



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Variable Housing Allowance - Offset for Monthly
Housing Expenses
File: B-224133
Date: December 22, 1987

DIGEST

1. Under a 1985 amendment to the variable housing allowance (VHA) law, VHA is reduced under certain circumstances where it, together with basic allowance for quarters, exceeds a member's housing costs. The amount of reduction, if any, depends on the member's monthly housing costs, with higher monthly housing costs resulting in no reduction or a lesser reduction. The regulation defining monthly housing costs may not include the cost of a second mortgage taken for reasons other than repairing, renovating or enlarging a residence since VHA is an allowance to help a member pay for housing in a high cost area.
2. The definition of monthly housing costs for the purpose of computing the VHA may include the cost of a loan not secured by realty provided that the loan is taken for the purpose of repairing, renovating or enlarging the member's residence. There is no statutory impediment to amending applicable regulations to reflect this, but it is a matter left to administrative discretion in implementing the VHA statute.

DECISION

The Chairman of the per Diem, Travel and Transportation Allowance Committee requested an advance decision concerning the computation of variable housing allowances authorized members of the uniformed services to help defray their housing costs in high cost areas in the United States. The questions concern the regulations which define monthly housing costs for a residence for purposes of the variable housing allowance (VHA). Specifically, the Chairman asked whether the following two expenses not currently included in the regulations may be included: (1) personal loans, as distinguished from a second mortgage, for repairing, renovating or enlarging a residence and (2) second mortgages

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on a residence obtained for other than repairing, renovating or enlarging a residence. As will be explained below, we conclude that it is within the discretion of the services to authorize inclusion of a personal loan in the circumstances described as a housing expense, but we do not view the cost of a second mortgage in the circumstances described to be a housing expense as contemplated by Congress in enacting the VHA statute.

BACKGROUND

Presently, a VHA is authorized by 37 U.S.C. § 403a (Supp. III 1985). Pursuant to the authority granted by 37 U.S.C. § 403a(e), implementing regulations are prescribed in Volume 1 of the Joint Federal Travel Regulations (1 JFTR).^{1/} Under section 403a(a)(1) of title 37, a member of a uniformed service who is entitled to a basic allowance for quarters (BAQ) is also entitled to a VHA if he or she is "assigned to duty in an area of the United States which is a high housing cost area with respect to that member." Subsection 403a(c)(1) prescribes the monthly amount of the VHA for a member with respect to an area as:

"* * * the difference between (A) the median monthly cost of housing in that area for members of the uniformed services serving in the same pay grade and with the same dependency status as that member, and (B) 80 percent of the median monthly cost of housing in the United States for members of the uniformed services serving in the same pay grade and with the same dependency status as that member."

In late 1985 there were several amendments to the law regarding VHA. One of these changes required that a member's monthly VHA be reduced by one-half of the amount, if any, by which the total of the member's prescribed VHA and BAQ exceeds the member's "monthly housing costs." 37 U.S.C. § 403a(c)(6)(A) as added by Public Law 99-145, § 602(c)(2), 99 Stat. 637 (Nov. 8, 1985). This was the first time that a member's personal and individual housing

^{1/} Effective January 1, 1987, Volume 1 of the Joint Travel Regulations, which had included the VHA regulations, was replaced by Volume 1 of the Joint Federal Travel Regulations.

costs became directly relevant in determining his or her VHA.^{2/}

To implement this reduction provision, the term "monthly housing costs" had to be defined by the services since no definition was provided by the statute. Consequently, the regulations were amended so that for a member owning his or her home, the allowable housing expenses for purposes of the VHA offset were determined to be periodic mortgage payments, hazard and liability insurance, real estate taxes, and a standard utility maintenance expense. 1 JFTR, para. U8001-F.^{3/} Furthermore, the regulations specify that allowable mortgage payments are limited to:

"1. mortgages used in connection with the initial purchase of a residence;

"2. mortgages used to refinance an existing mortgage which was used to purchase a residence (i.e., the existing mortgage is paid off with proceeds from the new mortgage) to the extent that the new mortgage payments do not exceed the old mortgage payment;

"3. real estate equity loans (e.g., a second mortgage) to the extent used to repair, renovate, or enlarge a residence (does not include loans used to furnish or decorate a home, or loans for personal reasons) * * *."

QUESTIONS AND ANALYSIS

Questions have arisen regarding whether the regulation is too restrictive and unfairly penalizes members in two situations. The first situation involves members who, prior to the passage and implementation of the offset provision for monthly housing costs, had taken a second mortgage for purposes other than repairing, renovating or enlarging their residences. According to the submission, many of these members anticipated a full VHA payment and took this into account in their financial planning. The implication here

^{2/} It should be noted that 37 U.S.C. § 403a both before and after the 1985 amendment provided for a reduction in VHA for members under certain conditions other than an individual member's housing costs.

^{3/} Previously 1 JTR para. M4551-6.

is that these members are being unfairly penalized, and it is inequitable to delete any second mortgage cost from housing expenses if the second mortgage was taken prior to the effective date of the reduction provision. Additionally, it is suggested that the legislative history of the offset provision does not mandate this result.

Initially, we point out that VHA is an allowance paid in addition to BAQ to defray expenses related to securing living quarters in high cost areas of the United States. See 1 JFTR para. U8000. Legislation providing for the allowance was first enacted in 1980,^{4/} and modifications to it have been made several times since then. Compare 37 U.S.C. § 403(2)(b) (1982) with 37 U.S.C. § 403a(a)(1) (Supp. III 1985). The 1985 series of changes, of which the 50 percent reduction was a part, appears to have been made as the result of concerns over the cost of the program and to more closely attune the allowance to members' housing costs.^{5/}

The purpose of a VHA is to defray housing costs; it is not necessarily to reimburse a member for a second mortgage. Thus, it would be contrary to the purpose of the statute to allow inclusion of the cost of a second mortgage payment as a housing cost in the circumstances described where that mortgage is taken for other than housing-related purposes. Furthermore, there is no legal impediment to Congress changing or even repealing the VHA authorization entirely. While it may cause some inconvenience to some members who took second mortgages in these circumstances prior to the effective date of the reduction provision, Congress included no "grandfather" provision to delay implementation of this provision for such members, although it did provide "grandfather" provisions for those affected by two other changes in VHA entitlement made by the same statute.^{6/} Thus, we find no support for making an exception to the

^{4/} Public Law 96-343, § 4, Sept. 8, 1980, 94 Stat. 1125-1126.

^{5/} See S. Rep. No. 99-118, 99th Congress, 1st Session, 426 (1985).

^{6/} See Pub. Law 99-145, § 602(f), concerning members stationed in Hawaii or Alaska being switched from overseas station allowance to VHA, and § 602(e), concerning the reduction of VHA entitlement for members paying child support.

statutory criteria for qualifying second mortgages based on when the mortgage was executed.

The second situation presented involves a member taking a loan to repair, renovate or enlarge his residence when the loan is not secured by the realty. The submission suggests that it is the purpose of the loan and not its form which should govern whether a loan is included as an allowable monthly housing expense.

We have not found in the legislative history of the offset provision a definitive statement as to what is meant by housing costs, although the legislative history does mention mortgage payments as being includable. Thus, some administrative latitude is left in implementing the statute. It is our view that the law does not require the exclusion of the cost of loans unsecured by mortgages if the loans are taken for the purposes of repairing, renovating or enlarging a residence. Therefore, we would not object to the exercise of administrative discretion to amend the regulation to include such loans in the definition of housing costs, although such a change in the regulations is not required.

for Milton J. Jordan
Comptroller General
of the United States