

at the beginning of the covered relocation period.

(b) HOUSING TREATMENT.—

(1) CONTINUATION OF HOUSING FOR THE SPOUSE AND OTHER DEPENDENTS.—If a spouse or other dependent of a member whose request under subsection (a) is approved resides in Government-owned or Government-leased housing at the beginning of the covered relocation period, the spouse or other dependent may continue to reside in such housing during a period determined in accordance with the regulations prescribed pursuant to this section.

(2) EARLY HOUSING ELIGIBILITY.—If a spouse or other dependent of a member whose request under subsection (a) is approved is eligible to reside in Government-owned or Government-leased housing following the member's permanent change of station within the United States, the spouse or other dependent may commence residing in such housing at any time during the covered relocation period.

(3) TEMPORARY USE OF GOVERNMENT-OWNED OR GOVERNMENT-LEASED HOUSING INTENDED FOR MEMBERS WITHOUT A SPOUSE OR DEPENDENT.—If a spouse or other dependent of a member relocates at a time different from the member in accordance with a request approved under subsection (a), the member may be assigned to Government-owned or Government-leased housing intended for the permanent housing of members without a spouse or dependent until the member's detachment date or the spouse or other dependent's arrival date, but only if such Government-owned or Government-leased housing is available without displacing a member without a spouse or dependent at such housing.

(4) EQUITABLE BASIC ALLOWANCE FOR HOUSING.—If a spouse or other dependent of a member relocates at a time different from the member in accordance with a request approved under subsection (a), the amount of basic allowance for housing payable may be based on whichever of the following areas the Secretary concerned determines to be the most equitable:

(A) The area of the duty station to which the member is reassigned.

(B) The area in which the spouse or other dependent resides, but only if the spouse or other dependent resides in that area when the member departs for the duty station to which the member is reassigned, and only for the period during which the spouse or other dependent resides in that area.

(C) The area of the former duty station of the member, but only if that area is different from the area in which the spouse or other dependent resides.

(c) RULE OF CONSTRUCTION RELATED TO CERTAIN BASIC ALLOWANCE FOR HOUSING PAYMENTS.—Nothing in this section shall be construed to limit the payment or the amount of basic allowance for housing payable under section 403(d)(3)(A) of this title to a member whose request under subsection (a) is approved.

(d) HOUSING TREATMENT EDUCATION.—The regulations prescribed pursuant to this section

shall ensure the relocation assistance programs under section 1056 of title 10 include, as part of the assistance normally provided under such section, education about the housing treatment available under this section.

(e) DEFINITIONS.—In this section:

(1) COVERED RELOCATION PERIOD.—(A) Subject to subparagraph (B), the term “covered relocation period”, when used with respect to a permanent change of station of a member of the armed forces, means the period that—

(i) begins 180 days before the date of the permanent change of station; and

(ii) ends 180 days after the date of the permanent change of station.

(B) The regulations prescribed pursuant to this section may provide for a shortening or lengthening of the covered relocation period of a member for purposes of this section.

(2) DEPENDENT.—The term “dependent” has the meaning given that term in section 401 of this title.

(3) PERMANENT CHANGE OF STATION.—The term “permanent change of station” means a permanent change of station described in section 452(b)(2) of this title.

(Added Pub. L. 115-91, div. A, title VI, §604(a)(1), Dec. 12, 2017, 131 Stat. 1419.)

Editorial Notes

PRIOR PROVISIONS

A prior section 403a, added Pub. L. 98-525, title VI, §602(d)(1), Oct. 19, 1984, 98 Stat. 2534; amended Pub. L. 99-145, title VI, §§602(a)-(d), 604(b), Nov. 8, 1985, 99 Stat. 636-638; Pub. L. 100-26, §8(e)(8), Apr. 21, 1987, 101 Stat. 286; Pub. L. 101-189, div. A, title VI, §602(a), Nov. 29, 1989, 103 Stat. 1445; Pub. L. 101-510, div. A, title VI, §602, Nov. 5, 1990, 104 Stat. 1575; Pub. L. 102-25, title VII, §702(b)(1), (2), (c), Apr. 6, 1991, 105 Stat. 117; Pub. L. 102-190, div. A, title VI, §§603, 604(b), 633, Dec. 5, 1991, 105 Stat. 1373, 1374, 1381; Pub. L. 103-160, div. A, title VI, §604, Nov. 30, 1993, 107 Stat. 1679; Pub. L. 104-106, div. A, title VI, §605(a)(1), (b), Feb. 10, 1996, 110 Stat. 358; Pub. L. 104-201, div. A, title VI, §§604(d), 606(a)-(d), Sept. 23, 1996, 110 Stat. 2541, 2542, related to variable housing allowances, prior to repeal by Pub. L. 105-85, div. A, title VI, §603(c)(1), Nov. 18, 1997, 111 Stat. 1781.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 115-91, div. A, title VI, §604(b), Dec. 12, 2017, 131 Stat. 1420, provided that: “The amendments made by this section [enacting this section] shall take effect on October 1, 2018.”

