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B-101860, Oct. 17, 1955

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B-101860, OCT. 17, 1955

TO THE HONORABLE SECRETARY OF THE ARMY:

REFERENCE IS MADE TO LETTER OF MAY 9, 1955, FROM YOUR PREDECESSOR IN OFFICE, CONCERNING A QUESTION WHICH HAS ARISEN IN THE NEGOTIATION OF A NEW JAPANESE MASTER LABOR CONTRACT BETWEEN THE UNITED STATES AND THE JAPANESE GOVERNMENT.

IT IS EXPLAINED THAT PURSUANT TO A CONTRACT WITH THE JAPANESE PROCUREMENT AGENCY, AN AGENCY OF THE JAPANESE GOVERNMENT, THE JAPANESE PROCUREMENT AGENCY FURNISHES SUCH PERSONAL SERVICES TO THE UNITED STATES ARMED FORCES IN JAPAN AS MIGHT BE SPECIFIED IN WORK ORDERS OR REQUISITIONS MADE BY DESIGNATED UNITED STATES OFFICIALS. UNDER THIS CONTRACT THE UNITED STATES MAKE A MONTHLY PAYMENT TO JPA CONSISTING OF THE BASIC WAGES OF THE EMPLOYEES AND, IN ADDITION, A FLAT SUM FOR EACH EMPLOYEE TO COVER THE LIABILITY ASSUMED BY JPA FOR THE SPECIAL BENEFITS, SUCH AS UNEMPLOYMENT, SICKNESS, MATERNITY, DEATH, ACCIDENT, AND RETIREMENT (SEPARATION), REQUIRED BY JAPANESE LAW. THUS, THERE IS NO CONTINUING RESPONSIBILITY IN THE UNITED STATES SINCE ITS OBLIGATION IS DISCHARGED IN MAKING THE REQUIRED MONTHLY PAYMENTS.

THE QUESTION WHICH HAS ARISEN IN NEGOTIATING A NEW CONTRACT CONCERNS THE MATTER OF FINANCING THE UNITED STATES' LIABILITY FOR THE AFOREMENTIONED RETIREMENT (SEPARATION) BENEFITS. IT IS EXPLAINED THAT A PROPOSAL NOW IS UNDER CONSIDERATION WHEREBY THE UNITED STATES WOULD RECEIVE CREDIT FOR THE AMOUNT WHICH JPA HAS RECEIVED BUT NOT PAID OUT AS RETIREMENT BENEFITS UNDER THE PRESENT CONTRACT AND THE UNITED STATES WILL THEN ASSUME RESPONSIBILITY FOR PAYMENT OF THE RETIREMENT ALLOWANCE WHEN DUE AND THE UNITED STATES' OBLIGATION TO JPA FOR RETIREMENT ALLOWANCE WILL BE FULLY LIQUIDATED AT THE TIME OF SEPARATION OF THE EMPLOYEE OR THE TERMINATION OF THE CONTRACT, WHICHEVER IS EARLIER.

IT IS STATED THAT THIS PLAN WOULD BE ADVANTAGEOUS TO THE UNITED STATES IN THAT PAYMENTS WILL BE SPREAD OVER A CONSIDERABLE TIME AND THE UNITED STATES WILL NOT BE REQUIRED TO PAY IN ADVANCE THE AMOUNT NEEDED FOR EVENTUAL SETTLEMENT OF THE RETIREMENT ALLOWANCE LIABILITY. HOWEVER, IT IS POINTED OUT THAT THIS PROPOSAL HAS THE DISADVANTAGE OF POSSIBLY REQUIRING THE PAYMENT OF CONSIDERABLE SUMS TO LIQUIDATE ACCRUED RETIREMENT LIABILITIES UPON LARGE REDUCTIONS IN FORCE OF EMPLOYEES UNDER THE CONTRACT EITHER DURING THE LIFE OF THE CONTRACT OR AT TERMINATION THEREOF.

