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Comptroller General
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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: United States Central Command—Cairo Housing

File: B-308150

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DIGEST

The Office of Military Cooperation, Cairo, may use its appropriation to fund leases of residential property occupied by personnel of other agencies at the U.S. Embassy in Cairo as part of a housing pool. Such payments are a proper use of an agency's appropriation when they represent the costs attributable to an agency's use of housing in the pool.

DECISION

The United States Central Command (CENTCOM) has requested an advance decision under 31 U.S.C. § 3529 regarding whether the Office of Military Cooperation (OMC), Cairo, may use its appropriation to fund leases for residences occupied by personnel of other agencies at the U.S. Embassy in Cairo, Egypt, as part of a housing pool. Letter from Colonel James R. Pulliam, Financial Management and Comptroller, CENTCOM, to the Comptroller General of the United States, Aug. 8, 2006 (Pulliam Letter). CENTCOM requests this decision on OMC's behalf because CENTCOM administers OMC's appropriation. *Id.* We conclude that OMC may use its appropriated funds for this purpose, as they represent the costs attributable to OMC's use of housing in the pool. If OMC did not pay its share of housing costs, OMC would improperly augment its appropriation.

Our practice when rendering decisions is to obtain the views of the relevant federal agencies to establish a factual record and to elicit the agencies' legal positions on the matter. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), *available at* www.gao.gov/legal.htm. In this regard, the Department of State (State) responded to questions from our office regarding the procedures for assigning housing among the various agencies with personnel at the Cairo embassy and State's views on whether OMC may use its appropriation to fund leases for residences occupied by personnel of other agencies

at the Cairo embassy. Letter from Dennis J. Gallagher, Assistant Legal Adviser, Buildings and Acquisitions, State, to Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, GAO, Oct. 6, 2006 (Gallagher Letter). We asked CENTCOM similar questions but received no response. Letter from Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, GAO, to Colonel James R. Pulliam, Financial Management and Comptroller, CENTCOM, Aug. 29, 2006.

BACKGROUND

OMC is a Department of Defense Security Assistance Organization located at the United States Embassy in Cairo, Egypt. Pulliam Letter. Security Assistance consists of a group of programs, established by the Foreign Assistance Act of 1961 and the Arms Export Control Act, that transfers military articles and services to friendly foreign governments. Department of Defense Manual 5105.38-M, *Security Assistance Management Manual*, ¶ 1.1.1 (Oct. 3, 2003) (SAMM). Security Assistance programs are carried out chiefly by DOD and State. *Id.* at ¶ 1.1.2. OMC engages in Foreign Military Sales activities, a major Security Assistance program. Pulliam Letter.

Although DOD carries out numerous aspects of Security Assistance, State is responsible for the overall supervision and general direction of the Security Assistance program. SAMM ¶ 2.2. State determines when DOD will sell military articles to a particular country and determines the size of the budget requests and allocation of funds for military assistance. *Id.* OMC personnel at an embassy serve under the day-to-day direction of the Chief of Mission, a State official. *Id.* at ¶ 2.5.1.

OMC receives its funding in the Foreign Military Financing Program appropriation. *E.g.*, Revised Continuing Appropriations Resolution, 2007, Pub. L. No. 110-5, § 20401, 121 Stat. 8, 22 (Feb. 15, 2007). Congress appropriates these funds directly to the President, but they are automatically transferred to DOD. Exec. Order No. 11958, *Administration of Arms Export Controls*, § 3, 42 Fed. Reg. 4311 (Jan. 18, 1977).

