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326

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

B-210555.11

September 18, 1985

*RELEASED*

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

Dear Mr. Chairman:

This is in response to your letter dated August 2, 1985, requesting the views and comments of this Office on a recent Office of Management and Budget (OMB) legislative proposal for amendment of 31 U.S.C. § 1344<sup>V</sup> concerning home-to-work transportation of Government employees. We support the enactment of legislation along the lines of the OMB proposal. We worked closely with OMB on earlier drafts of this proposal but we did not have an opportunity to review this final version before it was sent to you. We have several suggestions which we think will improve the draft both in form and substance.

As you know, this Office concluded in a decision dated June 3, 1983, 62 Comp. Gen. 438<sup>V</sup>(1983), issued at your request, that the use of Government vehicles for home-to-work transportation of Government employees was limited by 31 U.S.C. § 1344<sup>X</sup> to the President, cabinet level department heads, principal diplomatic and consular officials, medical officers providing out-patient medical services, and certain employees engaged in "field work."

In the letter transmitting our decision to you, we noted that the present law makes no provision for unusual circumstances in which there is no effective way to accomplish official business without the use of Government vehicles for home-to-work transportation. The OMB proposal provides a reasonable solution to this problem. It would authorize the President or an agency head to permit home-to-work transportation of employees for up to 90 days in the case of genuine emergencies or when "highly unusual circumstances" make such transportation essential to the effective conduct of official business.

In two GAO decisions, we declined to take exception to expenditures for such transportation when there were well-documented threats to the personal safety of certain employees or when extraordinary working conditions involving a

general transportation strike made Government transportation of essential employees necessary. See 54 Comp. Gen. 855 (1975); 54 Comp. Gen. 1066 (1975). The proposed exception would not authorize home-to-work transportation once emergency conditions abate nor could such transportation ever be provided solely for employee comfort or convenience.

Home-to-work transportation for such "operational conditions" would also be provided on a permanent basis for the Director of the Federal Bureau of Investigation, the Assistant to the President and Chief of Staff, and the Assistant to the President for National Security Affairs.

A proposed change from current law is the expansion of the small group of officials who, by virtue of their status as heads of cabinet level departments, are eligible for routine transportation in a Government vehicle between their residences and offices. For example, deputies to the heads of cabinet-level departments are added to the group of eligible individuals, at the discretion of their respective Department heads.

We would recommend that the word "principal" be inserted in proposed section (b)(2)(A) before the word "deputy". In GAO's previous recommendations to your committee, we said that it seemed appropriate to provide home-to-work transportation to the number 2 official in a cabinet department. We have since learned that many departments have several deputies at lower levels of responsibility (or have several titles arguably equivalent to "Deputy".) We don't think it desirable to expand the list beyond the principal deputy who acts for the department head in his absence.

There is no specific provision in the OMB draft covering heads of all non-cabinet agencies. While proposed subsection (b)(2)(B) which includes "other persons in the Executive Branch designated at level II of the Executive Schedule" would cover most non-cabinet agency heads, there are some significant omissions. For example, the administrators of the General Services Administration and the Small Business Administration would not be eligible, although the administrators of the Federal Aviation Administration and the Federal Highway Administration would be. Similarly, the Chairman of the Nuclear Regulatory Commission would be covered but not the chairmen of all the other major independent regulatory agencies, since they are listed at level III of the Executive Schedule.

The needs and responsibilities of the heads of non-cabinet agencies who are not eligible for home-to-work transportation under the current law do not differ in any practical sense from the needs and responsibilities of cabinet level Department heads and other eligible individuals. While setting the

general eligibility level at level II of the Executive Schedule is reasonable, we would prefer to see all agency heads, regardless of pay level, specifically declared eligible.

The proposed bill would authorize eligibility for those whom the President designates as having cabinet level status, whether or not they fit into any other category of eligibles. (Proposed section (b)(2)(A).) While we do not question some flexibility in this regard, we suggest that this provision be amended to set a maximum number of officials who can be authorized routine home-to-work transportation under such designation by the President.

Proposed subsection (a)(3) would permit routine home-to-work transportation for "the Assistant to the President and Chief of Staff, and the Assistant to the President for National Security Affairs." These specific positions are not created by statute. Designating them by name in this manner could result in future difficulty were a President to change the structure or titles of his immediate staff. For example, when Attorney General Meese was Chief of the White House staff, he was called "Counselor to the President." We suggest instead that the President be authorized to designate up to, say, three of his top staff members to be eligible for routine Government-provided transportation.

We note that nothing in the OMB proposal would affect the eligibility for home-to-work transportation of certain individuals who receive such transportation pursuant to statutes other than 31 U.S.C. § 1344! Such individuals include the Director of the Arms Control and Disarmament Agency, 22 U.S.C. § 2588, certain officials of the Central Intelligence Agency, 50 U.S.C. § 403, the Administrator of the Agency for International Development, 22 U.S.C. § 2396(a)(5), the Deputy Secretary of State, 22 U.S.C. § 2678, and the Deputy Secretary of Defense, Under Secretaries of Defense, and members of the Joint Chiefs of Staff, 10 U.S.C. § 2637!

To avoid any misunderstanding about coverage and to minimize the need for further amendments to section 1344 in the future, we suggest that proposed subsection (b)(2)(C) be amended to read as follows, if it is desired to include the Commandant of the Coast Guard:

"(C)(i) any individual or position specifically made eligible for Government transportation between home and work by any Federal statute, and (ii) the Commandant of the Coast Guard and the United States Trade Representative."

