

Central Intelligence Agency



Washington, D.C. 20505

OLL 84-3727
2 October 1984

Mr. Michael J. O'Neil
Chief Counsel
Permanent Select Committee on Intelligence
House of Representatives
Washington, D.C. 20515

Dear Mike:

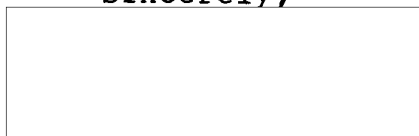
I am writing to provide you with copies of the statutes and regulations I mentioned in our recent telephone conversation concerning danger pay.

The Agency's decision to pay retroactive danger pay followed similar action by the Department of State (DOS). The authority for both DOS and the Agency flows from 5 U.S.C. § 5928. (Relevant portions of Title 5 are enclosed.) Under 5 U.S.C. § 5922(c) the President is authorized to prescribe regulations to pay this allowance. The President has delegated this authority to the Secretary of State for all executive agencies by E.O. 10903 (enclosed). As a result of this delegation the Secretary of State promulgates the "Standardized Regulations" Chapter 650 of which addresses danger pay (a copy of Chapter 650 is enclosed).

As I stated in our telephone conversation there probably was no need to notify the Committee of the action to pay danger pay retroactively. However because these payments were retroactive, and out of an excess of caution the Office of General Counsel decided that these payments should be premised not only on § 5928 but also on § 4(b)(1) of the CIA Act. As a result we decided to notify you of these payments.

If I can be of further assistance on this matter please do not hesitate to call.

Sincerely,



Office of Legislative Liaison

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Enclosures

Subject: Letter to Michael J. O'Neil
re: Danger Pay

Distribution:

Original - Addressee

1 - (OGC)

1 - D/OLL

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recruitment and retention incentive for the filling of positions at that post. An additional differential for any employee under this subsection—

(1) may be paid for each assignment to a post determined to have such conditions;

(2) may be paid periodically or in a lump sum; and

(3) may not exceed 15 percent of the rate of basic pay of that employee for the period served under that assignment.

(As amended Pub.L. 96-465, Title II, § 2309, Oct. 17, 1980, 94 Stat. 2165.)

1980 Amendment. Subsec. (a). Pub.L. 96-465, § 2309(1), (2), designated existing provisions as subsec. (a), and in subsec. (a) as so designated, added "under this subsection" preceding "may not exceed".

Subsec. (b). Pub.L. 96-465, § 2309(3), added subsec. (b).

Effective Date of 1980 Amendment. Amendment by Pub.L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub.L. 96-465, set out as a note under section 3901 of Title 22, Foreign Relations and Inter-course.

Savings Provisions. All actions made, issued, undertaken, entered into, or taken under the authority of any law repealed, modified or affected by the Foreign Service Act of 1980, Pub.L. 96-465, Oct. 17, 1980, 94 Stat. 2071, to continue in full force and effect until modified, revoked, or superseded by appropriate authority, see section 4172 of Title 22, Foreign Relations and Inter-course.

Legislative History. For legislative history and purpose of Pub.L. 96-465, see 1980 U.S. Code Cong. and Adm. News, p. 4419.

§ 5927. Advances of pay

Up to three months' pay may be paid in advance to an employee upon the assignment of the employee to a post in a foreign area.

(Added Pub.L. 96-465, Title II, § 2310(a), Oct. 17, 1980, 94 Stat. 2166.)

Effective Date. Section effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub.L. 96-465, set out as a note under section 3901 of Title 22, Foreign Relations and Inter-course.

Legislative History. For legislative history and purpose of Pub.L. 96-465, see 1980 U.S. Code Cong. and Adm. News, p. 4419.

Library References

United States ⇐ 39(1).
C.J.S. United States §§ 17, 44.

§ 5928. Danger pay allowance

An employee serving in a foreign area may be granted a danger pay allowance on the basis of civil insurrection, civil war, terrorism, or wartime conditions which threaten physical harm or imminent danger to the health or well-being of the employee. A danger pay allowance may not exceed 25 percent of the basic pay of the employee, except that if an employee is granted an additional differential under section 5925(b) of this title with respect to an assignment, the sum of that additional differential and any danger pay allowance granted to the employee with respect to that assignment may not exceed 25 percent of the basic pay of the employee. The presence of nonessential personnel or dependents shall not preclude payment of an allowance under this section. In each instance where an allowance under this section is initiated or terminated, the Secretary of State shall inform the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate of the action taken and the circumstances justifying it.

(Added Pub.L. 96-465, Title II, § 2311(a), Oct. 17, 1980, 94 Stat. 2166, and amended Pub.L. 98-164, Title I, § 131, Nov. 22, 1983, 97 Stat. 1028.)

