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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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B-211921

OCTOBER 25, 1983

RELEASED

The Honorable William V. Roth, Jr.
Chairman, Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

Subject: Adequacy of the Department of Defense's Response to Its Inspector General's Report on the Use of Vehicles Assigned to the Office of the Secretary of Defense Executive Motor Pool (GAO/NSIAD-84-10)

Your February 18, 1983, letter requested that we review the executive motor pools that support the Office of the Secretary of Defense (OSD) and the Army, Navy, and Air Force headquarters. As agreed with your Office, we confined our review to the operations of the OSD executive motor pool and did not review the motor pools of the respective services' headquarters. Specifically, we conducted a followup on the Department of Defense Inspector General's (DOD IG's) Quick-Reaction Report on the Survey of Executive Motor Pool Operations, issued December 10, 1982, to determine (1) what corrective actions were taken, (2) if corrective actions were not taken, the reasons for no actions, and (3) if present controls over the use of OSD vehicles are adequate.

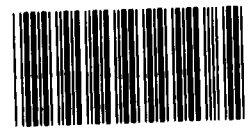
BACKGROUND

Due to congressional and Office of Management and Budget interest in the use of vehicles and chauffeurs by high level government officials, the DOD IG decided to audit the OSD executive motor pool.

The DOD IG's survey, performed in December 1982, covered about 6,000 trips made from June through November 1982 and resulted in the DOD IG auditors identifying 1,555 trips that appeared questionable. After considering alternatives on how best to resolve the issue, the DOD IG opted for a "quick-reaction" report that alerted management to the problems and made recommendations for management actions. The report recommended that:

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"1. . . . the Assistant Secretary of Defense (MRA&L) [Manpower, Reserve Affairs and Logistics] request the Military Departments to review the adequacy of controls implemented for vehicle support provided to senior officials to ensure compliance with applicable laws and regulations.

2. . . . the Deputy Assistant Secretary of Defense (Administration):

a. Develop more specific and detailed guidance concerning the use of vehicles assigned to the executive motor pool. This policy guidance should also address the limitations on travel between domicile and place of employment, travel to and from airports during nonduty hours, and travel to and from locations other than place of employment during nonduty hours. Upon completion, this guidance should be furnished to all individuals authorized to use the executive motor pool.

b. Review vehicle usage records for calendar years 1981 and 1982 and recover from appropriate individuals those expenses incurred for any unauthorized or unofficial trips.

c. Implement procedures that provide for the review of vehicle usage records on a periodic basis to determine if trips were taken for authorized, official purposes.

d. Implement procedures that require the motor pool supervisor to advise you, in writing, of any trips that appear to be for other than official purposes.

e. Establish necessary controls to ensure that travel between domicile and place of employment is restricted to those individuals authorized such transportation in DOD Regulation 4500.36-R."

ACTIONS TAKEN BY DOD ON QUESTIONABLE TRIPS

As previously stated, the DOD IG auditors identified 1,555 trips that appeared questionable. For this review, we have categorized the 1,555 trips as follows:

--1,132 trips taken by DOD officials during their work day.

--423 trips were made by unaccompanied relatives of principal DOD officials and by DOD officials (1) from home to work, (2) from home to other government

buildings, (3) to and from military airports, and (4) other destinations that could not be easily categorized.

A discussion of the 1,555 trips and DOD's disposition follows.

After receiving the DOD IG report, the Deputy Assistant Secretary of Defense (Administration) on January 26, 1983, sent letters to 99 officials. These officials were provided a list of 1,132 trips and were asked to indicate the purpose of each trip and whether it was personal or official business. Neither we nor DOD attempted to verify the validity of the responses because any attempt to do so would have been extremely time-consuming and, in most cases, there would not have been documents to verify. However, we did review the exchange of correspondence in which the officials' responses indicated which trips were personal or official business.

The DOD General Counsel indicated that in addition to charges for personal trips, charges should be made for all nonemergency medical trips whether or not such trips were indicated by the officials as personal or official business. Therefore, in an April 8, 1983, letter, the Deputy Assistant Secretary of Defense (Administration) asked 11 officials to reimburse the government \$386.30 for 30 trips that had been marked as personal and for 30 trips that had been marked as nonemergency medical. The reimbursement charge was based on a commercial taxicab rate of \$1.70 for the first mile plus \$1.00 for each additional mile. In addition, a \$0.65 charge was made to recover the costs associated with the telephone request to dispatch the vehicle.

In addition, action has been taken to resolve the remaining 423 trips questioned by the DOD IG report. On April 29, 1983, the Deputy Assistant Secretary of Defense (Administration) sent letters to 17 officials asking them to indicate the purpose of 97 trips taken by relatives of DOD officials and whether the trips were personal or official business. One official reimbursed the government \$205.30 for 20 personal trips made by relatives in motor pool vehicles but indicated that 22 other trips were for official business. The other officials indicated that their relatives' trips were official. We can find no basis to authorize the transportation of unaccompanied relatives at government expense as official business. Moreover, DOD

Administrative Instruction No. 70, which was issued on May 13, 1983, lists, as an example of unauthorized use of government owned or leased vehicles, the transportation of dependents or visitors without the accompanying officials. (See pp. 9 and 10 of enc. I.)

On the basis of DOD Regulation 4500.36-R, DOD determined that the use of government vehicles for home-to-work, home-to-government building transportation, as well as for use between home and military airports, was for official use. However, our decision, B-210555, dated June 3, 1983, states that only the heads of cabinet-level departments; the Secretaries of the Army, Navy, and Air Force; and those persons who are properly appointed (or succeed) to become the heads of foreign diplomatic or consular posts as ambassadors, ministers, or charges d'affaires may be provided with home-to-work transportation (there are two other exceptions not relevant here). No other government officials or employees may be provided this transportation under the current statute (31 U.S.C. 1344). Our decision was rendered in response to a request from Chairman Brooks of the House Committee on Government Operations.

