

The original documents are located in Box 52, folder “8/6/76 HR2943 Relief of the Estate of James J Caldwell” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library

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APPROVED
AUG - 6 1976

8/6/76

THE WHITE HOUSE
WASHINGTON
August 4, 1976

ACTION
Last Day: August 7

Posted
8/7/76
Archives
8/9/76

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON
SUBJECT: H.R. 2943 - For the relief of the estate of James J. Caldwell

Attached for your consideration is H.R. 2943, sponsored by Representative Obey.

The enrolled bill authorizes and directs payment of \$19,145.18 to the estate of James J. Caldwell, representing amounts erroneously deducted from his salary for his civil service retirement from October 31, 1957 through March 25, 1961 and social security benefits denied him because this erroneous deduction reduced the earnings credited to him for social security during this period.

Additional information is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 2943 at Tab B.





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

AUG 2 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 2943 - For the relief of
the estate of James J. Caldwell
Sponsor - Rep. Obey (D) Wisconsin

Last Day for Action

August 7, 1976 - Saturday

Purpose

Authorizes and directs payment of \$19,145.18 to the estate of Mr. James J. Caldwell, representing amounts erroneously deducted from his salary for his civil service retirement annuity from October 31, 1957 through March 25, 1961, and social security benefits denied him because this erroneous deduction reduced the earnings credited to him for social security during this period.

Agency Recommendations

Office of Management and Budget	Approval
Department of Interior	Approval
Department of Health, Education, and Welfare	No objection
Civil Service Commission	Defers to Interior and HEW

Discussion

Mr. Caldwell, a Menominee Indian, was an employee of the Bureau of Indian Affairs (BIA) at the Menominee Indian Mills in Neopit, Wisconsin, when the Federal trust relationship with the Menominee tribe was terminated, beginning in 1957, according to the terms of the Menominee Termination Act of 1954. Mr. Caldwell, having had 37 years of service for BIA, voluntarily retired on October 31, 1957 from his Federal position and was rehired the following

day in the same job by the Menominee Indian Mills as an employee of the tribe. He had stated that he understood this action would enable him to earn social security protection while receiving his full civil service annuity.

From November 1, 1957 until May 4, 1958, Mr. Caldwell received his full salary, his earnings were reported for social security purposes, and he also received his civil service retirement annuity. BIA subsequently erroneously instructed the Menominee tribe that the amount of his civil service annuity should be deducted from his salary, as if he were rehired as a Federal employee. Effective May 5, 1958, these deductions were made, and his social security contributions were suspended.

In October of 1959, BIA corrected its position, and found that Mr. Caldwell was not a Federal employee, and that he should not have his civil service retirement annuity deducted from his pay. Nevertheless, the erroneous deductions continued until March 25, 1961 and no social security earnings were reported, or contributions made by him, during that period.

The Civil Service Commission (CSC), on May 12, 1961, disallowed Mr. Caldwell's application for a supplemental civil service annuity based on his reemployment from November 1, 1957 to March 25, 1961, on the basis that he was not a Federal employee during that period. The Social Security Administration (SSA) was advised by BIA that he should have been covered under social security; SSA received from the Menominee tribe a statement of his earnings, and has paid Mr. Caldwell and his family benefits based on that statement. The earnings in the statement, however, are the amounts he actually received; they do not include the amounts he did not receive because of the erroneous deduction of his civil service annuity from his salary.

Mr. Caldwell raised questions with BIA and CSC, beginning in June 1958, about the propriety of deducting his annuity from his salary and BIA requested a ruling from the General Accounting Office. In January, 1970 the Comptroller General ruled that Mr. Caldwell's pay had been erroneously reduced by the amount of his annuity but that compensation for this loss was the obligation of his employer, the Menominee tribe, and not the Federal Government. Mr. Caldwell subsequently brought suit in the Court of Claims,

and the Court concluded in February, 1972 that his suit was barred by the statute of limitations. Mr. Caldwell died on January 4, 1972.

H.R. 2943 would authorize payment to Mr. Caldwell's estate of \$19,145.18. This includes \$12,474.11 reported by Interior as the annuity incorrectly withheld, and the lost social security benefits estimated by HEW as approximately \$7,000, reduced by the amount of \$328.93 representing social security contributions which should have been withheld.

In reporting on this legislation in the 93rd Congress, Interior did not object to awarding an appropriate claim to Mr. Caldwell's estate. Interior stated:

"We believe that the Bureau of Indian Affairs bears some responsibility for the wrongful withholding of the annuity amounts from Mr. Caldwell's salary ..."

GAO reported in the 93rd Congress its view that the Government is not obligated to pay the claim, but that since the error was BIA's and payment by the tribe would likely cause economic hardship, "it may be that Congress would desire to provide equitable relief."

Interior's attached views letter recommends that H.R. 2943 be approved since the losses to Mr. Caldwell and his estate are attributable to actions of BIA. We concur with Interior's recommendation in the interest of equity and because all other avenues of remedy appear to have been exhausted.


Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: August 3

Time: 915am

FOR ACTION: David Lissy
Max Friedersdorf
Ken Lazarus

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: August 5

Time: noon

SUBJECT:

H.R. 2943-For the relief of the estate of James J. Caldwell

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 27 1976

Dear Mr. Lynn:

This responds to your request for the views of this Department on the enrolled bill H.R. 2943, "For the relief of the estate of James J. Caldwell."

We recommend that the bill be approved by the President.

H.R. 2943 authorizes and directs the Secretary of the Treasury to pay to the estate of James J. Caldwell, of Menominee County, Wisconsin, the sum of \$19,145.18 in full settlement of all claims against the United States arising out of the erroneous action of the Bureau of Indian Affairs in deducting civil service retirement benefits from the salary of the said James J. Caldwell and failing to deduct appropriate contributions for social security retirement purposes from such salary while he was employed at the Menominee Indian Mills, Menominee County, Wisconsin, during the period from October 31, 1957, through March 25, 1961. The bill also limits to ten percent the amount which may be paid to any agent or attorney in connection with the claim.

The facts of the case are as follows:

On October 31, 1957, Mr. James J. Caldwell voluntarily retired on a civil service retirement annuity from his position as a Federal employee of the Bureau of Indian Affairs at the Menominee Indian Mills, Neopit, Wisconsin. On the following day, November 1, 1957, he was rehired in the same job for the same pay. (This was permitted under the law governing the relationship between the Federal Government and the Menominee people). Mr. Caldwell had stated that it was his understanding that by taking this action he would no longer be a Federal employee but an employee of the Menominee Tribe, and therefore he would be covered by social security rather than the civil service retirement system and thus would be able to earn social security protection while receiving his full civil service annuity.



From November 1, 1957, until May 4, 1958, Mr. Caldwell received his full salary. His earnings until May 4, 1958, were reported for social security purposes. However, local officials of the Bureau of Indian Affairs then determined that Mr. Caldwell was a civil service annuitant reemployed by the Federal Government and consequently, effective May 5, 1958, the amount of Mr. Caldwell's civil service annuity (then \$358 per month) was deducted from his salary and his earnings were no longer reported for social security purposes. In October 1959, the Bureau of Indian Affairs reversed its decision and held that Mr. Caldwell was not a Federal employee, but it appears that the amount of his civil service annuity continued to be deducted from his salary and his earnings continued to be treated as though not covered by social security.

The Civil Service Commission, on May 12, 1961, disallowed Mr. Caldwell's application for a supplemental civil service retirement annuity based on his reemployment from November 1, 1957 to March 25, 1961, on the basis that he was not a Federal employee during this period.

In connection with Mr. Caldwell's application for social security retirement benefits in 1961, the Social Security Administration made an investigation regarding the correct amount of his earnings covered by social security. On May 1, 1962, the Bureau of Indian Affairs advised the Social Security Administration that Mr. Caldwell's services from November 1, 1957 to March 25, 1961 should have been covered under social security. The Social Security Administration then obtained from Menominee Enterprises, Inc., a statement showing the amount of covered earnings.

