



NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-0000

O/CONGRESSIONAL AFFAIRS

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MEMORANDUM FOR THE OFFICE OF CONGRESSIONAL AFFAIRS, CENTRAL
INTELLIGENCE AGENCY

SUBJECT: NSA Proposals for FY-88 Intelligence Authorization Act

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1. This responds to your letter of 16 October 1986 in which you request legislative language for NSA proposals to be included into the FY-88 Intelligence Authorization Bill.

2. Summarized below are six proposals including a revised version of the Foreign Cryptographic Control Bill. Legislative language and sectional analyses for each provision are attached at Tabs A-F.

a. Tax Exemption of Allowances Paid to Certain NSA Employees. An amendment to section 912(1) of the Internal Revenue Code to exempt from taxation allowances provided to certain NSA and DIA personnel. The same allowances provided to Foreign Service members and CIA personnel are currently exempted from taxation under section 912(1). The NSA portion of the proposal has already been cleared by OMB and has been sent to Congress. The Intelligence Authorization Act may be an appropriate vehicle for enacting this legislation. (A copy of the Speaker Letter prepared by DoD is attached at Tab G.)

b. Retroactive Pay for Certain NSA Employees. An amendment to the NSA Act of 1959 (50 U.S.C. §402 note) to allow the Director, NSA, to pay certain senior NSA employees additional pay to which they would have been entitled during fiscal years 1980 and 1981 under a 1984 Seventh Circuit decision (Squillacote v. U.S., 739 F.2d 1208 (7th Cir. 1984), cert. denied, 105 S.C. 2021 (1985)) if NSA's Senior Cryptologic Executive Service (SCES) had been established at the same time as the Senior Executive Service (SES).

c. Foreign Cryptography Control. An amendment to Title 10 to provide the Secretary of Defense and the Director, NSA, with the statutory authority to prevent the introduction of foreign manufactured cryptography into the United States Government and government-contractor inventory and to bar foreign-owned, controlled, or influenced companies from accessing United States Government cryptography.

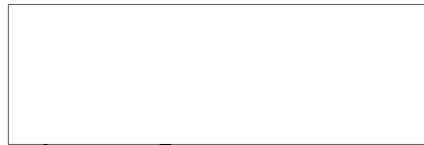
d. Transportation of Remains. An amendment to Title 5 to authorize the payment of expenses for transportation of

remains, dependents, and effects of an employee of the United States who dies while on a rotational tour of duty within the United States at a place away from his or her permanent home.

e. Pay Advance. An amendment to Title 5 to authorize advances of up to three months' pay to employees reassigned for permanent duty to a new location within the United States in like manner as is authorized in cases of transfers overseas.

f. NSA Graduate Studies Program. An amendment to the NSA Act of 1959 to provide statutory authority for the establishment by the Director, NSA, of a graduate training program for critical skills.

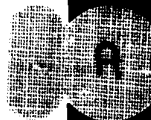
3. Please contact me with any questions you may have concerning our submissions.



Legislative and Regulatory Counsel

Encls:
a/s

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TAX EXEMPTION FOR ALLOWANCES PAID TO CERTAIN NSA
AND DIA EMPLOYEES

Section _____: Section 912(1) of chapter 1 of title 16, United States Code, is amended by inserting at the end thereof the following new paragraphs:

"(E) subsection (b) of section 9 of the National Security Agency Act of 1959, as amended (50 U.S.C. section 402 note), whenever the allowance would be excluded from gross income under paragraphs (1)(A) or (1)(B) of this section.

"(F) subsection 1605(a) of title 10, United States Code, whenever the allowance would be excluded from gross income under paragraph 1(A) of this section."

SECTIONAL ANALYSIS

Section _____ would amend section 912(a) of the Internal Revenue Code of 1954 to grant comparable tax treatment of allowances currently provided to certain Department of Defense personnel under section 9(b)(1) of the National Security Act of 1959 and section 1605 of title 10, United States Code.

