

DOCUMENT RESUME

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[Payment of Special Allowances, Not Specifically Authorized by Statute, to Inspectors of the Office of the Inspector General, Foreign Service, Department of State]. ID-77-46; B-134192. July 27, 1977. 4 pp.

Report to Secretary, Department of State; by Charles D. Hylander (for J. K. Fasick, Director, International Div.).

Issue Area: Internal Auditing Systems: Sufficiency of Federal Auditors and Coverage (201); Internal Auditing Systems: Internal Audit Planning and Coordination (202); Internal Auditing Systems: Audit Reports Quality and Followup (203).

Contact: International Div.

Budget Function: International Affairs: Foreign Economic and Financial Assistance (151).

Organization Concerned: Foreign Service.

Congressional Relevance: House Committee on International Relations; Senate Committee on Foreign Relations.

Authority: Foreign Service Act of 1946, as amended, sec. 681 (22 U.S.C. 1036). 22 U.S.C. 2671. 31 U.S.C. 107. 5 U.S.C. 5702. 5 U.S.C. 5536. 34 Comp. Gen. 445. Hendrick v. United States, 16 Ct. Cl. 88 (1880).

The State Department has been paying inspectors of its Office of the Inspector General, Foreign Service, a special allowance based on absences from their residences in the United States for periods of more than 30 days while performing inspections of U.S. diplomatic and consular establishments. The payments are in addition to the maximum per diem allowed under Government travel regulations, and are made from the "Emergencies in the Diplomatic and Consular Service" appropriation. Findings/Conclusions: The Department justifies the extra allowance on the grounds that, because of severe travel requirements, Foreign Service inspectors incur extraordinary expenses, including costs for additional home insurance because their homes are vacant for extended periods, home maintenance costs incurred during their extended absences, and travel costs of spouses to inspection sites to reduce the strain on family units. Payment of the special allowances does not appear to arise from any condition which could fairly be characterized as either unforeseen or an emergency, nor does the special allowance appear to be of a confidential character. Benefits and allowances paid to Federal employees are not generally kept confidential. The special allowance, combined with the per diem paid, exceeds the established maximum per diem rates for civilian officers and Government employees on official travel in foreign areas. Recommendations: Payment of the special allowance should be discontinued. (SC)

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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

INTERNATIONAL DIVISION

B-134192

JUL 27 1977

The Honorable  
The Secretary of State

Dear Mr. Secretary:

The State Department has been paying inspectors of its office of the Inspector General, Foreign Service, a special allowance based on absences from their residences in the United States for periods of more than 30 days while performing inspections of U.S. diplomatic and consular establishments. The payments are in addition to the maximum per diem allowed under Government travel regulations and have been made from the "Emergencies in the Diplomatic and Consular Service" appropriation.

The Department justifies the extra allowance on the grounds that, because of severe travel requirements (as many as 3 trips a year averaging about 10 weeks each), Foreign Service inspectors incur extraordinary expenses. Specific types of extraordinary expenses cited include (1) costs of additional home insurance needed because their homes are vacant for extended periods, (2) lawn care, emergency repairs, and other home maintenance costs incurred during their extended absences, (3) travel costs of spouses to inspection sites, which are considered necessary to reduce strain on the family units during periods of prolonged separation.

Expenditures for emergencies in the diplomatic and consular service are made under 22 U.S.C. 2671 which authorized the Secretary of State to:

"Make expenditures, from such amounts as may be specifically appropriated therefor, for unforeseen emergencies arising in the diplomatic and consular service and, to the extent authorized in appropriations Acts, funds expended for such purposes may be accounted for in accordance with section 107 of Title 31 \* \* \*."  
(Underscoring supplied.)