On the basis of this statement, earnings were credited to Mr. Caldwell's social security earnings record, and social security benefits have been paid to Mr. Caldwell and his family based on these earnings.

The statement of earnings, however, furnished by Menominee Enterprises, Inc., for the calendar quarters from December 1957, through March 1961, did not include the amount of Mr. Caldwell's civil service annuity which had been erroneously withheld from his salary. If the amount equivalent to his civil service annuity had not been incorrectly withheld from his salary, Mr. Caldwell's actual earnings would



have been (after adjustment for the social security contribution and benefit base):

1958 -----	\$4,200	1960 -----	\$4,800
1959 -----	4,800	1961 -----	4,800

Since Mr. Caldwell's earnings would have exceeded the contribution and benefit base, any overtime wages he should have received would have no effect on his social security benefits.

Mr. Caldwell and his children became entitled to social security benefits in December 1960, and benefits were first paid for January 1962 (since Mr. Caldwell had stopped working) and up to January 1972 when Mr. Caldwell died. One of his children is still receiving benefits on his earnings record and Mrs. Caldwell is not entitled to benefits as a widow.

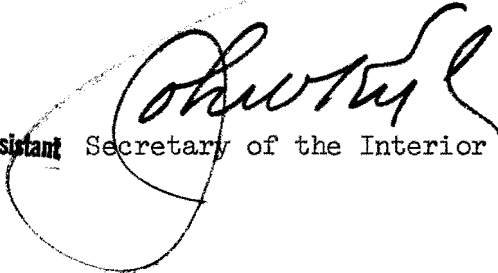
Through December 1973, approximately \$31,500 in monthly benefits had been paid to the Caldwell family. If Mr. Caldwell's earnings had been fully paid to him and credited to his social security earning record, he and his children would have received a total of approximately \$38,500 in benefits through December 1973 (and additional benefits since that time), or about \$7,000 more than they actually received.

Present law does not permit the Social Security Administration to credit the amount of his earnings which were withheld and to pay benefits based on these earnings because they were not actually paid to him. Even if these earnings were now paid to Mr. Caldwell's estate they could not be credited to his earnings record when they were actually earned because wages are generally creditable only when actually paid and earnings paid after the year of death are not covered by social security.

Because the failure to make the appropriate deductions from Mr. Caldwell's income for social security retirement

purposes and the continued erroneous deductions for the civil service annuity were attributable to the actions of the Bureau of Indian Affairs, it is recommended that H.R. 2943 be approved by the President.

Sincerely yours,


Assistant Secretary of the Interior

Honorable James T. Lynn
Director, Office of
Management and Budget
Washington, D. C.



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

JUL 28 1976

The Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is in response to your request for a report on H.R. 2943, an enrolled bill "For the relief of the estate of James J. Caldwell." Information of Mr. Caldwell's claim is contained in a memorandum accompanying our report to the House Judiciary Committee on H.R. 1357. A copy of that report is enclosed for your convenience.

The instant bill differs from H.R. 1357 only in that it reduces the amount of the recovery from \$35,673.18 to \$19,145.18.

For the reasons expressed in the enclosed report, we see no objection to the approval of the enrolled bill.

Sincerely,

A handwritten signature in black ink that reads "Louise Lynch". The signature is written in a cursive, flowing style.

Under Secretary

Enclosure



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

JUN 5 1974

Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This letter is in response to your request of February 15, 1973, for a report on H.R. 1357, a bill "For the relief of the estate of James J. Caldwell."

The bill would provide for payment of \$35,673.18 to the estate of James J. Caldwell in full settlement of any claims Mr. Caldwell or his successors have against the United States alleged to arise out of the action of the Bureau of Indian Affairs in reducing his salary by the amount of his Federal civil service retirement benefits (because he was erroneously held to be a reemployed civil service annuitant), in failing to deduct appropriate social security contributions from his salary, and in failing to pay him overtime wages, while he was employed at the Menominee Indian Mills from October 31, 1957, through March 25, 1961.

While the bill does not stipulate how the amount of the proposed settlement was arrived at, Mr. Charles A. Hobbs, the attorney representing the Caldwell estate, has stated in a written analysis of the claim that, of the \$35,673.18 claimed as settlement, \$8,970.50 represents the amount of additional social security benefits Mr. Caldwell and his dependents would have received had his earnings been correctly reported for social security purposes from October 31, 1957, through March 25, 1961. Our comments are directed to that part of the claim.

From the facts available to us (stated in the enclosed memorandum prepared by the Social Security Administration) it appears that Mr. Caldwell was not a Federal employee from November 1, 1957, to March 25, 1961. In that event, his earnings should have been treated as earnings covered under social security.

As explained in the enclosed memorandum, if Mr. Caldwell's earnings had not been reduced by the amount of his civil service annuity, and if the unreduced earnings had been reported for social security purposes, he and his dependents would have been entitled to additional benefits of approximately \$7000 through December 1973, additional child's and widow's benefits since that time, and possible benefits in the future. This is exclusive of \$328.93 in employee contributions which Mr. Caldwell would have paid during the period in question.

As to the desirability of the bill, we defer to the other agencies concerned since the bill would have no effect on the social security program.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

/s/ Frank C. Carlucci
Acting

Secretary

Enclosure

Memorandum to Accompany
the Report of the Department of Health, Education, and
Welfare on H.R. 1357

On October 31, 1957, Mr. James J. Caldwell voluntarily retired on a civil service retirement annuity from his position as a Federal employee of the Bureau of Indian Affairs at the Menominee Indian Mills, Neopit, Wisconsin. On the following day, November 1, 1957, he was rehired in the same job for the same pay. (This was permitted under the law governing the relationship between the Federal Government and the Menominee people.) Mr. Caldwell had stated that it was his understanding that by taking this action he would no longer be a Federal employee but an employee of the Menominee Tribe, and therefore he would be covered by social security rather than the civil service retirement system and thus would be able to earn social security protection while receiving his full civil service annuity.

From November 1, 1957, until May 4, 1958, Mr. Caldwell received his full salary. His earnings until May 4, 1958, were reported for social security purposes. However, local officials of the Bureau of Indian Affairs then determined that Mr. Caldwell was a civil service annuitant reemployed by the Federal Government and consequently, effective May 5, 1958, the amount of Mr. Caldwell's civil service annuity (then \$358 per month) was deducted from his salary and his earnings were no longer reported for social security purposes. In October 1959, the Bureau of Indian Affairs reversed its decision and held that Mr. Caldwell was not a Federal employee, but it appears that the amount of his civil service annuity continued to be deducted from his salary and his earnings continued to be treated as though not covered by social security.

The Civil Service Commission, on May 12, 1961, disallowed Mr. Caldwell's application for a supplemental civil service retirement annuity based on his reemployment from November 1, 1957, to March 25, 1961, on the basis that he was not a Federal employee during this period.

In connection with Mr. Caldwell's application for social security retirement benefits in 1961, the Social Security Administration made an investigation regarding the correct amount of his earnings covered by social security. On May 1, 1962, the Bureau of Indian Affairs advised the Social Security Administration that Mr. Caldwell's services from November 1, 1957, to March 25, 1961, should have been covered under social security. The Social Security Administration then obtained from Menominee Enterprises, Inc., a statement showing that the following covered earnings were paid to Mr. Caldwell:

<u>Calendar Quarter</u>	<u>Covered Earnings</u>	<u>Calendar Quarter</u>	<u>Covered Earnings</u>
12/57	\$ 931.10	9/59	\$641.91
3/58	1,681.16	12/59	739.20
6/58	1,102.89	3/60	686.40
9/58	607.23	6/60	686.40
12/58	761.94	9/60	724.80
3/59	584.52	12/60	694.40
6/59	627.14	3/61	728.00

On the basis of this statement, earnings in the above amounts were credited to Mr. Caldwell's social security earnings record, and social security benefits have been paid to Mr. Caldwell and his family based on these earnings.