Because so many agencies have relied on apparent acquiescence by the Congress during the appropriations process when funds for passenger vehicles were appropriated without imposing any limits on an agency's discretion to determine the scope of "official business," and because our own decisions may have contributed to the impression that the use of vehicles for home-to-work transportation was a matter of agency discretion, we do not think it is appropriate to seek recovery for past misuse of vehicles. However, our June 3, 1983, decision made it quite clear that as the law now reads, agency heads do not have discretion to authorize transportation between home and work for anyone not mentioned in the statute as being exceptions to the general prohibition (except for certain emergency situations specified in our decisions). We, nevertheless, pointed out that the rigidity of the present rule may cause great difficulty or even hardship for government agencies in carrying out their missions. We, therefore, suggested that the Congress study these needs and consider amendatory legislation to relax the restrictions in appropriate cases. We also suggested that the Congress may wish to reconsider the rationale for exempting from the general prohibitions in 31 U.S.C. 1344(b) only the heads of executive departments and expand the present exemption to include the heads of all agencies and, perhaps, their principal deputies. A copy of the decision is contained in enclosure II.

As recommended by the DOD IG, the Director, Space Management and Services, Washington, Headquarters Services, is reviewing trips made during fiscal year 1981 and that part of fiscal

year 1982 not covered by the DOD IG's December 10, 1982, report (January through May 1982) to identify misuse during that period.

INTERNAL CONTROLS ESTABLISHED IN
EXECUTIVE MOTOR POOL

In a May 18, 1983, memorandum to us, the Acting Director, Space Management and Services, Washington, Headquarters Services, enumerated several internal controls that were implemented as a result of the DOD IG report. For example, the Acting Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) in a February 15, 1983, letter, revised the listing of acceptable methods of transportation of personnel before and after normal duty hours. The revised listing, in priority order, is as follows:

1. DOD-scheduled bus service.
2. Scheduled public transportation.
3. Voluntary use of privately owned motor vehicles on a reimbursable basis.
4. Taxicab on a reimbursable basis.
5. DOD motor vehicle.

Also, trips are now being questioned by dispatchers. When a request is made for a vehicle, the dispatcher will ask for the trip's purpose if the pickup point or destination is (1) a residence, (2) a hotel, club, or restaurant, or (3) an unusual location.

In addition, the Deputy Assistant Secretary of Defense (Administration) prepared Administrative Instruction No. 70 (see enc. I), which provides policy, assigns responsibility, and prescribes procedures for the operation and use of the OSD executive motor pool. This instruction supplements the previously issued guidelines and lists officials authorized to use the executive motor pool on a priority basis and on a space available basis.

As of February 1983, drivers are required to fill out a special daily log sheet listing total mileage and time and all passengers and trips. The completed sheets are turned in every 2 weeks to the Director, Office Services Division, who spot

checks the logs to determine if they are being completed correctly. These logs augment the dispatch records and are reviewed during the quarterly review discussed later. Our observations of the dispatchers at work and our review of recent logs indicate that the above controls are, in fact, being implemented.

Also, the Director, Office Services Division, is conducting quarterly reviews of dispatch records and daily logs to test and determine if the executive motor pool vehicles have been used in accordance with applicable laws and regulations. The results of the quarterly reviews are reported to the Deputy Assistant Secretary of Defense (Administration). At the completion of our audit work, the first quarterly review was in process; therefore, we did not review its contents or assess any of the findings. When a copy is made available, we will evaluate it and provide our evaluation to your Office.

CONCLUSIONS

With one exception, we believe the actions taken to identify and collect for personal trips were prompt and reasonable. The exception concerns the transportation of unaccompanied relatives. We recognize there are numerous instances where the use of government vehicles to transport unaccompanied relatives of government employees have been viewed by many as "official" trips. Nonetheless, we can find no basis to authorize such use. However, because so many agencies have relied on apparent acquiescence by the Congress during the appropriations process when funds for passenger vehicles were appropriated without imposing any limits on an agency's discretion to determine the scope of "official business," we do not think it is appropriate to seek recovery for the trips that occurred prior to the date of release of this report. Also, since the DOD revised regulation lists the transportation of dependents or visitors without the accompanying official as an example of unauthorized use of government owned or leased vehicles, we do not need to make a recommendation on this matter.

We further believe the actions that have been taken to tighten controls over the use of the motor pool should significantly lessen the possibility of misuse in the future. However, the revised regulations do not conform to the requirements of the law regarding which officials are authorized home-to-work transportation as interpreted in our June 3, 1983, decision.

RECOMMENDATION

We recommend that the Secretary of Defense revise DOD regulations to preclude home-to-work transportation for any officials other than those authorized in the law as interpreted by our June 3, 1983, decision or under special circumstances cited in our previous decisions.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives were to identify (1) actions taken by DOD as a result of the DOD IG's December 10, 1982, report (2) if corrective actions were not taken, the reasons for inaction, and (3) to determine if present controls on the use of OSD vehicles are adequate.

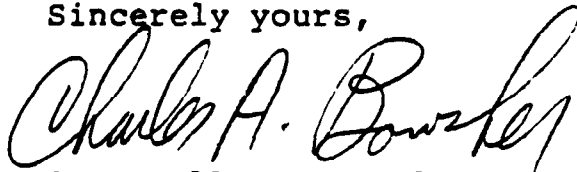
We reviewed DOD IG working papers, applicable DOD policies and regulations governing the use of government vehicles, and dispatch logs and observed the activities of the Washington, Headquarters Services, dispatchers.

Our work was performed in accordance with generally accepted government audit standards. As requested by your Office, we did not obtain written comments from DOD on matters discussed in this report, however, the results of our review were discussed with DOD officials.