§ 403b. Cost-of-living allowance in the continental United States

(a) PAYMENT AUTHORIZED.—The Secretary concerned may pay a cost-of-living allowance to the eligible members of a uniformed service under the jurisdiction of the Secretary.

(b) ELIGIBLE MEMBERS.—The following members are eligible to receive a cost-of-living allowance under this section:

(1) A member assigned to a high cost area in the continental United States.

(2) A member assigned to an unaccompanied tour of duty outside the continental United States if the primary dependent of the mem-

ber resides in a high cost area in the continental United States.

(3) A member assigned to duty in the continental United States if the Secretary of the uniformed service concerned determines that—

(A) the primary dependent of the member must reside in a high cost area in the continental United States by reason of the member's duty location or other circumstances; and

(B) it would be inequitable for the member's eligibility for the allowance to be determined on the basis of the duty location of the member.

(c) HIGH COST AREA DEFINED.—An area is a high cost area for a fiscal year for purposes of this section if the uniformed services cost of living for that area for the base period exceeds the average cost of living in the continental United States for such base period by at least the threshold percentage. The Secretary of Defense, in consultation with the other administering Secretaries, shall establish the threshold percentage, except that the threshold percentage may not be less than 8 percent. The administering Secretaries shall prescribe a higher threshold percentage to be applied for a fiscal year when it is necessary to do so in order to ensure that the total amount of the payments of the cost-of-living allowance made to members of the uniformed services under this section for such fiscal year does not exceed the total amount available to all uniformed services for that fiscal year for paying such allowance.

(d) AMOUNT OF ALLOWANCE.—The cost-of-living allowance that may be paid to a member for a high cost area for a fiscal year shall be the amount that is equal to the product of—

(1) the amount of the average spendable income determined applicable for the regular military compensation level of such member under subsection (g); and

(2) the percentage equal to the excess of—

(A) the percentage by which the uniformed services cost of living for the member's high cost area for the base period exceeds the average cost of living in the continental United States for such base period, over

(B) the threshold percentage applicable to such fiscal year under subsection (c).

(e) LIMITATION TO ONE ALLOWANCE.—If primary dependents of a member reside separately in different high cost areas—

(1) the member may be paid only one cost-of-living allowance under this section; and

(2) the cost-of-living allowance payable to the member shall be the highest of the amounts computed under this section for such high cost areas.

(f) SERVICE NOT COVERED.—(1) A cost-of-living allowance may not be paid a member under this section for the days authorized for travel of the member in connection with a permanent change of duty station.

(2) A member of a reserve component is not eligible for a cost-of-living allowance under this section unless the member is on active duty under a call or order to active duty that—

(A) specifies a period of 140 days or more; or

(B) states that the call or order to active duty is in support of a contingency operation.

(g) AVERAGE SPENDABLE INCOME.—The Secretary of Defense shall determine, using a methodology and assumptions that the Secretary considers appropriate, the amounts of average spendable income of members of the uniformed services for various ranges of regular military compensation. For purposes of this subsection, spendable income is the total amount of regular military compensation that is available for purchase of goods and services after allocation of amounts for taxes, insurance, housing, gifts and contributions, and savings.

(h) JOINT REGULATIONS.—The Secretary of Defense and the other administering Secretaries shall jointly prescribe regulations to carry out this section.

(i) OTHER DEFINITIONS.—In this section:

(1) The term "primary dependent", with respect to a member, means—

(A) the member's spouse; or

(B) in the case of an unmarried member, a dependent described in paragraph (2) or (4) of section 401(a) of this title.

(2) The term "cost of living" means a price index selected by the Secretary of Defense, in consultation with the other administering Secretaries, from among the following indices:

(A) The Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

(B) Any other index developed in the private sector that the Secretary of Defense, in consultation with the other administering Secretaries, determines is comparable to the Consumer Price Index and is appropriate for use for purposes of this section.

(3) The term "uniformed services cost of living" means the price index selected as described in paragraph (2) and adjusted as the Secretary of Defense, in consultation with the other administering Secretaries, considers appropriate to reflect variations between expenses of members of the uniformed services (as offset by the basic allowance for subsistence) and the corresponding expenses of persons not members of the uniformed services with regard to the following:

(A) Nonhousing costs (including costs of transportation, goods, and services, taking into consideration savings attributable to use of such military facilities as commissary stores and exchange stores).

(B) Average income tax paid.

(C) Cost of health care.