The Intelligence Authorization Act of 1982 (Public Law 97-89) amended the National Security Agency Act of 1959 to allow the

Director, National Security Agency, to provide allowances and benefits to certain civilian employees of the Department of Defense which were comparable to those provided to the State Department's Foreign Service and to employees of the Central Intelligence Agency. During the implementation of this statute, it was discovered that comparability of the allowances could not be achieved unless the tax exemption provided for Foreign Service and Central Intelligence Agency employees under section 912(1) (A) and (B) of the Internal Revenue Code was also available for civilians employed and assigned to the National Security Agency.

The Intelligence Authorization Act for Fiscal Year 1984 (Public Law 98-215) amended title 10, United States Code, to provide certain allowances and benefits to personnel assigned to Defense Attache Offices and Defense Intelligence Agency Liaison Offices overseas comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under chapter 9 of Title I of the Foreign Service Act of 1980. Although section 1605 was designed to establish equivalence between DAO/DIALO civilians and Foreign Service personnel with respect to many allowances and benefits, the actual value of the allowances and benefits to DAO and DIALO personnel is less than the value of the benefits to Foreign Service personnel, since the benefits granted under the Foreign Service Act are tax free by virtue of section 912 of the Internal Revenue Code while those granted under section 1605 are not exempt from taxation.

The current inequity in taxation has been compounded by subsection 12323(b) of the Tax Reform Act of 1986 (Public Law 99-570). This subsection provides that civilian employees of the Department of Defense stationed in Panama may exclude from gross income allowances which are comparable to the allowances excludable under section 912(a) of the Internal Revenue Code by employees of the Department of State stationed in Panama. Thus, it appears that any Defense Intelligence Agency or National Security Agency personnel stationed in Panama will, in future taxable years, be able to exclude from their gross income Foreign Service-equivalent allowances and benefits granted to them.

As a result of the provisions discussed above, there is now a situation where the tax laws treat identical allowances and benefits differently for NSA and DIA civilian personnel stationed overseas from that of Foreign Service personnel. Moreover, under the Tax Reform Act of 1986, the tax laws now treat identical allowances and benefits differently for NSA and DIA civilian personnel in Panama from all other NSA and DIA civilian personnel stationed overseas. The addition of the proposed paragraphs (E) and (F) to section 912(1) of the Internal Revenue Code of 1954 will provide equal tax treatment for identical allowances and benefits received by NSA, DIA, and Foreign Service civilian personnel stationed around the world.

CHANGES IN EXISTING LAW

Subsection 912(1) of title 26, United States Code, as follows:

Sec. 912. Exemption for certain allowances.

The following items shall not be included in gross income, and shall be exempt from taxation under this subtitle:

(1) Foreign areas allowances.--In the case of civilian officers and employees of the Government of the United States, amounts received as allowance or otherwise (but not amounts received as post differentials) under--

(A) chapter 9 of title I of the Foreign Service Act of 1980,

(B) section 4 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. sec. 403e),

(C) title II of the Overseas Differentials and Allowances Act, or

(D) subsection (e) or (f) of the first section of the Administrative Expenses Act of 1946, as amended, or section 22 of such Act--1

(E) subsection (b) of section 9 of the National Security Agency Act of 1959, as amended (50 U.S.C. section 402 note), whenever the allowances would be excluded from gross income under paragraphs (1) (A) or (1) (B) of this section, or

(F) subsection 1605(a) of title 10, United States Code whenever the allowance would be excluded from gross income under paragraph (1) (A) of this section.

COST ANALYSIS

The enactment of this section would result in the loss to the government of income tax revenues otherwise collectible on the exempted sums.