Section 107 of title 31, in turn, provides that:

"Whenever any sum of money has been or shall be issued, from the Treasury, for the purposes of intercourse or treaty with foreign nations, in pursuance of any law, the President is authorized to cause the same to be duly settled annually with the General Accounting Office, by causing the same to be accounted for, specifically, if the expenditure may, in his judgment, be made public; and by making or causing the Secretary of State to make a certificate of the amount of such expenditure, as he may think it advisable not to specify; and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended."

The President has not caused expenditures from the Emergencies appropriation to be duly settled with GAO by accounting for them specifically. Presumably the President's judgment is that these expenditures should not be made public, at least not in this manner. The expenditures have been settled by the Secretary's "certificate of the amount" expended, which by law is "a sufficient voucher" for the sum stated in the voucher of expenditure. Therefore, our Office has been unable to determine precisely the period over which such payments have been made, the current rates or the amounts paid, or the Department's criteria for determining eligibility for such payments. However, we were able to ascertain that in March 1974 inspectors were receiving an extra \$10 a day while in the field.

Payment of the special allowance does not appear to arise from any condition which could be fairly characterized as either unforeseen or an emergency. Inspections of the diplomatic and consular establishments are made pursuant to section 681 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1036), which requires that the work of these establishments be inspected at least once every 2 years. Nor does the special allowance appear to be of a confidential character. Benefits and allowances paid to Federal employees are not generally kept confidential.

The Congress has enacted numerous laws specifically to authorize payments to Federal employees for travel, living quarters, post differentials, cost-of-living differentials, education of employees' children, etc.

Section 5702 of title 5 of the United States Code provides in pertinent part that:

"(a) An employee, while traveling on official business away from his designated post of duty, is entitled to a per diem allowance \* \* \*. For travel outside the continental United States, the per diem allowance may not exceed the rate established by the President or his designee \* \* \*." (Underscoring supplied.)

Pursuant to authority delegated by the President, the Secretary of State has established maximum per diem rates for civilian officers and Government employees on official travel in foreign areas. These rates appear in the Department's standardized regulations (Government Civilians, Foreign Areas). Accordingly, per diem allowances may not exceed the rates established in those regulations. The special allowance, combined with the per diem paid, exceeds that limitation.

Also, 5 U.S.C. 5536 provides that:

"An employee or a member of a uniformed service whose pay or allowance is fixed by statute or regulation may not receive additional pay or allowance for the disbursement of public money or for any other service or duty, unless specifically authorized by law and the appropriation therefor specifically states that it is for the additional pay or allowance." (Underscoring supplied.)

The above section was derived from former sections 70 and 71 of title 5 (1964 ed.) which provided, respectively that:

"No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is

authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation.

"No civil officer of the Government shall receive any compensation or perquisites, directly or indirectly, from the treasury or property of the United States beyond his salary or compensation allowed by law."

In Hedrick v. United States, 16 Ct. Cl. 88 (1880), the Court of Claims indicated that the purpose of the Act of June 20, 1874, which became former section 71 of title 5, was to preclude claims by public officers for extra compensation on the ground of extra services. Nevertheless, the language of former section 71 appears broad enough to preclude extra compensation when a claim is based on grounds other than the performance of extra services. For example, the Comptroller General has held (34 Comp. Gen. 445) that the Canal Zone Government's practice of providing free living quarters for the district judge, the district attorney, and the marshal, whose salaries had been fixed without regard to the free quarters contravened former sections 70 and 71 of title 5.

Thus the statutes from which section 5536 of title 5 is derived have been interpreted as applying not only to issues concerning compensation for extra services but also to those concerning additional payments for reasons other than extra services. Because 5 U.S.C. 5536 does not differ essentially from superseded sections 70 and 71, we believe that the two cited cases would have been decided identically under 5 U.S.C. 5536.

We requested documentation citing the Department's basis for paying the special allowance, but neither the Legal Adviser's Office nor the Inspector General's Office provided any legal basis for the payments.

We believe payment of the special allowance should be discontinued. We shall appreciate receiving your early response.

Sincerely yours,

C. D. Wylander  
for

J. K. Fasick  
Director