1983 Amendment. Pub.L. 98-164 added provision that the presence of nonessential personnel or dependents shall not preclude payment of an allowance under this section, and that in each instance where an allowance under this section is initiated or terminated, the Secretary of State shall inform the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate of the action taken and the circumstances justifying it.

Effective Date. Section effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub.L. 96-465, set out as a note under section 3901 of Title 22, Foreign Relations and Inter-course.

Legislative History. For legislative history and purpose of Pub.L. 96-465, see 1980 U.S. Code Cong. and Adm. News, p. 4419. See, also, Pub.L.

5 § 5921**EMPLOYEES****Part 3**

spect to the matters affected by this order, and in effect at the time of the issuance of this order, including any regulations prescribed or approved by the President or his delegate with respect to such matters, shall, except as they are inconsistent with the provisions of this order, remain in effect until amended,

modified, or revoked pursuant to appropriate authority.

Sec. 302. This order, and the regulations prescribed or approved under the authority thereof, shall be published in the FEDERAL REGISTER.

LYNDON B. JOHNSON

Library References

United States Code § 5921(5).

C.J.S. United States §§ 17, 46.

§ 5922. General provisions

(a) Notwithstanding section 5536 of this title and except as otherwise provided by this subchapter, the allowances and differentials authorized by this subchapter may be granted to an employee officially stationed in a foreign area—

(1) who is a citizen of the United States; and

(2) whose rate of basic pay is fixed by statute or, without taking into consideration the allowances and differentials provided by this subchapter, is fixed by administrative action pursuant to law or is fixed administratively in conformity with rates paid by the Government for work of a comparable level of difficulty and responsibility in the continental United States.

To the extent authorized by a provision of statute other than this subchapter, the allowances and differentials provided by this subchapter may be paid to an employee officially stationed in a foreign area who is not a citizen of the United States.

(b) Allowances granted under this subchapter may be paid in advance, or advance of funds may be made therefor, through the proper disbursing official in such sums as are considered advisable in consideration of the need and the period of time during which expenditures must be made in advance by the employee. An advance of funds not subsequently covered by allowances accrued to the employee under this subchapter is recoverable by the Government by—

(1) setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and

(2) such other method as is provided by law for the recovery of amounts owing to the Government.

The head of the agency concerned, under regulations of the President, may waive in whole or in part a right of recovery under this subsection, if it is shown that the recovery would be against equity and good conscience or against the public interest.

(c) The allowances and differentials authorized by this subchapter shall be paid under regulations prescribed by the President governing—

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EDERAL REGISTER.
LYNDON B. JOHNSON

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Ch. 59 ALLOWANCES 5 § 5922

- (1) payments of the allowances and differentials and the re-
spective rates at which the payments are made;
- (2) the foreign areas, the groups of positions, and the catego-
ries of employees to which the rates apply; and
- (3) other related matters.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 510.

Historical and Revision Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
(a)	5 U.S.C. 3033	Sept. 6, 1960, Pub.L. 86-707, § 201, 74 Stat. 793.
(b)	5 U.S.C. 3034	Sept. 6, 1960, Pub.L. 86-707, § 202, 74 Stat. 793.
(c)	5 U.S.C. 3035	Sept. 6, 1960, Pub.L. 86-707, § 203, 74 Stat. 793.

Explanatory Notes

In subsection (a), the word "only" is omitted as surplusage.
In subsection (b), the words "disbursing official" are substituted for "disbursing officer" because of the definition of "officer" in section 2104 which excludes a member of a uniformed service.
Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.
Delegation of Functions. Secretary of State empowered to prescribe regulations, see section 1(b) of Ex.Ord.No.10903, Jan. 11, 1961, 26 F.R. 217, set out as a note under section 5921 of this title.

Library References

United States § 39(5). C.J.S. United States §§ 17, 46.

Notes of Decisions

Administrative orders 1
Discretion of Administrator of Veterans' Affairs 2
Naturalized citizens 3

but his discretion must be exercised impartially and must not be arbitrary or capricious. *Vallesteros v. U. S.*, 1954, 125 Ct.Cl. 218.

1. Administrative orders

Order of the Administrator of Veterans' Affairs, effective Nov. 3, 1946, establishing a special foreign living allowance, and seeking to bar natives of the Philippine Islands was discriminatory as against the plaintiff, who though a native of the Philippines, was a naturalized citizen of the United States, residing in the United States, who had left his permanent residence with every intention of returning, in order to accept employment abroad with its attendant inconvenience and additional expense. *Vallesteros v. U. S.*, 1954, 125 Ct.Cl. 218.

