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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Chrono
SPECIAL

April 23, 1984

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

General Services Administration
Department of Justice
Veterans Administration
Central Intelligence Agency ✓
National Security Council
Department of the Treasury

SUBJECT: Central Intelligence Agency and Veterans Administration views on
H.R. 3987 and S. 905, bills known as the "National Archives and
Records Administration Act of 1984."

The Office of Management and Budget requests the views of your
agency on the above subject before advising on its relationship
to the program of the President, in accordance with OMB Circular
A-19.

Please provide us with your views no later than

11:00 A.M. TUESDAY, APRIL 24, 1984.

Direct your questions to Gregory Jones (395-3856), of this office.


James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: M. Chaffee
F. Reeder
J. Coffey

Office of the
 Administrator
 of Veterans Affairs

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Honorable David A. Stockman
 Director, Office of Management
 and Budget
 Attention: Assistant Director
 for Legislative Reference
 Washington, D.C. 20503

**ADVANCE COPY
 SUBJECT TO CHANGE**

Dear Mr. Stockman:

This is in response to the requests of the Assistant Director for Legislative Reference dated April 10 and April 13, 1984, for this Agency's comments on H.R. 3987 and S. 905, bills to be known as the "National Archives and Records Administration Act of 1984."

Essentially, the bills provide for transferring the statutory authority of the General Services Administration (GSA) for administering basic archival and records management functions to the Archivist of the United States. In so doing, an independent National Archives and Records Administration would be created with the Archivist becoming a Presidential appointee. The rationale supporting this shift of responsibility is that the inefficiency of divided authority would be eliminated, giving the Archivist of the United States more effective control over the complete "life cycle" of Federal records. It is anticipated that this legislation would clarify lines of authority, expedite decisionmaking, provide for clearer policy direction and insulate the agency from political influence.

Under the proposed legislation, the Office of Management and Budget (OMB) and Congress would evaluate the Archivist's budget requests in conjunction with those of other cultural and heritage agencies. The Senate bill makes a clear transfer of responsibilities whereas the House bill allows the Administrator of GSA to retain joint responsibility with the Archivist with respect to records management and inspection of agency records. For the reasons set out below, this Agency has no objection to S. 905 but objects to certain provisions in H.R. 3987.

Generally, the impact on the Veterans Administration of an independent Archives would be minimal provided degradation of the services, guidance, and assistance now provided by

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the National Archives and Records Service (NARS) of GSA does not occur. However, the VA is not a disinterested observer, since our Agency is a primary user of the Federal records center system with holdings in excess of one million cubic feet in the various centers. Moreover, we believe that regardless of which entity ultimately becomes responsible for these records management functions, that entity must exist to serve the needs of all operating Federal agencies and not vice-versa.

Currently, direct contact with GSA on matters affecting VA records management is almost nonexistent. In our experience, it is the Archivist of the United States who generally communicates with agency heads or other top management officials on proposals or changes which significantly alter the administration of records programs. To our knowledge, no problems have surfaced between our agencies that were not mutually resolved.

The VA has no objection to S. 905 because it clearly provides for the Archivist to have sole responsibility for the management and preservation of the Nation's historical documents. Further, Presidential appointment of the Archivist for a period of 10 years would enhance the continuity of programs necessary to maintain these records and provide agencies with a point of contact that is totally knowledgeable of the mission and purpose of each agency. Unlike H.R. 3987, S. 905 does not provide for shared responsibility by the Archivist and the Administrator of GSA in the areas of records management and inspection of records. Finally, S. 905 would transfer back to the Archivist the Office of Information Systems from GSA's Office of Information Resources, Automated Data and Management. The VA supports this move as long as the technology aspect of information systems, as opposed to records management, remains with GSA, which has automated data procurement responsibilities. In our opinion, the Administrator of GSA and not the Archivist should continue to provide computer technology guidance and maintain his role in developing Federal acquisition regulations.

The VA objects to H.R. 3987, as presently drafted. While we do not object to many of the concepts proposed, we believe that several of the bill's provisions should be modified or eliminated. In addition to the lack of total independence of the Archivist mentioned earlier, we object to provisions in the House Bill that would tend to increase the oversight of other agencies by the Archivist and the Administrator of GSA, and, would allow the Archivist to utilize personnel of other agencies or to charge for services that should be covered within the budget of NARS.

