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MEMORANDUM FOR: Deputy Director (Administration)

SUBJECT: [REDACTED]

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1. You have requested our opinion with respect to (a) forfeiture of annual leave during 1953 and 1954, (b) the effective date of resignation, and (c) subject's entitlement to return travel expenses from [REDACTED] which are presented by the subject file. Since the fact situation is detailed by the file only those portions necessary to discussion of the questions presented are repeated herein.

2. Section 2066 of Title 5 U.S.C. provides that in any case in which the amount of accumulated annual leave to the credit of an employee immediately following the end of the last complete pay period in the calendar year 1952 is in excess of the amount allowable under the provisions of law then applicable to such officer or employee, such excess shall remain to the credit of such officer or employee until used, but the use during any leave year of an amount in excess of the aggregate amount which shall have accrued during such year shall automatically reduce the maximum allowable accumulation at the beginning of the first complete pay period in the following leave year, until the accumulation of such officer or employee no longer exceeds 45 days.

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a. [REDACTED] had accrued to her credit, beginning with the first pay period 1953, 438 hours. She accrued during the year 1953, 166 hours, giving her a total of 604 hours. During the year she utilized 10 hours, leaving her a net of 594 hours. Since her accumulation at the beginning of the year exceeded 45 days, she could carry over no greater amount, which resulted in a forfeiture of 196 hours at the end of 1953. With respect to 1954 her balance brought forward was again 438 hours and during the year prior to her resignation on 17 April she accrued 48 hours. However, her accumulation having been again in excess of 45 days at the beginning of the year she could only be paid upon lump sum settlement of her leave account, the amount carried over from the previous year.

b. Although it is unfortunate that erroneous instructions were forwarded to the field during 1953, such instructions cannot affect a new authority for the certifying officer in the maintenance of leave records or the payment of lump sum leave. With respect to the accrual, accumulation, payment, and forfeiture of annual

leave the pertinent criteria is established by Congress and relates directly to each individual employee. No discretion is granted to the employing agency to amend or modify these provisions.

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3. [redacted] resignation having been effective 17 April, the date of her marriage, as directed by the headquarters, she could not be continued in a leave status through 27 April. Section 61b of Title 5 U.S.C. provides that lump sum payment shall be made for accumulated or accrued annual leave upon separation from service. Such lump sum payment shall equal the compensation that such employee would have received had he remained in the service until the expiration of the period of such annual or vacation leave, except that after August 31, 1953 no such lump sum payment shall exceed compensation for any period of such leave in excess of 30 days or the number of days carried over to his credit at the beginning of the leave year in which entitlement of lump sum payment occurs, whichever is the greater. Since the resignation by its terms, and as was directed by the headquarters, was effective 17 April 1954, the provisions of the Lump Sum Leave Act would mandate cash payment of such leave as was properly payable effective 17 April.

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4. With respect to [redacted] entitlement to return travel to the United States, her letter to the Director dated 16 September, indicates that she was married "six days prior to the completion of my tour". [redacted]

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[redacted] we must look to the Administrative Expense Act of 1946, as amended. It is there provided that expenses of return travel and transportation upon separation from Government service shall be allowed whether such separation is for the purposes of the Government or for personal convenience, but shall not be allowed unless such persons selected for appointment outside the continental United States shall have served for a minimum period of not less than one nor more than three years prescribed in advance by the head of the agency concerned, or unless separation is for reasons beyond the control of the individual and acceptable to the agency concerned. [redacted] having resigned rather than delay her marriage until clearance could be effective, may not be determined to have resigned for reasons "beyond the control of the individual and acceptable to the department or agency concerned." Since her period of service was less than one year, the foregoing prohibition against the expenditure of funds with respect to her return travel as a former employee of this Agency, determines her entitlement.

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5. To return for the moment to the question of continuing Mrs. Hevener in a leave status through 27 April, we find that were it to be allowed, her resignation then would be effective after completion of one year of service. In consequence, if there were a discretionary

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power vested in the Agency to change the effective date of resignation, such discretion could not be exercised where it would result in establishing an obligation for travel expenses which is otherwise prohibited by the effective date of the resignation. Even assuming for the moment that [redacted] was entitled to return travel at Government expense upon resignation from this Agency, the material contained in the file would indicate that such travel has been afforded her. She was returned to the United States at Government expense, as the dependent wife of an Air Force officer.

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6. With respect to [redacted] dated 13 April 1953, and entitled "Marriage of Staff Personnel in the Field" which is contained in the file, it is noted that at line 5 of unnumbered paragraph 3 of [redacted] letter of 16 September to the Director states as follows: "I have been led to believe by legal authority since, however, that permission was not necessary." [redacted] is there apparently referring to her meeting with the undersigned on 25 August 1954 when in answer to a question posed by her as to the requirement for her resignation that she was told was required by Field Instructions, it was pointed out in effect that the undersigned knew of no regulation or notice requiring resignation or termination in the absence of consent in the case of marriage to a U. S. citizen. In the short generalized discussion on this point, it was stated that the penalty of dismissal was only provided for marriage, without Agency consent, to an alien. However, even in the absence of such regulation her case was controlled by the specific directives sent out by headquarters.

7. In accordance with the foregoing discussion it is the opinion of this office that the criteria established by Congress with respect to Leave is not susceptible to amendment by this Agency for compassionate reasons and that the effective date of resignation may not be amended. As for the question of return travel to her residence at the time of appointment it would appear that she has no such entitlement by virtue of the prohibition established by the Administrative Expense Act of 1946, as amended, and that even were such entitlement existent, it has been fulfilled by virtue of her travel to the United States at Government expense, as a dependent of an Air Force officer.

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Office of General Counsel

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