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As requested by your Office, we plan no further distribution of this report until 30 days from the date of this report unless the contents are publicly announced earlier. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,



Comptroller General
of the United States

Enclosures - 2



COMPTROLLER
(Administration)

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

May 13, 1983

ADMINISTRATIVE INSTRUCTION NO. 70

SUBJECT: Offices of the Secretaries of Defense and the Air Force Executive Motor Pool

- References:**
- (a) DoD Directive 5110.4, "Washington Headquarters Services," October 1, 1977
 - (b) DoD 4500.36-R, "Management, Acquisition, and Use of Motor Vehicles," July 1981, authorized by DoD Directive 4500.36, July 18, 1979
 - (c) DoD Instruction 4515.7, "Use of Motor Transportation and Scheduled DoD Bus Service in the National Capital Region," August 11, 1972
 - (d) Title 31, United States Code, Section 638a(c)(2)(1976)

A. PURPOSE

Under reference (a), this Instruction supplements references (b) and (c) by providing policy, assigning responsibilities, and prescribing procedures for the operation and use of the Office of the Secretary of Defense and the Office of the Secretary of the Air Force executive motor pool (OSD/OSAF EMP).

B. APPLICABILITY

This Instruction applies to the Office of the Secretary of Defense (OSD), the Office of the Secretary of the Air Force (OSAF), the Organization of the Joint Chiefs of Staff (OJCS), and those Defense Agencies in the National Capital Region (NCR) that are supported by Washington Headquarters Services (WHS) (hereafter referred to collectively as "DoD Components").

C. DEFINITIONS

1. Assistant Office Motor Vehicle Transportation Officers (AOMVTOs). The officials designated and authorized by an Office Motor Vehicle Transportation Officer (OMVTO) to request transportation service from the OSD/OSAF EMP.
2. National Capital Region. Includes the District of Columbia; Montgomery and Prince George's Counties in Maryland; and Arlington, Fairfax, Loudoun, and Prince William Counties and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia.
3. Office Motor Vehicle Transportation Officers. The designated representatives of the DoD Components serviced by the OSD/OSAF EMP.
4. Official Purposes. Any application of a motor vehicle in support of authorized DoD functions, activities, or operations.

D. POLICY

1. Transportation from the OSD/OSAF EMP shall be provided for the official use of DoD officials occupying the positions listed in enclosure 1 (priority basis) and enclosure 2 (space available basis).

2. Under the exemptions granted by 31 U.S.C. 638a(c)(2)(1976) (reference (d)), the following are the only DoD officials authorized to use, on a daily basis, DoD-owned or -controlled motor vehicles for transportation between their domiciles (homes) and places of employment (work): Secretary of Defense; Deputy Secretary of Defense; Secretaries of the Military Departments; Chairman, JCS; Under Secretaries of Defense; Chiefs of Staff, Army and Air Force; Chief of Naval Operations; and Commandant, United States Marine Corps.

3. The following OSD, JCS, and OSAF officials are authorized EMP transportation between home and work on an exception basis when they determine it to be essential to the successful accomplishment of their duties for a particular day, but not on a daily or routine basis: the Assistant Secretaries of Defense; General Counsel, DoD; Inspector General, DoD; Under Secretary of the Air Force; Assistant Secretaries of the Air Force; Vice Chief of Staff of the Air Force; and Director, Joint Staff. An official in an "acting capacity" in any of these positions is not authorized transportation between home and work.

4. The OSD, JCS, and OSAF officials listed in subsections D.2. and D.3., above, are authorized EMP transportation between home or work and local commercial transportation terminals. For all other DoD officials, such transportation may be authorized on an exception basis by the Deputy Assistant Secretary of Defense (Administration) when required because of emergency situations or security requirements or when public or commercial transportation is inadequate. Public and commercial transportation to commercial terminals in the NCR generally is considered adequate for all but the most unusual circumstances. Since public and commercial transportation to and from Andrews Air Force Base or Davison Army Airfield is not routinely available, the EMP may be used to satisfy official requirements to these air terminals.

5. All DoD officials using or authorizing the use of government-owned or -leased vehicles shall be aware that vehicles can be used only for official purposes and that their use otherwise is contrary to law. Reference (d) states, in substance, that any officer or employee of the government who willfully uses or authorizes the use of any government-owned passenger motor vehicle for other than official purposes shall be suspended from duty by the head of the DoD Component concerned, without compensation, for not less than 1 month, and shall be suspended for a longer period or summarily removed from office if circumstances warrant. Examples of unauthorized use include:

- a. Transportation of government officials to private social functions.
- b. Transportation to, from, or between locations for the purpose of conducting personal business.

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c. Transportation of dependents or visitors without the accompanying officials.

6. Requests for transportation for second parties in the name of a principal will not be honored.

E. RESPONSIBILITIES

1. The Director, Washington Headquarters Services, shall, under DoD Directive 5110.4 (reference (a)):

- a. Direct and administer the OSD/OSAF EMP.
- b. Designate an OSD/OSAF EMP Coordinator.

2. The Director, Space Management and Services Directorate, WMS, acting as the OSD/OSAF EMP Coordinator, shall:

- a. Manage and operate the OSD/OSAF EMP consistent with the provisions of DoD 4500.36-R (reference (b)) and DoD Instruction 4515.7 (reference (c)).
- b. Provide for the pooling of administrative use vehicles.
- c. Establish procedures for assignment and use of vehicles.
- d. Establish a central dispatch point for control.
- e. Provide for the collection of operational data as a basis for inventory and allowance actions and cost and utilization reporting.
- f. Provide for training of EMP personnel.
- g. Ensure the safety, security, and proper use of equipment.
- h. Provide for rotation of vehicles, when practical and economical, to equalize equipment usage.

3. The Heads of DoD Components serviced by the OSD/OSAF EMP shall:

- a. Designate in writing an OMVTO (normally the Component's executive assistant or administrative officer) and one AOMVTO to serve as the point of contact to request official transportation service from the OSD/OSAF EMP; submit this designation to the Director, Space Management and Services, WMS, Attention: OSD/OSAF EMP; and ensure that changes to this list are reported as they occur.
- b. Ensure compliance with existing laws and regulations governing the use of official transportation and ascertain that the intended use of this service meets the provisions of laws and regulations.