PROPOSED SECTION TO THE DRAFT INTELLIGENCE AUTHORIZATION ACT 1988:

Retroactive Pay for Certain NSA Employees

Sec. _____. Notwithstanding any other law, the Director of the National Security Agency may, in his discretion, pay retroactively to present and former members of the Senior Cryptologic Executive Service any additional pay to which they would have been entitled had the Senior Cryptologic Executive Service been established on July 13, 1979. Such retroactive payments may only be made to those employees of the National Security Agency whose basic pay was at or above the rate of basic pay of grade 16 of the General Schedule at some time between July 13, 1979, and March 14, 1982, and who subsequently became members of the Senior Cryptologic Executive Service prior to 8 June 1982. Such retroactive payments may be made from any funds appropriated for prior fiscal years which remain available.

SECTIONAL ANALYSIS

Section _____ would authorize the Director, NSA, to make a one-time retroactive payment to certain Senior Cryptologic Executive Service (SCES) employees equivalent to the retroactive pay for fiscal years 1980 and 1981 made to Senior Executive Service (SES) personnel pursuant to a 1984 circuit court decision, Squillacote v. United States, 739 F.2d 1208 (7th Cir. 1984), cert. denied, 105 S.C. 2021 (1985). The Director would also be permitted to pay affected employees any amounts subsequently determined by any court to be due to SES employees by virtue of their membership in the SES between July 13, 1979, the date after United States Government employees were first converted to SES, and March 14, 1982, the date positions in the National Security Agency were first converted to the SCES. The section further provides that such payment shall be made from any funds appropriated for prior fiscal years which remain available.

In Squillacote, the Seventh Circuit Court of Appeals determined that pay for the SES was improperly capped at Executive Level V in fiscal years 1980 and 1981. During these fiscal years, no positions within the National Security Agency were included in the SES because Section 3132(a) of Title 5, United States Code, specifically excluded the National Security Agency from participating in the SES. However, during fiscal years 1980 and 1981, the Agency employed a number of employees whose rate of basic pay was equal to or greater than the rate of basic pay for

grade 16 of the General Schedule and who subsequently were converted to the Senior Cryptologic Executive Service. The pay of these employees was capped at Executive Level V pursuant to 5 U.S.C. § 5308.

In Public Law 97-89, the Intelligence Authorization Act of 1982, 95 Stat. 1150, NSA was given authority to implement a Senior Cryptologic Executive Service which was to operate in much the same way as the SES and to pay SCES members the same amounts as members of the SES are paid. In early 1982, NSA began the process of converting senior grade employees to the SCES positions. By June 1982, the initial process of converting employees to the SCES was completed. The proposed legislation would permit the Director of NSA to retroactively pay employees who were subsequently converted to the SCES the amounts they would have received had they been converted to the SCES at the same time other government agencies converted employees to the SES.

COST AND BUDGET DATA

We estimate the cost to be \$700,000.



A BILL

To protect United States Government telecommunications from interception and interference by foreign powers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States:

SEC. 2. (a) Chapter 4 of title 10, United States Code, is amended by adding at the end thereof the following section:

"140d. Cryptographic Security

"(a) To ensure the security of communications relating to activities of the United States Government and to control the dissemination of cryptographic information, the Secretary of Defense shall issue regulations governing the purchase, use and disposal of cryptographic equipment used by the United States Government, by United States Government contractors, and by others who have been granted access to cryptographic equipment by the United States Government.

"(b) All agencies and instrumentalities of the United States Government, United States Government contractors, and others who have been granted access to cryptographic equipment by the United States Government shall comply with regulations issued pursuant

to subsection (a). Such regulations shall be promulgated after coordination with the heads of departments and agencies as determined by the President.

"(c) Regulations issued pursuant to subsection (a) shall be submitted to the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives, and the Select Committee on Intelligence and the Committee on Armed Services of the Senate, no later than thirty days before such regulations take effect.

"(d) The Secretary of Defense may delegate the authority granted by subsection (a) only to the Deputy Secretary of Defense and the Director, National Security Agency.

"(e) In addition to any administrative, contractual, or other remedy that may be available, the Attorney General is authorized, upon request of the Secretary of Defense, to institute a civil action pursuant to section 1345 of title 28, United States Code, to enforce compliance with regulations issued pursuant to subsection (a). In a civil action instituted pursuant to this subsection, the district court may order injunctive or other equitable relief, including but not limited to specific performance of obligations imposed by regulations issued pursuant to subsection (a) and the forfeiture to the United States of equipment or the proceeds

from equipment sold, used, or disposed of contrary to such regulations.

