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Comptroller General  
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United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Army—Mass Transit Benefits, Aberdeen Proving Ground

**File:** B-316381

**Date:** July 18, 2008

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### DIGEST

The Army established a policy implementing 5 U.S.C. § 7905, which permits agency heads to reimburse federal employees, including members of a uniformed service, for certain commuting expenses. The certifying officer received a request for reimbursement, consistent with Army policy, from an Army officer for expenses of taking a commuter rail train to his place of employment. In accordance with this policy, the certifying officer may certify payment for transit benefits for the eligible active duty Army officer. The Army policy answers the certifying officer's concerns about the wisdom of permitting benefits for short commuting distances or easy travel conditions or when there is only one participant in the program. In implementing 5 U.S.C. § 7905, current Army policy provides that no installation outside the national capital region may restrict the benefit to eligible service members and employees for qualified means of transportation.

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### DECISION

A certifying officer with the United States Army Center for Health Promotion and Preventative Medicine (USACHPPM) at Aberdeen Proving Ground, Maryland, requests a decision under 31 U.S.C. § 3529 regarding mass transit benefits at USACHPPM.<sup>1</sup> Specifically, the certifying officer asks whether USACHPPM is “authorized to deny requests for Mass Transit Benefits for Civilians and/or active duty Army personnel” for what the certifying officer describes as short commuting

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<sup>1</sup> Memorandum from Jack D. Wilson, Financial Management Analyst, Department of the Army, Center for Health Promotion and Preventative Medicine, Aberdeen Proving Ground, to GAO, Apr. 18, 2008 (Request Memo).

distances or easy travel conditions currently existing in and around Aberdeen.<sup>2</sup> *See* Request Memo.

The Federal Employees Clean Air Incentives Act permits agency heads to reimburse federal employees including members of a uniformed service for certain commuting expenses. 5 U.S.C. § 7905. The Army has instituted a policy of providing transit benefits to eligible service members and employees outside the national capital region for qualified means of transportation. As we explain below, in accordance with this policy, a certifying officer at USACHPPM may certify payment for transit benefits for an eligible active duty Army officer, notwithstanding the certifying officer's concerns that the claimant's commuting distance is short and travel conditions are easy. The certifying officer's concerns are answered by the Army's policy, which, for equitable reasons, prohibits installations outside the national capitol region from restricting these benefits if eligibility criteria are met.

## BACKGROUND

An army officer at USACHPPM submitted a mass transit benefit program application and an accompanying claim for reimbursement to his budget office for the monthly fare of his commute using the Maryland Area Regional Commuter (MARC) train service. Request Memo. The officer intends to drive his privately owned vehicle from his home in Havre De Grace, Maryland, to a nearby MARC station at Aberdeen, Maryland, and then commute approximately 10 miles by MARC train to USACHPPM at Edgewood, Maryland. *Id.* The officer resides approximately fifteen miles from USACHPPM. *Id.* The monthly train fare for which the officer is seeking reimbursement is \$100. *Id.*

The USACHPPM certifying officer questions whether it is in the best interest of the government to use appropriations for mass transit benefits under travel conditions in Harford County, Maryland, where USACHPPM is located. *Id.* The certifying officer posits that the Mass Transit Fringe Benefits program was created to entice government employees to use mass transit, and thereby reduce traffic congestion and air pollution caused by commuting to and from the workplace *in metropolitan areas*. *Id.* The certifying officer explains that the MARC train which the Army officer proposes to take travels along a path that is roughly parallel to a public highway, U.S. Route 40, that is not congested at any time during normal conditions.

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<sup>2</sup> When rendering decisions and opinions, our regular practice is to obtain the views of the relevant federal agency to establish a factual record and to elicit the agency's legal position 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/resources.html](http://www.gao.gov/legal/resources.html). In this case the certifying officer provided us with the Army's recent policy on the Mass Transportation Benefit Program; because of this clear statement of Army policy, we did not need to obtain further information.

*Id.* The certifying officer suggests, therefore, that reimbursing for such relatively short commuting distances may represent waste or abuse of government resources. Telephone conversation between Jack D. Wilson, Financial Management Analyst, USACHPPM, and Pedro E. Briones, Senior Attorney, GAO, May 1, 2008. Furthermore, the certifying officer argues, USACHPPM employs 579 civilians and active duty Army personnel, none of whom are claiming reimbursement from the mass transportation benefit program at this time. Request Memo. The certifying officer thus asks us whether he may deny the request for mass transit benefits in these circumstances. *Id.*

## ANALYSIS

A USACHPPM certifying officer has advised that the agency would use Army's Defense Health Program appropriations to make this payment.<sup>3</sup> See Department of Defense Appropriations Act, 2008, Pub. L. No. 110-116, 121 Stat. 1295, 1310 (Nov. 13, 2007). Because this appropriation is available for, among other things, the operation and maintenance of USACHPPM, the Army has made these funds available for transit benefits for eligible service members.

