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MEMORANDUM FOR: Krista Faecke

Administrative Services Division

Office of the Chief of Facilities Management Officer National Institute of Standards and Technology

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FROM:

Barbara S. Fredericks Assistant General Counsel for Administration

SUBJECT:

Subsidies for Bicycle Commuters

This responds to a question, which was forwarded to this office as a matter under our purview, concerning whether the Department of Commerce (including its operating units) may offer employees a subsidy to use bicycles for their home-to-work commutes. As discussed below, the Department may not offer such subsidies to employees. Even though the Internal Revenue Code permits employers to exclude from employees' taxable income certain costs associated with using bicycles for commuting this does not permit the Department to use its appropriated funds to pay a subsidy to employees for this purpose.

Discussion

The employee who asked the question is mistaken in thinking that the Internal Revenue Service statute has authorized a subsidy. Instead, the Internal Revenue Code permits employers to exclude from employees' taxable income compensation provided in the form of "qualified transportation fringe benefits." See 26 U.S.C. § 132(a)(5). This has included benefits such as transit passes and parking spaces. See 26 U.S.C. § 132(f)(1)(B) and (C). Beginning on January 1, 2009, employers may also exclude from employees' taxable income compensation of up to \$20 per month for the expenses of purchasing a bicycle, bicycle improvements, repair, and storage. See 26 U.S.C. § 132(f)(1)(D), added by Pub. L. No. 110-343, Div. B, § 211(a) (October 3, 2008); Internal Revenue Service Publication 15-B (2009), Employers' Tax Guide to Fringe Benefits, pp. 19-20.

This authority to exclude certain transportation fringe benefits from taxable income does not, however, authorize Federal agencies to expend appropriated funds in the form of subsidies for such benefits.¹

Because the inquiry to which we are responding involved a subsidy rather than a tax exclusion, we have focused our inquiry on this. We are not aware of any program within the Department to exclude from taxation \$20 per month from eligible employees' current income.

Federal agencies may only expend appropriated funds for those purposes that are permitted by law. See 31 U.S.C. § 1301(a). Generally, employees' home-to-work commuting costs are viewed as personal expenses which are not borne by the Government, and exceptions must be specifically authorized by statute. See B-305,864 (January 5, 2006). A limited exception exists under 5 U.S.C. § 7905 which authorizes agencies to pay for certain commuting expenses:

- (b)(1) The 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.
 - (2) A program established under this section may involve such options as-
 - (A) transit passes ...;
 - (B) furnishing space, facilities, or services to bicyclists; and
 - (C) any non-monetary incentive which the agency head may otherwise offer under any other provision of law or other authority.

(Emphasis added.) Hence, the Department's authority to expend appropriated funds to provide benefits to employees who use bicycles to commute is limited to the items listed in subsection (b)(2)(B): space, facilities, or services.² It does not extend to reimbursing employees for the costs of purchasing, improving repairing, or storing bicycles.

Please contact Alice McKenna at (202) 482-5234 if you have any further questions about this matter.

cc: Jeanette Darden

² We understand that many Department facilities currently provide on-site bicycle lockers and shower facilities to employees who require them after riding bicycles to work. These in-kind amenities are within the scope of 5 U.S.C. § 7905(b)(2)(B).