The above statement of earnings, however, furnished by Menominee Enterprises, Inc., for the calendar quarters from December 1957, through March 1961, did not include the amount of Mr. Caldwell's civil service annuity which had been erroneously withheld from his salary. If the amount equivalent to his civil service annuity had not been incorrectly withheld from his salary, Mr. Caldwell's actual earnings would have been (after adjustment for the social security contribution and benefit base):

1958 - \$4,200.00	1960 - \$4,800.00
1959 - \$4,800.00	1961 - \$4,800.00

Since Mr. Caldwell's earnings would have exceeded the contribution and benefit base, any overtime wages he should have received would have no effect on his social security benefits.

Mr. Caldwell and his children became entitled to social security benefits in December 1960, and benefits were first paid for January 1962 (since Mr. Caldwell had stopped working) and up to January 1972 when Mr. Caldwell died. One of his children is still receiving benefits on his earnings record and Mrs. Caldwell is now entitled to benefits as a widow.

Through December 1973, approximately \$31,500 in monthly benefits had been paid to the Caldwell family. If Mr. Caldwell's earnings had been fully paid to him and credited to his social security earnings record, he and his children would have received a total of approximately \$38,500.00 in benefits through December 1973 (and additional benefits since that time), or about \$7,000 more than they actually received.

Present law does not permit the Social Security Administration to credit the amount of his earnings which were withheld and to pay benefits based on these earnings because they were not actually paid to him. Even if these earnings were now paid to Mr. Caldwell's estate, they could not be credited to his earnings record when they were actually earned because wages are generally creditable only when actually paid and earnings paid after the year of death are not covered by social security.



UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

CHAIRMAN

July 28, 1976

Honorable James T. Lynn
Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for
Legislative Reference

Dear Mr. Lynn:

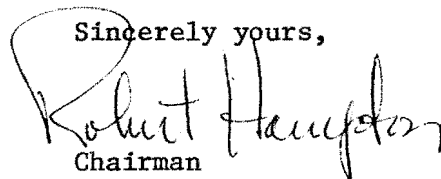
This is in reply to your request for the Commission's views on enrolled bill H.R. 2943, "For the relief of the estate of James J. Caldwell."

H.R. 2943 would authorize payment of \$19,145.18 from the Treasury of the United States to the estate of James J. Caldwell in full settlement of claims arising out of actions by the Bureau of Indian Affairs in erroneously reducing Mr. Caldwell's salary by the amount of his Civil Service annuity when he was reemployed in the Menominee Indian Mills under a non-Federal appointment, and in failing to make Social Security deductions from his salary.

Since the actions by the Bureau of Indian Affairs in this case concern payment of salary for non-Federal employment and a denial of Social Security coverage, matters outside the Commission's jurisdiction, the Commission defers to the Department of the Interior and the Department of Health, Education, and Welfare on the merits of the enrolled bill.

By direction of the Commission:

Sincerely yours,


Chairman

THE WHITE HOUSE

Bill

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: August 3

Time: 915am

FOR ACTION: David Lissy
Max Friedersdorf
Ken Lazarus

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: August 4

Time: noon

SUBJECT:

H.R. 2943-For the relief of the estate of James J. Caldwell

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

*No objection
WMD*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: August 3

Time: 915am

FOR ACTION: David Lissy
Max Friedersdorf
Ken Lazarus

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: August 4

Time: noon

SUBJECT:

H.R. 2943-For the relief of the estate of James J. Caldwell

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

No objection -- Ken Lazarus 8/3/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

WASHINGTON

August 4, 1976

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *M. F.*
SUBJECT: H.R. 2943, for the relief of the estate
of James J. Caldwell

The Office of Legislative Affairs concurs with the agencies
that the bill be signed.

Attachments



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

AUG 2 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 2943 - For the relief of
the estate of James J. Caldwell
Sponsor - Rep. Obey (D) Wisconsin

Last Day for Action

August 7, 1976 - Saturday

Purpose

Authorizes and directs payment of \$19,145.18 to the estate of Mr. James J. Caldwell, representing amounts erroneously deducted from his salary for his civil service retirement annuity from October 31, 1957 through March 25, 1961, and social security benefits denied him because this erroneous deduction reduced the earnings credited to him for social security during this period.

Agency Recommendations

Office of Management and Budget	Approval
Department of Interior	Approval
Department of Health, Education, and Welfare	No objection
Civil Service Commission	Defers to Interior and HEW

Discussion

Mr. Caldwell, a Menominee Indian, was an employee of the Bureau of Indian Affairs (BIA) at the Menominee Indian Mills in Neopit, Wisconsin, when the Federal trust relationship with the Menominee tribe was terminated, beginning in 1957, according to the terms of the Menominee Termination Act of 1954. Mr. Caldwell, having had 37 years of service for BIA, voluntarily retired on October 31, 1957 from his Federal position and was rehired the following

JAMES J. CALDWELL

OCTOBER 9, 1975.—Committed to the Committee of the Whole House and
ordered to be printed

Mr. MAZZOLI, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 2943]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2943) for the relief of the estate of James J. Caldwell having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to compensate the estate of James J. Caldwell in the amount of \$19,145.18 in settlement of the decedent's claims for civil service retirement benefits and social security benefits not received as a result of erroneous action by the Bureau of Indian Affairs in causing civil service retirement benefits to be deducted from the salary of said James J. Caldwell and failing to have appropriate contributions deducted for social security retirement purposes from that amount.

STATEMENT

On October 31, 1957, Mr. James J. Caldwell voluntarily retired on a civil service retirement annuity from his position as a Federal employee of the Bureau of Indian Affairs at the Menominee Indian Mills, Neopit, Wisconsin. On the following day, November 1, 1957, he was rehired in the same job for the same pay. (This was permitted under the law governing the relationship between the Federal Government and the Menominee people.) Mr. Caldwell had stated that it was his understanding that by taking this action he would no longer be a Federal employee but an employee of the Menominee Tribe, and therefore he would be covered by social security rather than the civil service retirement system and thus would be able to earn social security protection while receiving his full civil service annuity.

From November 1, 1957, until May 4, 1958, Mr. Caldwell received his full salary. His earnings until May 4, 1958, were reported for social security purposes. However, local officials of the Bureau of Indian Affairs then determined that Mr. Caldwell was a civil service annuitant reemployed by the Federal Government and consequently, effective May 5, 1958, the amount of Mr. Caldwell's civil service annuity (then \$358 per month) was deducted from his salary and his earnings were no longer reported for social security purposes. In October 1959, the Bureau of Indian Affairs reversed its decision and held that Mr. Caldwell was not a Federal employee, but it appears that the amount of his civil service annuity continued to be deducted from his salary and his earnings continued to be treated as though not covered by social security.

The Civil Service Commission, on May 12, 1961, disallowed Mr. Caldwell's application for a supplemental civil service retirement annuity based on his reemployment from November 1, 1957 to March 25, 1961, on the basis that he was not a Federal employee during this period.

In connection with Mr. Caldwell's application for social security retirement benefits in 1961, the Social Security Administration made an investigation regarding the correct amount of his earnings covered by social security. On May 1, 1962, the Bureau of Indian Affairs advised the Social Security Administration that Mr. Caldwell's services from November 1, 1957 to March 25, 1961, should have been covered under social security. The Social Security Administration then obtained from Menominee Enterprises, Inc., a statement showing the amount of covered earnings.

On the basis of this statement, earnings were credited to Mr. Caldwell's social security earnings record, and social security benefits have been paid to Mr. Caldwell and his family based on these earnings.

