees the following options now available to all Federal retirees: [1] Pay no premiums after retirement and allow their policy to be reduced to 25%; [2] Pay premiums that will allow their policy to be reduced to 50%; [3] Pay premiums to maintain their life insurance at 100% of its full value. The mandatory reduction formula used before 1980 leaves many retirees with very inadequate life insurance protection.

PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES

I. INTRODUCTION

The National Association of Government Employees (NAGE) is an affiliate of the Service Employees International Union, AFL-CIO. NAGE is the fourth largest federal employee union in the country, representing thousands of federal employees in the Department of Defense, Department of Veterans Affairs, Department of Transportation, and many other federal agencies. We appreciate the opportunity to appear and testify before the Subcommittee on Compensation and Employee Benefits of the House Post Office and Civil Service Committee regarding the Federal Group Life Insurance program. We especially appreciate Chairperson Eleanor Holmes Norton's superb efforts on behalf of the federal employee community during the 103rd Congress. NAGE members are indebted to you and your staff for the long hours spent searching for fair solutions to the problems which have confronted the federal employee community. Our testimony today elucidates our support for the amendments offered today and notes some suggestions.

Federal Employees Group Life Insurance (FEGLI), 5 U.S.C. §8701 et. seq., offers to federal employees basic life insurance at a very reasonable price -- 16 1/2 cents per \$1,000 of basic coverage. The bills introduced today, H.R. 512, H.R. 891, and H.R. 3297, seek to amend this legislation. H.R. 512 provides that group life insurance benefits may, upon application, be paid out to an insured individual who is terminally ill. H.R. 891 permits certain federal employees who retired or became entitled to receive compensation for work injury before December 9, 1980, to elect to resume

coverage under the Federal Employees' Group Life Insurance Program. H.R. 3297 extends treatment currently afforded to Federal judges under FEGLI to certain other judicial officials. Our testimony today will be limited to comments on H.R. 512 and H.R. 891.

II. H.R. 512

First, we would like to start off by praising the intent of this legislation. Due to the astronomical costs of health care, especially for individuals who are terminally ill, it is crucial for individuals to have financial resources at their disposal to keep up with their hospital bills and costs of living. Allowing insured individuals who are terminally ill to access life insurance benefits before their death is a good step toward alleviating this onerous burden. NAGE fully supports legislation that would allow any individual who is declared to be terminally ill and who is covered by FEGLI to receive a lump sum payment equal to the full amount of insurance which would otherwise be payable at death.

To apply for funds requires certification by an appropriate medical authority as to the nature of the individual's illness and that the individual is not expected to live more than 9 months. H.R. 512 further provides that in order to ascertain the reliability of any medical opinion or finding, the covered individual may be required to submit to a second medical examination and evaluation.

NAGE would like to see assurances that the provision requiring a second medical opinion will not be unduly burdensome or

accelerate into a battle of the doctors. Too frequently in the disputes before the Office of Workers' Compensation Program (OWCP), the medical diagnosis of the personal physician of an injured employee is pitted against the diagnosis of an OWCP referred doctor. Employees often wait months until the conflict between the medical evidence is resolved. Needless to say, employees with terminal illnesses don't have months to spare.

To avoid this scenario, H.R. 512 should be amended to clarify that a covered individual may be required to submit to a second medical examination under the direction of the agency considering the application only if the agency shows by clear and convincing evidence its basis for rejecting the first doctor's report.

NAGE supports Section 2, Subsection (4) of H.R. 512, which allows individuals to elect to designate only a partial payment of insurance. This section clearly recognizes the importance of allowing individuals flexibility in planning for their needs. NAGE is troubled, however, by the following Subsection (5) which indicates that an individual is able to make an election to receive benefits only one time. This provision denies individuals the flexibility to receive benefits at the times they may need it most. While we recognize the bureaucratic difficulties inherent in a system that would allow qualified individuals to receive benefits at any time, we believe that a one time limit too severely restricts individuals' access to their life time benefits. We would propose, instead, that the legislation allow individuals to make an election to receive partial benefits no more than three

times.

NAGE is pleased to see that H.R. 512 specifically ensures that an individual who takes a lump sum payment remains eligible for optional benefits under sections 8714a-8714c.

NAGE would like to stress that it is important for the administration of this program to run smoothly. Legislative steps should be taken to ensure that the individuals who qualify to receive a lump sum payment are not constrained by bureaucratic red-tape during a most dire time of their life.

