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OLL 84-3934/1
7 December 1984

MEMORANDUM FOR: Deputy Director for Personnel Benefits
Office of Personnel

Chief, Administrative Law Division
Office of General Counsel

FROM:

Legislation Division
Office of Legislative Liaison

SUBJECT:

Draft Responses to Mazzoli's Questions on
Former Spouses

REFERENCE:

Ltr from Chairman Mazzoli to Robert Magee
dtd 14 September 1984, OLL 84-3934

1. Attached are draft answers to Chairman Mazzoli's Questions for the Record concerning his CIARDS Former Spouses bill, H.R. 5805. Eventhough H.R. 5805 died in the 98th Congress, Mazzoli wants responses to these questions to complete the record in preparation for a similar bill in the 99th Congress.

2. Please review the attached and provide me or [] with your comments.

Attachment

Distribution:

Original - Addressee (w/attach)
1 - C/ALD/OGC (w/attach)
1 - D/OLL (w/o attach)
1 - DD/OLL (w/o attach)
1 - OLL Chrono (w/o attach)
1 - LEG Subject (Former Spouses) (w/attach)
1 - ROD Signer (w/o attach)
OLL/LEG/ROD:sm, [] (7 December 1984)

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QUESTIONS FOR THE RECORD FOR THE CIA

(1) Please provide a brief overview of how well the 1982 CIA Former Spouses Retirement Equity Act has worked.

Answer: The CIA Spouses' Retirement Equity Act of 1982 is a good piece of legislation. It satisfies some important needs of individuals who made an immense contribution to our Agency. Because of the cover and security requirements that must be factored in, it was a difficult law to administer at first. However, we've been working with the 1982 Act and our experience has helped us improve its Administration. The procedures we have implemented are helping to ensure that individuals entitled to benefits under this law are receiving them.

(2) What is CIA's estimate of the number of former CIA spouses who would be entitled to the annuity benefit provided for by H.R. 5805 and what is the basis for that estimate?

Answer: The Agency unfortunately does not have records that would provide for an accurate estimate of the number of CIA former spouses who would be entitled to an annuity benefit under H.R. 5805. A ballpark guess could be that as many as 200 individuals potentially qualify if you apply national divorce statistics to the eligible CIARDS population. However, we have no reason to dispute other estimates that the Committee has received of less than half that number.

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(3) What is CIA's estimate of the cost, on annual basis and over time, to the Government of the annuity benefit in H.R. 5805, and what is the basis for that estimate?

Answer: Our best annual estimate of the cost would result from multiplying the benefit provided under this bill, \$7,400, times the potential number of eligible spouses. Using the 200 figure would result in an annual cost of \$1.5, a lower population obviously would reduce this amount proportionately. Of course this benefit would have a limited actuarial life, since the class of beneficiaries is limited.

(4) In its letter to the Subcommittee of 27 August 1984, the Office of Personnel Management objected to the health insurance eligibility provision of H.R. 5805 in part on the administrative ground that OPM does not have the records on CIA employees needed to carry out the provision. Does CIA have such records, or the ability to create them, and could CIA instead of OPM, or in coordination with OPM, more effectively administer the health insurance provision?

Answer: Once again, CIA lacks adequate records to implement this benefit fully. H.R. 5805 as written applies to all former CIA spouses who immediately before the divorce or annulment were covered under a Federal Employees Health Benefits Program (FEHBP) plan and who were married

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ten years to any Agency employee with at least five years of the marriage spent outside the United States. Using this definition, there will be many former spouses whose husbands/wives are no longer Agency employees, much less participants in a single health insurance plan. Some of these individuals will have retired and some will have left for other employment. Identifying all of these individuals would require extraordinary effort, but we are prepared to work with the Committees to determine acceptable procedures.

OPM does not maintain records on CIA employees, former employees, and retirees needed to carry out the health insurance provision of this bill.

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(6) Please describe the current availability of health care to CIA personnel and their dependents serving overseas.

Answer: Health care facilities for Agency personnel and their dependents overseas vary significantly both in terms of quality and availability. In some areas medical facilities are woefully inadequate while, in others, medical care equates to U.S. standards. There are locales where Agency personnel use a combination of local doctors and hospitals, DOD and embassy facilities. In other areas employees must depend on local facilities supplemented by periodic visits from an Agency regional medical officer.

(7) Please estimate the expected duration of the need for funding the annuity provisions of H.R. 5805, given that the spouses divorced prior to 15 November 1982, eligible for annuities under this bill constitute a finite group and are probably in their middle years, and given the actuarial realities of life expectancies.

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Answer: Based on data from 1966 to 1982, the average life expectancy for females is age 84. Consequently, we would estimate the duration for major funding at 34 years. This estimate is based on the assumption of a mean age of 50 years for the eligible population.

(8) If H.R. 5805 were enacted, how would you proceed to identify and notify CIA former spouses potentially eligible for benefits under H.R. 5805 of their potential rights?

Answer: As previously indicated the Agency lacks records that readily identify former spouses divorced prior to 1982. Consequently, identifying and notifying former spouses who might be eligible for a benefit is a potential problem with this bill. However, as with the 1982 Act, we can do a number of things to publicize the benefits of any new legislation. Under the 1982 Act we initially published a series of notices and field correspondence to employees and forwarded letters to retirees advising them of the provisions of the Act. We could use these and other mechanisms to notify and solicit the names of individuals who might be affected under any new legislation. We would also be willing to work with the Committee and any former spouses or their representatives, to develop additional notification procedures, consistent with our cover and security requirements.

