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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

NATIONAL SECURITY AND  
INTERNATIONAL AFFAIRS DIVISION

B-215746

JANUARY 18, 1985

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The Honorable William Proxmire  
United States Senate

RELEASED

Dear Senator Proxmire:

Subject: Defense-Arranged Flights for Members of  
Congress to Vote on the Peacekeeper (MX)  
Program (GAO/NSIAD-85-40)

On June 4, 1984, you asked us to answer the following questions about flights that the Department of Defense (DOD) arranged for certain members of Congress so that they would not miss the May 31, 1984, vote on the MX missile program:

- How many members were flown to the Washington metropolitan area?
- What were the origin and destination of the flights?
- How much did this transportation cost the U.S. Government?
- Were commercial flights available, and how would their cost have compared with the cost of the military flights?
- Who authorized the flights and what were the justifications?
- Did the use of military aircraft to transport members of Congress to Washington for votes on the MX missile program violate any law or regulation regarding the use of appropriated funds for lobbying?

NUMBER, LOCATION, AND COST OF FLIGHTS

Nine members of Congress were provided military transportation into and/or out of the Washington metropolitan area so that they could be present to vote on May 31, 1984. Records show that each member voted on the MX missile program.

The Air Force and Army flew six congressmen from various parts of the United States to the Washington metropolitan area on May 31, 1984. Regularly scheduled commercial flights were available but did not match the military aircrafts' departure times. A comparison of the departure time for each of the military flights



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with those of the closest commercial flights showed a variance of about 30 to 180 minutes. However, the congressmen's business schedules may have precluded them from using commercial transportation. A schedule showing the transportation data by flight follows.

Travel provided by	Origin	Destination	Costs	
			Military	Commercial <sup>a</sup>
Air Force	Greenville, Mississippi	Andrews AFB, Maryland	\$2,271	\$325
Air Force	Midland, Texas	Andrews AFB, Maryland	3,592	323
Air Force	St. Paul, Minnesota	Andrews AFB, Maryland	2,194	249
Air Force	Grand Rapids, Michigan	Andrews AFB, Maryland	1,976	169
Army	DuBois, Pennsylvania	Davison U.S. Army Airfield, Ft. Belvoir, Virginia	853	189
Army	Patton, Pennsylvania	Army helicopter landing site, Pentagon	<u>858</u>	<u>176</u>
		Total	<u>\$11,744</u>	<u>\$1,431</u>

<sup>a</sup>Highest commercial airline coach fares from the Official Airline Guide dated May 15, 1984.

In addition, the Air Force provided four congressmen with military transportation from the Washington metropolitan area to their home state on June 1, 1984, after voting on the MX missile program. Regularly scheduled commercial flights were available on June 1, 1984. According to an Office of the Assistant Secretary of Defense for Legislative Affairs (OASDLA) official, this transportation was provided so that the congressmen would remain in Washington on May 31, 1984, to vote on a bill. One of the congressmen had been provided military transportation into Washington on May 31, 1984. A schedule showing the transportation data by flight follows.

Travel provided by	Origin	Destination	Costs	
			Military	Commercial <sup>a</sup>
Air Force	Andrews AFB, Maryland	Phoenix, Arizona	\$4,472	\$425
Air Force	Andrews AFB, Maryland	Myrtle Beach, South Carolina	710	388
Air Force	Andrews AFB, Maryland	Waco, Texas	8,328	350
Air Force	Andrews AFB, Maryland	Nashville, Tennessee	<u>2,506</u>	<u>204</u>
		Total	<u>\$16,016</u>	<u>\$1,367</u>

<sup>a</sup>Highest commercial airline coach fares from the Official Airline Guide dated June 1, 1984.

#### AUTHORIZATION OF FLIGHTS

In each case we found that the following procedures were used in approving and coordinating the requests for air transportation for the nine members of Congress. According to an OASDLA official, their office received a verbal request for air transportation from either the member, someone on his staff, or a White House staff member. After determining that the trip was in connection with official business, the OASDLA official made a verbal request to one of the military departments to provide air transportation for the member. The military department then prepared a travel order and provided the service.

In accordance with instructions from OASDLA, the members' flights were authorized by either the Secretary of the Air Force or the Secretary of the Army. According to an official from OASDLA, the members were provided military transportation so that they could be present to vote on a bill. He also stated that he considered this justification adequate for authorizing the transportation and did not require anything more specific.

The Air Force's justification for this authorization was that the transportation was in connection with official business of the Secretary of Defense. The Army's justification indicated that the transportation was in connection with official business. However, Army flight records and discussions with an official of the Army's Congressional Liaison Office indicate that members were flown to Washington, D.C., for the critical vote on the MX program.

NO AUTHORITY FOR THE FLIGHTS

We found that in providing military air transportation to members of Congress to enable them to participate in a vote, DOD did not violate any lobbying statutes. However, we did find that there is no authority for the flights in either the appropriation laws or DOD's internal directives.

Section 1303 (a) of title 31 of the United States Code provides: "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law." In response to our inquiry, DOD's General Counsel, in a letter dated August 15, 1984, indicated that the flights in question were funded from DOD's "Operation and Maintenance" appropriations. For fiscal year 1984, the Operation and Maintenance appropriation for the Army was "For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law \* \* \*." 97 Stat. 1423. The same appropriation for the Air Force, was likewise "For expenses, not otherwise provided for, necessary for the operation and maintenance of the Air Force, as authorized by law \* \* \*," 97 Stat. 1424. These appropriations are only available for expenses authorized by law.