III. H.R. 891

NAGE supports the legislative goal of H.R. 891 to extend FEGLI to federal employees who retired or became entitled to receive compensation for work injury before December 9, 1980. FEGLI is an important program, offering federal employees much needed insurance to support their surviving family members, and, upon passage of H.R. 512, to defray the costs of intensive care. NAGE welcomes the expansion of FEGLI to cover those employees who retired or became entitled to receive compensation not only on or after, but also before December 9, 1980.

IV. CONCLUSION

NAGE is fully supportive of FEGLI because it makes available to our members a quality insurance plan. H.R. 512 and H.R. 891 further strengthen the FEGLI program. Accordingly, NAGE is pleased to testify to our support of these bills.

PREPARED STATEMENT OF ROBERT M. TOBIAS, NATIONAL PRESIDENT, NATIONAL
TREASURY EMPLOYEES UNION

Chairwoman Norton, Members of the Subcommittee:

Thank you very much for the invitation to appear before you today concerning the Federal Employees Group Life Insurance Program (FEGLI).

Your Subcommittee today considers three important proposals of interest to the federal community -- H.R.512, the Federal Employees Living Benefits Act, H.R. 3297, which seeks to qualify certain retired judges as being in active service for purposes of the federal life insurance program, and H.R.891, which would offer pre-1980 retirees the same life insurance options other federal retirees enjoy.

H.R.512 would for the first time add a humanitarian benefit to FEGLI for those federal employees and retirees who are terminally ill. A federal employee diagnosed to have less than 9 months to live would have the option of receiving his or her basic life insurance amount as a living benefit instead of a death benefit.

Increasingly widely available in private sector policies, living benefits allow the terminally ill individual to pay off mortgages or other debts relieving other family members from these burdens. Or, the living benefit can be used to take one last dream

vacation with precious loved ones. Often, the cash payment is useful in paying for long-term or chronic care health expenses which may be particularly large in the final months of life.

The addition of a living life insurance option to FEGLI would be a valuable benefit for those employees wishing to take advantage of its availability. H.R.512 would permit the insured to request his or her basic life insurance amount, or elect a portion of the basic insurance and receive the funds in the form of a lump sum payment. Retirees and those receiving workers compensation would be required to choose the full basic life insurance amount. The legislation applies only to the basic FEGLI amount and does not extend to optional FEGLI insurance amounts nor negate beneficiary rights to these optional life insurance sums. Applications for living benefits must provide appropriate certification of the terminal status of the individual and once elected, the policyholder is no longer liable for basic life insurance premiums.

More than 70 private companies now offer living benefit life insurance policies or riders to policies and although different states place a variety of restrictions on how the living benefit can be used, at least 42 states have endorsed the concept. The living benefits can take several different forms and restrictions often apply in private policies. Nonetheless, interest in living benefit life insurance continues to grow and the trend is expected to continue.

Although not directly addressing the need for a comprehensive long term care policy in this country, living benefits may make a significant difference in easing the financial burden of nursing home and/or home care for some terminal patients. NTEU continues to support enactment of long term health care solutions, however, to the extent the provision for living life insurance benefits may help ease this burden for some FEGLI participants, it represents a step in the right direction.

NTEU has also long supported H.R.891. For the past several Congresses, Representative Barney Frank has authored this legislation which seeks to provide those on the federal retirement rolls with added life insurance options. Under current law, those who retired or became eligible for workers compensation benefits prior to December 9, 1980 find the value of their life insurance decline by 2 percent per month when they reach age 65. The policy value stabilizes at 25 percent of its original face value.

H.R.891 would allow these pre-1980 retirees to exercise the same life insurance options as current retirees. The options include 1) paying an additional premium and having the policy value decline by only one percent per month until it reaches 50 percent of its original value, or 2) paying a somewhat larger premium and maintaining the full value of the policy. Although we have supported passage of this legislation for some time now, the back payments required by retirees to exercise these new life insurance options may prevent many of them from taking advantage of the

legislation should it pass this Congress. Nonetheless, passage of this measure would aid those who still wish to take advantage of its provisions.

NTEU supports enactment of these important changes in the FEGLI law and looks forward to working with this Committee to make them a reality. Thank you again for scheduling this important hearing today.

