

**Department of  
Veterans Affairs**

# Memorandum

Date: August 3, 2006

VAOPGCPREC 4-2006

From: General Counsel (021)

Subj: Proper Implementation of Public Law 109-233, Section 101 -- Specially Adapted Housing Assistance (EDMS 361332)

To: Director, Loan Guaranty Service (26)

## **QUESTIONS PRESENTED:**

1. Pursuant to Public Law 109-233, may the Department of Veterans Affairs (VA) provide Specially Adapted Housing (SAH) assistance to active duty service members who are temporarily residing in a home owned by a family member?
2. Does Public Law 109-233 change the one-time usage of SAH grant benefits?

## **DISCUSSION:**

1. We have been asked to provide guidance on the implementation of section 101 of Public Law 109-233, the Veterans Housing Opportunity and Benefits Act of 2006 (the "Act"), concerning SAH assistance. Specifically, you have asked whether section 101 authorizes VA to provide temporary SAH assistance to active duty service members and whether the law repeals the one-time usage limitation on the section 2101 grants.
2. In answer to your first question, it appears that active duty service members are not eligible for the temporary residence adaptation ("TRA") assistance provided under new section 2102A of title 38, United States Code, as added by section 101 of the Act. New section 2102A authorizes SAH benefits for disabled veterans who temporarily reside with family members. To qualify for the benefit, the disabled veteran must be a disabled veteran described in subsection (a)(2) or (b)(2) of section 2101 of title 38, United States Code. However, neither of those subsections explicitly or implicitly describes active duty service members. Rather, eligibility of such members for SAH grants under those subsections is separately authorized by subsection 2101(c) of title 38, United States Code, as modified and re-enacted by section 105 of the Act. Thus, by its terms, section 2102A does not authorize TRA assistance grants to active duty service members.
3. It may be noted that our office became aware of this problem in September of 2005, when we were asked to review H.R. 3665. H.R. 3665 contained a provision identical to the one at issue here. At that time, this office alerted the

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Office of Management and Budget and a staff member of the House Committee on Veterans' Affairs (HVAC) to the potential result of the text as drafted. HVAC also apprised its counterpart in the Senate of the problem.

Later, after the House had amended S.1235 to include this provision but before the Senate had agreed to the amended version, we offered another technical service to the Senate Committee on Veterans' Affairs:

*The bill would restore SAH benefits for certain active duty members by re-enacting 2101(c). It would also add SAH benefits to disabled veterans who temporarily reside with a family member (new section 2102A). As drafted, we believe the new section leaves out the active duty military members rendered eligible again for the traditional SAH benefits in section 2101. We believe what is needed is an insertion of a new subsection (d) in the new section 2102A that would read as follows:*

*(d) A disabled veteran or veteran referred to in this section shall include a member of the Armed Forces described in section 2101(c)(1) or (c)(2), as applicable.*

*Current subsections (d) and (e) should then be redesignated as (e) and (f).*

Our recommendations were not accepted. The bill was passed into law, and the result is that active duty service members are now once again eligible for other SAH benefits under 2101(a) and 2101(b), but not for those provided under 2102A.

4. Turning to the question of whether the law changes the one-time usage limitation on the section 2101 SAH grants, we believe the plain language of the section 101(b) amendments to 38 U.S.C. § 2102 states that it does. First, section 101(b)(1) of the Act amends section 2102 by striking the clause that limited SAH assistance to one housing unit and the necessary land therefore and by eliminating the \$50,000 grant cap. Next, section 101(b)(2) sets a cap on the aggregate amount of assistance that may be made available to an eligible veteran under subsections 2101(a) and (b), respectively, when combined with the section 2102A TRA assistance. Finally, section 101(b)(3) limits an eligible veteran to no more than three grants of assistance under chapter 21 of title 38, United States Code.

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5. In short, we interpret the law as creating a significant change in the usage limitation. The following chart outlines the possible permutations for SAH grants under the new statutory framework:

Type of Grant	Permitted Combinations
2101(a)	1. up to three 2101(a) grants, not to exceed \$50k in aggregate, <b>or</b> 2. up to two 2101(a) grants, plus one 2102A grant of up to \$14k; the amount of three grants not to exceed \$50k in aggregate
2101(b)	1. up to three 2101(b) grants, not to exceed \$10k in aggregate, <b>or</b> 2. up to two 2101(b) grants, plus one 2102A grant of up to \$2k; the amount of the three grants not to exceed \$10k in aggregate
2101(b) recipient who later becomes eligible for 2101(a)	1a. one 2101(b) grant, not to exceed \$10k, <b>AND</b> b. <b>if the veteran becomes eligible under 2101(a)</b> , up to two 2101(a) grants, the two 2101(a) grants not to exceed \$50k in aggregate;
	<p><b>OR</b></p> <p>2a. two 2101(b) grants, not to exceed \$10k in aggregate, <b>AND</b> b. <b>if the veteran becomes eligible under 2101(a)</b>, one 2101(a) grant of up to \$50k;</p> <p><b>OR</b></p> <p>3a. one 2101(b) grant, plus one 2102A grant of up to \$2k; the two grants not to exceed \$10k in aggregate; <b>AND</b> b. <b>if the veteran becomes eligible under 2101(a)</b>, one 2101(a) grant, not to exceed \$50k;</p> <p><b>OR</b></p> <p>4a. one 2101(b) grant, not to exceed \$10k, <b>AND</b> b. <b>if the veteran becomes eligible under 2101(a)</b>, one 2102A grant of up to \$14k, <b>PLUS</b> one 2101(a) grant; the 2102A grant and 2102(a) grant not to exceed \$50k in aggregate;</p> <p><b>OR</b></p> <p>5a. two 2101(b) grants, not to exceed \$10k in aggregate, <b>AND</b> b. <b>if the veteran becomes eligible under 2101(a)</b>, one 2102A grant for up to \$14k.</p>

6. Moreover, veterans who were limited in the past to one instance of assistance may now be entitled to additional grants. As long as a veteran has not exceeded

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the statutory aggregate (whether in number or dollar amount), a veteran may apply for additional assistance to make new adaptations. This does not mean, however, that the Secretary may approve assistance retroactively, by reimbursing a veteran for adaptations made before the enactment of Public Law 109-233. Rather, the law only has prospective effect. In other words, it applies to activities occurring on or after the effective date of the Act for which a grant would be authorized. Thus, for example, the law would not entitle a veteran who in 1997 had obtained the maximum grant of \$38,000, against actual adapted housing costs of \$50,000, to now be awarded a grant of additional assistance for the difference. Similarly, a veteran who in 1997 had used SAH funds toward the purchase of an already suitable home would not now be entitled to receive additional SAH assistance to reduce or retire existing purchase money debt. On the other hand, if a veteran who had received a section 2101(a) grant of \$38,000 in 1997 were to apply after the date of enactment for a grant to make future additional \$12,000 in adaptations, then that veteran would, if otherwise eligible under that subsection, be entitled to the assistance requested.

7. We appreciate that certain post-enactment press releases by the Veterans' Affairs Committees and discussions with Committee staff suggest that our views on the questions posed, as informally discussed with you and as expressed above, do not accord with what they intended. That may be, and this legislation, in fact, may not accurately reflect the Committees' intent and, possibly, even Congress' intent in enacting it. Nevertheless, it is well-established jurisprudence that post-enactment expressions of congressional intent are not reliable aids in statutory interpretation, and so are not entitled to any weight. See 2A Normal J. Singer, Sutherland on Statutes and Statutory Construction §§ 48:20, 49-51 (6<sup>th</sup> ed. 2000). Further, our research has disclosed only the slightest of legislative history pertinent to the matters presented, proving neither particularly enlightening nor in any way dispositive as to those matters.

8. In any event, particularly in the face of the unambiguous language of the statute, we are not inclined to rest support either for the broader interpretation on the first issue or for the narrower interpretation on the second, only upon remote extraneous indicia of Congress' intent. Rather, we believe the appropriate course is to follow the so-called "plain meaning rule" of statutory construction. On such basis, we find, as discussed above, that VA lacks statutory authority to provide the TRA assistance to active duty service members and also that Congress meant what is said when it authorized not more than three grants of SAH assistance.

9. The Veterans Benefits Administration may wish to consult with VA's Office of Congressional and Legislative Affairs about informing the Committees of our views and to determine whether/when the Committees might seek to pursue any corrective legislation. Based on that information, the Department may wish to further consider its policy alternatives.

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**HELD:**

1. Section 101 of Public Law 109-233 does not authorize VA to provide SAH assistance authorized under 38 U.S.C. § 2102A to active duty service members who are temporarily residing in a home owned by a family member.

2. Section 101 changes the one-time usage limitation on SAH grants to allow veterans to obtain up to three grants under chapter 21, title 38, United States Code, in an aggregate amount not to exceed \$50,000 for veterans eligible under 38 U.S.C. § 2101(a) and \$10,000 under 38 U.S.C. § 2101(b).

Tim S. McClain