

TRAVEL

Implementation of Airmen Volunteer Travel Reimbursement from Headquarters Air Force (HAF) Emergency and Extraordinary Expense (EEE) Funds

Introduction:

AF/AIP requested we provide guidance on whether 10 U.S.C. § 127 authorizes the Air Force to make payments, in the form of invitational travel orders paying travel and per diem expenses, to Airmen volunteers in a leave or pass status, who are assisting flood displaced Airmen despite the limitations in 5 U.S.C. § 5703 and the Joint Federal Travel Regulation (JFTR) and in the absence of specific JFTR provisions that support this process.

Background

As a result of record flooding during June 2011 in State X, over 1200 Airmen, as well as thousands of local civilians, were displaced from their homes. Many remain displaced, including approximately 240 Airman whose primary residences remain uninhabitable or exposed to potential additional damage due to winter's imminent onset. To assist these Airmen, on 23 October 2011, the Secretary of the Air Force (SecAF) authorized the use of up to \$250,000 of HAF EEE funds (10 U.S.C. § 127) to create a program to encourage Airmen volunteers and State X licensed trades personnel to travel to Base Y to assist displaced Airmen in the repair and/or winterization of their homes.

The Air Force Accounting and Finance Office (AFAFO) contends that the JFTR precludes such payments to military members on leave or pass.

Discussion:

In advance of the Secretary's approval, DoD/GC, SAF/GC, and AF/JAA discussed the fiscal law issues surrounding this program, including a focused examination on the Airmen volunteer aspect of the proposed program. The DoD/GC, the SAF/GC and their staffs, as well as the AF/JAA Director and his staff, all agreed to interpose no fiscal objection to use EEE funds to reimburse Airmen volunteers, in a leave or pass status, for their travel to assist our displaced Airmen in repairing and/or winterizing their private residences. The use of EEE funds permits us to overcome hurdles and limitations otherwise imposed by 5 U.S.C. § 5703 and the JFTR in that with 10 U.S.C. § 127 (as opposed to O&M funds normally used to fund travel), the requirement of a "direct benefit" imposed by 5 U.S.C. § 5703 does not apply. This "aggressive use" of SecAF's authority provides a singularly unique authority to reimburse travel costs for identified individuals to come to the aid of their fellow Airmen who have been displaced from their homes by floods.

The DoD Deputy General Counsel, Fiscal Law, opined in an email, dated 20 October 2011, that,

AF cannot use MILPERS and O&M appropriations to pay for salaries of members and employees to work on private homes (as well as travel expenses if not from Base Y); such a use of appropriated-funded labor runs afoul of well-established legal and policy standards regarding the use of public funds/resources for improvements to private residences.

However, we interpose no FISCAL objection to AF members and employees working on private homes while off-duty. This is because the off-duty performance of repairs would not result in any incremental increase in salary costs or interfere with the performance of official duties for which the AF members/employees are being compensated through their salaries. (Liability/licensing issues would remain.)

AF can use EEE funds to pay travel costs and per diem for volunteers and/or contractors, notwithstanding the so-called “travel statute” (5 U.S.C. § 5703). This is because the “direct benefit” requirement in that statute applies only if the invitational travel is being funded with normal O&M. That requirement does not apply if the travel is being undertaken and funded with “EEE” under 10 U.S.C. § 127. (emphasis added).

While we agree with AFAO that, in “normal” travel scenarios, 5 U.S.C. § 5703 and the JFTR, prohibit Airmen in a leave or pass status from being placed on invitational travel using O&M funds under 10 U.S.C. § 127, rather than 5 U.S.C. § 5703 and the JFTR, the Secretary can approve use of these specially earmarked EEE funds to pay travel costs and per diem for Airmen volunteers, in a leave or pass status, as well as State X-licensed trades personnel to travel to assist our displaced Airmen. This payment is a travel payment pursuant to 10 U.S.C. § 127, rather than travel pay under the JFTR.

Conclusion and Recommendation:

In this instance, the Secretary has approved the use of EEE funds for Airmen volunteers, in a leave or pass status, to travel to Base Y, to assist our displaced Airmen. Providing this “invitational travel” using EEE funds is completely separate and distinct from normal travel under the JFTR so there is no need to implement a change to the JFTR. Pursuant to his statutory authority under 10 U.S.C. § 127, the Secretary’s determination on this matter is final and conclusive upon the accounting officers of the United States, which includes the AFAFO. There are no legal impediments to the use of these approved HAF EEE funds to pay for travel and per diem for Airmen volunteers in a leave or pass status to provide aid to our flood displaced Base Y Airmen. This opinion has been coordinated with SAF/GCA.