The statement of earnings, however, furnished by Menominee Enterprises, Inc., for the calendar quarters from December 1957, through March 1961, did not include the amount of Mr. Caldwell's civil service annuity which had been erroneously withheld from his salary. If the amount equivalent to his civil service annuity had not been incorrectly withheld from his salary, Mr. Caldwell's actual earnings would have been (after adjustment for the social security contribution and benefit base):

1958	-----	\$4,200	1960	-----	\$4,800
1959	-----	4,800	1961	-----	4,800

Since Mr. Caldwell's earnings would have exceeded the contribution and benefit base, any overtime wages he should have received would have no effect on his social security benefits.

Mr. Caldwell and his children became entitled to social security benefits in December 1960, and benefits were first paid for January 1962 (since Mr. Caldwell had stopped working) and up to January 1972 when Mr. Caldwell died. One of his children is still receiving benefits on his earnings record and Mrs. Caldwell is not entitled to benefits as a widow.

Through December 1973, approximately \$31,500 in monthly benefits had been paid to the Caldwell family. If Mr. Caldwell's earnings had been fully paid to him and credited to his social security earnings record, he and his children would have received a total of approximately \$38,500 in benefits through December 1973 (and additional benefits since that time), or about \$7,000 more than they actually received.

Present law does not permit the Social Security Administration to credit the amount of his earnings which were withheld and to pay benefits based on these earnings because they were not actually paid to him. Even if these earnings were now paid to Mr. Caldwell's estate, they could not be credited to his earnings record when they were actually earned because wages are generally creditable only when actually paid and earnings paid after the year of death are not covered by social security.

The Committee has considered this bill to compensate Mr. Caldwell's estate in the amount of \$19,145.18. Because the failure to make the appropriate deductions from Mr. Caldwell's income for social security retirement purposes and the continued erroneous deductions for the civil service annuity were attributable to the actions of the Bureau of Indian Affairs, it is recommended that the bill be considered favorably.

The reports of the Departments of Interior and Health, Education, and Welfare and the General Accounting Office are set out below. The Department of the Interior indicated it would have no objection to an amended bill, and the Department of Health, Education, and Welfare deferred to other agencies in connection with the bill. The Interior Department report states that the annuity incorrectly withheld was \$12,474.11. The Department of Health, Education, and Welfare stated that the lost social security benefits were approximately \$7,000. These amounts added together and reduced by the amount of \$328.93 representing contributions for social security which should have been withheld, yield the amount stated in the bill, \$19,145.18.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 9, 1974.

HON. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on H.R. 1357, a bill "For the relief of the estate of James J. Caldwell."

We have no objection to enactment of this bill if amended as suggested herein.

H.R. 1357 would compensate the estate of James J. Caldwell in the sum of \$35,673.18 for inequities which occurred in payment of compensation to him during the period from May 5, 1958, through March 25, 1961, during which time he was an employee of the Menominee Indian Mills, Neopit, Wisconsin.

Mr. Caldwell—a Menominee Indian—was the Federally-employed superintendent of logging (GS-10, at a salary of \$6,725 per annum)

at Menominee Indian Mills when he retired on October 31, 1957. He was rehired on November 1, 1957, as a tribal employee performing the same job. This situation arose out of the termination of the Federal trust relationship with the Menominees and the tribe's assumption of previously Federal functions. The Bureau of Indian Affairs subsequently made the decision that persons, like Mr. Caldwell, who retired from regular civil service positions at the Menominee Indian Mills and were rehired by the tribe should have a deduction made from their salary for the amount of their retirement annuity. The Bureau instructed the Menominees to this effect, and the Menominees reduced Mr. Caldwell's weekly pay by the amount of his annuity effective May 5, 1958. In addition, FICA deductions which had been made were suspended. (No retroactive adjustments were made for the period from November 1, 1957 to May 4, 1958.)

In October 1959, after reexamining its position, the BIA found that Mr. Caldwell should have been considered a tribal employee and therefore deductions should not have been made from his weekly pay in an amount that equalled his retirement annuity. However, FICA deductions should have been made—and were not. During the period May 5, 1958, to March 25, 1961, a total of \$12,474.11 (\$82.61 per week for 151 weeks) was withheld from his salary—the same amount as though he had been a reemployed annuitant in a Federal position. Therefore, the exact amount that might be due Mr. Caldwell's estate for the period May 5, 1958, to March 25, 1961, would be the \$12,474.11 withheld minus the amount of FICA taxes that should have been withheld. We have no objection to the enactment of legislation that would allow the estate to recover this adjusted amount.

Mr. Caldwell raised questions with the BIA and the Civil Service Commission beginning in June 1958 concerning the propriety of reducing his compensation by the amount of his annuity, but his attorneys did not file a claim on his behalf (for the amount of \$12,474.11) until June 2, 1969. The BIA determined that he was entitled to recover the amount claimed and submitted a request to the Comptroller General for a decision as to the legality of the claim and the propriety of certifying a voucher for payment in favor of Mr. Caldwell. Until that time no claim had been filed by Mr. Caldwell or his representative for overtime pay allegedly due.

The Comptroller General, in a decision B-168395 dated January 23, 1970, expressed the opinion that Mr. Caldwell's weekly pay had been erroneously reduced by the amount of his Civil Service annuity. However, since the operating expenses of the Menominee Indian Mills were paid from tribal funds during the entire period pertaining to Mr. Caldwell's claim, the Comptroller General held that such additional pay as was due Mr. Caldwell was the obligation of the tribe. Thus, in the opinion of the Comptroller General Mr. Caldwell's claim should have been submitted to the tribal organization, Menominee Enterprises, Inc., and not to the United States.

Subsequent to that decision Mr. Caldwell brought suit in the Court of Claims (*James J. Caldwell v. United States*, Ct. Cl. No. 208-70) demanding judgment in the amount of \$12,202.68 on account of wrongful salary deductions; \$10,000 on account of past and future loss of Social Security benefits; and \$14,550 on account of uncompensated

overtime; plus interest to date of payment. (The question of compensation for overtime was raised for the first time in this suit.) By decision of February 4, 1972, the Court of Claims concluded that the plaintiff's petition was barred by the statute of limitations and dismissed the case. (Mr. Caldwell died on January 4, 1972.)

We believe that the Bureau of Indian Affairs bears some responsibility for the wrongful withholding of the annuity amounts from Mr. Caldwell's salary and for that reason would not object to his estate's being awarded the adjusted sum for this matter as discussed *supra*. However, we have no records which would either confirm or deny Mr. Caldwell's overtime claims and in any event are convinced that nothing done by the BIA could have been responsible for Mr. Caldwell's alleged failure to be compensated for this time. Such failure would be solely the Menominees' responsibility. Therefore, we recommend against awarding any money to Mr. Caldwell's estate for alleged overtime work.

As to any part of the amount claimed in the bill that might arise from the loss of past or future Social Security benefits, we defer to the Department of Health, Education, and Welfare.

Because of the unusual complexity of this case, involving two retirement systems administered by different agencies of the Government, we recommend further that the bill be amended to have the Comptroller General determine the exact amount due Mr. Caldwell's estate given all the facts as available from this Department, the Department of Health, Education, and Welfare, and the Civil Service Commission.

Finally, we note that although it is possible that one or two other persons are or were in Mr. Caldwell's situation, we believe it very unlikely that in fact there are any.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JOHN H. KYL,
Assistant Secretary of the Interior.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
June 5, 1974.

HON. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request of February 15, 1973, for a report on H.R. 1357, a bill for the relief of the estate of James J. Caldwell.

The bill would provide for payment of \$35,673.18 to the estate of James J. Caldwell in full settlement of any claims Mr. Caldwell or his successors have against the United States alleged to arise out of the action of the Bureau of Indian Affairs in reducing his salary by the amount of his Federal civil service retirement benefits (because he was erroneously held to be a reemployed civil service annuitant), in failing to deduct appropriate social security contributions from

his salary, and in failing to pay him overtime wages, while he was employed at the Menominee Indian Mills from October 31, 1957, through March 25, 1961.

