

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

00 072

INCOMING

DATE RECEIVED: AUGUST 31, 1990

NAME OF CORRESPONDENT: THE HONORABLE PHILIP R. SHARP

SUBJECT: CONCERNS REGARDING THE EVENTUAL PAYMENT OF
EARNED INTEREST ON THE ASSETS OF IRAQ AND
KUWAIT FOLLOWING THE INVASION

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION		DISPOSITION	
	ACT CODE	DATE YY/MM/DD	TYPE RESP	C COMPLETED D YY/MM/DD
FREDERICK MCCLURE	ORG	90/08/31	Fm	A9009/05 LJ
REFERRAL NOTE: <u>99Trea</u>	R	90/09/06		A90/11/10 DJ
REFERRAL NOTE: <u>NSC219</u>	I	90/09/06		C / /
REFERRAL NOTE: <u>99005</u>	I	90/09/06		C / /
REFERRAL NOTE: <u>LAMCC</u>	A	90/11/07		C 90/11/07 WS
REFERRAL NOTE: <u>fyf - Trea</u>				

COMMENTS:

ADDITIONAL CORRESPONDENTS: 1 MEDIA:L INDIVIDUAL CODES: 1230

MAIL USER CODES: (A) (B) (C)

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*ACTION CODES:          *DISPOSITION          *OUTGOING          *
*                        *                        *CORRESPONDENCE:  *
*A-APPROPRIATE ACTION  *A-ANSWERED          *TYPE RESP=INITIALS *
*C-COMMENT/RECOM       *B-NON-SPEC-REFERRAL *           OF SIGNER  *
*D-DRAFT RESPONSE      *C-COMPLETED        *           CODE = A   *
*F-FURNISH FACT SHEET  *S-SUSPENDED         *COMPLETED = DATE OF *
*I-INFO COPY/NO ACT NEC*                        *           OUTGOING  *
*R-DIRECT REPLY W/COPY *                        *                        *
*S-FOR-SIGNATURE       *                        *                        *
*X-INTERIM REPLY       *                        *                        *
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REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE
(ROOM 75, OEOB) EXT-2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING
LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS
MANAGEMENT.



DEPARTMENT OF THE TREASURY
WASHINGTON

ASSISTANT SECRETARY

NOV 01 1990

FAC: IK-119122/119336
ENF: 03083T/04048T
ESLA: 90-91494/91705
WH: 171024

The Honorable Frank McCloskey
House of Representatives
Washington, D.C. 20515

Dear Mr. McCloskey:

Thank you for your letter of August 30, 1990, concerning the freeze on Iraqi and Kuwaiti assets instituted by the Treasury Department on August 2, 1990.

In your letter, you expressed concern about rules expected soon from the Treasury Department which might require the payment of interest on blocked Iraqi and Kuwaiti accounts. In addition, you asked if there is a precedent by which interest earned on blocked funds could be diverted for use by the U.S. Government or for distribution to American energy consumers.

You are correct that past asset freezes have typically specified that blocked funds be placed into bank accounts earning commercially reasonable rates of interest. These requirements have been instituted for several reasons.

First, the blocked assets and accrued interest provide a possible source of funding for a financial settlement of claims between all parties involved, including many U.S. persons whose interests may have been adversely affected by the blocking. This dictates that sound fiduciary practices be followed with respect to the assets until an orderly settlement can be crafted which addresses the legitimate interests of all affected parties.

Second, permitting holders of blocked funds to hold such funds without paying commercially reasonable rates of interest would not only result in an unconscionable diminution in the value of the funds to the detriment of innocent third party claimants, but could also result in an unjust and unfair enrichment of the financial institutions holding the blocked funds.

In the absence of specific vesting legislation from the Congress, the Treasury Department does not have the legal authority to divert or seize blocked Iraqi or Kuwaiti funds, or interest earned thereon, for other uses. The vesting of Iraqi or Kuwaiti property in the U.S. Government for such purposes is not authorized by either the International

Emergency Economic Powers Act, 50 U.S.C. 1701-06, or the United Nations Participation Act, 22 U.S.C. 287c, upon which the present economic sanctions are based. Vesting is fundamentally different than blocking, which is intended to freeze in place, as nearly as is practicable, the interests of all parties until an orderly process can be devised to settle disputes.

If you have any additional questions, please feel free to contact Mr. R. Richard Newcomb, Director, Office of Foreign Assets Control, at (202) 535-9445. Please let me know whenever we may be of service.

