

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

TO : The Secretary
Through: U _____
ES _____

FROM : Commissioner of Social Security

DATE: FEB 12 1975

REFER TO:

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SUBJECT: Social Security Provisions in Proposed Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States--INFORMATION

On January 30, 1975, representatives of SSA and the Office of General Counsel met with a representative of the Office for Micronesian Status Negotiations to review draft language for the subject provisions. This language is intended to reflect agreements already reached in the negotiations between representatives of the Northern Mariana Islands and U.S. Ambassador F. Hayden Williams, The President's Personal Representative for Micronesian Status Negotiations. The purpose of the review was to assure insofar as possible that the language would not create technical difficulties for the agencies of the United States Government who will eventually be involved in its implementation.

The proposed Covenant is intended to be a non-self-executing agreement that will establish the conditions under which the Northern Mariana Islands will become a territory of the United States, after a period of transition. Before the transition ends it will be necessary for organic legislation to be enacted authorizing the extension of various Federal laws and programs as agreed. Ambassador Williams' negotiating instructions were issued by authority of Secretary of State Kissinger and were communicated to the Under Secretaries' Committee. To our knowledge no prior discussions were held with this Department on questions involving programs that are within its jurisdiction. Nevertheless, SSA cooperated in the review with the clear understanding that we are not committed to support the provisions before Congressional committees during the formulation of organic legislation. We were informed that some of the programs--particularly social programs--were extended in a particular way at the specific request of certain members of the House and Senate Interior Committees. For example, under Section 502(a) of the proposed Covenant (Tab A), Title XVI and Section 223 of the Social Security Act as it applies to the several States are to be extended to the Northern Mariana Islands.

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Under Section 505 (to be renumbered as 507 (Tab B), the present Trust Territory of the Pacific Islands (TTPI) social security trust fund is to be divided on the date the Covenant is approved, probably some time in 1975. That portion attributable to the Northern Mariana Islands is to be deposited in an account in the Treasury of the United States to be administered by the United States as a separate social security system in accordance with the TTPI social security law. There is almost no likelihood that this fund will run a deficit, according to the TTPI actuarial consultant, but the agreement provides that any deficit will be funded out of U.S. general revenues. When the transition ends, probably around 1981, the Federal OASDHI program is to become applicable to the Northern Mariana Islands, and any person domiciled in the Islands at that time who had insurance credits or who was eligible or entitled under the transitional system (directly or by transfer from the TTPI system) will be given at least the same credit, eligibility or entitlement under OASDHI. The transitional fund will be deposited in the appropriate Federal social security trust funds.

We do not perceive any disagreements in principle with what Ambassador Williams has agreed to include in the Covenant as far as OASDHI is concerned. As soon as the Northern Marianas is joined to the United States its inhabitants would have rights comparable to all other United States nationals and in particular to their ethnic relatives on Guam. Furthermore, they would be given credit for contributions made to the TTPI system during periods when they were prevented by law from contributing to OASDHI.

We have two significant reservations about the Ambassador's agreements on OASDHI and these have been only partially taken care of through modifications of the language of the proposed Covenant sections. The first is regarding an agreement that SSA would administer the transitional fund in accordance with TTPI laws. We would prefer not to have to do so because of the obvious difficulties of gearing up to administer a program with which we are not familiar. Several possibilities do exist for contracting out. The specific language was removed but the original ideas of administration by SSA remains and will probably be noted in the records of negotiations. Our second reservation is in the implication that after the transition period is over the U.S. social security trust funds will meet any excess cost of benefits attributable to coverage under the TTPI or transitional systems not paid for by the transitional fund. The amounts involved are likely to be insignificant but the precedent is a dangerous one to establish. We believe that such excess costs should be paid for out of general revenues.

A number of technical problems are likely to appear as the organic legislation is being developed and can be dealt with at that time. For example, there is the question of whether retired workers under age 62 receiving benefits at the time the transition ends--TTPI retirement age is 60--will be treated as age 62 under OASDHI or whether they receive further actuarially reduced benefits. Another question is whether beneficiaries over age 55 at the time the transition ends will pay the SMI contribution of a person who elects at age 55 or of a person who elects at a later age.

The Ambassador and his staff are expected to return shortly from completing the negotiations in the Trust Territory. We will keep you informed of any further developments.

 /s/ Arthur L. Hays
James B. Cardwell

Enclosures:

Tab A - Section 502 of the proposed Covenant

Tab B - Section 605 of the proposed Covenant

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Section 502

The following laws of the United States in existence on the effective date of this Section, and subsequent amendments to such laws, will apply to the Northern Mariana Islands as follows, except as otherwise provided in this Covenant:

- (a) those laws which provide federal services and financial assistance programs, the federal banking laws as they apply to Guam, and Title XVI and Section 223 of the Social Security Act as it applies to the several States; the Public Health Service Act as it applies to the Virgin Islands; and the Micronesian Claims Act as it applies to the Trust Territory of the Pacific Islands;
- (b) those laws not described in Subsection (a) which are applicable to Guam and which are of general application to the several States as they are applicable to the several States;
- (c) those laws not described in Subsections (a) or (b) which are applicable to the Trust Territory of the Pacific Islands, but not their subsequent amendments unless specifically made applicable to the Northern Mariana Islands, as they apply to the Trust Territory of the Pacific Islands until termination of the Trusteeship Agreement, and will thereafter be inapplicable.

Section 606 (To be numbered as 606)

(a) Not later than at the time this Covenant is approved, that portion of the Trust Territory Social Security Fund attributable to the Northern Mariana Islands will be transferred to the Treasury of the United States, to be held in trust as a separate fund to be known as the "Northern Mariana Islands Social Security Retirement Fund". This Fund will be administered by the United States in accordance with the social security laws of the Trust Territory of the Pacific Islands in effect at the time of such transfer, which may be modified by the Government of the Northern Mariana Islands only in a manner which does not create any additional differences between the social security laws of the Trust Territory of the Pacific Islands and the laws described in Subsection (b). The United States will supplement such Fund if necessary from the general revenues of the United States to assure that persons receive benefits therefrom comparable to those they would have received from the Trust Territory Social Security Retirement Fund under the laws applicable thereto on the day preceding the establishment of the Northern Mariana Islands Social Security Retirement Fund, so long as the rate of contributions to the Northern Mariana Islands Social Security Retirement Fund also remains comparable to the rate of contributions under the Trust Territory social security law on that day.

(b) Those laws of the United States which impose excise and self-employment taxes to support, or which provide benefits from the United States Social Security System will upon termination of the Trusteeship Agreement or such earlier date as may be agreed to by the Government of the Northern Mariana Islands and the Government of the United States become applicable to the Northern Mariana Islands as they apply to Guam.

(c) At such time as the laws described in Subsection (b) become applicable to the Northern Mariana Islands:

(1) The Northern Mariana Islands Social Security Retirement Fund will be transferred to the appropriate U.S. Federal Social Security Trust Funds; and

(2) prior contributions by or on behalf of persons domiciled in the Northern Mariana Islands to the Trust Territory Social Security Retirement Fund or the Northern Mariana Islands Social Security Retirement Fund will be considered to have been made to the appropriate United States Federal Social Security Trust Fund for the purpose of determining eligibility of those persons in the Northern Mariana Islands for benefits under those laws; and

(3) persons domiciled in the Northern Mariana Islands who are eligible or entitled to social security benefits under the laws of the Trust Territory of the Pacific Islands or of the Northern Mariana Islands will not lose their entitlement and will be eligible or entitled to benefits under the laws described in Subsection (b).

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