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

IN REPLY  
REFER TO: B-192522 (RLR)

March 4, 1980

The Honorable Donald W. Riegle, Jr.  
United States Senator  
101 Hollister Building  
106 West Allegan  
Lansing, Michigan 48933

Dear Senator Riegle:

This replies to your letter of January 23, 1980, requesting reconsideration of our decision of January 30, 1979, B-192522, pertaining to one of your constituents, Mr. Robert A. Young. That decision holds that the use of appropriated funds to pay the costs of Mr. Young's round trip travel by foreign air carrier between Chicago, Illinois, and Frankfurt, Germany in November 1976 is prohibited by section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 1517) - more commonly known as the Fly America Act.

We have reviewed this decision and we can find no legal basis for reversing our prior holding. As we stated therein, the Fly America Act (a) makes mandatory the use of certified U.S. air carriers for international air travel paid for from appropriated funds if service by such carriers is available, and (b) imposes a nondiscretionary duty upon the Comptroller General to disallow expenditures from appropriated funds for such travel by foreign air carriers in the absence of satisfactory proof of the necessity therefore.

We have for some time recognized that this law produces some harsh results and imposes a heavy burden on travelers. They are charged with knowledge of its requirements and are personally liable for any costs incurred because of their failure to comply even though others may have advised them erroneously or improperly arranged their travel. Nevertheless, until this law is changed by the Congress, this Office has no alternative but to apply it as presently enacted.

We have recommended to the Congress on several occasions that the Fly America Act be amended to relieve travelers of personal liability. See the enclosed copies of our letter of January 27, 1978,

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B-189711, to the Chairman of the Senate Committee on Foreign Relations; our report to the Congress of October 31, 1978, "The Fly America Act Should Allow More Agency Discretion in Authorizing Use of Foreign - Flag Air Carriers to Conduct Business Overseas" (LCD-78-235); and our more recent letter of October 11, 1979, B-120751, to the Chairman of the House Committee on Public Works and Transportation. However, while Congress has recently amended the Act to establish less stringent standards of availability of U.S. air carrier service, it has not yet seen fit to revoke or modify the penalty provision of this law. See Public Law 96-192, approved February 15, 1980.

With regard to your inquiry as to any appeal rights Mr. Young may have, you are advised that there is no administrative appeal from decisions of the Comptroller General which are binding upon the Executive branch of the Government. See sections 44, 71, 74, and 82d of title 31, United States Code. However, both the United States District Courts and the Court of Claims have jurisdiction of claims against the United States. See sections 1346 and 1491 of title 28, United States Code.

We regret that our reply is not more favorable to your constituent.

Sincerely yours,



FOR THE Comptroller General  
of the United States

Enclosures