

T DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D.C. 20505

Legislative Counsel

22 MAR 1979

OGC HAS REVIEWED.

Mr. James M Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This is in response to your request for the views of the Central Intelligence Agency on the most recent draft of the "Classification and Compensation Act of 1979".

I am disappointed to note that the draft falls seriously short of reflecting the Agency's suggestions contained in my letter of 20 January 1979, and communicated in subsequent oral presentations made by members of my staff.

The importance of protecting intelligence sources and methods, and of preserving the flexibility required for the effective conduct of the Central Intelligence Agency's foreign intelligence functions were recognized by both the Administration and the Congress when the Agency was exempted from all of the major provisions of the Civil Service Reform Act of 1978. The same considerations should apply with regard to the Classification and Compensation Act of 1979.

Section 6 of the new draft would add a new Chapter 50 to Title 5 of the United States Code. Under Section 5001, the "Compensation Agent" and its staff would have access to information directly pertaining to intelligence sources and methods. The revisions now contained in the draft (exempting employment in foreign areas with regard to pension pay and allowances in Section 5001(b)) do not adequately meet our needs.

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The draft, for example, would eliminate for purposes of the proposed Act the exemption to the rule making provisions of the Administrative Procedure Act contained in Section 553(a). This would result in the subsection of some of CIA's most sensitive material to various forms of public disclosure. Under subsection 553(c) of Title 5, for example, there could be public participation in Agency rule making related to matters covered by the Classification and Compensation Act; a result that would be diametrically opposed to the purposes of both the National Security Act of 1947 and the Central Intelligence Agency Act of 1949, and to the position consistently taken by this and previous Administrations on similar matters.

Under the provisions of the latest draft, the Compensation Agent and its staff would also possess, inappropriately in our view, the authority to make recommendations impacting upon the mission and substantive functions of the Central Intelligence Agency. In addition, it is implicit in the draft bill that the Office of Personnel Management's administration of modifications in pay systems or premium pay or allowance provisions under Section 5001 would require continuing access to information pertaining to intelligence sources and methods and could place OPM in the position of affecting substantive Central Intelligence Agency functions.

The Central Intelligence Agency must retain maximum flexibility to carry out its mission and functions successfully, a fact which has been reflected in Administration policy in areas such as those covered by the draft Classification and Compensation Act. The flexibility of the Director under 50 U.S.C. 403j to operate and adapt the Central Intelligence Agency's personnel system in order to meet the Agency's unique personnel requirements and the ever-shifting exigencies of intelligence collection and foreign affairs would be seriously impaired by Section 5001.

I strongly urge, therefore, acceptance of the following amendments:

1. Section 5001(a): Line 13 on page 40 of the March OMB draft should be amended as follows:

"...States, but does not mean an employee of the Central Intelligence Agency."

2. Section 5949(a) "Staffing Differentials:
Line 21 on page 32 should, for the same reasons
outlined above in connection with Section 5001(a),
be amended to read:

"...prescribe, but does not include
compensation systems of the Central Intelligence
Agency."

The opportunity to again comment on this draft bill is appreciated. We firmly believe that the amendments specified above must be made in order to prevent the erosion of key statutory authorities of the Director of Central Intelligence and to preserve the flexibility which is critical to successful accomplishment of the Central Intelligence Agency's mission. We stand ready to provide whatever further assistance may be necessary.

Sincerely,

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SIGNED

[Redacted Signature]

Legislative Counsel