"(f) Nothing in this section shall be deemed to affect or reduce the authorities conferred by the Federal Property and Administrative Services Act of 1949, as amended, on the Administrator of General Services, the Secretary of Commerce, or the Director of the Office of Management and Budget.

"(g) Nothing in this section shall alter or affect the authorities of the Director of Central Intelligence, including the authority to protect intelligence sources and methods and activities of the Central Intelligence Agency, from unauthorized disclosure.

"(h) As used in this section --

"(1) 'Contractors' means individuals, sole proprietors, associations, partnerships, corporations, and other entities performing under contracts with the United States and includes subcontractors.

"(2) 'Cryptographic equipment' means all equipment, documents, material, devices, or information used to provide security or protection to telecommunications by converting information to a form unintelligible to an unauthorized recipient and by reconvertng such information to its original form for authorized recipients;

specifically to aid in, or as an essential element of, such a conversion and reconversion process; and crypto-ancillary equipment, crypto-production equipment, and authentication equipment; and

"(3) 'Agencies and instrumentalities of the United States Government' means executive departments, military departments, agencies, and independent establishments of the United States, and the armed forces, but does not include the Congress or the Judiciary."

b. The Table of Contents of Chapter 4 of title 10, United States Code, is amended by adding at the end thereof the following:

"140d. Cryptographic Security."

SECTIONAL ANALYSIS

Section 2(a) amends Chapter 4 of Title 10 by adding a new section 140d - Cryptographic Security. This new section provides the Secretary of Defense, and if he delegates his authority, the Deputy Secretary of Defense and the Director, NSA, statutory authority to promulgate regulations governing the purchase, use, and disposal of cryptographic equipment in order to maintain the integrity of communications security equipment used by the United States Government, its contractors, and others granted access to such equipment by the government. Regulations issued pursuant to this authority would maintain an appropriate level of control over the introduction of foreign-manufactured cryptography into the United States Government and government-contractor inventory and regulate the access to United States Government cryptography by foreign-owned, controlled, or influenced companies.

Subsection (b) provides that regulations issued by the Secretary of Defense will be promulgated after coordination with the heads of departments and agencies determined by the President to have a role in these matters. These regulations will be submitted to the Congressional committees enumerated in subsection (c) no later than thirty days before they are to take effect.

Subsection (e) specifically provides authority to institute civil judicial proceedings to enforce compliance with regulations issued pursuant to this Section.

Nothing in this section shall be deemed to affect or reduce the authorities conferred by the Federal Property and Administrative Services Act of 1949, as amended, on the Administrator of General Services, the Secretary of Commerce, or the Director of the Office of Management and Budget. Nor shall this section alter or affect the authorities of the Director of Central Intelligence (DCI), including his authority to protect intelligence sources, methods and activities from unauthorized disclosure or his responsibility to act as Executive Agent of the United States Government for technical security countermeasures.

A BILL

To amend Title 5, United States Code, to authorize payment of expenses for transportation of remains, dependents, and effects of certain employees of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that Chapter 57 of Title 5, United States Code, is amended as follows:

Sec. 1. Subsections (1) and (2) of Section 5742(b) are amended to read as follows:

"(1) the expenses of preparing and transporting the remains to the home or official station of the employee, or such other place appropriate for interment as is determined by the head of the agency concerned, if death occurred while the employee was in a travel status away from his official station in the United States, while performing official duties outside the United States, while the employee was on a rotational tour of duty within the United States, or while in transit thereto or therefrom; and

"(2) the expense of transporting his dependents, including expenses of packing, crating, draying, and transporting household effects and other personal property to his former home or such other place as is determined by the head of the agency concerned, if death occurred while the employee was performing official

duties outside the United States, while the employee was on a rotational tour of duty within the United States or while the employee was in transit thereto or therefrom."