F. PROCEDURES

1. Official transportation may be obtained by calling the OSD/OSAF EMP at 695-1575 or 695-1576 between the hours of 0700 and 1900 hours, Monday through Friday (excluding holidays).

2. Advance reservations are preferred for official vehicle support on weekends, holidays, and beyond normal duty hours. However, if advance reservations are not possible, backup support shall be provided by the Pentagon Motor Pool (PMP). This backup support can be arranged after normal duty hours by calling the Cable Division, Correspondence and Directives Directorate, WHS, at 697-8151. The Cable Division, in turn, shall make the necessary arrangements with the PMP.

3. When making a request for official transportation, OMVTOs shall provide the following information to the dispatcher: date and day of the week that transportation is required; pickup time; passenger's name; location of pickup; destination; special remarks; type of trip ("drop" or "remain with" passenger); and name of requestor. This information shall be read back to the requestor to ensure correctness. All trips shall be drop trips unless otherwise directed; wait periods may not exceed 30 minutes unless unusual circumstances prevail.

4. When departure times and destinations are reasonably close, OSD/OSAF EMP customers shall be asked to rideshare. This will permit more efficient use of the vehicles and possibly prevent another DoD official from being inconvenienced because of vehicle nonavailability.

G. EFFECTIVE DATE

This Instruction is effective immediately.



D. O. Cooke
Deputy Assistant Secretary of Defense

Enclosures - 2

1. DoD Officials Authorized Use of OSD/OSAF EMP (priority basis)
2. DoD Officials Authorized Use of OSD/OSAF EMP (space available basis)

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**DoD Officials Authorized Use of OSD/OSAF EMP
(priority basis)**

OSD

**Secretary of Defense
Deputy Secretary of Defense
Under Secretaries of Defense
Assistant Secretaries of Defense
General Counsel, DoD
Inspector General, DoD
Deputy Under Secretary of Defense for Policy
Principal Deputy Under Secretary of Defense for Research and
Engineering
Assistant to the Secretary of Defense (Atomic Energy)
Deputy Assistant Secretary of Defense (Reserve Affairs)
Principal Deputy Assistant Secretaries of Defense
Deputy General Counsel, DoD
Deputy Inspector General, DoD
Director, Program Analysis and Evaluation
Director, Net Assessment
Director, Washington Headquarters Services
Defense Advisor, U.S. Mission to NATO
Director, Defense Intelligence Agency
Director, Defense Security Assistance Agency
Director, Defense Advanced Research Projects Agency
Chairman, Reserve Forces Policy Board
Military Assistants to the Secretary of Defense and Deputy Secretary
of Defense
Executive Secretary**

Air Force

**Secretary of the Air Force
Chief of Staff of the Air Force
Under Secretary of the Air Force
Vice Chief of Staff of the Air Force
Assistant Secretaries of the Air Force**

Joint Chiefs of Staff

**Director, Joint Staff
Assistant to the Chairman
Directors, J1, J3, J4, and J5
Director, C3S**

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**DoD Officials Authorized Use of OSD/OSAF EMP
(space available basis)**

OSD

**Assistants to the Secretary of Defense
Deputy Under Secretaries of Defense
Deputy Assistant Secretaries of Defense
Director, Test and Evaluation
Director, Small and Disadvantaged Business Utilization
Assistant General Counsels
Principal Deputy Director, Program Analysis and Evaluation
Deputy Directors, Program Analysis and Evaluation
Assistant Inspectors General
Assistant to the Secretary of Defense (Intelligence Oversight)
Deputy Director, Defense Security Assistance Agency**

Air Force

**Deputy Under Secretary of the Air Force
General Counsel of the Air Force
Principal Deputy Assistant Secretaries of the Air Force
Assistant Vice Chief of Staff of the Air Force
Administrative Assistant to the Secretary of the Air Force**



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

June 3, 1983

B-210555

The Honorable Jack Brooks
Chairman, Committee on Government
Operations
House of Representatives

Dear Mr. Chairman:

This is in response to your letter of January 10, 1983, in which you asked us to review two legal memoranda which represent the positions of the Departments of State and Defense with respect to the use of Government vehicles and drivers for the provision of transportation for officials and employees of those Departments between their homes and places of employment. You requested our opinion on whether the policies of those two Departments, as discussed in the official memoranda which you supplied to us, are consistent with the meaning and intent of 31 U.S.C. § 1344.

Enclosed is a copy of our decision of today in which we explain how and why we conclude that the determinations of the Departments of State and Defense concerning the provision of home-to-work transportation are not consistent with the law.

However, we would like to take this opportunity to reiterate some recommendations we have made to the Congress over a period of years whenever new or amended language has been proposed to deal with this subject. (See, e.g., the "Limousine Limitation Act of 1975, S. 615, 94th Congress, and more recently, section 614 of H.R. 7158, the House version of the Treasury, Postal Service, and General Government Appropriation Act for FY 1983.) The fact that none of this legislation has passed (although restrictions on home-to-work transportation for a few specific agencies were enacted) has added to general agency uncertainty about Congressional intent. Did these proposals fail to pass because the Congress no longer wishes to apply the title 31 restrictions so strictly, or because a new Act was thought to be unnecessary in view of the continued viability of 31 U.S.C. 1344(b)(2)?

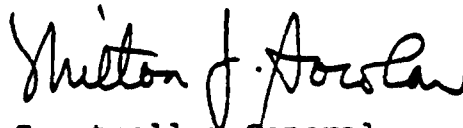
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The legislative history is silent or, at best inconclusive. This fact, coupled with the continued approval of limousines and other passenger vehicles during the appropriations process without restrictions on their use continues to confuse a number of agencies about the Congress' wishes on this subject.