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(9) The annuity payable to a former CIA spouse divorced prior to 15 November 1982, who is eligible under this bill, would be paid from the CIA Retirement Fund or the Civil Service Fund, as appropriate. What would CIA's plans be to replace these withdrawals from the funds not based on previous contributions? Would you, for example, seek a specific appropriation or just allow the retirement funds to absorb a larger unfunded liability?

Answer: In introducing this legislation, Congressman Mazzoli indicated that this new benefit for qualified former spouses would be paid out of Treasury funds. If this bill were to pass, CIA would indeed seek to ensure that the CIA Retirement Fund would not absorb this unfunded liability.

(10) Does the CIA actively assist spouses in finding overseas employment, whether with CIA or otherwise?

Answer: Yes. Agency employees generally make known their spouse's interest in working overseas. We make every effort then to locate assignments not only for the spouse who is already an Agency employee, but also for the non-Agency employed spouse if at all possible. In the latter instance, we may hire the non-Agency employed spouse for a specific assignment prior to the couple's departure; hire him or her locally at the post after arrival overseas

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if a requirement develops; or, if possible, refer the spouse to the State Department Family Liaison Office for assistance.

Agency employees whose non-Agency employee spouses are transferred overseas by their own organizations are allowed 90 days leave Without Pay (LWOP) to accompany the spouse if there is no Agency assignment possibility for the Agency employee at the time of departure. Should an appropriate requirement develop at the Agency post during that 90-day period, the employee would be returned to duty from LWOP. Should a requirement not develop, or should the employee locate an assignment with another organization, a resignation would be processed. Upon return to the Headquarters area, the employee would be favorably considered for reemployment if such is requested.

When one member of an employee couple is identified for an assignment, Agency policy requires that every effort be made to locate an assignment for the other member. If none is available, the non-assigned employee may convert to intermittent status to accompany the assigned employee overseas. The intermittent spouse may later be reactivated to fill a requirement that develops after his or her arrival and is guaranteed a return to the grade held, and in a position similar to, that occupied at the time of departure.

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(11) Does the CIA have any special policies or practices either encouraging or discouraging husband-wife case officer teams in which both spouses are full-time CIA staff employees?

Answer: There is no Agency-wide policy discouraging husband-wife case officer teams, or teams in any occupational category. We have long recognized the value of husband-wife teams in general and have tried to use them to everyone's advantage in the accomplishment of the Agency's mission. At the current time we are working on refining and enhancing the existing programs and policies which encourage dual assignments or employee couples, particularly overseas. We make every effort to treat each member of the employee couple as individuals, using their qualifications and skills, and making assignments, in accordance with good management principles. When overseas assignments are not immediately available for both members of an employee couple, the non-assigned spouse may convert to the program described in paragraph C of the response to question 10.

(12) Would passage of this legislation place any undue administrative or operational burdens on the CIA? If so, how can those burdens be minimized and still accomplish the purposes of the bill?

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Answer: At this time we do not foresee major problems beyond those identified in previous answers.

(13) Assuming for purposes of discussion that the policy goals of H.R. 5805 were accepted, what specific amendments to H.R. 5805 would the CIA recommend?

Answer: In light of your question, CIA would propose the following amendments.

Spousal Election

In enacting the CIA Spouses' Retirement Equity Act of 1982, Congress recognized that retroactive application of this law could affect settled legal rights and consequently limited that statute to prospective application only. We feel that the same potential for interference with completed divorce actions exists in H.R. 5805, which as written would alter the balance of assets already determined by existing spousal support arrangements for divorces prior to 15 November 1982. To minimize this potential we believe that the bill should be modified to reflect that where spousal support has been decreed by a court, the former spouse should be required to elect between benefits under the draft bill or court ordered payments.

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We are also concerned with the fairness of the former spouse would receiving a uniform amount (approximately \$7,4000 annually) regardless of the size of the participant's annuity. We believe that the lifetime and survivor benefits under the draft bill should not exceed those available to former spouses under the 1982 spousal legislation. This potential inequity could be alleviated by determining the entitlement through the lesser of the \$7,400 figure or the computation of a pro-rata share based on the length of time the spouse is married to the participant during periods of creditable service as provided for in existing law. For example: If married to the participant for 30 out of the 30 years on which the annuity is based, the former spouse would be entitled to the lesser of \$7,400 or one-half (50 percent) of the participant's annuity; if married to the participant for 15 out of the 30 years on which the annuity is based, the former spouse would be entitled to the lesser of \$7,400 or one-fourth (25 percent) of the participant's annuity.

Treasury Funding

In introducing this legislation, you indicated that this new benefit for qualified former spouses would be paid out of Treasury funds. However, as presently drafted this simply provides an entitlement for the new class of former spouses to

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receive benefits from the CIA retirement fund. To ensure that these funds are replenished from the Treasury, we suggest that the following amendment be added to this bill:

"SEC. 3. There are authorized to be appropriated from the United States Treasury such funds as are necessary to carry out the purposes of this Act."

Protection of Classified Information

Finally, given the potential that the proposed bill offers for disclosure of classified information in litigation, we believe that a provision should be added to this bill to safeguard any information concerning former spouses. The purpose of this provision would be to notify spouses and their attorneys that nothing in this Title may be construed as authorizing the disclosure on the public record of the identity of CIA employees who are under cover. We are prepared to work with your staff to draft language that would achieve this result.

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