Sec. 2. Section 5742(c) is amended by inserting after "therefrom," the following:

"or while on a rotational tour of duty within the United States,"

Sec. 3. For purposes of this Act, a "rotational tour of duty within the United States" is a form of permanent change of station whereby an agency transfers an employee away from the agency headquarters to another post of duty in the United States for a fixed period of time established by regulation with the intent to return the employee to the agency headquarters by permanent change of station relocation at the end of that period.

Sec. 4. The amendment made by this Act shall be effective on the date of enactment of this Act.

SECTIONAL ANALYSIS

Section 1 amends Section 5742(b)(1) of Title 5, United States Code, to authorize an agency to pay the expenses of transporting the remains, dependents, and effects of employees who die while on a rotational tour of duty in the United States.

Section 2 amends Section 5742(c) of Title 5, United States Code, by providing the agency head with the authority to pay the expenses of transporting the remains of a dependent of the employee described above who dies while residing with the employee.

Section 3 defines for purposes of this Act the term "rotational tour of duty" as a form of a permanent change of station whereby an agency transfers an employee away from the agency headquarters to another post of duty in the United States for a fixed period of time established by regulation with the intent to return the employee to the agency headquarters by permanent change of station relocation at the end of that period.

Section 4 provides that the effective date of the amendment shall be the date of enactment.

A BILL

To permit advances of pay to an employee upon the reassignment of the employee to a post within the United States.

1 Be it enacted by the Senate and House of Representatives
2 of the United States in Congress assembled,

3 SEC. 1. Subchapter II of chapter 57 of title 5, United States
4 Code, is amended by adding at the end thereof the following
5 new section:

6 "§5734. Advance of pay
7 "Under such regulations as the President may prescribe,
8 an advance of up to three months' pay may be paid to
9 an employee upon the reassignment of the employee for permanent
10 duty within the United States, its territories or possessions,
11 or the Commonwealth of Puerto Rico, with the same safeguards
12 required under section 5705 of this title."

13 SEC. 2. The table of sections at the beginning of such
14 chapter is amended by adding at the end of the portion
15 relating to subchapter II the following new item:

16 "5734. Advance of pay."

SECTIONAL ANALYSIS

The purpose of this proposal is to make available to employees reassigned for permanent duty to new posts of duty within the United States in the interests of the government, advances of up to three months' pay--the same advances of pay as are currently available to employees assigned to foreign areas.

COST AND BUDGET DATA

The enactment of this proposed legislation would result in deminimus additional cost to the government in terms of interest paid or not received by the government on the sums advanced.



PURPOSE

To amend the National Security Agency Act of 1959 to authorize the Secretary of Defense to establish a graduate training program for critical skills. The National Security Agency Act of 1959, 50 U.S.C. § 402 note, is amended as follows:

Sec. 1. Section 16(a) is amended to read as follows:

The purposes of this section are: 1) to establish an undergraduate training program, which may lead to the baccalaureate degree, to facilitate the recruitment of individuals, particularly minority high school students, with a demonstrated capability to develop skills critical to the mission of the National Security Agency, including mathematics, computer science, engineering, and foreign languages; and 2) to establish a graduate training program which may lead to a graduate degree to facilitate the retention of employees and the recruitment of new employees with a demonstrated capability to develop skills critical to the mission of the NSA.

Sec. 2. Section 16(b) is amended by inserting the words "or graduate" after "undergraduate."

Sec. 3. Subsection (2) of Section 16(e) is amended by inserting the words "or graduate" after "undergraduate."

SECTIONAL ANALYSIS

This amends the National Security Agency Act of 1959 to enable the Agency to establish a graduate program leading to a graduate degree with the same provisions as the undergraduate training program.