(4) The term "base period", with respect to a fiscal year, means the 12-month period ending on June 30 of the year in which such fiscal year begins.

(5) The term "administering Secretaries" means the following:

(A) The Secretary of Defense, with respect to the armed forces (other than the Coast Guard when it is not operating as a service in the Navy).

(B) The Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service in the Navy.

(C) The Secretary of Commerce, with respect to the National Oceanic and Atmospheric Administration.

(D) The Secretary of Health and Human Services, with respect to the Public Health Service.

(Added Pub. L. 103-337, div. A, title VI, §602(a)(1), Oct. 5, 1994, 108 Stat. 2779; amended Pub. L. 107-296, title XVII, §1704(c), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107-314, div. A, title VI, §654(b)(2), Dec. 2, 2002, 116 Stat. 2582.)

Editorial Notes

AMENDMENTS

2002—Subsec. (i)(5)(B). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

Subsec. (i)(6). Pub. L. 107-314 struck out par. (6) which read as follows: “The term ‘continental United States’ means the 48 contiguous States and the District of Columbia.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of Title 10, Armed Forces.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CONDITIONS ON PROVISION OF ALLOWANCE

Pub. L. 103-337, div. A, title VI, §602(b), Oct. 5, 1994, 108 Stat. 2781, provided that:

“(1) A cost-of-living allowance under section 403b of title 37, United States Code, as added by subsection (a), may not be provided until after the end of the 90-day period beginning on the date the Secretary of Defense submits the report required under paragraph (2).

“(2) Before implementing section 403b of title 37, United States Code, the Secretary of Defense, in consultation with the other administering Secretaries (as defined in subsection (h)(6) [probably should be (i)(5)] of such section), shall submit to Congress a report describing—

“(A) the methods by which the Secretary of Defense would determine the price index to be used under such section and the types of nonhousing related costs that will be considered under such price index;

“(B) the manner by which the Secretary will establish the threshold percentage for purposes of such section;

“(C) the manner in which savings attributable to use of such military facilities as commissary stores, exchange stores, and military medical treatment facilities will be taken into consideration; and

“(D) the methods by which the Secretary proposes to prevent uncontrolled growth in Government expenditures through the cost-of-living allowance available under such section.”

[Report submitted by Secretary of Defense on Mar. 31, 1995.]

[§ 404. Renumbered § 474]

[§ 404a. Renumbered § 474a]

[§ 404b. Renumbered § 474b]

§ 405. Travel and transportation allowances: per diem while on duty outside the continental United States

(a) PER DIEM AUTHORIZED.—Without regard to the monetary limitation of this title, the Secretary concerned may pay a per diem to a member of the uniformed services who is on duty outside of the continental United States, whether or not the member is in a travel status. The Secretary may pay the per diem in advance of the accrual of the per diem.

(b) DETERMINATION OF PER DIEM.—In determining the per diem to be paid under this section, the Secretary concerned shall consider all elements of the cost of living to members of the uniformed services under the Secretary’s jurisdiction and their dependents, including the cost of quarters, subsistence, and other necessary incidental expenses. However, dependents may not be considered in determining the per diem allowance for a member in a travel status.

(c) TREATMENT OF HOUSING COST AND ALLOWANCE.—Housing cost and allowance may be disregarded in prescribing a station cost of living allowance under this section.

(d) UNUSUAL OR EXTRAORDINARY EXPENSES.—(1) The Secretary concerned may reimburse a member of the uniformed services on duty as described in subsection (a) or (e) for an unusual or extraordinary expense incurred by the member incident to such duty that—

(A) is directly related to the conditions or location of the duty or the location of the member’s dependents;

(B) is of a nature or a magnitude not normally incurred by members of the uniformed services on duty inside the continental United States; and

(C) is not included in the per diem determined under subsection (b) as payable to the member under subsection (a) or (e).

(2) Any reimbursement provided to a member under paragraph (1) is in addition to a per diem payable to that member under subsection (a) or (e).

(e) PAYMENT OF ALLOWANCE BASED ON OVERSEAS LOCATION OF DEPENDENTS.—In the case of a member assigned to duty inside the continental United States whose dependents continue to reside outside the continental United States, the Secretary concerned may pay the member a per diem under this section based on the location of the dependents and provide reimbursement under subsection (d) for an unusual or extraordinary expense incurred by the dependents if the Secretary determines that such payment or reimbursement is in the best interest of the member or the member’s dependents and in the best interest of the United States.

(Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 473, §405; Pub. L. 89-718, §57, Nov. 2, 1966, 80 Stat. 1123; Pub. L. 91-486, Oct. 22, 1970, 84 Stat. 1085; Pub. L. 96-107, title VIII, §807(a), Nov. 9, 1979, 93 Stat.