



Oklahoma



Connecticut

May 22, 2018

Honorable Patrick M. Shanahan
Deputy Secretary of Defense
1010 Defense Pentagon
Washington, DC 20301-1010

Dear Secretary Shanahan:

Thank you for your letter of May 17, 2018, responding to the request for a copy of the Department of Defense (DoD) General Counsel's legal opinion concerning use of a 502 (f) (2) federal response after a Presidential Declaration of emergency or disaster. We appreciate that your coordination with General Counsel confirmed that DoD is not authorized by law to fund the governors' use of the National Guard to support a state-declared emergency or disaster response. However, it's not clear from the letter that the General Counsel evaluated the use of a 502 (f) (2) in a federally-declared declaration.

You indicated federal law (Title 32) authorizes governors to order their National Guard to perform training or other duty in support of operations or missions at the request of the Secretary of Defense. The President also possesses this same legal authority - Title 32 502 (f) (2) (A). The President, in fact, has the authority to allow governors to utilize the National Guard in a Title 32 status even without a federal emergency or disaster - commonly referred to as "operational T32." For example, operational T32 has been authorized in response to the 9/11 terrorist attack, the response to Hurricane Katrina and, most recently, to support the Southwest Border mission.

We agree that funds are not appropriated specifically to DoD for operational T32. However, it is still not clear whether General Counsel evaluated the legality of the Federal Emergency Management Agency utilizing its Disaster Relief Fund to reimburse DoD for operational T32 costs associated when responding to a federal disaster. We would appreciate clarification on this during our discussion tomorrow.

Sincerely,

Handwritten signature of Mary Fallin in black ink.

Governor Mary Fallin
Governor of Oklahoma
Co-Chair, Council of Governors

Handwritten signature of Dannel Malloy in black ink.

Governor Dannel Malloy
Governor of Connecticut
Co-Chair, Council of Governors