COST AND BUDGET DATA

The estimated cost of the program is as follows:

1988	\$422,000
1989	\$464,000
1990	\$510,000



April 7, 1980

Honorable Thomas P. O'Neill
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

There is forwarded herewith a draft of legislation "To amend Section 912(1) of the Internal Revenue Act of 1954 (26 U.S.C. §912(1)) by including a paragraph which would grant comparable tax treatment of allowances permitted to certain Department of Defense personnel under Section 9(b)(1) of the National Security Agency Act of 1959 (50 U.S.C. §402 note)."

This proposal is part of the Department of Defense legislative program for the 99th Congress. The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this proposal for consideration of the Congress. It is recommended that the proposal be enacted by Congress.

Purpose

The National Security Agency Act of 1959 (Public Law 86-36), as amended by the Intelligence Authorization Act of 1982 (Public Law 97-89), provides for certain administrative authorities for the National Security Agency. Section 9(b) of the Act authorizes the Director, National Security Agency, to provide benefits and allowances to certain National Security Agency employees that are comparable to those received by members of the State Department's Foreign Service Corps or Central Intelligence Agency employees stationed overseas. The intent of the Act was to remove inequities arising from the absence of statutory authority to pay to National Security Agency employees the same benefits and allowances that could be paid to either State Department or Central Intelligence Agency personnel alongside whom they work.

During the implementation of the Act, an inequity appeared in the tax treatment of certain allowances provided to the National Security Agency employees. Often the allowances provided to members of the Foreign Service, under Chapter 9 of Title I of the Foreign Service Act of 1980, or Central Intelligence Agency employees, under Section 4 of the Central Intelligence Agency Act of 1949 (50 U.S.C. §403e), were exempted from taxation by Title 26, Section 912(1)(A) and (B) of the Internal Revenue Code. Comparable benefits paid to National Security Agency employees however, may not be exempt because

their enabling statutes were not among those listed under 26 U.S.C. §912(1). Therefore, although the National Security Agency employee would be entitled to the comparable allowance of a Central Intelligence Agency or Foreign Service employee, the taxation of his/her allowance would result in another inequity.

To remedy the disparity, we are proposing that Section 912(1) of the Internal Revenue Code be amended to allow tax exemption of allowances paid to those National Security Agency employees under Section 9(b)(1) of the National Security Agency Act of 1959.

Cost and Budget Data

The enactment of this proposed legislation would result in the loss to the government of income tax revenues otherwise collectible on the exempted sums.

A draft bill and sectional analysis are enclosed.

Sincerely,


H. Lawrence Garrett, III

Enclosure

A BILL

To amend Section 912(1) of the Internal Revenue Code of 1954 by including a paragraph which would grant comparable tax treatment of allowances provided to certain Department of Defense personnel under Section 9(b)(1) of the National Security Agency Act of 1959 (50 U.S.C. §402 note).

Be it enacted by the Senate and the House of Representatives of the United States in Congress assembled, that Section 912(1) of the Internal Revenue Code of 1954, as amended, is further amended by adding at the end thereof the following paragraph:

"(E) Subsection (b) of Section 9 of the National Security Agency Act of 1959, as amended (50 U.S.C. §402 note), whenever the allowance would be excluded from gross income under paragraphs(1)(A) or (1)(B) of this section."

Sectional Analysis

The Intelligence Authorization Act of 1982 (Public Law 97-89) amended the National Security Agency Act of 1959 to allow the Director, National Security Agency, to provide allowances and benefits to certain civilian employees of the Department of Defense which were comparable to those provided to the State Department's Foreign Service and to employees of the Central Intelligence Agency. During the implementation of this statute, it was discovered that comparability of the allowances could not be achieved unless the tax exemption provided for Foreign Service and Central Intelligence Agency employees under Section 912(1)(A) and (B) of the Internal Revenue Code was also available for civilians employed and assigned to the National Security Agency.

The addition of the proposed paragraph (E) to Section 912(1) will allow the same tax treatment for an allowance paid to a Department of Defense employee under Section 9(b) of the National Security Agency Act of 1959 as would be enjoyed by a member of the Foreign Service Corps or an employee of the Central Intelligence Agency under either paragraph (A) or (B) of the existing statute.