3. Naturalized citizens

Where plaintiff, a native of the Philippine Islands, who had served in the United States Army in World War II, and while so serving became a naturalized citizen, was afterwards employed by the General Accounting Office in Washington and pursuant to his request and effective Mar. 13, 1946, was appointed as a war service indefinite employee by transfer to a position in the Veterans' Administration Regional Office in Manila, he was entitled to a 25 percent salary differential on his base pay and where on July 14, 1946, the differential payment was discontinued and he filed with the Comptroller General a claim for the differential from July 14, 1946 to Nov. 2, 1946, differential was granted. *Vallesteros v. U. S.*, 1954, 125 Ct.Cl. 218.

2. Discretion of Administrator of Veterans' Affairs

The Administrator of Veterans' Affairs has the discretion to approve allowances

SUBCHAPTER III—OVERSEAS DIFFERENTIALS AND ALLOWANCES

§ 5921. Definitions

EXECUTIVE ORDER NO. 10903

Jan. 11, 1961, 26 F.R. 217, as amended by Ex.Ord. No. 11228, June 14, 1965, 30 F.R. 7789; Ex.Ord. No. 11230, June 28, 1965, 30 F.R. 8447; Ex.Ord. No. 11380, Nov. 8, 1967, 32 F.R. 15627; Ex.Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex.Ord. No. 12292, Feb. 23, 1981, 46 F.R. 13967

DELEGATION OF REGULATORY AUTHORITY

By virtue of the authority vested in me by section 301 of title 3 of the United States Code [section 301 of Title 3, The President], and various provisions of law cited in the body of this order, and as President of the United States, it is hereby ordered as follows:

Section 1. The Secretary of State is hereby designated and empowered to perform the following-described functions without the approval, ratification, or other action of the President:

(a) The authority vested in the President by section 5921(3) of Title 5, United States Code [par. (3) of this section], to prescribe regulations defining the term "employee".

(b) The authority vested in the President by subchapter III of Chapter 59 of title 5 of the United States Code [this subchapter], to prescribe regulations, including the regulations referred to in sections 5922(b), 5922(c), and 5924(4)(B) of that title [sections 5922(b), 5922(c), and 5924(4)(B) of this title] governing, respectively, (1) certain waivers of recovery, (2) the payment of allowances and differentials authorized by said subchapter and certain other matters, and (3) travel expenses for dependents of certain employees).

(c) The authority vested in the President by section 5913 of title 5 of the United States Code

[section 5913 of this title], (1) to prescribe regulations governing the allotment to posts in foreign countries, for the purpose stated in that section, of funds available to the departments for administrative expenses, and (2) to designate senior officials of this Government in foreign countries.

(d) The authority vested in the President by other provisions of law (including section 235(2) of Title 38 of the United States Code [now section 235(2) of Title 38, Veterans' Benefits]) to prescribe regulations governing representation allowances similar to those authorized by section 905 of the Foreign Service Act of 1980 (22 U.S.C. 4085) [section 4085 of Title 22, Foreign Relations and Intercourse].

(e) The authority vested in the President by section 5912 of title 5 of the United States Code [section 5912 of this title] to approve regulations prescribed by heads of agencies (under which employees who are citizens of the United States permanently stationed in foreign countries may be furnished, without cost to them, living quarters, including heat, fuel, and light, in government-owned or rented buildings).

* * * * *

§ 5923. Quarters allowances

When Government owned or rented quarters are not provided without charge for an employee in a foreign area, one or more of the following quarters allowances may be granted when applicable:

[See main volume for text of (1)]

(2) A living quarters allowance for rent, heat, light, fuel, gas, electricity, and water, without regard to section 3324(a) and (b) of title 31.

[See main volume for text of (3)]

(As amended Pub.L. 97-258, § 3(a)(15), Sept. 13, 1982, 96 Stat. 1063.)

1982 Amendment. Par. (2). Pub.L. 97-258, § 3(a)(15), substituted "3324(a) and (b)" for "529".

Legislative History. For legislative history and purpose of Pub.L. 97-258, see 1982 U.S. Code Cong. and Adm. News, p. 1895.

§ 5924. Cost-of-living allowances

The following cost-of-living allowances may be granted, when applicable, to an employee in a foreign area:

[See main volume for text of (1) and (2)]

(3) A separate maintenance allowance to assist an employee who is compelled or authorized, because of dangerous, notably unhealthful, or excessively adverse living conditions at the employee's post of assignment in a foreign area, or for the convenience of the Government, or who requests such an allowance because

CHAPTER 650

DANGER PAY ALLOWANCE

651 Definitions

For the purpose of this chapter:

- a. "Danger Pay Allowance" means the additional compensation of up to 25 percent over basic compensation granted to employees (Sections 031 and 040i) for service at designated danger pay posts, pursuant to Section 5928, Title 5, United States Code (Section 2311, Foreign Service Act of 1980) and the provisions of this chapter.
- b. "Danger Pay Post" means:
 1. a place listed individually in Section 920 which has been so designated by the Secretary of State;
 2. a place which is not listed individually in Section 920 but which is located in a country or area which has been so designated by the Secretary of State.
- c. "Detail" means detail as defined in Section 040p for a minimum of 24 consecutive hours, commencing at time of arrival, at a place designated a danger pay post, other than the employee's post (Section 040h), including all periods of leave while present at such place of detail but excluding any days of absence away from the designated post or country/area. Employees transiting a post who are inadvertently detained thereat for more than one day shall be considered on detail.
- d. "Day" means each midnight, including the midnight of the 24-hour minimum period required by Section 651c, occurring while the employee is on detail at a designated danger pay post or country/area.

652 Scope

- a. The danger pay allowance is designed to provide additional compensation above basic compensation to all U.S. Government civilian employees, including Chiefs of Mission, for service at places in foreign areas where there exist conditions of civil insurrection, civil war, terrorism or wartime conditions which threaten physical harm or imminent danger to the health or well-being of an employee. These conditions do not include acts characterized chiefly as economic crime.
- b. The danger pay allowance may be granted separately from any grant of post differential in Chapter 500 and may be granted at foreign posts or country/areas which have no post differential.
- c. The danger pay allowance, if prescribed, is in lieu of any special incentive differential authorized a post under the provisions of Chapter 570, which may have been in effect at the post at the time of designation as a danger pay post to the extent that the combined payments may not exceed 25 percent of basic compensation.
- d. The danger pay allowance is in lieu of that part of the hardship post differential rate (Chapter 500) at a post which is attributable to political violence. Consequently, the rate of post differential may be reduced while danger pay allowance is in effect to avoid dual crediting for political violence. However, combined danger pay and post differential for each employee will be at least five percent of basic compensation above the previous combined post differential and special incentive differential, if any, in effect at the post.
- e. Unless otherwise specified, the amount of the danger pay allowance shall be at the maximum rate of 25 percent of basic compensation.

STANDARDIZED REGULATIONS

(Government Civilians, Foreign Areas)

653 Basis for Danger Pay Allowance*653.1 Designation

A danger pay allowance is established by the Secretary of State when, and only when, civil insurrection, civil war, terrorism or wartime conditions threaten physical harm or imminent danger to the health or well being of a majority of employees officially stationed or detailed at a post or country/area in a foreign area. To determine whether the situation meets the danger pay criteria, a post usually must submit the portion of the post differential questionnaire which addresses political violence along with pertinent supporting information to the Department of State (Allowances Staff) for review. The Director of the Allowances Staff will chair a working group which will make a recommendation to the Assistant Secretary of State for Administration concerning a danger pay designation.

*653.2 Criterion

In general, the conditions described under Sections 652a and 653.1 must be such that there must exist a continuing threat of physical harm or imminent danger to health or well being of employees at the post.

*653.3 Periodic Review

Conditions at danger pay allowance posts are reviewed periodically at appropriate intervals by the working group to ensure that the danger pay allowance continues only during the existence of conditions justifying such payment. As a result of periodic reviews the danger pay allowance may be modified or removed at any time.

654 Danger Pay Allowance Applicable to Post (Section 040h)654.1 Commencement

Danger pay allowance commences on the date of designation by the Secretary of State for employees present at the post on assignment or detail, and on the date of arrival at post for subsequently assigned or detailed employees or for employees returning to post after temporary absence.

654.2 Termination

The danger pay allowance terminates as of the close of business on the day the designation is removed by the Secretary of State, or the day the employee departs the post for any reason for a post or country/area not designated for the danger pay allowances.

655 Danger Pay Allowance on Detail

Employees on detail at a danger pay post may be granted the danger pay allowance at the prescribed rate for all days of detail at such post except for days of absence from the post in a post or area not designated for the danger pay allowance.

656 Payments656.1 Full-Time, Temporary and Intermittent Employees

The danger pay allowance for full-time employees and employees appointed for temporary periods (Sections 013.3 and 031.4) shall be at the percentage of basic compensation established for the post. For part-time regularly-scheduled employees and intermittent employees the danger pay allowance shall be computed at the prescribed percentage of basic compensation earned during the applicable pay period.

656.2 No Ceiling on Payments

The danger pay allowance is not subject to any ceiling which would provide a payment less than the full percentage rate prescribed for the post.

657 Exclusion of Danger Pay Allowance from Step Pay Increase Computations

Payment of the danger pay allowance shall not be construed as part of basic compensation for computing within-grade, step, merit pay increases and Senior Executive Service or Senior Foreign Service bonuses.

STANDARDIZED REGULATIONS

(Government Civilians, Foreign Areas)