Again, we recommend that clarifying legislation be enacted to resolve the troubling questions about the scope of an agency head's discretion to relax the restriction in the case of emergencies and similar situations.

Finally, the Congress may wish to reconsider the rationale for exempting only heads of executive departments from the restriction. It is not clear to us how a cabinet officer's needs differ from those of the heads of other major agencies, such as the General Services Administration, the National Aeronautics and Space Administration, and so forth. In addition, the law does not take into account any special requirements or needs of the principal officer of each agency. By "principal officer," we have in mind the individual who occupies the number two position in each agency, and who shares most of the same responsibilities as the agency head. Finally, we note that there are no provisions for handicapped personnel, or for transportation to and from evening meetings where alternative transportation is not available or, generally, where there is no other way to accomplish official business without the use of chauffeur-driven automobiles. The Congress may wish to have a Government-wide canvas of special needs prior to deciding whether to broaden the exceptions presently in the law. We will, of course, be glad to help in this endeavor.

Sincerely yours,



Acting Comptroller General
of the United States

Enclosure

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-210555

DATE: June 3, 1983

MATTER OF: Use of Government vehicles for transportation between home and work.

DIGEST:

1. GAO disagrees with the legal determinations of officials of the Departments of State and Defense that it is proper under 31 U.S.C. § 1344(b) for agency officials and employees (other than the Secretaries of those departments, the Secretaries of the Army, Navy, and Air Force, and those persons who have been properly appointed or have properly succeeded to be heads of Foreign Service posts) to receive transportation between their home and places of employment using Government vehicles and drivers. GAO construes 31 U.S.C. § 1344(b) to generally prohibit the provision of such transportation to agency officials and employees unless there is specific statutory authority to do so.
2. GAO disagrees with the Legal Advisor of the Department of State and the General Counsel of the Defense Department who have interpreted the phrase "heads of executive departments," contained in 31 U.S.C. § 1344(b)(2), to be synonymous with the phrase "principal officers of executive departments." Congress has statutorily defined the "heads" of the executive departments referred to in 31 U.S.C. § 1344(b)(2) (including the Departments of State and Defense) to be the Secretaries of those departments.
3. GAO disagrees with the State Department's Legal Advisor and the General Counsel of the Defense Department who have construed the phrase "principal diplomatic and consular officials," contained in 31 U.S.C. § 1344(b)(3), to

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include those high ranking officials whose duties require frequent official contact on a diplomatic level with high ranking officials of foreign governments. GAO construes 31 U.S.C. § 1344, (b) (3) to only include those persons who have been properly appointed, or have properly succeeded, to head a foreign diplomatic, consular, or other Foreign Service post, as an ambassador, minister, charge d'affaires, or other similar principal diplomatic or consular official.

4. The State Department's reliance on the GAO decision in 54 Comp. Gen. 855 (1975) to support the proposition that the use of Government vehicles for home-to-work transportation of Government officials and employees lies solely within the administrative discretion of the head of the agency was based on some overly broad dicta in that and several previous decisions. Read in context, GAO decisions, including the one cited by the State Department's Legal Advisor, only authorize the exercise of administrative discretion to provide home-to-work transportation for Government officials and employees on a temporary basis when (1) there is a clear and present danger to Government employees or an emergency threatens the performance of vital Government functions, or (2) such transportation is incident to otherwise authorized use of the vehicles involved.
5. Because so many agencies have relied on apparent acquiescence by the Congress during the appropriations process when funds for passenger vehicles were appropriated without imposing any limits on an agency's discretion to determine the scope of "official business," and because dicta in GAO's own decisions may have contributed to the impression that use of cars for home-to-work transportation was a matter of agency discretion, GAO does not think it appropriate to seek recovery for past misuse of vehicles, (except for those few agencies whose use of vehicles was restricted by specific Congressional enactments). This decision is intended to apply prospectively only. Moreover, GAO will not question such continued use of vehicles to transport heads of non-cabinet agencies and the respective seconds-in-command of both cabinet and non-cabinet agencies until the close of this Congress.

B-210555

We have been asked by the Chairman of the House Committee on Government Operations to review a Department of State, July 12, 1982 legal memorandum and an earlier Department of Defense legal opinion which interpret the exemptions in 31 U.S.C. § 1344(b) (formerly 31 U.S.C. § 638a(c)(2)), from the prohibition in 31 U.S.C. § 1344(a) against using appropriated funds to transport Government officials between their homes and places of employment. Relying on these interpretations, the Department of State has expanded its internal list of officials for whom such transportation is authorized. The Chairman seeks our opinion on whether that action is in accordance with the meaning and intent of the law. As explained below, it is our opinion that the determination of the State Department (and that of the General Counsel of the Department of Defense, Legal Opinion No. 2, October 12, 1953, upon which the State Department action is based) is not in accordance with the law.

Notwithstanding these conclusions, we recognize that the use of Government-owned or leased automobiles by high ranking officials for travel between home and work has been a common practice for many years in a large number of agencies. (See, for example, our report to the Senate Committee on Appropriations on "How Passenger Sedans in the Federal Government are Used and Managed," B-158712, September 6, 1974.) The justification advanced for this practice is the apparent acquiescence by the Congress which regularly appropriate funds for limousines and other passenger automobiles knowing, in many instances, the uses to which they will be put but not imposing limits on the discretion of the agencies in determining what uses constitute "official business."

In addition, the General Accounting Office may, itself, have contributed to some of the confusion. As we studied our past decisions in order to respond to the Chairman's request, we recognized that in some instances, we may have used overly broad language which implied exceptions to the statutory prohibition we did not intend. (This will be discussed in more detail later.) For these reasons, we do not think that it is appropriate to seek recovery from any officials who have benefited from home-to-work transportation to date. Our interpretation of the law is intended to apply prospectively only.

