

FEA Guidance concerning the “10-Mile Rule”

As the result of several successful Association grievances and litigation, a DoDDS local hire in the Association’s bargaining unit may obtain housing and transportation benefits if he/she is reassigned or transferred outside of the “commuting area,” in addition to meeting certain other criteria.

One of the above-mentioned Association victories specifically dealt with the issue of whether the “10-mile rule” should still be followed in our bargaining unit to determine whether a move was outside of the “commuting area.” The decision in the case heard by Arbitrator Jascourt was that the “10-mile rule” controls in the Association’s bargaining unit, and that subsequent changes to the JTR regulations on this matter were barred.

The purpose of this update is only to provide some additional information regarding what constitutes a move outside of the “commuting area” in the Association’s bargaining unit following the Jascourt decision, as well as the general rules for local hires to obtain LQA when they are moved.

I. History of the “10-mile rule”

One method for a local hire employee to become eligible for housing benefits (living quarters allowances, or LQA), is for the employee to be moved by management through a permanent change in station (PCS) move outside of the commuting area (defined in the Joint Travel Regulations (JTR)). The JTR defines the criteria used in making the determination whether the employee is eligible for a PCS.

For a move involving a “short” distance, “old” JTR paragraph C4108 (the 10-mile rule) provided the criteria for making the determination whether a local hire employee was eligible for a PCS move. If the employee meets all of the requirements of “old” JTR paragraph C4108 and is determined eligible for a PCS, then the employee would be entitled to LQA at their new residence. When “old” JTR paragraph C4108 was revised over the objection of the Association, the Association filed a grievance.

Arbitrator Jascourt ruled in favor of the Association and ordered regulations in conflict with the negotiated agreement between DoDDS and FEA be negated. In particular, the changes to “old” JTR paragraph C4108 that had increased the distance from 10 miles to 50 miles were rescinded. Therefore, for employees in the Association’s bargaining unit, the “10-mile rule” in “old” JTR paragraph C4108 remains in effect.

II. What is the “10-mile rule?”

Generally speaking, the “10-mile rule” is a JTR regulation (“old” JTR paragraph C4108) that governs when a local hire employee who is moved a “short distance” by management may be eligible for a PCS, and subsequently LQA. When management determines that the local hire employee has met the JTR requirements for the “10-mile rule” listed in

“old” JTR paragraph C4108, the employee is deemed eligible for a PCS move and will become eligible for housing benefits (LQA) for their new residence.

III. What are the requirements of the “10-mile rule?”

As a result of the Association’s victory in the Jascourt arbitration, DoDDS must apply the requirements of the “old” JTR paragraph C4108 (the 10-mile rule) (before this paragraph was subsequently revised and moved to a different chapter of the JTR) to local hire employees in the Association’s bargaining unit in determining whether they are eligible for a short distance PCS.

Please be aware that “old” JTR paragraph C4108 has a number of requirements, and the determination is NOT based solely on distance between the old and new duty stations.

Generally speaking, the requirements of “old” JTR paragraph C4108 (the 10-mile rule) are that the move by the employee must be:

- in the interest of the government;
- to a new permanent duty station (PDS) which is at least 10 miles distant from the old PDS;
- is not primarily for the convenience/benefit of the employee, or at his/her request;
- relocation of the residence is incident to the transfer

Previous Version of JTR Paragraph C4108

However, the analysis does not end there. The “old” JTR paragraph C4108 also had a clarifying paragraph explaining how these requirements are to be applied. The clarifying paragraph states:

“In determining if the relocation of residence is incident to the transfer, the travel-approving official should take into consideration such factors as commuting time and distance between the employee’s residence at the time of notification of the transfer and his/her old and new duty station as well as the commuting time and distance between a proposed new residence and the new duty station. Ordinarily, a relocation of residence should not be considered as incident to a PCS unless the one-way commuting distance from the old residence to the new duty station is at least 10 miles greater than from the old residence to the old duty station. Even then, circumstances surrounding a particular case, for example, relative commuting time, may suggest that relocation of residence was not incident to the transfer.”

IV. How is the “10-mile rule”/“old” JTR paragraph C4108 applied by DoDDS?

The following is management's position on the proper application of the "10-mile rule." In order to avoid complications, you should follow the steps below. The process for determining whether the employee has met all of the requirements of "old" JTR paragraph C4108 has several elements. Management's position is that the local hire employee must meet each one of the requirements, or DoDDS will determine that the employee is not to be eligible for a PCS, and subsequently will not get LQA.

A. The First Element

The first determination that management must make is whether the move is "in the interest of the government," and not at the employee's request/interest. In other words, if a local hire educator asks to be transferred (outside of the Washington DC Transfer Program or other management directed program), or arranges their own deal with administration to move from one school to another, this is usually determined by DoDDS to **not** be in the interest of the government. If a local hire educator voluntarily applies for another position (outside of the Transfer Program, or some other management directed program), then DoDDS may decide that this move is in the educator's own interest, and not in the interest of the government. Therefore, management's position would be to decide that it is unlikely that such actions would meet this element, and the PCS request would probably be denied.

However, being reassigned by management can involve a move under the Washington DC Transfer Program, a management-directed transfer, or when an educator is declared excess at a school. All of these moves or reassignments are in the interest of the government, and would meet this element's requirements.

B. The Second Element

The second determination that management must make is whether the distance from the local hire employee's old permanent duty station (PDS) to the new PDS is at least 10 miles. PLEASE NOTE that management's position is that under the JTR regulations, the 10 miles in question are NOT determined by your map, the distance on your car's odometer, or by a computer map program. Instead, it is determined by the DoD Table of Official Distances (DTOD). In other words, management will use the DTOD to determine the "official distance" between the duty stations. This element will only be met if the DTOD confirms that the official distance between your old and new duty stations is 10 miles or more.

C. The Third Element

The third determination by management is whether the PDS will increase the local hire employee's commute by more than 10 miles. Management will first measure the distance from the employee's existing residence to the old PDS. Then, they will measure the distance from the employee's existing residence to the new PDS. Finally, management will compare the two commutes. If the new commute exceeds the old commute by 10

miles, management will probably determine that the employee is eligible for a PCS move.

PLEASE NOTE that management interprets this element to mean that if the employee's commute is actually shorter (from the residence to the new PDS as against the old PDS), then the employee is **not** eligible for a PCS. In other words, if the commute from your residence to the old PDS was 15 miles, but the commute from your residence to the new PDS is 13 miles, management will determine that as the commute is actually shorter. Since it does not increase the commute by 10 miles or more, management's position is that you do not meet the second element and will deny your request for PCS orders.

D. The Fourth Element

In addition to the above-listed elements, management's position is that the local hire employee must also move their residence. In other words, the distances involved are not the only factors. If you do not move your residence "incident to the transfer," then management's position is that you will not have met the final element of the regulation. However, we would strongly advise, to avoid complications, that you ask management for a pre-determination of your eligibility for LQA **BEFORE** contemplating a move of your residence. Please note that if you do not meet management's above-listed criteria, management's position is that it will not matter if you move your residence or not. If management determines that any of the above-listed elements are not met, management will deny the local hire employee's request for PCS orders and a move of residence.

V. Management denied my request for a PCS move! What can I do?

If you are a local hire employee who was denied a PCS for a short distance move, please make sure that you request a copy, in writing, of the determination made by management, as well as an explanation of why your request was denied. Then, contact your Uniserv as soon as possible, so that they can review the determination to see whether management's determinations under "old" JTR paragraph C4108 were made correctly, and/or to see whether any errors may have been made in the determination.