Sincerely,

(Signed)

Bryce L. Harlow
Assistant Secretary
(Legislative Affairs)

THE WHITE HOUSE OFFICE
REFERRAL

SEPTEMBER 7, 1990

TO: DEPARTMENT OF THE TREASURY

ACTION REQUESTED:
DIRECT REPLY, FURNISH INFO COPY

REMARKS: ALSO REFERRED TO DOS

DESCRIPTION OF INCOMING:

ID: 171024
MEDIA: LETTER, DATED AUGUST 30, 1990
TO: PRESIDENT BUSH
FROM: THE HONORABLE PHILIP R. SHARP
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515

SUBJECT: CONCERNS REGARDING THE EVENTUAL PAYMENT OF
EARNED INTEREST ON THE ASSETS OF IRAQ AND
KUWAIT FOLLOWING THE INVASION

PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN
TAKEN WITHIN 9 WORKING DAYS OF RECEIPT, PLEASE TELEPHONE THE
UNDERSIGNED AT 456-7486.

RETURN CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE
(OR DRAFT) TO:
AGENCY LIAISON, ROOM 91, THE WHITE HOUSE, 20500

SALLY KELLEY
DIRECTOR OF AGENCY LIAISON
PRESIDENTIAL CORRESPONDENCE

September 5, 1990

Dear Congressman McCloskey:

Thank you for your recent letter to the President, cosigned by Congressman Sharp, expressing your concerns that the Treasury Department may issue rules that would permit the eventual payment of earned interest on frozen Iraqi and Kuwaiti assets.

We appreciate both being apprised of your reservations concerning this matter and receiving your recommendation that interest payments for Iraqi assets be blocked. I have taken the liberty of sharing your comments with several of the President's advisors so that they, too, are aware of your views and concerns.

Thank you again for your interest in writing.

With best regards,

Sincerely,

Frederick D. McClure
Assistant to the President
for Legislative Affairs

The Honorable Frank McCloskey
House of Representatives
Washington, D.C. 20515

FDM:SLM:

bcc: w/ copy of inc to Dept. of the Treasury - for direct
response
bcc: w/ copy of inc to NSC - FYI
bcc: w/ copy of inc to Dept. of State - FYI

September 4, 1990

Dear Congressman Sharp:

Thank you for your recent letter to the President, cosigned by Congressman McCloskey, expressing your concerns that the Treasury Department may issue rules that would permit the eventual payment of earned interest on frozen Iraqi and Kuwaiti assets.

We appreciate both being apprised of your reservations concerning this matter and receiving your recommendation that interest payments for Iraqi assets be blocked. I have taken the liberty of sharing your comments with several of the President's advisors so that they, too, are aware of your views and concerns.

Thank you again for your interest in writing.

With best regards,

Sincerely,

Frederick D. McClure
Assistant to the President
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The Honorable Philip R. Sharp
House of Representatives
Washington, D.C. 20515

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Congress of the United States

House of Representatives

Washington, DC 20515

August 30, 1990

F McClure
The Honorable George Bush
President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

We have serious reservations that the Treasury Department may soon issue rules that would permit the eventual payment of earned interest on the considerable assets of Iraq and Kuwait which you ordered "frozen" following the Iraqi invasion.

The Treasury Department has been generally successful in tracking down and blocking disposition of investments and payments for goods and services which are affected by your order. We applaud Secretary Brady and his staff for prompt execution of this complex task. However, we have questions concerning rules for the asset freeze, which, if traditionally structured, could reward Saddam Hussein and his Government for their brutal aggression.

Regulations on past asset freezes have typically specified that blocked liquid assets are placed into interest-bearing accounts of the shortest possible term. With appreciation for certain legal questions of extra-territoriality, we question whether it is in the spirit, if not the principles, of international law for Saddam Hussein to reap a windfall from the invasion of Kuwait in the form of earned interest.

Most Iraqi and Kuwaiti assets, the preponderance of which come from petroleum, are under contracts stipulating a delivery cost, typically with a provision for plus or minus ten percent price flexibility, with payment on irrevocable Letters of Credit with U.S. and foreign banks. Further, we understand that most processed Letters of Credit -- the proceeds from which are placed in "blocked" accounts -- were paid at the ten percent premium. So it is possible that Mr. Saddam's Government will reap *two* windfalls when the assets are eventually unfrozen: premium prices *which he precipitated and* earned interest.

Would it be more appropriate, Mr. President, to let our regulations fit the crimes of aggression and hostage-taking by denying the payment of interest to blocked accounts for Iraqi assets, and any Kuwaiti assets which are not returned to their rightful pre-invasion owners, when the freeze is lifted? Finally, is there a precedent by which any expropriated earned interest, pursuant to a resolution from the Congress, might be used to lessen *our* costs -- such as mitigating the taxpayers' burden for Operation *Desert Shield*, or rebating American consumers who are paying higher energy prices?

The Honorable George Bush
President of the United States
August 30, 1990
Page Two

We appreciate that past experience with seized assets and reparations strongly suggests it is in America's ultimate best interests that our actions should be essentially neutral and avoid being perceived as unduly punitive. However, we strongly believe that asset seizure procedures should not confer any windfall to an aggressor who uses innocent American children, women and men as pawns. We would appreciate your thoughts and comments on how the Government of the United States will implement the freezing of these assets, and thank you for your consideration.

Sincerely,



Philip R. Sharp
Member of Congress



Frank McCloskey
Member of Congress