Finally, we note that the General Accounting Office has made several legislative recommendations to the Congress over a period of years to clarify its intent about the scope of the prohibition. Among other things, we suggested that the Congress consider expanding the present exemption to include the heads of all agencies and perhaps their principal deputies. This decision, therefore, need not be considered effective with respect to agency heads and their principal deputies until the end of the present Congress in order to allow the Congress sufficient time to consider our suggestions. (This does not, of course, include any agency whose use of motor vehicles has been the subject of a specific Congressional restriction.)

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The Law

Section 1344 of title 31 of the United States Code states:

"(a) Except as specifically provided by law, an appropriation may be expended to maintain, operate, and repair passenger motor vehicles or aircraft of the United States Government that are used only for an official purpose. An official purpose does not include transporting officers or employees of the Government between their domiciles and places of employment except--

(1) medical officers on out-patient medical service; and

(2) officers or employees performing field work requiring transportation between their domiciles and places of employment when the transportation is approved by the head of the agency.

(b) This section does not apply to a motor vehicle or aircraft for the official use of--

(1) the President;

(2) the heads of executive departments listed in section 101 of title 5; or

(3) principal diplomatic and consular officials."

Since vehicles may not be operated with appropriated funds except for an "official purpose" and the term, "official purpose" does not include transportation between home and work, (except as otherwise specifically provided), we regard subsection (a), above, as constituting a clear prohibition which cannot be waived or modified by agency heads through regulations or otherwise.

While the law does not specifically include the employment of chauffeurs as part of the prohibition in subsection (a), GAO has interpreted this section, in conjunction with other provisions of law, as authorizing such employment only when the officials being driven are exempted by subsection (b) from the prohibition. B-150989, April 17, 1963.

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present danger, use of Government vehicles to transport employees to and from home is not proscribed." The Legal Advisor also quoted the following passage from that decision:

"In this regard we have long held that use of a Government vehicle does not violate the intent of the cited statute where such use is deemed to be in the interest of the Government. We have further held that the control over the use of Government vehicles is primarily a matter of administrative discretion, to be exercised by the agency concerned within the framework of applicable laws. 25 Comp. Gen. 844 (1946)." 54 Comp. Gen. at 857.

Based upon that passage, the Legal Advisor concluded that GAO's decisions support the proposition that home-to-work transportation is permissible whenever there is an administrative determination by the head of the agency that this would be in the interest of the Government, and not merely for the personal convenience of the employee or official concerned.

The Legal Advisor then referred to the Foreign Affairs Manual (FAM) to demonstrate that the Secretary, Deputy Secretary, Under Secretaries and Counselor "share in discharging the substantive responsibilities of the Secretary," and have been placed by law in the order of succession to be Acting Secretary of State. According to the Legal Advisor, those officials "constitute a management group--the Seventh Floor Principals." The Legal Advisor noted that those officials have "heavy after hours official representation responsibilities and a heavy load of other official responsibilities which requires virtually around the clock accessibility * * *." The Legal Advisor concluded that these considerations "would support an administrative determination that it is in the interest of the United States, not personal convenience," to provide home-to-work transportation for the Seventh Floor Principals. In his opinion, such a determination would satisfy the requirements of GAO's decisions.

Discussion

We disagree with the analysis and conclusions of the Legal Advisor. With regard to the Legal Advisor's first basis, we have reviewed the October 12, 1953 Legal Opinion No. 2 of the General Counsel of the DOD, upon which the

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The State Department Determination

After researching and considering the provisions of section 1344, the State Department's Legal Advisor informed the State Department's Under Secretary for Management (in a memorandum dated July 12, 1982) that there is "no legal impediment" to authorizing the State Department's Under Secretaries and Counselor to use Government vehicles and drivers for transportation between their homes and places of employment. (Previous to that opinion, the State Department had restricted such transportation to the Secretary and Deputy Secretary.) The Legal Advisor founded his determination upon several bases.

For his first basis, the Legal Advisor relied upon an October 12, 1953, opinion by the General Counsel of the Defense Department which concluded that the phrase "heads of executive departments" contained in 31 U.S.C. § 1344(b)(2) (then referred to as section 16(a)(c)(2) of the Act of August 2, 1946, 60 Stat. 810) "is not limited to Cabinet Officers or Secretaries of executive departments, but includes also the principal officials of executive departments appointed by the President with the advice and consent of the Senate." Applying the DOD General Counsel's conclusion, the State Department's Legal Advisor found that the Secretary, Deputy Secretary, Under Secretaries, and Counselor (whom he refers to as the "Seventh Floor Principals") may be regarded as "heads of departments" for the purposes of section 1344(b)(2), and are therefore eligible to use Government vehicles and drivers for home-to-work transportation.

Secondly, the Legal Advisor determined that home-to-work transportation for the Seventh Floor Principals is also authorized based upon his construction of the exemption in section 1344(b)(3) for "principal diplomatic and consular officials." The Legal Advisor stated in his memorandum that the Seventh Floor Principals "all share in discharge of the Secretary's diplomatic responsibilities in much the same way as ambassadors abroad; and the [State] Department * * * is uniquely qualified to determine what diplomatic functions are and who performs them." In his interpretation, the restriction on home-to-work transportation in section 1344(a) would not apply to the Seventh Floor Principals because they are all "principal diplomatic * * * officials."