IN ORDER TO OVERCOME THIS DISADVANTAGE IT IS PROPOSED TO ESTABLISH A SPECIAL ACCOUNT WHICH WOULD BE EXEMPT FROM THE NORMAL REQUIREMENT OF TRANSFER TO THE TREASURY UPON THE LAPSING OF THE APPROPRIATIONS INVOLVED INTO WHICH RETIREMENT ALLOWANCE FUNDS WOULD BE DEPOSITED MONTHLY AS THE LIABILITY ACCRUES AND FROM

WHICH PAYMENTS WOULD BE MADE AS THEY BECOME DUE. OUR DECISION IS REQUESTED WHETHER WE WOULD BE REQUIRED TO OBJECT TO THE ESTABLISHMENT OF SUCH SPECIAL ACCOUNT.

SECTION 1210 OF THE GENERAL APPROPRIATION ACT, 1951, APPROVED SEPTEMBER 6, 1950, 64 STAT. 765, PROVIDES, IN PART, AS FOLLOWS:

" NO FUNDS MADE AVAILABLE FOR THIS OR ANY OTHER ACT BE WITHDRAWN FROM ONE APPROPRIATION ACCOUNT FOR CREDIT TO ANOTHER, OR TO A WORKING FUND, EXCEPT AS AUTHORIZED BY LAW * * *.'

SECTION 2 OF THE SURPLUS FUND-CERTIFIED CLAIMS ACT OF 1949, 63 STAT. 407, PROVIDES, IN PART, AS FOLLOWS:

"UNLESS A LONGER PERIOD OF AVAILABILITY FOR EXPENDITURE IS SPECIFICALLY PROVIDED IN AN APPROPRIATION OR OTHER LAW, ON JULY 1 IN EACH YEAR THE UNEXPENDED BALANCES OF ALL APPROPRIATIONS WHICH SHALL HAVE REMAINED UPON THE BOOKS OF THE GOVERNMENT FOR TWO FISCAL YEARS FOLLOWING THE FISCAL YEAR OR YEARS FOR WHICH APPROPRIATED SHALL LAPSE AND THE SECRETARY OF THE TREASURY SHALL CAUSE SUCH BALANCES TO BE TRANSFERRED TO A CONSOLIDATED APPROPRIATION ACCOUNT, TO BE KNOWN AS ,PAYMENT OF CERTIFIED CLAIMS," AND SUCH FUNDS SHALL REMAIN AVAILABLE UNTIL EXPENDED FOR THE PAYMENT OF CLAIMS, WITHIN THE LIMITS OF AND CHARGEABLE TO THE RESPECTIVE BALANCES OF ANY LAPSED APPROPRIATIONS, WHICH MAY BE CERTIFIED BY THE COMPTROLLER GENERAL OF THE UNITED STATES TO BE LAWFULLY DUE: * * *"

IN VIEW OF SUCH PROVISIONS OF LAW AND IN THE ABSENCE OF ANY AUTHORITY TO WAIVE THE REQUIREMENTS THEREOF, THERE APPEARS NO PROPER BASIS UPON WHICH FUNDS MAY BE TRANSFERRED TO A SPECIAL ACCOUNT, AS PROPOSED, AND RETAINED THEREIN UPON THE LAPSING FOR EXPENDITURE PURPOSES OF THE RELATED APPROPRIATION.

YOU ARE ADVISED, HOWEVER, THAT WE, TOGETHER WITH THE BUREAU OF THE BUDGET AND THE TREASURY DEPARTMENT, ARE COOPERATING IN AN EFFORT TO DRAFT LEGISLATION DESIGNED TO PERMIT EACH DEPARTMENT AND AGENCY TO RETAIN CONTROL OF ANY BALANCE REMAINING IN A LAPSED APPROPRIATION WHICH IS NEEDED FOR THE LIQUIDATION OF VALID OBLIGATIONS. IT IS HOPED THAT WE WILL BE ABLE TO SUBMIT THIS PROPOSED LEGISLATION TO THE APPROPRIATE CONGRESSIONAL COMMITTEES IN THE NEAR FUTURE. SEE, IN THIS CONNECTION H.R. 7658, H.R. 7688, AND S. 2678 INTRODUCED IN THE 84TH CONGRESS, 1ST SESSION.