

OGC 76-2779

26 May 1976

MEMORANDUM FOR: Deputy Director for Administration

25X1A SUBJECT: [REDACTED] Allowances

REFERENCES: A. Memo to SSA/DDA fm C/Ops & Mgt Law Div/OGC, dtd 19 Jan 76 (OGC 76-0273), Subj: Cost-of-Living Supplement for Agency Personnel Assigned

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B. Memo to DCI fm DDA, dtd 27 Apr 76, Subj: [REDACTED] Allowances

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1. Via Reference A this Office advised the SSA/DDA that the Director had the legal authority to pay an "addition to compensation" to certain employees [REDACTED]. Via Reference B the DCI approved such an addition to compensation. The question has now been raised concerning the nature of this compensation and whether the same is, in fact, "compensation" or an "allowance." If the former prevails, the amount paid is subject to additional FEGLI and retirement withholding, credited toward determining an employee's "high three," etc. If the latter prevails, the compensation is taxable and nothing more.

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2. Throughout the discussions which culminated in Reference B, there was never any intent that the compensation be anything other than an [REDACTED] foreign area cost-of-living allowance. In fact, it was only for the purpose of avoiding the possibility of confusing the allowance with these two COLAs that another name for the allowance was chosen -- "an addition to compensation."

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3. Both references make it clear that the compensation is in the nature of an allowance and not meant to be an increase to basic pay or the creation of a "regional pay schedule." See particularly Reference A which sets out four possible solutions to compensate for the high cost of living in [REDACTED]

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of base salary, [redacted] and, a "regional pay schedule" (paragraph 7).
Via subparagraph 10(c) of Reference B, the Director approved [redacted]
to compensation" not a "regional pay schedule." See also paragraph 8 of
Reference B which is the joint recommendation of the DDA and the DDO for an
"addition to compensation," not a "regional pay schedule."

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4. For purposes of retirement deductions, the same are made on the
basic pay of an individual and "basic pay" includes --

* * * *

but does not include bonuses, allowances, overtime
pay, military pay, pay given in addition to the base
pay of the position as fixed by law or regulation....
5 U.S.C. 8331(3)

Nor does the "addition to compensation" allowance affect "average pay" which
"means the largest annual rate resulting from averaging an employee's or
Member's rates of basic pay...." 5 U.S.C. 8331(4) (Emphasis added.) The
allowance also has no application to FEGLI withholdings.

(a) An employee eligible for insurance is
entitled to be insured for an amount of group life
insurance, plus an equal amount of group accidental
death and dismemberment insurance, in accordance
with the following schedule, which schedule shall be
automatically extended correspondingly by the amounts
of increases in the annual rate of basic pay for posi-
tions at level II of the Executive Schedule under section
5313 of this title: ... 5 U.S.C. 8704(a).

5. In short, the benefit is an allowance designed to compensate
employees for the cost difference between living in Washington, D.C. and
[redacted] It is an allowance, albeit a taxable allowance, but
it cannot be considered compensation for other purposes.

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cc: D/Pers
DDO
✓ DDA

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Acting General Counsel