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before the

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

on

“MANDATORY RETIREMENT AGE RULES:
IS IT TIME TO RE-EVALUATE?”

SEPTEMBER 14, 2004

Mr. Chairman, Senator Breaux, and Members of the Committee:

I am pleased to be here today on behalf of the Director of the Office of Personnel Management (OPM), Kay Coles James, to discuss the issue of “Mandatory Retirement Age Rules: *Is it Time to Re-Evaluate?*”

As I am sure you are aware, OPM administers the two largest retirement systems for Federal employees. They are the Civil Service Retirement System, also known as CSRS, and the Federal Employees’ Retirement System, also known as FERS. CSRS, which dates from 1920, is now a closed system that still covers about a third of Federal employees. FERS was established in 1986 and covers the majority of Federal employees. Before discussing the current provisions of those systems relating to mandatory retirement, I would like to take a few minutes to explain a little of the history behind those provisions.

While we have come a long way in terms of applicability, mandatory retirement age has been a factor in the Federal retirement systems since the very beginning. The original Civil Service Retirement Act of 1920 established three automatic retirement ages – 62, 65, or 70 – classified according to the type of position. Sixty-two was the age set for railway postal clerks; age 65 was set for mechanics, city and rural letter carriers, and post office clerks; while age 70 was applicable to all other employees. Separation was mandatory at those ages, even if the individual did not have the 15 years of service required for an annuity. Renewable two years extensions were permitted, based upon certification by the agency head and Civil Service Commission approval. There were no provisions for retirement at any other time, other than based upon disability.

For a number of years thereafter, these provisions were subject only to rather minor modifications from time to time. In 1926, the occupational group compositions subject to retirement at the various ages were changed, and automatic separations were deferred

until individuals completed enough service to qualify for an annuity. The occupational classifications for the age groups were again changed in 1930. All previously granted exemptions were terminated by the so-called Economy Act of 1932, which also limited future exemptions to Presidential authorizations.

The first major change to mandatory retirement occurred in 1942. While a 1930 change in retirement law had permitted individuals with 30 years of service to retire two years prior to the mandatory retirement age for their occupational classification, the 1942 Act for the first time established the concept of voluntary retirement at a much younger age, as early as age 55. At the same time, the mandatory retirement age was set at age 70 for all employees.

With the exception of minor technical changes, and special provisions applicable to limited groups, age 70 remained the uniform Federal mandatory retirement age for the next three decades. To be technically accurate, I must point out that certain employees of the legislative and judicial branches, Alaska Railroad, Panama Canal Company, and Canal Zone government were subject to different rules, but these exceptions were of limited applicability.

In 1972, Public Law 92-297 brought back the concept of a separate mandatory retirement age for a specific occupational group, Air Traffic Controllers, who were required to retire at age 56 with 20 years of service. In order to make this economically feasible, the law provided for a minimum annuity of 50 percent, the percentage that otherwise would have required 26 years and 11 months of service. However, any Air Traffic Controller who worked for greater than that period would receive their normal annuity computed under the same formula applicable to employees generally. Coupled with enhanced annuity provisions, the law also added authority to set a maximum entry age to ensure that individuals would complete the service needed to retire on time.

Two years later, Public Law 93-350 added special mandatory retirement provisions for two more occupational groups, this time Law Enforcement Officers and Firefighters, who were required to retire at age 55 with 20 years of service. As with Air Traffic Controllers, a maximum entry age was provided for. This time, however, the Congress chose to use a different mechanism to make early retirement economically feasible. Instead of a guaranteed minimum annuity, an enhanced annuity formula was provided. While other employees received 36.25 percent of average salary for their first 20 years of service, these groups received 50 percent. Service in excess of 20 years continued to be credited at the same rate as generally applicable. With subsequent minor variations, this concept of a higher computation rate for the first 20 years of service became the basis for all future extension of mandatory retirement to additional occupational groups.

As an aside, it is important to understand that the retirement definition of “law enforcement officer” has a statutory meaning that is substantially more restrictive than the commonly understood concept of “law enforcement officer.” The main element of the definition is that the employee’s duties must be *primarily* the “investigation, apprehension, or detention of individuals suspected or convicted of offenses against the

criminal laws of the United States.” Groups that generally do not meet this definition (because they prevent or detect violations instead of investigate them) include police officers, guards, and inspectors (including customs inspectors and immigration inspectors).