CENTCOM's request stems from the housing arrangement among the agencies at the Cairo embassy. Housing at U.S. embassies is normally "pooled." Department of State Foreign Affairs Manual, vol. 15, *Overseas Buildings Operations* (15 FAM), 231, 261(1) (Apr. 26, 2006). Typically, embassy housing pools consist of numerous leases for residential properties near an embassy. Telephone conversation between Wesley Dunn, Staff Attorney, GAO, and Kerry Armstrong, CENTCOM Command Budget Officer, Aug. 21, 2006 (Armstrong Conversation). Each embassy has an Interagency Housing Board (IAHB), which manages most aspects regarding housing for personnel of the embassy's agencies, including housing pools. *Id.*; 15 FAM 212.2. The IAHB assigns these leases to personnel of the various agencies associated with an embassy, including OMC, as the personnel arrive at the embassy. Armstrong Conversation. When personnel living in a leased housing unit are transferred and leave the embassy, the lease for the property goes back into the pool and is

reassigned to new personnel from any agency as they arrive. *Id.* Usually, each agency participating in the pool pays the rent and other costs for housing occupied only by its own personnel. *Id.*

OMC's arrangement at the Cairo embassy departs from this model in that OMC funds leases for housing occupied by other agencies' personnel. Pulliam Letter. This departure from the normal procedure of embassy housing pools is rooted in State regulations that distinguish between short-term leased housing and government-owned/long-term leased (GO/LTL) housing at embassies.¹ See 15 FAM 230, 260. IAHBs allocate short-term leased housing among all the agencies at an embassy, including OMC. *Id.* at 233. In contrast, GO/LTL housing at embassies is usually available only to employees of the Foreign Affairs Agencies (State, U.S. Agency for International Development, Foreign Agricultural Service, and Foreign Commercial Service) and the Defense Intelligence Agency (DIA). *Id.* at 232, 235.2 (list of the Foreign Affairs Agencies). Personnel of DOD entities such as OMC "are not normally entitled to" GO/LTL housing. *Id.* at 261.4(a). GO/LTL housing is normally made available to agencies like OMC only after all housing needs of the Foreign Affairs Agencies and DIA are met. *Id.* at 162.1(a).

Prior to 2001, the IAHB in Cairo occasionally placed OMC personnel in GO/LTL housing, even though the housing was not surplus to the housing needs of the Foreign Affairs Agencies and DIA. Armstrong Conversation; Gallagher Letter. OMC personnel were thus occupying housing that would otherwise have been allotted to Foreign Affairs Agency and DIA personnel.² State bears all GO/LTL residential leasehold costs, regardless of the agency occupying the unit. 15 FAM 162.1(a). Other costs, such as building operating expenses and minor improvements, are borne by the occupying agency. *Id.* at 162.1(b)–(c). State and, to a lesser extent, the other agencies eligible for GO/LTL housing thus used their appropriations to house OMC personnel and incurred costs by housing their displaced personnel in leased housing. Pulliam Letter, Attachment 2.

In 2001, when State objected to this arrangement, OMC entered into a memorandum of agreement with State and the other agencies at the embassy (collectively referred to in the memorandum of agreement as "The Embassy") under which OMC agrees to fund a short-term lease for inclusion in the Cairo housing pool whenever OMC personnel are assigned to GO/LTL housing. Memorandum of Agreement between the American Embassy, Cairo, Egypt, and the Office of Military Cooperation, Cairo,

¹ State has authority to allocate space in buildings used for diplomatic establishments "among the several agencies of" the government. 22 U.S.C. § 292.

² OMC personnel regarded the government-owned housing as more "child friendly" than short-term leased housing because it consists of adjacently located units in a walled compound. Pulliam Letter, Attachment 2.

Egypt (Mar. 21, 2001) (MOA). Specifically, the MOA provides that, whenever the IAHB assigns OMC personnel to GO/LTL housing, OMC will fund a short-term lease of comparable value for another agency's personnel. In practice, the agency whose personnel are to live in an OMC-funded leased residence enters into a lease and then transfers the funding responsibility for the lease to OMC. *See* Pulliam Letter, Attachment 9. OMC asks whether it may use its appropriated funds to lease residences occupied by another agency's personnel in these circumstances.

ANALYSIS

An agency's appropriated funds "shall be applied only to the objects for which the appropriations were made except as otherwise provided by law." 31 U.S.C. § 1301(a). OMC does not receive an appropriation specifically to fund the housing of other agencies' personnel.³ Nevertheless, an agency's appropriation is available for expenses necessary and incident to the object of the appropriation. *E.g.*, B-306748, July 6, 2006; B-303145, Dec. 7, 2005.