The Federal Employees Clean Air Incentives Act provides that "[t]he head of each agency may establish a program to encourage employees of such agency to use means other than single occupancy motor vehicles to commute to or from work." 5 U.S.C. § 7905(b)(1). Programs established under section 7905 may include transit passes, as well as cash reimbursements for transit passes. 5 U.S.C. § 7905(b)(2). The stated purposes of the Act are to improve air quality and to reduce traffic congestion by providing for the establishment of programs to encourage federal employees to commute by means other than single occupancy motor vehicles. 5 U.S.C. § 7905 note. See also B-291208, Apr. 9, 2003. The provision grants discretion to agency heads to establish transit benefit programs generally. 5 U.S.C. § 7905(b).

The President directed that "federal agencies *shall implement* a transportation fringe benefit program" in order "to expand [Federal employees'] commuting alternatives." *Federal Workforce Transportation*, Exec. Order No. 13150, 65 Fed. Reg. 24,613-14 (Apr. 26, 2000) (emphasis added). The Deputy Secretary of Defense, in a memorandum to the military departments, issued guidance for the Department of Defense (DOD) implementing section 7905.<sup>4</sup> Subsequently, Army guidance with

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<sup>3</sup> E-mail from Thomas R. Bender, Deputy Chief of Staff for Resource Management, USACHPPM, to Pedro Briones, Senior Attorney, GAO (July 2, 2008).

<sup>4</sup> DOD, Memorandum for Secretaries of the Military Departments, *et al.*, *DOD Transportation Incentive Program*, Oct. 13, 2000, *accompanied by Guidance on the DOD Transportation Incentive Program*, available at [www.asafm.army.mil/rabp/masstrans/archives/101300di.pdf](http://www.asafm.army.mil/rabp/masstrans/archives/101300di.pdf) (last visited July 14, 2008) (DOD Transportation Incentive Program Memorandum).

regard to installations outside the National Capitol Region was revised and reissued by the Assistant Secretary of the Army (Financial Management and Comptroller) in January 2008. Department of the Army, *Mass Transportation Benefit Program Outside the National Capital Region, Program Policy, Procedures and Guidelines* (Jan. 1, 2008), available at [www.asafm.army.mil/rabp/mass\\_trans/apg/mtbp.pdf](http://www.asafm.army.mil/rabp/mass_trans/apg/mtbp.pdf) (last visited July 14, 2008) (Program Policy). The purpose of the program is to reduce federal employees' contribution to traffic congestion and air pollution and to expand community alternatives by using mass transportation. Program Policy, § 1.1. It also provides that no installation outside the national capital region may restrict the benefit to eligible service members and employees for qualified means of transportation,<sup>5</sup> including restricting the amount of fare a program participant may receive based on commuting distance. Program Policy, § 4.7.1.

In this case, the army officer was seeking reimbursement of his costs for taking the MARC train. These are commuting costs for a qualified means of transportation, that is, a commuter train. Reimbursement of these costs comports with both the Federal Employees Clean Air Incentives Act and the DOD policy. Neither the act nor the policy restricts the availability of benefits on the basis of commuting distances or traffic conditions. Thus, the certifying officer would incur no personal financial liability if he were to certify a payment for this purpose. See 5 U.S.C. § 7905(2)(A); 31 U.S.C. § 3528; B-291208, Apr. 9, 2003.

It appears that Army policy would prohibit the certifying officer at USACHPPM from denying a claim for reimbursement for mass transit benefits presented by eligible civilians or active duty personnel. See Program Policy, § 4.7.1. Although the certifying officer expresses concern that the applicant will be the only participant at USACHPPM,<sup>6</sup> the Army policy also states that there is no requirement for a minimum or maximum number of program participants at any given installation. Program Policy, § 4.7.7. The policy anticipates that some installations may have only one participant, while others may have hundreds. *Id.* In fact, Army installations are to ensure that all military members and civilian employees who are employed by or stationed at the installation are aware of the benefit's availability, guidelines, and restrictions, using all internal communication media, including local installation newspapers, e-mail distribution lists, flyers, bulletin boards, *etc.* to inform potential participants. *Id.*, § 6.4.2.

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<sup>5</sup> A qualified means of transportation includes a commuter bus, commuter train, subway or light rail, and, under specified conditions, van pools and ferries. Program Policy, § 4.3.1.

<sup>6</sup> Request Memo.

## CONCLUSION

The Federal Employees Clean Air Incentives Act permits agency heads to establish programs to encourage commuting by means other than single-occupancy motor vehicles. 5 U.S.C. § 7905. The certifying officer was presented with a request for reimbursement from an Army officer for expenses of taking a commuter rail train to his place of employment. The Army officer's request meets the Army's current policy. In accordance with this policy, the certifying officer at USACHPPM may certify payment for transit benefits from the eligible active duty Army officer. The certifying officer's concerns about the wisdom of permitting benefits for short commuting distances or easy travel conditions or when there is only one participant in the program are answered by the Army's policy. In implementing 5 U.S.C. § 7905, current Army policy provides that no installation outside the national capital region may restrict the benefit to eligible service members and employees for qualified means of transportation

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