In 1978, Public Law 95-256, the Age Discrimination In Employment Act Amendments of 1978, was enacted. This Act repealed the requirement of mandatory retirement for employees generally. From this time forward, only the special occupational groups remained subject to mandatory retirement.

The Federal Employees’ Retirement System was established in 1986 by Public Law 99-335. This new retirement system retained the same basic scheme for special occupational groups of a maximum entry age, enhanced annuity computation, and mandatory retirement. Also, under FERS, Air Traffic Controllers were brought under that scheme.

Other laws added additional occupational groups including Capital Police, Supreme Court Police, and Nuclear Materials Couriers. These groups are subject to the same general scheme as Law Enforcement Officers and Firefighters.

Minor changes were also made to the mandatory retirement age by various laws. At this time, Air Traffic Controllers remain subject to mandatory retirement at age 56, while other groups subject to mandatory retirement must retire at age 57.

In order to be subject to mandatory retirement, an employee must be eligible for retirement under the special provisions. An agency head may retain an employee who is in one of these special groups until age 60 (or age 61 for an Air Traffic Controller) if the agency head finds that the employee’s continued service is in the public interest. A CSRS special group employee may be retained beyond age 60 or 61 with OPM’s permission. A FERS special group employee may be retained beyond age 60 or 61 only with the permission of the President.

As you are aware, Director James recently transmitted an important, in-depth, report to Congress on law enforcement classification, pay, and benefits. Among the matters considered in that report was the issue of mandatory retirement. That report was limited to the area of law enforcement. We have not performed a separate examination of these other special retirement groups with mandatory retirement in mind. However, many of the factors discussed in the report are applicable to the issue of mandatory retirement whether in the public or private sector.

Before imposing, amending, or removing a mandatory retirement provision, an organization must first determine if such a change serves an organizational interest. In general, the special retirement provisions under the Federal systems for groups such as law enforcement officers, firefighters, and air traffic controllers are intended to permit the Government to maintain a younger workforce in these occupations through youthful career entry, continuous service, and early separation. This is because the duties of these

occupations are so demanding that it is in the Government's interest to maintain a younger workforce to ensure the effectiveness of that workforce.

If it is determined that an occupation requires a younger workforce, mandatory retirement is only one means of achieving that goal. For the Federal special group occupations several provisions work in combination to maintain a younger workforce in these occupations. These include a maximum entry age, voluntary early retirement with an enhanced annuity computation, and a mandatory retirement age. An organization could use one or more of these provisions or other means to help shape a more youthful workforce.

In addition, enhanced retirement benefits under the Federal systems were specifically established to permit an individual to retire voluntarily at an early age or at the mandatory retirement age with a sufficient annuity to make retirement viable. By ensuring a benefit commensurate with that of an employee who is not subject to mandatory retirement, the benefit package allows the Federal government to remain competitive in hiring and retaining qualified employees. The imposition of a mandatory retirement provision should balance the public or private sector organization's need for a younger workforce in certain demanding occupations against the financial interests of employees working a shortened career.

One of the most important issues discussed in OPM's report on law enforcement officers is the need for flexibility. The demands of work and average effective career length vary by occupation. A mandatory retirement age for one occupation is not necessarily the right mandatory retirement age for other groups. Mandatory retirement should take into account any unique requirements associated with the duties of any given occupation, or even select groups within an occupation, while also preventing the imposition of overly restrictive hiring barriers or forced retirements that unnecessarily constrain staffing options. For example, setting too low a mandatory retirement age for an occupation may result in the premature loss of an organization's most experienced personnel.

Finally, ensuring that a workable process exists to determine if mandatory retirement is necessary or desirable and for setting a mandatory retirement age is critical. The process that is ultimately established should facilitate an objective evaluation of the demands of a particular occupation, and the establishment of the appropriate mandatory retirement age based on that evaluation. The process should be carefully crafted, because if it is flawed, there is the risk that mandatory retirement could operate to adversely affect an organization's ability to carry out its functions in an effective manner. In short, there is no simple rule of thumb that can be applied across the board in determining if a mandatory retirement provision should be imposed, and if so, at what age. However, we believe that establishing an effective process for making these determinations is achievable and a necessary first step.

In conclusion, Mr. Chairman and Senator Breaux, on behalf of Director James, I thank you for inviting the Office of Personnel Management to testify on this matter. I will be glad to answer any questions you may have.