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With respect to H.R. 3987, as it amends certain sections of Chapter 29 of title 44, the role of the Administrator of GSA appears to be left untouched. For example, proposed section 2904 addresses general responsibilities for records management; however, it explicitly provides for a sharing of responsibilities with NARS on areas related to the development of standards and procedures, the conduct of research, studies, surveys and inspections of records and records management programs. In essence, it is not clear which organization would assume the leadership role and that in turn would cause additional problems for agencies with respect to obtaining assistance, guidance and direction on records management problems. The passage of the bill in its present form would not enhance the authority or adequately define the responsibilities of the Archivist.

We strongly recommend that these responsibilities be vested entirely with the Archivist to alleviate the confusion and redundancy that would likely result if the two agencies were to share joint responsibility for these functions.

Related to this issue is the extent of GSA and NARS oversight in records management and inspection of records. For example, the Archivist is given new authority in the bill under proposed sections 2905(a) and 3106 of title 44, U.S. Code, to initiate action to prevent defacing, removal or destruction of records upon an agency's timely failure to do so. The inspection of records provisions of proposed sections 2104(f) and 3301(b) of title 44, U.S. Code, offered in H.R. 3987 depart from current law (i.e., 44 U.S.C. § 2906) in two important respects: first, under proposed section 2104(f), each Federal agency is required (not merely authorized as in S. 905) to permit GSA or NARS to inspect that agency's records; second, under both proposed sections 2104(f) and 3301(b), neither national security or public interest restrictions nor compliance with the Privacy Act of 1974 (5 U.S.C. § 552a) and other Federal confidentiality laws that may apply to the records to be inspected are provided for as is the case under both existing 44 U.S.C. § 2906 and the proposed modification of that section in H.R. 3987. We continue to strongly object to any legislative change that would allow another agency to exercise control over internal VA records or information decisions made while carrying out our mission of administering VA benefits.

The matter of funding and costs related to the operation of an independent NARS is of prime importance to the VA. We would expect NARS to provide the same level of services currently

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furnished at no additional cost to the VA except for certain special services that may be negotiated on an individual basis. We believe that NARS has the responsibility to provide agencies with low cost storage facilities for noncurrent records and that that responsibility includes total funding of the operation of the facilities at no expense to user agencies.

However, proposed section 2116(c) of title 44, U.S. Code, in H.R. 3987 would alter existing law (i.e., 44 U.S.C. § 2112(c)) by allowing the Archivist to charge fees to other agencies for authentication or reproduction of records where the Archivist's appropriations are insufficient to cover this cost. In this regard, we note that any substantial, unexpected costs could severely curtail VA operations.

Finally, we object to the discretion granted in proposed section 2302 of title 44, U.S. Code, in H.R. 3987 to the National Archives Trust Fund Board to utilize the services and personnel of another agency without the consent of the agency head involved. We assume this was an unintended result and that appropriate modification in language to provide for the consent of an agency head will be accomplished as was done elsewhere in H.R. 3987 (see proposed section 2105(a) of title 44, U.S. Code).

Thank you for the opportunity to present our views on this proposed legislation. Questions concerning these comments may be addressed to Neal C. Lawson at 389-3294.

Sincerely,

HARRY N. WALTERS
Administrator

Central Intelligence Agency

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Washington, D.C. 20505

18 April 1984

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 legislative referral memorandums of 10 April and 13 April 1984, wherein you request the views of the Central Intelligence Agency (CIA) on S. 905, as reported, and H.R. 3987, as ordered reported. Both of these bills are entitled the "National Archives and Records Administration Act of 1984" and both seek to establish an independent National Archives and Records Administration. The Central Intelligence Agency has no objections to S. 905 as reported by the Senate Committee on Governmental Affairs. H.R. 3987, however, contains a provision, not contained in S. 905, which we feel poses problems for the CIA, as explained below. We have crafted, therefore, language which we believe will resolve the problems posed by H.R. 3987 and, with the addition of our amendment, we would pose no further objection to H.R. 3987.