As authority for the questioned transportation, DOD relies on 31 U.S.C. § 1108(g) (1982), which reads:

"Amounts available under law are available for field examinations of appropriation estimates. The use of the amounts is subject only to regulations prescribed by appropriate standing committees of Congress."

In our opinion, this provision clearly permits the use of agency appropriations for the traveling expenses of congressional committee members and staff only "when the expenses are incurred incident to the examination of estimates of appropriations in the field" (B-214611, April 17, 1984). However, the travel of the individual members of Congress in question was for the purpose of a congressional vote and not connected with "the examination of estimates of appropriations in the field." Accordingly, section 1108(g) does not seem applicable in this case and does not provide statutory support for the use of DOD's "Operation and Maintenance" appropriation.

We are not aware of any other statutes which would authorize DOD or anyone in the executive branch to provide the transportation of members of Congress in the case at hand. Although the Comptroller General grants a certain amount of discretion to agencies in determining what constitutes a necessary expense under their appropriations, such discretion is not unlimited:

"Generally, the Congress in making appropriations leaves largely to administrative discretion the choice of ways and means to accomplish the objects of the appropriation, but, of course, administrative discretion may not transcend the statutes, not be exercised in conflict with law, nor for the accomplishment of purposes unauthorized by the appropriation; \* \* \* It may be remarked here that the question with the accounting officers is not the apparent general merit of a proposed expenditure, but whether the Congress, controlling the purse, has by law authorized the expenditure \* \* \*." 18 Comp. Gen. 285, 292 (1938).

The providing of transportation to members of Congress to enable them to participate in a vote strains the limits of permissible administrative discretion because it lacks a clear statutory foundation. See, e.g., 42 Comp. Gen. 226 (1962); 34 Comp. Gen. 599 (1955).

DOD also informed us that it provided transportation to members of Congress under the authority of the DOD Directive No. 4515.12, dated December 12, 1964. Section V of the directive sets forth the conditions for approving requests for transportation from members of Congress. Since the travel of these congressmen did not meet the requirements for "sponsored" or "nonsponsored" travel, their travel was not authorized under this section.

Sponsored travel is defined as "travel by members and employees of the Congress pursuant to an official invitation issued by proper authority in the DOD." DOD's General Counsel stated that the transportation was provided for those members of Congress requesting it. According to an OASDLA official the actual requests for the transportation in question came from either the member, someone on his staff, or a White House staff member. We did not confirm this information with the individual members of Congress. Since the transportation in question was not provided at the invitation of DOD, it should not have been authorized under the directive as sponsored nonreimbursable travel.<sup>1</sup>

Nonsponsored travel is defined as "travel by members and employees of the Congress authorized as a result of an official request by the Congress to DOD." To be official, the request must be submitted by the chairman of the congressional committee on which the member or employee serves. Also, it must state that the purpose of the travel is of primary interest to DOD and that the

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<sup>1</sup>The Department of Defense's position is that a request from a member or someone on his staff which is granted by the Department would qualify as a Department of Defense "invitation".

expenditure of funds by DOD is authorized by 31 U.S.C. § 1108(g). If such expenditure is not so authorized, the request must specify such other provision of law as authorizes the expenditures by DOD. The travel requests of the congressmen were not made by the chairmen of the committees on which the transported representatives serve, according to an OASDLA official.

While we found no authority for the transportation in question, a DOD official told us that it was not unusual for the Department to provide members of Congress transportation to Washington, D.C. to enable them to vote. DOD's General Counsel advised us that while the statutory basis for the transportation was not very precise, DOD's interpretation has been known to, and implicitly accepted by the Congress since the original enactment of this provision in 1953. DOD's General Counsel also noted that the Congress had provided appropriations for more than 30 years for the operation, maintenance and renewal of transport aircraft used by the Congress. In view of these circumstances, you may wish to initiate efforts to have the Congress clarify its intent either by providing explicit authority for the provision of such transportation or by clearly prohibiting the practice.

#### SCOPE AND METHODOLOGY

We interviewed officials and/or examined documents at Andrews AFB, Maryland; U.S. Army Military District of Washington helicopter landing site at the Pentagon; Davison U.S. Army Airfield, Fort Belvoir, Virginia; Military Airlift Command Headquarters, Scott AFB, Illinois, and the Office of the Secretary of Defense for Legislative Affairs and the Air Force, Army, Navy, and National Guard Headquarters at the Pentagon. The Air Force and Army provided us with the total aircraft hours necessary to perform their missions and the cost per flying hour. Our analysis of the flight data did not include matching specific commercial flight times with the congressmen's schedules, but was limited to determining whether commercial flights were available.

We also requested the Secretary of Defense's formal views as to the legal authority for the use of Air Force and Army aircraft to transport members of Congress to vote on the MX missile program. We did not confirm who made the request for transportation for the individual members of Congress identified as being transported on military aircraft into and/or out of the Washington metropolitan area.

We performed our fieldwork primarily between June and September 1984 in accordance with generally accepted government auditing standards. We did not request official comments on this report. However, we did discuss a draft of the report with the Office of the Secretary of Defense, Air Force, and Army officials and incorporated their suggestions where appropriate.

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As arranged with your office, we plan no further distribution of this report until 15 days from its date of issuance unless you publicly announce its contents earlier. At that time, we will send copies to the Secretaries of Defense, the Air Force, the Army, and the Navy, and to other interested parties.

Sincerely yours,



Frank C. Conahan  
Director