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The Honorable Tom Lantos
Chairman
House Committee on Foreign Affairs
2170 RHOB
Washington, DC
20515

Dear Chairman Lantos,

As you know, the State Department recently transmitted suggested legislative language related to a potential Foreign Relations Authorization Act for FY 2008-2009. The American Foreign Service Association (AFSA) supports important parts of this draft legislation, in particular the "worldwide pay" provision. However, we have a strong objection to Section 307, titled "Suspension of Foreign Service Members Without Pay." This provision would permit the Department to suspend a member of the Foreign Service without pay when there is reasonable cause to believe that the member has committed a crime, even if there is no connection between the alleged crime and the member's position as a Foreign Service employee, or when the member's security clearance has been suspended. For the reasons discussed below, this provision, if adopted, would be profoundly unfair to employees.

In some circumstances, it may be entirely appropriate for the Department to suspend an employee without pay where there is reasonable cause to believe he or she has committed a crime. However, the provision as written is overly broad because it does not appear to require a nexus or link between the crime and the employee's duties or the efficiency of the Service. Thus, the provision would permit the Department to place on Leave without Pay an employee who committed an off-duty misdemeanor that has no connection to his or her job as a Foreign Service Officer (for example, driving under the influence of alcohol). We object to this provision.

AFSA also strenuously objects to the provision because it would permit the Department to place an employee on indefinite Leave without Pay when the employee's security clearance is suspended. The Department's Diplomatic Security (DS) bureau has absolute discretion to suspend an employee's clearance. The employee is not entitled to any details or documents regarding the basis for the suspension and has no right of response. The U.S. Court of Appeals for the Federal Circuit recently overturned the Department of Justice's indefinite suspension of a DEA employee based on the suspension of his security clearance, finding the employee had been denied due process because he did not have a meaningful opportunity to respond to the basis of the proposed Leave without Pay. *Cheney v. DOJ*, No. 06-3124 (Fed. Cir. March 2, 2007).

In addition to our concerns about due process, we are also very concerned about the lengthy period of time that an employee could be placed in a leave without pay status. Although the Foreign Affairs Manual states that DS will seek to investigate the underlying allegations and make a decision to either reinstate or move to revoke the clearance within 90 days, in reality, these cases

take much longer. In AFSA's experience, most of these cases take two to three years to process, and on occasion four, five, or even more years before a final decision is rendered.
For example, AFSA is aware of one case where the employee's clearance was suspended in April 2004. DS has interviewed the employee on a number of occasions but has taken no further action regarding his security clearance. Another employee's clearance was suspended in November 2002. The employee is still waiting for a decision from DS regarding his clearance. Numerous other cases have taken two to three years to resolve.

The scant information provided to an employee when his or her clearance is suspended and the lengthy time it takes before a final decision is made makes it profoundly unfair to place an employee on LWOP, particularly when one recognizes that many of these employees ultimately have their clearances reinstated because the allegations were unsubstantiated or did not warranted revocation of their clearance. To force employees onto LWOP during this period would amount to a presumption of guilt, without affording the employee even minimal due process. It would impose a severe penalty on employees before the investigation and adjudication of their cases are even completed. AFSA respectfully requests that the language be revised to protect employee rights or be removed entirely from any final bill.

Thank you for your leadership. We deeply appreciate your support and are happy to discuss this matter further.

Sincerely,

J. Anthony Holmes
President