

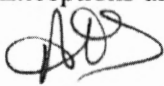


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

FEB 11 2019

OFFICE OF
GENERAL COUNSEL

SUBJECT: Authority to Grant First Class Exceptions under Delegations 1-17A and 1-17B

FROM: Angelia Talbert-Duarte 
Acting Associate General Counsel
Civil Rights and Finance Law Office

TO: Charles Sheehan
Acting Inspector General

This is in response to your request for a legal opinion on whether the Acting Controller had the delegated authority to grant exceptions for the Administrator's first class travel. As discussed below, the Acting Controller did have the authority to grant the first class exceptions.

Both Delegations 1-17A (for domestic travel) and 1-17B (for international travel) specifically state in section 2.b. that the Chief Financial Officer and the Deputy Chief Financial Officer have the authority to approve business class accommodations for the Administrator and first class accommodations for agency employees (which includes the Administrator). Section 3.e. in Delegation 1-17B also states that the Administrator must obtain approval from the Chief Financial Officer, Deputy Chief Financial Officer, or designee in order to travel in business class. Both delegations also provide (Delegation 1-17A, section 4.e and Delegation 1-17B, section 4.h.) that the Chief Financial Officer and the Deputy Chief Financial Officer may redelegate the authority to approve first class travel to the Director of the Office of the Controller (the Controller).

On March 1, 2012, the authority to approve first class travel was redelegated to the Director of the Office of Financial Management. In March 2016, the Office of Financial Management became the Office of the Controller, under an office reorganization, and on April 30, 2018 the authority was redelegated to the Controller, Office of the Controller. Both redelegations contain a limitation that restricts the approval authority to agency employees at the office director level or below, which would not include the Administrator.

The two first class travel exceptions at issue were granted on June 2, 2017 and June 5, 2017 by the Acting Controller. When the exceptions were granted, the Acting Chief Financial Officer and the Acting Controller were both unaware of the limitation in the redelegations. Not aware of this limitation, both the Acting Chief Financial Officer and the Acting Controller believed that the Acting Controller had been redelegated the authority to approve the Administrator's first class travel. Further, on May 3, 2017 an oral request to grant an exception, based on the Protective

Security Detail's (PSD) threat assessment, was presented to the Acting Controller. The Acting Controller met with the Acting CFO on May 11, 2017 and discussed that they would rely on the security professionals to determine that there was a threat. At that meeting, the Acting CFO agreed that the office would grant an exception for first class travel based on PSD's assessment.

While EPA's policy is to delegate authorities in writing, one court has found that if the supervisor is aware that an authority is being carried out by a subordinate and the supervisor does not object, the actions of that subordinate are valid pursuant to an "implied delegation." See *Parrish v. Shinseki*, 24 Vet. App. 391 (2011). Here, the Acting CFO was aware that the Acting Controller was approving first class travel for the Administrator. The Acting CFO was under the impression that the authority had been redelegated to that position, and further, did not object to the Acting Controller's role of approving first class travel. In fact, the Acting CFO expressed his approval of the determination when he met with the Acting CFO on May 11. Because the Acting Controller was operating pursuant to this implied redelegation, the exceptions for the Administrator's travel were valid.

Please contact me on 202-564-8158 or Elise Packard, Acting Deputy General Counsel on 202-564-7729 if you have any further questions.

cc: Holly Greaves
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