While the bill does not stipulate how the amount of the proposed settlement was arrived at, Mr. Charles A. Hobbs, the attorney representing the Caldwell estate, has stated in a written analysis of the claim that, of the \$35,673.18 claimed as settlement, \$8,970.50 represents the amount of additional social security benefits Mr. Caldwell and his dependents would have received had his earnings been correctly reported for social security purposes from October 31, 1957, through March 25, 1961. Our comments are directed to that part of the claim.

From the facts available to us (stated in the enclosed memorandum prepared by the Social Security Administration) it appears that Mr. Caldwell was not a Federal employee from November 1, 1957, to March 25, 1961. In that event, his earnings should have been treated as earnings covered under social security.

As explained in the enclosed memorandum, if Mr. Caldwell's earnings had not been reduced by the amount of his civil service annuity, and if the unreduced earnings had been reported for social security purposes, he and his dependents would have been entitled to additional benefits of approximately \$7000 through December 1973, additional child's and widow's benefits since that time, and possible benefits in the future. This is exclusive of \$328.93 in employee contributions which Mr. Caldwell would have paid during the period in question.

As to the desirability of the bill, we defer to the other agencies concerned since the bill would have no effect on the social security program.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Acting Secretary.

MEMORANDUM TO ACCOMPANY THE REPORT OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE ON H.R. 1357

On October 31, 1957, Mr. James J. Caldwell voluntarily retired on a civil service retirement annuity from his position as a Federal employee of the Bureau of Indian Affairs at the Menominee Indian Mills, Neopit, Wisconsin. On the following day, November 1, 1957, he was rehired in the same job for the same pay. (This was permitted under the law governing the relationship between the Federal Government and the Menominee people.) Mr. Caldwell had stated that it was his understanding that by taking this action he would no longer be a Federal employee but an employee of the Menominee Tribe, and therefore he would be covered by social security rather than the civil service retirement system and thus would be able to earn social security protection while receiving his full civil service annuity.

From November 1, 1957, until May 4, 1958, Mr. Caldwell received his full salary. His earnings until May 4, 1958, were reported for social security purposes. However, local officials of the Bureau of In-

dian Affairs then determined that Mr. Caldwell was a civil service annuitant reemployed by the Federal Government and consequently, effective May 5, 1958, the amount of Mr. Caldwell's civil service annuity (then \$358 per month) was deducted from his salary and his earnings were no longer reported for social security purposes. In October 1959, the Bureau of Indian Affairs reversed its decision and held that Mr. Caldwell was not a Federal employee, but it appears that the amount of his civil service annuity continued to be deducted from his salary and his earnings continued to be treated as though not covered by social security.

The Civil Service Commission, on May 12, 1961, disallowed Mr. Caldwell's application for a supplemental civil service retirement annuity based on his reemployment from November 1, 1957, to March 25, 1961, on the basis that he was not a Federal employee during this period.

In connection with Mr. Caldwell's application for social security retirement benefits in 1961, the Social Security Administration made an investigation regarding the correct amount of his earnings covered by social security. On May 1, 1962, the Bureau of Indian Affairs advised the Social Security Administration that Mr. Caldwell's services from November 1, 1957, to March 25, 1961, should have been covered under social security. The Social Security Administration then obtained from Menominee Enterprises, Inc., a statement showing that the following covered earnings were paid to Mr. Caldwell:

Calendar quarter	Covered earnings	Calendar quarter	Covered earnings
January 1957	\$931.10	September 1959	\$641.91
March 1958	1,681.16	December 1959	739.20
June 1958	1,102.89	March 1960	686.40
September 1958	607.23	June 1960	686.40
December 1958	761.94	September 1960	724.80
March 1959	584.52	December 1960	694.40
June 1959	627.14	March 1961	728.00

On the basis of this statement, earnings in the above amounts were credited to Mr. Caldwell's social security earnings record, and social security benefits have been paid to Mr. Caldwell and his family based on these earnings.

The above statement of earnings, however, furnished by Menominee Enterprises, Inc., for the calendar quarters from December 1957, did not include the amount of Mr. Caldwell's civil service annuity which had been erroneously withheld from his salary. If the amount equivalent to his civil service annuity had not been incorrectly withheld from his salary, Mr. Caldwell's actual earnings would have been (after adjustment for the social security contribution and benefit base):

1958	\$4,200	1960	\$4,800
1959	4,800	1961	4,800

Since Mr. Caldwell's earnings would have exceeded the contribution and benefit base, any overtime wages he should have received would have no effect on his social security benefits.

Mr. Caldwell and his children became entitled to social security benefits in December 1960, and benefits were first paid for January 1962 (since Mr. Caldwell had stopped working) and up to January

1972 when Mr. Caldwell died. One of his children is still receiving benefits on his earnings record and Mrs. Caldwell is now entitled to benefits as a widow.

Through December 1973, approximately \$31,500 in monthly benefits had been paid to the Caldwell family. If Mr. Caldwell's earnings had been fully paid to him and credited to his social security earnings record, he and his children would have received a total of approximately \$38,500.00 in benefits through December 1973 (and additional benefits since that time), or about \$7,000 more than they actually received.

Present law does not permit the Social Security Administration to credit the amount of his earnings which were withheld and to pay benefits based on these earnings because they were not actually paid to him. Even if these earnings were now paid to Mr. Caldwell's estate, they could not be credited to his earnings record when they were actually earned because wages are generally creditable only when actually paid and earnings paid after the year of death are not covered by social security.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 23, 1973.

B-178033

HON. PETER W. RODINO, JR.,
*Chairman, Committee on the Judiciary,
House of Representatives.*

DEAR MR. CHAIRMAN: Your letter of February 15, 1973, requests our views on H.R. 1357, a bill for the relief of the estate of James J. Caldwell.

The bill would authorize and direct the Secretary of the Treasury to pay to the estate of James J. Caldwell of Menominee County, Wisconsin, the sum of \$35,673.18 in full settlement of all his claims against the United States incident to the deduction of civil service retirement benefits from his salary; the nondeduction therefrom of social security contributions; and for overtime pay for services performed during his employment at the Menominee Indian Mills, Menominee County, Wisconsin, during the period from October 31, 1957, through March 25, 1961.

The question of the legality of Mr. Caldwell's claim for \$12,474.11, representing the amount by which his salary was reduced during the period May 5, 1958, through March 25, 1961, because of receipt of a retirement annuity, was the subject of our decision letter, B-168395, January 23, 1970, to the Department of the Interior, copy herewith. The facts as related in that decision are that Mr. Caldwell, Superintendent of logging, GS-10, \$6,725 per annum, employed at the Menominee Indian Mills, retired effective October 31, 1957, and was reemployed the following day November 1, 1957, as a tribal employee to perform the same duties. He received the same rate of pay and FICA deductions were withheld from his pay until May 5, 1958.

Because of the peculiar circumstances involved in the termination of Federal supervision over the Menominee Indians and the status of the employees, a decision was made that employees who retire from regular Civil Service positions at the Menominee Indian Mills shall have a

deduction made from their salary for the amount of their retirement if they should be reemployed as a Mill's employee.

In view of this decision Mr. Caldwell's weekly pay was reduced by the amount of his annuity effective May 5, 1958, and FICA deductions were suspended on that date. No adjustments were made for the period November 1, 1957, to May 5, 1958. Mr. Caldwell was finally separated March 25, 1961. Because of the above-mentioned decision Mr. Caldwell claims a reimbursement of \$12,474.11 (\$82.61 per week for 151 weeks, May 5, 1958-March 25, 1961).

