

INFORMATION PAPER

SUBJECT: Request for Special Legislation Benefiting Air America Employees

PURPOSE: To Explain the Reason and Justification for This Request

Air America (AAM) was a government owned corporation, authorized by law, which was operated and managed by the Central Intelligence Agency (CIA) in support of government operations during the Cold War, mainly in East Asia.

This support included flight operations conducted in various countries such as China, Korea, Laos and Vietnam, on behalf of the Department of Defense (DOD) and the CIA, beginning in 1950 up to 1976. The company employed several hundred U.S. citizens, mainly flight crewmembers, and 86 were killed in action while operating aircraft for the government.

Under the U.S. Code employees of government corporations are Federal employees and as such they are entitled to retirement benefits under the Civil Service Retirement System. This is true, as an example, for employees of such government corporations as the Tennessee Valley Authority and the Federal Land Bank. Government corporations are normally listed at 31 U.S.C. 9101.

The CIA conducted AAM operations with strict secrecy. During the Korean and Vietnam Wars the government ownership of the company was never acknowledged and was not known to the public. Only a select number of company employees were aware of whom they really worked for since access to this knowledge required top-secret clearances.

Historically, Federal employees could be hired into the civil service by means of an appointment or through a personal services contract. This was specifically provided for at the time in the applicable Civil Service regulation (5 CFR 831.201(a)(5)). Because of this secrecy employees could not be formally appointed into the civil service, as this would require revealing the CIA ownership of AAM. Employees were hired under employment contracts, which did not reveal this government ownership. In a December 5, 1978, response to an information request on this point the CIA stated, "In the case of Air America it would have been virtually impossible to preserve the cover story had all corporate employees been advised they were really employees of the United States Government"

In the early 1980s some AAM employees sought civil service retirement benefit through claims filed with the Merit Systems Protection Board (MSPB). They were turned down as they could not show they were "appointed" into the civil service and their claim for credit by means of contract service with a government corporation was also turned down for the reason that AAM was not publicly listed in 31 U.S.C. 9101 as a government

corporation and for the reason that the Office of Personnel Management (OPM) had revised its regulation to state that contract service would no longer be credited.

The OPM revision was made retroactive, thus preventing AAM employee from receiving retirement. The Congress questioned this OPM action when it gave retirement credit to a number of contract employees of the U.S. Navy in legislation similar to that being sought here. In connection with the enactment of Public Law 100-238 House Report 100-374 stated:

While OPM's action may be appropriate as a matter of law, individuals who performed such service prior to this policy change should be able to rely on published OPM instructions and prior administrative actions granting credit for such service. OPM's actions in denying this credit have been extremely unfair, particularly in view of the apparent inconsistent administration of the policy in the early 1980's and the fact that it took more than four years from the time OPM began denying retirement credit until it changed its publicly available instructions. (Page 25)

Similar legislation granted retirement benefits to several CIA owned proprietary corporations such as Radio Liberty, Radio Free Europe, and Radio Free Asia. Their legal status as government corporations was identical to that of Air America.

AAM employees are seeking Congressional action providing relief from this situation. Although employed by a government corporation this corporation was never listed in 31 U.S.C. 9101 because of the need for secrecy. This injustice can be remedied by legislation in Congress but that body may need a favorable recommendation from the CIA.

The injustice becomes more apparent when it is realized that of the estimated 508 employees who could have benefited from this retirement, 86 of them were killed in action while flying in support of DOD and CIA operations, beginning with flights over communist China, Korea and Dienbenphu in the early 1950's through the end of the Vietnam War. On February 24, 2005, the Government of France awarded the French Legion of Honor to seven surviving AAM pilots who flew missions for the CIA at Dienbenphu in 1954; and the last the last American helicopters, rescuing personnel from the rooftops of Saigon in 1975, were operated by AAM pilots.

The personnel of AAM, including the flight crewmembers who risked their lives daily on CIA and DOD missions, as well as their survivors in many cases, have been harmed by this unfortunate retroactive application of the retirement law. At the time when the law did recognize contract service as being Federal service it was not possible to file for retirement benefits due to the secrecy that surrounded all AAM operations.