We have previously approved a similar reimbursement arrangement involving a housing pool at an embassy. In 59 Comp. Gen. 403 (1980), we considered whether DIA could use its appropriation to reimburse State for costs State incurred funding all the leases in the housing pool at the embassy in Jakarta, Indonesia. The housing pool in Jakarta consisted of leases that State funded initially. *Id.* at 403. Each agency participating in the housing pool was assigned responsibility for ultimately funding a number of leases based on the number of personnel that the agency had at the embassy. *Id.* The agencies reimbursed State for the costs State incurred initially funding the leases assigned to that agency. *Id.* Participating agencies paid for the leases assigned to them whether or not their own personnel occupied the leased premises. *Id.* In effect, the agencies were often using their appropriations to house personnel of other agencies, but were paying only for their share of housing in the housing pool.

We decided that such an arrangement was a proper use of DIA's appropriation. 59 Comp. Gen. at 405. When all the agencies at an embassy decide to pool housing for the convenience of the group, each agency may properly pay for its share of the housing costs, regardless of whether its personnel actually reside in the housing units it funds. *Id.* While DIA was using its appropriation to house personnel of other agencies, the other agencies in the pool were using their appropriations to house DIA personnel. *Id.* at 403. In this way all agencies participating in the pool fund the costs they properly incur for housing their own personnel, albeit indirectly. Unlike the arrangement we considered in 1980, where each agency used its appropriation to house personnel of other agencies, OMC is the only agency at the

³ OMC's appropriation is available, of course, to provide housing to OMC personnel.

Cairo embassy using its appropriation to house another agency's personnel. Nevertheless, the same principle applied in that decision also applies to OMC's funding of short-term leases for other agencies at the Cairo embassy when OMC personnel are assigned to GO/LTL housing. By signing the MOA, OMC agreed to pay for its share of the housing costs in the Cairo housing pool, and OMC agreed that its cost would be proportional to its personnel's use of pooled housing. *See* MOA. Each time the IAHB assigns OMC personnel to GO/LTL housing, OMC must fund a lease for the personnel of another agency based on the cost of the GO/LTL housing occupied by OMC personnel. In this way OMC pays its share of the housing costs its personnel incur in the Cairo housing pool.⁴ The fact that OMC is making lease payments for property occupied by personnel of another agency is not problematic, so long as the payment is based on the cost attributable to OMC's use of housing in the pool.⁵ 59 Comp. Gen. at 403. OMC has not suggested that its costs under the MOA are not comparable to the costs State incurs when OMC personnel occupy GO/LTL housing.

Indeed, if OMC were not to pay for these costs, it would improperly augment its appropriation. OMC's appropriation is available for its housing costs. State does not, by regulation, have to pay the cost of housing OMC personnel, as State does for the Foreign Affairs Agencies and DIA. *See* 15 FAM 162.1, 232. If OMC did not pay for its personnel to live in GO/LTL housing, in the form of offset leases or otherwise, it would receive free housing for its personnel. Because OMC does not have authority to receive housing free of charge, it may not do so without augmenting its appropriation.

CONCLUSION

OMC may use its appropriated funds to pay for leases for personnel of other agencies as part of its participation in the housing pool at the U.S. Embassy, Cairo. Such payments represent OMC's share of the costs attributable to its personnel's use

⁴ DOD has authority under 10 U.S.C. § 2834 to participate in State housing pools overseas if DOD determines that there is a shortage of adequate housing in the area and that participation in the housing pool is the most cost-effective means of providing housing for the DOD personnel. Under such agreements, DOD is to reimburse State for housing and related services provided DOD. We do not analyze the applicability of this statute here because we have not been made aware of either its applicability to OMC or whether DOD has made the necessary determinations for the statute to apply.

⁵ Agencies in short-term lease housing pools today normally fund leases only for residential properties occupied by their own personnel. 15 FAM 233. This fact does not alter our legal analysis.

of housing in the pool. If OMC did not pay these costs, OMC would improperly augment its appropriation.

A handwritten signature in black ink, appearing to read "Gary L. Kepplinger". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gary L. Kepplinger
General Counsel