The Trade Representative is added to our suggested amendment because, contrary to the statement in the OMB transmittal letter to you, we can find nothing in title 31 of the United

329

States Code that makes him "explicitly eligible" for home-to-work transportation.

In your letter to us transmitting the OMB draft legislation, you asked for comments on the OMB's analysis of the need for "providing authority for a significantly greater number of officials to receive portal-to-portal transportation than is currently authorized." We agree with OMB's statement in its transmittal letter to you that there is a need for additional office-holders to have such transportation in order to "discharge their official duties in an efficient and effective manner." The proposal seems carefully designed to keep these additional officials to a reasonable number.

We note that although the OMB proposal expands the group of Government officials statutorily eligible for home-to-work transportation, it nonetheless permits the transportation of far fewer persons than the large number we have found currently to be receiving home-to-work transportation under various agency interpretations of the current law and perhaps an even larger number prior to our June 3, 1983, letter to you. See General Accounting Office, Use of Government Motor Vehicles for the Transportation of Government Officials and the Relations of Government Officials, B-210555/ GGD-85-76, September 1985. The OMB proposal would substantially reduce the number of Government officials now receiving routine home-to-work transportation.

You also asked whether we consider it necessary to include all three branches of Government in one bill. We think it highly desirable that home-to-work transportation be covered in a single statute. We see no advantage in dealing with the matter in a piecemeal fashion. Moreover, the prohibition against home-to-work transportation in section 16 of the original legislation as enacted in 1946 (Pub. L. No. 600, August 2, 1946; 60 Stat. 806/ 810)/ applied to officers and employees of "any department." The term "department" was construed in section 18 of the same law as including "independent establishments, other agencies, wholly owned Government corporations \* \* \*" but not the "Senate, House of Representatives, or Office of the Architect of the Capitol, or the officers or employees thereof." Note that the remainder of the legislative branch was not exempted nor were the members of the Supreme Court.

The informal codification of this Act in section 638a(c) of the "old" title 31 picked up the prohibition language of section 16 almost exactly but did not repeat the definition of "department" in section 18. Turning to the general definition of that term in the old 31 U.S.C. § 2, it appears that only the executive branch of government is covered. The entire legislative branch and the Supreme Court are specifically excluded from the definition.

The official codification--that is, section 1344--further confused the question of applicability by referring to "an appropriation" instead of an "appropriation available for any department." Moreover, the new title 31 definition of the term "agency," provided in section 101 and made applicable to all parts of title 31, distinguishes between "agencies" and "executive agencies." (In both cases, a "department" is a kind of agency.) Where the term "agency" is used alone, it applies to all three branches.

We think the original act must prevail over all subsequent codifications since the latter are not supposed to change substantive law. Nevertheless, the two codifications have created considerable confusion about the applicability of the home-to-work prohibition. We suggest that the Committee use the opportunity to restore the original congressional intent by amending the OMB proposed bill as follows:

Renumber paragraphs (1) and (2) of subsection 1344(b) of title 31 to make them (2) and (3), respectively. Add a new paragraph (1), as follows:

"Members of the United States Senate and the House of Representatives, the Architect of the Capitol, or the officers or employees thereof; and the Chief Justice and Associate Justices of the United States Supreme Court."

We would then propose deletion of (D) and (F) of section (b)(2) of the OMB bill as being unnecessary.

Your final request was for comments on the cost of the additional transportation provided by the proposed bill. We assume that you meant us to compare the added cost of the OMB proposal with the cost of transporting only those officials specifically authorized such transportation by the present law. As mentioned earlier, the OMB bill, if strictly enforced, would significantly reduce the numbers of employees now receiving these benefits inappropriately, according to our recent report to your Committee, with the result that present expenditures for this purpose would be reduced.

The costs of providing the home-to-work transportation for the additional officials authorized by the OMB bill cannot be precisely predicted because of the many variables involved. Some pertinent variables include the vehicle size, how far the official must commute, whether the vehicle will be leased or Government-owned, and whether or not the official will be chauffeured.

We have prepared some preliminary estimates, using two different assumptions, in an effort to determine the range of

costs which might be incurred under the bill. It appears to us that the least costly method of providing the home-to-work transportation would be for the official to use a Government-owned, mid-sized, non-chauffeured vehicle. Under this method, and assuming the official lives 10 miles from his/her place of employment, the estimated annual cost of the home-to-work transportation would be about \$1,100.

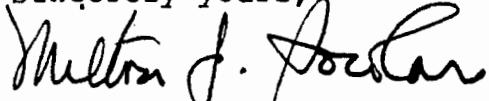
The most costly method would involve the official using a leased, large-sized, chauffeured vehicle. Under this method, and again assuming the official lives 10 miles from his/her place of employment, the estimated annual cost of the home-to-work transportation would be about \$9,465.

Under both methods we have assumed that the vehicle will be used in agency operations when not being used to provide home-to-work transportation and the chauffeur, if one is used, will have other agency duties when not driving the official either to work or home from work. Chauffeur salary costs would be counted only for the overtime he must work to drive the official to or from his home.

Unless the OMB proposal is modified to remove some of the open-ended authorities--e.g., the President's authority to designate an unlimited number of individuals as having cabinet level status--it will be difficult to arrive at a precise cost estimate for the bill. However, if the new discretionary authorities are used judiciously, the overall annual costs should be well within the range of costs described above. It is also essential that the expansion of the home-to-work authority not be viewed as an expansion of current authority in annual appropriation acts to lease or purchase automobiles.

We hope we have been of assistance to you. Unless released earlier by your office, this letter will be available for release to the public 30 days from today.

Sincerely yours,



Acting Comptroller General  
of the United States