We held in the decision of January 23, 1970, that since Mr. Caldwell was being paid from tribal funds we would not question the determination that he was not a Federal employee after his retirement and reemployment in 1957. However, we did express the opinion that his pay on and after November 1, 1957, should not have been subject to a reduction by the amount of his annuity. Further, we indicated that since all funds standing to the credit of the Menominee Indian Tribe in the United States Treasury on April 30, 1966, had been released to the tribal organization, the claim of Mr. Caldwell should have been submitted to that organization, namely, Menominee Enterprises, Inc.

We note that Mr. Caldwell also filed his claim in the Court of Claims under its Number 208-70. By order of February 4, 1972, the court concluded that Mr. Caldwell's claim was barred by the statute of limitations and dismissed the petition on the motion of the Government. See 197 C. Cls. 1065 (1972).

Informally we understand that the tribal organization, Menominee Enterprises, Inc. refuses to pay Mr. Caldwell's claim since the organizational officers feel the mistake was that of the Bureau of Indian Affairs. Additionally, we understand that if his claim be allowed from tribal funds it would very likely cause an economic hardship to the tribal organization. In this connection see H.R. 14556, H.R. 14803, and S. 3514, 92d Cong., 2d sess.

For the reason stated in our decision, cited above, we believe that Mr. Caldwell's claim does not result in an obligation of the Government payable from appropriated funds. However, since the error in withholding an amount equal to his civil service annuity from his salary after May 5, 1958, was the result of a Bureau of Indian Affairs decision, and in view of the apparent economic situation of Menominee Enterprises, Inc., it may be that Congress would desire to provide equitable relief.

Those parts of Mr. Caldwell's claim pertaining to loss of social security benefits and uncompensated overtime, although part of his case before the Court of Claims, were not before us at the time of B-168395. While the Bureau of Indian Affairs subsequently furnished to us certain information on those items, such information is insufficient for this Office to base any recommendation concerning the validity of those claims.

Sincerely yours,

PAUL G. DEMBLING,
*for the Comptroller General
of the United States.*

○

Calendar No. 967

94TH CONGRESS }
2d Session }

SENATE

{ REPORT
No. 94-1025

FOR THE RELIEF OF THE ESTATE OF JAMES J. CALDWELL

JULY 1 (legislative day JUNE 18), 1976.—Ordered to be printed

Mr. MATHIAS, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 2943]

The Committee on the Judiciary, to which was referred the bill (H.R. 2943) for the relief of the estate of James J. Caldwell, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the bill is to compensate the estate of James J. Caldwell in the amount of \$19,145.18 in settlement of the decedent's claims for civil service retirement benefits and social security benefits not received as a result of erroneous action by the Bureau of Indian Affairs in causing civil service retirement benefits to be deducted from the salary of said James J. Caldwell and failing to have appropriate contributions deducted for social security retirement purposes from the amount.

STATEMENT

The facts of the case as contained in the House report are as follows:

On October 31, 1957, Mr. James J. Caldwell voluntarily retired on a civil service retirement annuity from his position

as a Federal employee of the Bureau of Indian Affairs at the Menominee Indian Mills, Neopit, Wisconsin. On the following day, November 1, 1957, he was rehired in the same job for the same pay. (This was permitted under the law governing the relationship between the Federal Government and the Menominee people.) Mr. Caldwell had stated that it was his understanding that by taking this action he would no longer be a Federal employee but an employee of the Menominee Tribe, and therefore he would be covered by social security rather than the civil service retirement system and thus would be able to earn social security protection while receiving his full civil service annuity.

From November 1, 1957, until May 4, 1958, Mr. Caldwell received his full salary. His earnings until May 4, 1958, were reported for social security purposes. However, local officials of the Bureau of Indian Affairs then determined that Mr. Caldwell was a civil service annuitant reemployed by the Federal Government and consequently, effective May 5, 1958, the amount of Mr. Caldwell's civil service annuity (then \$358 per month) was deducted from his salary and his earnings were no longer reported for social security purposes. In October 1959, the Bureau of Indian Affairs reversed its decision and held that Mr. Caldwell was not a Federal employee, but it appears that the amount of his civil service annuity continued to be deducted from his salary and his earnings continued to be treated as though not covered by social security.

The Civil Service Commission, on May 12, 1961, disallowed Mr. Caldwell's application for a supplemental civil service retirement annuity based on his reemployment from November 1, 1957 to March 25, 1961, on the basis that he was not a Federal employee during this period.

In connection with Mr. Caldwell's application for social security retirement benefits in 1961, the Social Security Administration made an investigation regarding the correct amount of his earnings covered by social security. On May 1, 1962, the Bureau of Indian Affairs advised the Social Security Administration that Mr. Caldwell's services from November 1, 1957 to March 25, 1961, should have been covered under social security. The Social Security Administration then obtained from Menominee Enterprises, Inc., a statement showing the amount of covered earnings.

On the basis of this statement, earnings were credited to Mr. Caldwell's social security earnings record, and social security benefits have been paid to Mr. Caldwell and his family based on these earnings.

The statement of earnings, however, furnished by Menominee Enterprises, Inc., for the calendar quarters from December 1957, through March 1961, did not include the amount of Mr. Caldwell's civil service annuity which had been erroneously withheld from his salary. If the amount equivalent to his civil service annuity had not been incorrectly withheld

from his salary, Mr. Caldwell's actual earnings would have been (after adjustment for the social security contribution and benefit base) :

1958 -----	\$4,200	1960 -----	\$4,800
1959 -----	4,800	1961 -----	4,800

Since Mr. Caldwell's earnings would have exceeded the contribution and benefit base, any overtime wages he should have received would have no effect on his social security benefits.

Mr. Caldwell and his children became entitled to social security benefits in December 1960, and benefits were first paid for January 1962 (since Mr. Caldwell had stopped working) and up to January 1972 when Mr. Caldwell died. One of his children is still receiving benefits on his earnings record and Mrs. Caldwell is not entitled to benefits as a widow.

Through December 1973, approximately \$31,500 in monthly benefits had been paid to the Caldwell family. If Mr. Caldwell's earnings had been fully paid to him and credited to his social security earning record, he and his children would have received a total of approximately \$38,500 in benefits through December 1973 (and additional benefits since that time), or about \$7,000 more than they actually received.

Present law does not permit the Social Security Administration to credit the amount of his earnings which were withheld and to pay benefits based on these earnings because they were not actually paid to him. Even if these earnings were now paid to Mr. Caldwell's estate they could not be credited to his earnings record when they were actually earned because wages are generally creditable only when actually paid and earnings paid after the year of death are not covered by social security.

The Committee has considered this bill to compensate Mr. Caldwell's estate in the amount of \$19,145.18. Because the failure to make the appropriate deductions from Mr. Caldwell's income for social security retirement purposes and the continued erroneous deductions for the civil service annuity were attributable to the actions of the Bureau of Indian Affairs, it is recommended that the bill be considered favorably.

H.R. 2943 was reported by the House Committee on the Judiciary without amendment and was subsequently passed by the House of Representatives on November 4, 1975, and referred to the Senate Committee on the Judiciary on November 5, 1975.

The Committee is in agreement with the House findings, and, accordingly, recommends favorable consideration of H.R. 2943.

Attached hereto and made a part hereof are the reports of the Departments of the Interior and of Health, Education, and Welfare and the General Accounting Office. The Department of the Interior indicated it would have no objection to an amended bill, and the Department of Health, Education, and Welfare deferred to other

agencies in connection with the bill. However, in a letter subsequent to their report, HEW informed the committee that passage of H.R. 2943 would not result in an overpayment to claimant. The Interior Department report states that the annuity incorrectly withheld was \$12,474.11. The Department of Health, Education, and Welfare stated that the lost social security benefits were approximately \$7,000. These amounts added together and reduced by the amount of \$328.93 representing contributions for social security which should have been withheld, yield the amount stated in the bill, \$19,145.18.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 9, 1974.

