

**DECISION**

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

**FILE:** B-202410                      **DATE:** September 29, 1981  
**MATTER OF:** Fly America Act - Repatriation Loans

**DIGEST:** The "Fly America Act", 49 U.S.C. § 1517, does not require the use of United States air carriers in repatriation cases where the individuals are loaned funds by the Department of State for their subsistence and repatriation. Transportation procured by the individual with funds borrowed from an executive department is not Government-financed transportation to which the "Fly America Act" applies.

This action is in response to a letter dated March 3, 1981, from the Comptroller, Department of State, requesting an advance decision concerning the legality of a proposed change in Department of State regulations dealing with the repatriation of destitute Americans.

Section 2671 of title 22 of the United States Code (1976), authorizes the Secretary of State to make emergency expenditures and to delegate authority pertaining to the certification of those expenditures. Historically, Congress has appropriated monies to the Secretary's Confidential Fund, established for this emergency purpose, with the understanding that the fund would be used to provide loans to Americans needing financial assistance in returning to the United States. To ensure the proper use of these funds, the Department of State has promulgated regulations which define the circumstances in which financial assistance is to be provided and the procedures which must be followed. See 7 Foreign Affairs Manual (FAM) 370 and 375.

Generally, the individual is responsible for resolving his personal financial difficulties. However, when a United States national is seeking to return to the United States after a relatively brief period of absence, is destitute, and is without relatives and friends who are able and willing to help, the Department of State will provide temporary financial assistance. See 7 FAM 375.1-1. In these circumstances, the Department of State will provide a 60-day, interest-free loan to be used for subsistence and repatriation. The individual will not be furnished a passport for travel abroad until the obligation has been fully discharged.

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Existing Department of State regulations at 7 FAM 375.3-1e(1) and (2) require the use of United States air carriers in repatriation cases where such service is available. The amendment proposed by the Department would permit foreign carriers to be used where they are less costly than their United States counterparts. The issue presented here is whether the Fly America Act, 49 U.S.C. § 1517 (1976), as amended by Pub. L. No. 96-192, 94 Stat. 43 (1980), requires the Department of State to condition the receipt of a repatriation loan on the use of United States air carriers. As explained below, we find that the Fly America Act imposes no such requirement and the Department of State may implement the new regulation.

Section 1517(a), of title 49, states in relevant part that:

"\* \* \* whenever any executive department or other agency or instrumentality of the United States shall procure, contract for, or otherwise obtain for its own account or in furtherance of the purposes or pursuant to the terms of any contract, agreement, or other special arrangement made or entered into under which payment is made by the United States or payment is made from funds appropriated, owned, controlled, granted, or conditionally granted or utilized by or otherwise established for the account of the United States, or shall furnish to or for the account of any foreign nation, or any international agency, or other organization, of whatever nationality, without provision for reimbursement, any transportation of persons (and their personal effects) or property by air between a place in the United States and a place outside thereof, the appropriate agency or agencies shall take such steps as may be necessary to assure that such transportation is provided by air carriers holding certificates under section 1371 of this title \* \* \*."

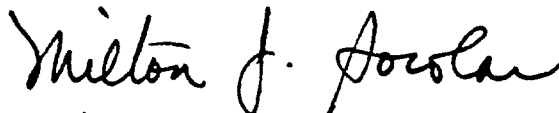
The statute applies only to the activities of an "executive department or other agency or instrumentality

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of the United States." An individual's actions in procuring air transportation is not covered unless payment for the transportation is made by the United States or from funds "appropriated, owned, controlled, granted, or conditionally granted or utilized by or otherwise established for the account of the United States."

In the case of repatriation, the transportation is obtained for the individual. As a condition to his receipt of repatriation assistance, the individual is required to execute a note by which he agrees to repay the Department of State the amount advanced for travel, subsistence, and related purposes. The funds are not granted or conditionally granted for these purposes by the United States. They are loaned to the individual. Because they are furnished with specific provision for reimbursement, we find that their expenditure is not subject to 49 U.S.C. § 1517, as amended. This is consistent with the statement in 56 Comp. Gen. 546 at 547 that nothing in the Act or its legislative history suggests that any person is required to use U.S. air carriers when no expenditure of Government revenues is involved. By virtue of the repatriated individual's obligation to make repayment, the expenditure involved in purchasing air transportation by such an individual must be viewed as an expenditure of individual funds.

This determination is predicated on the assumption that the Department will not purchase air transportation directly from the carrier but that the purchase of transportation will be made from funds loaned to the repatriated individual. Some changes in the wording of 7 FAM 375.3-1e(4) and in procedures used for obtaining such travel may be required so that purchase of the transportation will not be by the Department directly. Accordingly, we find no objection to the proposed amendment to permit the use of foreign air carriers for the repatriation of destitute Americans where such service is less costly than United States air carrier service.



Acting Comptroller General  
of the United States