For his final basis, the Legal Advisor cited our decision in 54 Comp. Gen. 855 (1975). That decision, according to the Legal Advisor, "holds that where there is a clear and

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Legal Advisor relied. (We have been informally advised that DOD has never overturned or modified that opinion although, as a matter of internal policy it has, over a period of years, curtailed the use of Government vehicles for such transportation.) We do not agree with the DOD General Counsel's conclusion that the exemption in subsection 1344(b)(2) for "the heads of executive departments listed in section 101 of title 5" includes the "principal officers of executive departments appointed by the President with the advice and consent of the Senate." The term "heads" of executive departments is not synonymous with the term "principal officers," particularly when the "head" of each of the 13 "executive departments" listed in section 101 of title 5 is explicitly designated in other statutory provisions. For example, 10 U.S.C. § 133 provides that "[t]here is a Secretary of Defense, who is the head of the Department of Defense * * *."¹ In 22 U.S.C. § 2651, it is provided that "[t]here shall be at the seat of government an executive department to be known as the Department of State, and a Secretary of State, who shall be the head thereof." (The State Department's own regulations provide that the Secretary of State "is the head of the Department of State." 1 FAM 110 (June 18, 1976).) Similar designations of the "head" of each of the other "executive Departments" may also

¹ There is one statutory exception for the Department of Defense. When the Department of Defense was created by the National Security Act Amendments of 1949, Pub. L. No. 81-216, 81st Cong., 1st Sess., 63 Stat. 578, 591-92 (1949), Congress expressly provided in subsection 12(g) that, despite the consolidation of the three military departments into the DOD, the Secretaries of the Army, Navy, and Air Force continue to be vested with the statutory authority which was vested in them when they enjoyed the status of Secretaries of executive departments, See e.g., S. Rep. No. 366, 81st Cong. 25 (1949). That authority is to be exercised subject to the discretion and control of the Secretary of Defense. Id. For this reason, the Secretaries of the Army, Navy, and Air Force may also be regarded as heads of the executive departments, even though their respective agencies are not listed in 5 U.S.C. § 101.

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be found in the United States Code. 49 U.S.C. § 1652 (Transportation); 42 U.S.C. § 3532 (Housing and Urban Development); 29 U.S.C. § 551 (Labor); 15 U.S.C. § 1501 (Commerce); 43 U.S.C. § 1451 (Interior); 31 U.S.C. § 301 (Treasury); 42 U.S.C. § 7134 (Energy); 42 U.S.C. § 3501n., as amended by 20 U.S.C. § 3508 (Health and Human Services); 28 U.S.C. § 503 (Justice); 7 U.S.C. § 2202 (Agriculture); 20 U.S.C. § 3411 (Education). Therefore, we construe subsection (b)(2) of section 1344 to refer strictly to those officers who are appointed (or who duly succeed) to the positions designated by law to be "the heads of executive departments" as listed in 5 U.S.C. § 101.

Moreover, the legislative history upon which the General Counsel relied does not support his conclusions. For example, the General Counsel cited the Act of March 3, 1873, 17 Stat. 485, 486, and the debate on that Act in the Congressional Globe, 42d Cong., 3rd Sess. 2104 (1873), for the proposition that "when Congress wanted to limit the expression [heads of executive departments] specifically to Cabinet Officers, it did so in precise terms and added after 'heads of executive departments' the qualification 'who are members of the President's Cabinet.'" However, our examination of the cited Act and debates failed to reveal the use of either phrase in the Act or the legislative debates. On the contrary, from our examination, it appears that the Act and the debates on it explicitly and repeatedly distinguish between the heads of the executive departments, and the "persons next in rank to the heads of Departments." See Cong. Globe, 42d Cong., 3rd Sess. 2100-2105 (1873); Act of March 3, 1873, 17 Stat. 485, 486.

As his second basis for concluding that the "Seventh Floor Principals" may be authorized to receive home-to-work transportation, the State Department Legal Advisor construed subsection (b)(3) of section 1344 (which exempts "principal diplomatic and consular officials" from the restrictions on home-to-work transportation) to include the "principal officers of this [State] Department." (Emphasis added.) According to the Legal Advisor, the "principal officers" of the State Department are the Seventh Floor Principals. We do not concur in that construction of subsection 1344(b)(3). For similar reasons we also disagree with the DOD General Counsel who concluded in his 1953 opinion (as cited and relied upon by the State Department Legal Advisor) that the phrase "principal diplomatic and consular officials" includes "those principal officers of the Government

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whose duties require frequent official contact upon a diplomatic level with ranking officers and representatives of foreign governments." (Emphasis added.)

Although the Congress has not defined the term "principal diplomatic and consular officials" as used in section 1344, it has defined "principal officer" as that term is used in the context of performing diplomatic or consular duties. In 22 U.S.C. § 3902, it is provided that the term "principal officer" means "the officer in charge of a diplomatic mission, consular mission * * *, or other Foreign Service post." Consistent with that statute, the State Department's Foreign Affairs Manual also defines a "principal officer" to mean the person who "is in charge of an embassy, a legation, or other diplomatic mission, a consulate general or consulate of the United States, or a U.S. Interests Section." 2 F.A.M. § 041(i) (October 11, 1977). See also 3 F.A.M. 030 (Nov. 27, 1967) (similar definition of "principal officer"). Our reading of these statutory and regulatory definitions, in conjunction with the plain meaning of subsection (b)(3) of section 1344 leads us to conclude that neither the Legal Advisor's definition, nor that of the DOD General Counsel, is correct. In our view the term "principal diplomatic and consular officials" only encompasses those individuals who are properly designated (or succeed) to head a foreign diplomatic, consular or other similar Foreign Service Post.

Furthermore, examination of the original enactment which was later codified as section 1344 by Pub. L. No. 97-258, 96 Stat. 877 (1982) also supports the conclusion that the Congress intended to limit the meaning of the phrase "principal diplomatic and consular officials" to the officers in charge of foreign posts. Section 16(a)(c)(2) of the Act of August 2, 1946, Chapt. 744, 60 Stat. 810-811 provided, in pertinent part:

"The limitations of this paragraph [now contained in section 1344(a)] shall not apply to any motor vehicles or aircraft for official use of the President, the heads of the executive departments enumerated in 5 U.S.C. 1, ambassadors, ministers, charges d'affaires, and other principal diplomatic and consular officials." (Emphasis added.)