HON. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on H.R. 1357, a bill "For the relief of the estate of James J. Caldwell."

We have no objection to enactment of this bill if amended as suggested herein.

H.R. 1357 would compensate the estate of James J. Caldwell in the sum of \$35,673.18 for inequities which occurred in payment of compensation to him during the period from May 5, 1958, through March 25, 1961, during which time he was an employee of the Menominee Indian Mills, Neopit, Wisconsin.

Mr. Caldwell—a Menominee Indian—was the Federally-employed superintendent of logging (GS-10, at a salary of \$6,725 per annum) at Menominee Indian Mills when he retired on October 31, 1957. He was rehired on November 1, 1957, as a tribal employee performing the same job. This situation arose out of the termination of the Federal trust relationship with the Menominees and the tribe's assumption of previously Federal functions. The Bureau of Indian Affairs subsequently made the decision that persons, like Mr. Caldwell, who retired from regular civil service positions at the Menominee Indian Mills and were rehired by the tribe should have a deduction made from their salary for the amount of their retirement annuity. The Bureau instructed the Menominees to this effect, and the Menominees reduced Mr. Caldwell's weekly pay by the amount of his annuity effective May 5, 1958. In addition, FICA deductions which had been made were suspended. (No retroactive adjustments were made for the period from November 1, 1957 to May 4, 1958.)

In October 1959, after reexamining its position, the BIA found that Mr. Caldwell should have been considered a tribal employee and therefore deductions should not have been made from his weekly pay in an amount that equalled his retirement annuity. However, FICA deductions should have been made—and were not. During the period May 5, 1958, to March 25, 1961, a total of \$12,474.11 (\$82.61 per week for 151 weeks) was withheld from his salary—the same amount as though he had been a reemployed annuitant in a Federal position. Therefore, the exact amount that might be due Mr. Caldwell's estate for the period May 5, 1958, to March 25, 1961, would be the \$12,474.11 withheld minus the amount of FICA taxes that should have been withheld. We

have no objection to the enactment of legislation that would allow the estate to recover this adjusted amount.

Mr. Caldwell raised questions with the BIA and the Civil Service Commission beginning in June 1958 concerning the propriety of reducing his compensation by the amount of his annuity, but his attorneys did not file a claim on his behalf (for the amount of \$12,474.11) until June 2, 1969. The BIA determined that he was entitled to recover the amount claimed and submitted a request to the Comptroller General for a decision as to the legality of the claim and the propriety of certifying a voucher for payment in favor of Mr. Caldwell. Until that time no claim had been filed by Mr. Caldwell or his representative for overtime pay allegedly due.

The Comptroller General, in a decision B-168395 dated January 23, 1970, expressed the opinion that Mr. Caldwell's weekly pay had been erroneously reduced by the amount of his Civil Service annuity. However, since the operating expenses of the Menominee Indian Mills were paid from tribal funds during the entire period pertaining to Mr. Caldwell's claim, the Comptroller General held that such additional pay as was due Mr. Caldwell was the obligation of the tribe. Thus, in the opinion of the Comptroller General Mr. Caldwell's claim should have been submitted to the tribal organization, Menominee Enterprises, Inc., and not to the United States.

Subsequent to that decision Mr. Caldwell brought suit in the Court of Claims (James J. Caldwell v. United States, Ct. Cl. No. 208-70) demanding judgment in the amount of \$12,202.68 on account of wrongful salary deductions; \$10,000 on account of past and future loss of Social Security benefits; and \$14,550 on account of uncompensated overtime; plus interest to date of payment. (The question of compensation for overtime was raised for the first time in this suit.) By decision of February 4, 1972, the Court of Claims concluded that the plaintiff's petition was barred by the statute of limitations and dismissed the case. (Mr. Caldwell died on January 4, 1972).

We believe that the Bureau of Indian Affairs bears some responsibility for the wrongful withholding of the annuity amounts from Mr. Caldwell's salary and for that reason would not object to his estate's being awarded the adjusted sum for this matter as discussed *supra*. However, we have no records which would either confirm or deny Mr. Caldwell's overtime claims and in any event are convinced that nothing done by the BIA could have been responsible for Mr. Caldwell's alleged failure to be compensated for this time. Such failure would be solely the Menominees' responsibility. Therefore, we recommend against awarding any money to Mr. Caldwell's estate for alleged overtime work.

As to any part of the amount claimed in the bill that might arise from the loss of past or future Social Security benefits, we defer to the Department of Health, Education, and Welfare.

Because of the unusual complexity of this case, involving two retirement systems administered by different agencies of the Government, we recommend further that the bill be amended to have the Comptroller General determine the exact amount due Mr. Caldwell's estate given all the facts as available from this Department, the De-

partment of Health, Education, and Welfare, and the Civil Service Commission.

Finally, we note that although it is possible that one or two other persons are or were in Mr. Caldwell's situation, we believe it very unlikely that in fact there are any.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JOHN H. KYL,
Assistant Secretary of the Interior.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
June 5, 1974.

HON. PETER W. RODINO, JR.,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.*

Dear Mr. CHAIRMAN: This letter is in response to your request of February 15, 1973, for a report on H.R. 1357, a bill for the relief of the estate of James J. Caldwell.

The bill would provide for payment of \$35,673.18 to the estate of James J. Caldwell in full settlement of any claims Mr. Caldwell or his successors have against the United States alleged to arise out of the action of the Bureau of Indian Affairs in reducing his salary by the amount of his Federal civil service retirement benefits (because he was erroneously held to be a reemployed civil service annuitant), in failing to deduct appropriate social security contributions from his successors have against the United States alleged to arise out of employed at the Menominee Indian Mills from October 31, 1957, through March 25, 1961.

While the bill does not stipulate how the amount of the proposed settlement was arrived at, Mr. Charles A. Hobbs, the attorney representing the Caldwell estate, has stated in a written analysis of the claim that, of the \$35,673.18 claimed as settlement, \$8,970.50 represents the amount of additional social security benefits Mr. Caldwell and his dependents would have received had his earnings been correctly reported for social security purposes from October 31, 1957, through March 25, 1961. Our comments are directed to that part of the claim.

From the facts available to us (stated in the enclosed memorandum prepared by the Social Security Administration) it appears that Mr. Caldwell was not a Federal employee from November 1, 1957, to March 25, 1961. In that event, his earnings should have been treated as earnings covered under social security.

As explained in the enclosed memorandum, if Mr. Caldwell's earnings had not been reduced by the amount of his civil service annuity, and if the unreduced earnings had been reported for social security purposes, he and his dependents would have been entitled to additional benefits of approximately \$7000 through December 1973, additional child's and widow's benefits since that time, and possible benefits in the future. This is exclusive of \$328.93 in employee contributions which Mr. Caldwell would have paid during the period in question.

As to the desirability of the bill, we defer to the other agencies concerned since the bill would have no effect on the social security program.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Acting Secretary.

MEMORANDUM TO ACCOMPANY THE REPORT OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE ON H.R. 1357

On October 31, 1957, Mr. James J. Caldwell voluntarily retired on a civil service retirement annuity from his position as a Federal employee of the Bureau of Indian Affairs at the Menominee Indian Mills, Neopit, Wisconsin. On the following day, November 1, 1957, he was required in the same job for the same pay. (This was permitted under the law governing the relationship between the Federal Government and the Menominee people.) Mr. Caldwell had stated that it was his understanding that by taking this action he would no longer be a Federal employee but an employee of the Menominee Tribe, and therefore he would be covered by social security rather than the civil service retirement system and thus would be able to earn social security protection while receiving his full civil service annuity.