In reviewing this legislation to determine whether or not it could adversely impact on CIA, it is important to understand the legislative history of the Federal Records Act of 1950, which is amended by both of these bills. The Federal Records Act (64 Stat. 583) was enacted as a new Title V to the Federal Property and Administrative Services (FPAS) Act of 1949. This is critical because the FPAS Act contains a provision which states: "Nothing in this Act shall impair or affect any authority of...the Central Intelligence Agency;" (see 40 U.S.C.A. section 474). This provision applies, therefore, to the Federal Records Act, which is found in chapters 21, 25, 29, and 31 of Title 44, United States Code. S. 905 contains amendments to chapter 21 which the CIA would object to except for the fact that our concerns are taken care of by the above exception in the FPAS Act which will apply to these proposed amendments.

H.R. 3987, however, also amends chapter 33 of Title 44, United States Code, which was not enacted as part of the Federal Records Act of 1950 and to which the CIA exception in the FPAS does not apply. Section 204 of the bill seeks to amend section 3301 of Title 44, United States Code, to add a new subsection (b). This subsection requires the Archivist to "establish detailed criteria under which material shall be examined to determine if it is a record..." and, furthermore, allows the Archivist to "...have access, to determine compliance..., to any material made or received by an agency of the United States Government." The CIA believes this provision could be construed to undermine the authority of the Director of Central Intelligence to protect intelligence sources and methods, contained in the National Security Act of 1947. In working to resolve this problem, we reviewed the current statutory provisions regarding inspection of records by the Administrator of General Services (GSA). Section 2906 of Title 44 currently allows the Administrator to inspect records for the sole purpose of making recommendations to improve an agency's records management practices and programs. This section also contains two important provisions which we believe should be added to the amendment proposed to section 3301.

The first is paragraph 2906(a)(2), which recognizes the sensitivity of records concerned with matters of national security and thus provides for inspection of such records "subject to the approval of the head of the agency concerned or of the President." The second important provision is subsection 2906(b), which requires the Administrator "...to comply with all other Federal laws and be subject to the sanctions provided therein" in conducting their inspections. H.R. 3987, as amended by your Committee, would extend these requirements regarding the inspection of records to the Archivist. We believe the addition of similar language to the proposed section 3301 in H.R. 3987 would resolve the concerns we have with the proposed section and allow a continuation of our good working relationship with the Archivist. The addition of this language to section 3301 would also provide an important element of uniformity in the inspection authorities of the Archivist as set forth in Title 44 of the United States Code. The amendments to section 3301 which we propose are as follows:

--Amend proposed subsection 3301(b) to read:

"(b) The Archivist of the United States shall, by regulation, establish detailed criteria under which material shall be examined to determine if it is a record as defined under subsection (a) and such regulation. The Archivist may have access, to determine compliance with such subsection and

such regulations, to any material made or received by an agency of the United States Government. Access to such material, and the examination thereof, by the Archivist shall be in compliance with all other Federal laws and be subject to the sanctions provided therein."

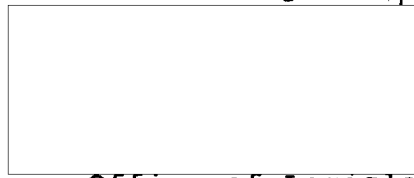
--Add a new subsection (c) to read:

"(c) Material, the use of which is restricted by law or for reasons of national security or the public interest, shall be examined, in accordance with regulations promulgated by the Archivist, subject to the approval of the head of the agency concerned or of the President."

In compliance with your request, we are enclosing for clearance a views letter to Chairman Jack Brooks of the House Government Operations Committee which sets forth our proposed amendment. Please note that in writing this views letter we did not make mention of the continuing applicability of the CIA provision in the FPAS Act but, instead, focused solely on the problems we see in the Committee's proposed section 3301 and the need for consistency in setting forth the Archivist's inspection authorities throughout the chapters in Title 44, United States Code, which govern Federal records management.

We appreciate the opportunity to comment upon S. 905 and H.R. 3987. Given our concern as expressed above, we would appreciate being kept informed as to the development of an Administration position on this legislation.

Sincerely, ↑



Deputy Director, Office of Legislative Liaison

Enclosure

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