

§ 403a. Housing treatment for certain members of the armed forces, and their spouses and other dependents, undergoing a permanent change of station within the United States

(a) HOUSING TREATMENT FOR CERTAIN MEMBERS WHO HAVE A SPOUSE OR OTHER DEPENDENTS.—

(1) HOUSING TREATMENT REGULATIONS.—The Secretary of Defense shall prescribe regulations that permit a member of the armed forces described in paragraph (2) who is undergoing a permanent change of station within the United States to request the housing treatment described in subsection (b) during the covered relocation period of the member.

(2) ELIGIBLE MEMBERS.—A member described in this paragraph is any member who—

(A) has a spouse who is gainfully employed or enrolled in a degree, certificate or license granting program at the beginning of the covered relocation period;

(B) has one or more dependents attending an elementary or secondary school at the beginning of the covered relocation period;

(C) has one or more dependents enrolled in the Exceptional Family Member Program; or

(D) is caring for an immediate family member with a chronic or long-term illness 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 member 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 de-