From November 1, 1957, until May 4, 1958, Mr. Caldwell received his full salary. His earnings until May 4, 1958, were reported for social security purposes. However, local officials of the Bureau of Indian Affairs then determined that Mr. Caldwell was a civil service annuitant reemployed by the Federal Government and consequently, effective May 5, 1958, the amount of Mr. Caldwell's civil service annuity (then \$358 per month) was deducted from his salary and his earnings were no longer reported for social security purposes. In October 1959, the Bureau of Indian Affairs reversed its decision and held that Mr. Caldwell was not a Federal employee, but it appears that the amount of his civil service annuity continued to be deducted from his salary and his earnings continued to be treated as though not covered by social security.

The Civil Service Commission, on May 12, 1961, disallowed Mr. Caldwell's application for a supplemental civil service retirement annuity based on his reemployment from November 1, 1957, to March 25, 1961, on the basis that he was not a Federal employee during this period.

In connection with Mr. Caldwell's application for social security retirement benefits in 1961, the Social Security Administration made an investigation, regarding the correct amount of his earnings covered by social security. On May 1, 1962, the Bureau of Indian Affairs advised the Social Security Administration that Mr. Caldwell's services from November 1, 1957, to March 25, 1961, should have been covered under social security. The Social Security Administration then ob-

tained from Menominee Enterprises, Inc., a statement showing that the following covered earnings were paid to Mr. Caldwell:

Calendar quarter	Covered earnings	Calendar quarter	Covered earnings
January 1957	\$981.10	September 1959	\$641.91
March 1958	1,681.16	December 1959	739.20
June 1958	1,102.89	March 1960	686.40
September 1958	607.23	June 1960	686.40
December 1958	761.94	September 1960	724.80
March 1959	584.52	December 1960	694.40
June 1959	627.14	March 1961	728.00

On the basis of this statement, earnings in the above amounts were credited to Mr. Caldwell's social security earnings record, and social security benefits have been paid to Mr. Caldwell and his family based on these earnings.

The above statement of earnings, however, furnished by Menominee Enterprises, Inc., for the calendar quarters from December 1957, did not include the amount of Mr. Caldwell's civil service annuity which had been erroneously withheld from his salary. If the amount equivalent to his civil service annuity had not been incorrectly withheld from his salary, Mr. Caldwell's actual earnings would have been (after adjustment for the social security contribution and benefit base):

1958	\$4,200	1960	\$4,800
1959	4,800	1961	4,800

Since Mr. Caldwell's earnings would have exceeded the contribution and benefit base, any overtime wages he should have received would have no effect on his social security benefits.

Mr. Caldwell and his children became entitled to social security benefits in December 1960, and benefits were first paid for January 1962 (since Mr. Caldwell had stopped working) and up to January 1972 when Mr. Caldwell died. One of his children is still receiving benefits on his earnings record and Mrs. Caldwell is now entitled to benefits as a widow.

Through December 1973, approximately \$31,500 in monthly benefits had been paid to the Caldwell family. If Mr. Caldwell's earnings had been fully paid to him and credited to his social security earnings record, he and his children would have received a total of approximately \$38,500.00 in benefits through December 1973 (and additional benefits since that time), or about \$7,000 more than they actually received.

Present law does not permit the Social Security Administration to credit the amount of his earnings which were withheld and to pay benefits based on these earnings because they were not actually paid to him. Even if these earnings were not paid to Mr. Caldwell's estate, they could not be credited to his earnings record when they were actually earned because wages are generally creditable only when actually paid and earnings paid after the year of death are not covered by social security.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 23, 1973.

B-178033

HON. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Your letter of February 15, 1973, requests our views on H.R. 1357, a bill for the relief of the state of James J. Caldwell.

The bill would authorize and direct the Secretary of the Treasury to pay to the estate of James J. Caldwell of Menominee County, Wisconsin, the sum of \$38,673.18 in full settlement of all his claims against the United States incident to the deduction of civil service retirement benefits from his salary; the nondeduction therefrom of social security contributions; and for overtime pay for services performed during his employment at the Menominee Indian Mills, Menominee County, Wisconsin, during the period from October 31, 1957, through March 25, 1961.

The question of the legality of Mr. Caldwell's claim for \$12,474.11, representing the amount by which his salary was reduced during the period May 5, 1958, through March 25, 1961, because of receipt of a retirement annuity, was the subject of our decision letter, B-168395, January 23, 1970, to the Department of the Interior, copy herewith. The facts as related in that decision are that Mr. Caldwell, Superintendent of logging, GS-10, \$6,725 per annum, employed at the Menominee Indian Mills, retired effective October 31, 1957, and was reemployed the following day November 1, 1957, as a tribal employee to perform the same duties. He received the same rate of pay and FICA deductions were withheld from his pay until May 5, 1958.

Because of the peculiar circumstances involved in the termination of Federal supervision over the Menominee Indians and the status of the employees, a decision was made that employees who retire from regular Civil Service positions at the Menominee Indian Mills shall have a deduction made from their salary for the amount of their retirement if they should be reemployed as a Mill's employee.

In view of this decision Mr. Caldwell's weekly pay was reduced by the amount of his annuity effective May 5, 1958, and FICA deductions were suspended on that date. No adjustments were made for the period November 1, 1957, to May 5, 1958. Mr. Caldwell was finally separated March 25, 1961. Because of the above-mentioned decision Mr. Caldwell claims a reimbursement of \$12,474.11 (\$82.61 per week for 151 weeks, May 5, 1958-March 25, 1961).

We held in the decision of January 23, 1970, that since Mr. Caldwell was being paid from tribal funds we would not question the determination that he was not a Federal employee after his retirement and reemployment in 1957. However, we did express the opinion that his pay on and after November 1, 1957, should not have been subject to a reduction by the amount of his annuity. Further, we indicated that since all funds standing to the credit of the Menominee Indian Tribe in

the United States Treasury on April 30, 1966, had been released to the tribal organization, the claim of Mr. Caldwell should have been submitted to that organization, namely, Menominee Enterprises, Inc.

We note that Mr. Caldwell also filed his claim in the Court of Claims under its Number 208-70. By order of February 4, 1972, the court concluded that Mr. Caldwell's claim was barred by the statute of limitations and dismissed the petition on the motion of the Government. See 197 C. Cls. 1065 (1972).

Informally we understand that the tribal organization, Menominee Enterprises, Inc. refuses to pay Mr. Caldwell's claim since the organizational officers feel the mistake was that of the Bureau of Indian Affairs. Additionally, we understand that if his claim be allowed from tribal funds it would very likely cause an economic hardship to the tribal organization. In this connection see H.R. 14556, H.R. 14803, and S. 3514, 92d Cong., 2d sess.

For the reason stated in our decision, cited above, we believe that Mr. Caldwell's claim does not result in an obligation of the Government payable from appropriated funds. However, since the error in withholding an amount equal to his civil service annuity from his salary after May 5, 1958, was the result of a Bureau of Indian Affairs decision, and in view of the apparent economic situation of Menominee Enterprises, Inc., it may be that Congress would desire to provide equitable relief.

Those parts of Mr. Caldwell's claim pertaining to loss of social security benefits and uncompensated overtime, although part of his case before the Court of Claims, were not before us at the time of B-168395. While the Bureau of Indian Affairs subsequently furnished to us certain information on those items, such information is insufficient for this Office to base any recommendation concerning the validity of those claims.

Sincerely yours,

PAUL G. DEMBLING,
for the Comptroller General
of the United States.

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

For the relief of the estate of James J. Caldwell.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the estate of James J. Caldwell, of Menominee County, Wisconsin, the sum of \$19,145.18, in full settlement of all claims against the United States of the said James J. Caldwell, or his successors, arising out of the erroneous action of the Bureau of Indian Affairs in deducting civil service retirement benefits from the salary of the said James J. Caldwell and failing to deduct appropriate contributions for social security retirement purposes from such salary while he was employed at the Menominee Indian Mills, Menominee County, Wisconsin, during the period from October 31, 1957, through March 25, 1961.

SEC. 2. No part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not in excess of \$1,000.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*