As the underlined language makes clear, Congress intended the term "principal diplomatic and consular officials" to

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include ambassadors, ministers, charges d'affaires and other similar officials. The codification of title 31 was not intended to make any substantive changes in the law. See H.R. Rep. No. 97-651, 97th Cong., 2d Sess. 69 (1982). Compare also, 2 F.A.M. §§ 041(i), 043 (October 11, 1977) (principal officers are ambassadors, ministers, charges d'affaires, and other similar officers who are in charge of Foreign Service Posts; each such person is the "principal diplomatic representative of the United States * * * to the government to which he is accredited"). Therefore, we conclude that the Seventh Floor Principals are not "principal diplomatic and consular officials" who may legally receive home-to-work transportation.

In arguing the third basis for his determination, the Legal Advisor relied specifically on our decision in 54 Comp. Gen. 855 (1975). That case concerned the provision of home-to-work transportation for DOD employees who were stationed in a foreign country where, according to the DOD submission, there was serious danger to the employees because of terrorist activities. As the Legal Advisor initially acknowledged, our decision in that case holds that where there is a "clear and present danger" to Government employees and the furnishing of home-to-work transportation in Government vehicles will afford protection not otherwise available, then the provision of such transportation is within the exercise of sound administrative discretion. 54 Comp. Gen. at 858.

The Legal Advisor then quotes the second passage from the decision (set forth earlier) which, as the reference indicates, was taken from 25 Comp. Gen. 844 (1946). That passage has been repeated a number of times as dicta in other Comptroller General decisions. (See, for example, B-181212, August 15, 1974, or B-178342, May 8, 1973.) Standing alone, it certainly implies that what constitutes official business is a determination that lies within the discretion of the agency head, and it is not surprising that many agencies chose to act on that assumption. However, all decisions must be read in context. The seminal decision, 25 Comp. Gen. 844 (1946), denied a claim for cab fare between an employee's home and the garage where a government car was stored, prior to beginning official travel, on the general principle that an employee must bear his own commuting expenses. The decision then said, in passing, that if an agency decided that it was more advantageous

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to the Government for official travel to start from an employee's home rather than from his place of business or, presumably, from the garage, "[S]uch use of a Government automobile is within the meaning of 'official purposes' as used in the act."

Deputy Assistant Attorney General Leon Ulman, Department of Justice, wrote a memorandum opinion on this topic for the Counsel to the President on August 27, 1979. After quoting the above-mentioned generalization about administrative discretion to authorize home-to-work transportation, Ulman concluded:

"But this sweeping language has been applied narrowly by both the Comptroller General and this Department * * *. We are aware of nothing that supports a broad application of the exception implied by the Comptroller General. That exception may be utilized only when there is no doubt that the transportation is necessary to further an official purpose of the Government. As we view it, only two truly exceptional situations exist: (1) where there is good cause to believe that the physical safety of the official requires his protection, and (2) where the Government temporarily would be deprived of essential services unless official transportation is provided to enable the officer to get to work. Both categories must be confined to unusual factual circumstances."

Moreover, even under the circumstances discussed in the terrorist activities case relied on by the State Department Legal Adviser, we pointed out that section 1344 does not expressly authorize either the exercise of such discretion or the provision of such transportation. We then stated:

"the broad scope of the prohibition in [what is now section 1344], as well as the existence of specific statutory exceptions thereto, strongly suggests that specific legislative authority for such use of vehicles should be sought at the earliest possible time, and that the exercise of administrative discretion in the interim should be reserved for the most essential cases."
54 Comp. Gen. at 858 (footnote omitted).

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Thus, it was the need to protect Government employees from a clear and present danger (not simply an administrative determination of the Government's interest) which led us to authorize the interim provision of home-to-work transportation until specific legislative authority for such transportation could be obtained.

Subsequent Comptroller General's decisions have not relied upon an administrative determination of the Government's interests as the sole basis for either approving or disapproving home-to-work transportation. ^{2/} We have, however, somewhat broadened the concept of an emergency situation to include temporary bus service for essential employees during a public transportation strike. 54 Comp. Gen. 1066 (1975). Cf. 60 Comp. Gen. 420 (1981).

There is one other narrow exception to the prohibition which should be mentioned. When provision of home-to-work transportation to Government employees has been incident to otherwise authorized use of the vehicles involved, i.e., was provided on a "space available" basis, and did not result in additional expense to the Government, we have raised no objection. See, e.g., B-195073, November 21, 1979, in which additional employees were authorized to go home with an employee who was on field duty and therefore was exempt from the prohibition.

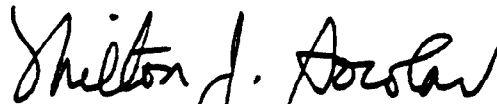
Unless one of the these exceptions outlined above applies, agencies may not properly exercise administrative discretion to provide home-to-work transportation for their officers and employees, unless otherwise provided by statute. (See e.g., 10 U.S.C. § 2633 for an example of a statutory exemption for employees on military installations and war plants under specified circumstances.)

^{2/} An audit report which was primarily concerned with misuse of federal employees as personal aides to Federal officials, GAO/FPCD-82-52 (B-207462, July 14, 1982) may have created a contrary impression. It, too, quoted our 1975 decision, without fully describing the limited context in which the exercise of administrative discretion might be permissible. The error was inadvertent.

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Conclusion

In light of the foregoing, we conclude that, unless one of the exceptions outlined above applies, the Deputy Secretary of State, the Under Secretaries, and the Counselor may not be authorized under 31 U.S.C. § 1344(b) to use Government vehicles or drivers for transportation between their homes and places of employment, nor may any other official or employee of the Departments of State and Defense (other than the Secretaries of those two Departments, and the Secretaries of the Army, Navy, and Air Force) be so authorized under that subsection, unless that person has been properly appointed (or has succeeded) to be the head of a foreign diplomatic, consular, or other Foreign Service post as an ambassador, minister, charge d'affaires, or another similar principal diplomatic or consular official.



Acting Comptroller General
of the United States