

February 9, 1999

MEMORANDUM FOR DIRECTOR, COMPETITIVE SOURCING AND PRIVATIZATION

SUBJECT: Impact Aid and the Military Housing Privatization Initiative (MHPI)

This memorandum explains the extent to which privatization of existing military family housing, pursuant to the MHPI, effects the level of impact aid to which a local education agency is entitled under subchapter VIII of Chapter 70, title 20, United State Code. I have discussed this issue and shared the substance of this memorandum with Miriam Whitney, the attorney at the Department of Education who is responsible for impact aid issues. She concurs with the rationale and conclusions of this memorandum.

As a general matter, a local educational agency gets a higher level of impact aid for children attending its schools who "resided on Federal property and had a parent on active duty in the uniformed services", than it does for children attending its schools who "had a parent on active duty in the uniformed services . . . but did not reside on Federal property". 20 U.S.C. § 7703. For the purpose of determining the level of impact aid to a local education agency, the term "Federal Property" includes "real property that is not subject to taxation by any State or any political subdivision of a State due to Federal agreement, law or policy and that is . . . owned by the United States or leased by the United States from another entity." 20 U.S.C. § 7713(5)(A)(i). The term Federal property also "includes, whether or not subject to taxation by a State or a political subdivision of a State . . . any improvement on Federal property as otherwise described in this paragraph". 20 U.S.C. § 7713(5)(C).

*The effect of an MHPI project on the level of impact aid depends on the type of housing privatization project involved. In the first type of housing privatization project, the Federal government transfers title to land and existing housing units located on that land to a private developer. Furthermore, title to any new housing units constructed by the private developer would vest in that private developer. Once title to land is transferred outside the Federal government and therefore no longer exempt from state and local taxation, that property is clearly not federal property and the local educational agency would receive local or state tax revenues and also would be eligible for lower level impact aid for children attending its schools that live in those housing units and that have a parent on active duty in the uniformed services.*

In the second type of housing privatization project, the Federal government retains title to the land and provides that land to the developer through a long term lease. The government transfers title to the existing housing units located on the land to the private developer who owns those units as well as any newly constructed units. Because title to the underlying land remains

with the Federal Government and is therefore not subject to taxation by the state or local government due to Federal law, the underlying land is clearly Federal property. Furthermore, because the term Federal property "includes, whether or not subject to taxation by a State or a political subdivision of a State . . . any improvement on Federal property as otherwise described in this paragraph" 20 U.S.C. § 7713(5)(C), the housing units located on the property, even though those housing units are owned by the private developer and his interest in those units may or may not be subject to taxation by the state or local government, are also Federal property. As long as the Federal government's real property is not subject to taxation due to Federal law, agreement or policy, the property and improvements located thereon are Federal property for the purposes of Impact Aid even if the private developer's leasehold interest in the property or the value of the private developer's improvements on the property are subject to taxation. Under this type of housing privatization project, the local educational agency would be eligible to receive high level impact aid for children attending its schools who resided in these housing units and who had a parent on active duty in the uniformed services.

If you have any additional questions on this matter, feel free to contact me at 703-693-4842.

/s/

Nicole D. Bayert  
Associate General Counsel

(Environment & Installations)