PREPARED STATEMENT OF JOHN STURDIVANT, NATIONAL PRESIDENT, AMERICAN
FEDERATION OF GOVERNMENT EMPLOYEES

Madam Chair and Subcommittee Members:

My name is John Sturdivant, and I am the National President of the American Federation of Government Employees, AFL-CIO. On behalf of the more than 700,000 federal and District of Columbia employees our union represents, I thank you for the opportunity to testify on legislation designed to improve and expand the life insurance benefits to federal employees. I will limit my testimony to H.R. 512, which directly affects AFGE members.

H.R. 512, introduced by Representative Ben Gilman (R-NY) provides a substantive change in the terms of federal employees' life insurance benefits. The proposal is to allow federal employees who are terminally ill to receive all or a portion of the value of the insurance which would otherwise be payable upon their death. "Terminally ill" is defined in the legislation as having a life expectancy of nine months or less, according to an accepted medical opinion.

AFGE supports the concept of giving terminally ill federal employees access to their life insurance benefits while they are still alive. It is unfortunate that the medical costs incurred by those covered by the Federal Employees Health Benefits Program can still be such that access to this money may be necessary. We are aware of many cases where individuals with AIDS or certain forms of cancer require treatments which may either slow the course of their disease, or even ease their pain which are prohibitive in cost. Others may need the funds to help support their families or themselves during the time when their illness prevents them from working.

A preferable and more appropriate solution to this problem would be an improvement in the terms of the disability retirement component of FERS. Although the current disability retirement program acknowledges that some disabilities strike workers in the early years of their careers and therefore places a floor on benefits, they are generally too meager to provide for the high medical and living costs incurred by an extremely ill individual and his or her family.

Giving access to life insurance to terminally ill federal employees is thus a second best solution. Ideally, the life insurance benefits are meant for use by the families of those who die during their working years. Life insurance exists to help with the needs of those who depended upon the deceased worker for financial support. If the money must be used for medical expenses or other living expenses of the terminally ill patient, it is of course far better than not for the patient to have this access.

AFGE supports this legislation even though we deplore the failings of the health insurance program and the disability retirement component of CSRS and FERS which create the need for this sub-optimal solution.

In budgetary terms, it is likely that the same arguments will be made against this proposal as those which led to the demise of the "lump-sum" option in the federal retirement system. It will be suggested that the payouts resulting from this legislation will be new costs which must be financed by corresponding spending cuts elsewhere or new revenue.

The long-term budget impact of this benefit is zero, because the payouts are made to terminally ill employees. If they elect a partial payout, their remaining account will be reduced accordingly. This provision along with the nine-month limitation, which we believe should be extended to one year, guarantees that the life insurance fund will be unaffected. There will be extremely minimal short-term administrative costs, and no long term costs.

That concludes my statement. I will be happy to respond to any questions.

PREPARED STATEMENT OF CAROL A. BONOSARO, PRESIDENT, SENIOR EXECUTIVES
ASSOCIATION

Madame Chairwoman and members of the Subcommittee, the Senior Executives Association (SEA) welcomes this opportunity to submit for the record its views on the Federal Employees Group Life Insurance Program (FEGLI), in particular, on H.R. 512, which provides "living" life insurance benefits to an insured individual who is terminally ill. SEA, a non-profit organization representing the career federal executive corps, supports the adoption of H.R. 512.

FEGLI is one of the most popular Federal employee benefit programs, in which approximately 90 percent of the Federal workforce elect to participate. Providing a living benefit life insurance option to FEGLI would be an invaluable addition to an exceedingly important program. H.R. 512, introduced by Representative Benjamin Gilman (R-NY), offers some piece of mind to those individuals who are faced with a terminal illness, by paying for their current needs and by off-setting any future bills left for family members.

Allowing an individual to request his or her basic life insurance amount when life expectancy is of nine months or less is also a growing practice in the private sector. Currently, the American Council of Life Insurance reports that approximately 150 insurance companies offer living benefits (also known as "accelerated death benefit"), encompassing some 3 million policyholders. This enables private sector insurance companies to provide valuable information on how the policies have developed and on how to fine-tune any requirements based upon their experience.



SEA concurs with other organizations of federal employees that this measure is only a "best substitute" to a comprehensive long term care policy. However, the living benefits legislation can make a noteworthy difference in alleviating financial burdens for the terminally ill and their families, and, for that reason, SEA strongly supports this measure.



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