AAM did have a savings plan, called a Retirement Plan, but it was not even close to being the equivalent of a government retirement system. Under this Plan employees

contributed money that was invested with the Manufacturers Hanover Trust Company. Matching contributions of 25% to 100%, depending on a person's length of service, were added by the employer. When the employee terminated his participation in the Plan, which he could do at any time, even while still employed, the results of this investment were paid in one lump sum. There was no provision for an annuity.

Payments under the Plan were very small due to the fact that it was short lived and was instituted only in the latter half of the company's existence. Many persons could not participate because of age restrictions (25 or older) or the fact they terminated employment before the Plan was created in 1962. Following are examples of the total lump sum "retirement" payments made in the case of employees killed while flying AAM aircraft on Government missions.

| | | | |
|----------------------|-------------|----------------------|-------------|
| Ackley, James | -0- | Liu, Herbert | \$3,750.00 |
| Bannerman, John | -0- | Mahony, Justin | -0- |
| Beale, William | -0- | Massey, Bruce | \$846.78 |
| Beardsley, William | -0- | Mateer, Charles | -0- |
| Bijl, Roelf | \$2,082.96 | Matheson, Milton | -0- |
| Booth, Gerald | -0- | McGovern, James | -0- |
| Boyles, Howard | \$8,141.06 | McKean, Roger | -0- |
| Bruce, Earl | -0- | Merkel, John | -0- |
| Campbell, J.C. | \$10,582.59 | Murray, Jon | -0- |
| Clark, Herbert | -0- | Muscal, Frank | -0- |
| Clark, Terry | -0- | Newton, Gideon | -0- |
| Cheney, Joseph | \$41.12 | Osterman, Clarence | -0- |
| Cochran, Kevin | -0- | Oyer, John | -0- |
| Crone, Robert | \$3,674.12 | Potter, Harvey | \$7,274.34 |
| Davis, Ralph | \$6,086.54 | Pirkle, Lowell | \$307.82 |
| Debruin, Eugene | -0- | Porter, Lester | -0- |
| DeLong, Gerald | \$4,805.70 | Prudhomme, Gerald | \$242.24 |
| Dieffenbach, Charles | -0- | Pruner, William | -0- |
| Driver, Clarence | -0- | Randall, Lloyd | \$6,595.56 |
| Ensminger, Wayne | -0- | Rasmusson, James | -0- |
| Franklin, Benjamin | \$10,782.64 | Rausch, James | -0- |
| Farthing, Frank | \$2,356.90 | Riley, Fred | -0- |
| Forte, Norwood | -0- | Rogers, Hugh | \$4,532.10 |
| Gibbs, William | -0- | Smith, Franklin | -0- |
| Grammer, Norman | -0- | Sandoval, Albert | \$1,524.32 |
| Heinrich, Howard | -0- | Sarno, Robert | -0- |
| Heritage, Donald | -0- | Scandalis, Alexander | -0- |
| Herrick, Charles | \$13.70* | Smart, Milton | -0- |
| Hester, William | \$4,831.34 | Snoddy, Robert | -0- |
| Houp, Kenneth | \$9,914.40 | Schwartz, Norman | -0- |
| Jones, Charles | -0- | Strouss, Herbert | -0- |
| Kelly Howard | \$7,561.54 | Varney, George | -0- |
| Lieberth, Richard | -0- | Wiehrdt, Leonard | \$10,659.44 |

| | | | |
|-------------------|-----|----------------|-----|
| Wizbowski, Walter | -0- | Wooten, Aubrey | -0- |
| Woods, Glen | -0- | | |

(* In most case 80% of the payments would be the return of employee contributions. For example, of the \$13.70 paid to the widow of Charles Herrick, only \$2.74 came from the company)

In the interest of fairness the AAM employees are seeking legislation that would provide civil service retirement benefits based upon the time they were employed with AAM and its affiliated companies also owned by the CIA (CAT INC, Air Asia, Civil Air Transport and Southern Air Transport). The estimate of benefits payable to some 400 to 500 persons who might be benefited is miniscule when compared with the millions of persons now receiving civil service benefits. The potential cost is also miniscule when compared with services AAM personnel provided to our nation, executing dangerous flight operations on the mainland of communist China, during the Korean War, in support of French forces at DienBeinPhu and throughout the duration of the Vietnam War.