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[Payment of an Annual Housing Supplement to Employees Assigned to the U.S. Mission to the United Nations in New York].  
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Report to Sen. Ernest F. Hollings, Chairman, Senate Committee on Appropriations: State, Justice, Commerce, and Judiciary Subcommittee; by Robert F. Keller, Deputy Comptroller General.

Issue Area: International Economic and Military Programs (600); Personnel Management and Compensation (300).

Contact: International Div.

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Organization Concerned: Department of State: United States Mission to the United Nations.

Congressional Relevance: Senate Committee on Appropriations: State, Justice, Commerce, and Judiciary Subcommittee.

Authority: (P.L. 93-126; 87 Stat. 454; 22 U.S.C. 287e-1 (Supp. III)). United Nations Participation Act of 1945. Cong. Rec. S19005-07.

Although there is statutory authority for the payment of housing allowances to certain employees of the U.S. Mission to the United Nations who have "important representational responsibilities" and therefore must live in "extraordinarily high-rent areas immediately surrounding the headquarters of the United Nations," the authority does not precisely define these key phrases. Findings/Conclusions: State Department regulations do not specifically delimit the area in which an employee must live to qualify, leaving considerable discretion to the official administering the supplements. Employees who lived within 20 miles of U.N. headquarters when the regulations became effective were granted exceptions because of the phrase "or other high rent areas." The statutory language does not, however, indicate that the entire metropolitan area of New York be included. The regulations require that the employee attend or host a substantial number of representational functions as part of his official duties. The number of functions must be substantial enough to merit the housing supplement. Twenty-three of the 38 employees receiving the supplement were considered unquestionably eligible for it, seven were considered ineligible, and eight were questionable. Recommendations: The regulations should be changed to precisely delimit the area of residence for eligibility in a manner consistent with the statutory standard.



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-189609

September 26, 1977

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The Honorable Ernest F. Hollings  
Chairman, Subcommittee on State,  
Justice, Commerce, the Judiciary  
Committee on Appropriations  
United States Senate

Dear Mr. Chairman:

In response to an August 5, 1977, request from the Committee, we have reviewed the facts surrounding the payment of an annual housing supplement to employees assigned to the U.S. Mission to the United Nations in New York. The Committee asked for GAO assistance in making a judgement as to whether these payments are authorized under section 9 of the United Nations Participation Act of 1945, as amended.

Section 9 of the Act, as amended, authorizes a housing allowance for employees of the U.S. Mission to the United Nations who are required to live in the high-rent area immediately surrounding the headquarters of the United Nations because of important representational responsibilities. The Standardized Regulations (Government Civilians, Foreign Areas) prescribe as a condition of eligibility for the supplement that the employee must be required as part of his official duties to attend or host a substantial number of representational functions. The regulations also require a causal connection between the above requirements and the employee's residence in a high-rent area.

Whatever the administrative interpretation of the precise limits of the area immediately surrounding the headquarters may ultimately be, it cannot include residences far-distant from the United Nations headquarters without being inconsistent with the statutory standard. Accordingly, employees who receive the allowance under the so-called "grandfather clause" exception for employees who resided within 20 miles of headquarters when the allowance became effective are not entitled to the allowance.

With respect to the determination of which employees have "important representational responsibilities," the administrative decision appears to be justified in some cases but without support in others. With respect to some other employees, the present regulations offer insufficient guidance to make an eligibility judgement.

We have not commented on terminated cases since the individuals were not at the Mission and records pertaining to their activities there were not always readily available.

We understand that the Department is revising the Standardized Regulations. We believe that the Regulations should precisely define the area of residence for eligibility in a manner consistent with the statutory standard and further interpret the phrase "important representational responsibilities." We have requested that the Department of State keep both you and us advised of revisions they make to the Regulations and actions they take regarding the payment of the supplement to people who, in our view, are not entitled to it or to whom payment appears to be without support.

We are enclosing for your information a detailed analysis of this issue prepared by our Office of the General Counsel. In reviewing this question, we met with officials of the Department of State in Washington and at the U.S. Mission in New York. We have not, however, discussed our final conclusions with these officials.

As arranged with your office, we are sending copies of this report to the Department of State. Copies will also be available to other interested parties who request them.

Sincerely yours,

DEPUTY

  
Comptroller General  
of the United States

Enclosure

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## ANALYSIS

HOUSING SUPPLEMENT FOR PERSONNEL ASSIGNED  
TO U.S. MISSION TO UNITED NATIONS

## DIGESTS:

1. Employees of U.S. Mission to United Nations who received allowance authorized by 22 U.S.C. 287e-1 under so-called "grandfather clause" exception for employees who resided within 20 miles of U.N. headquarters when allowance became effective are not entitled to allowance since they do not reside in "extraordinarily high-rent area immediately surrounding the headquarters of the United Nations."
2. Although our judgment concerning whether certain U.N. employees have "important representational responsibilities" within use of term in 22 U.S.C. 287e-1 might differ with the eligibility determination actually made, in those cases that are unclear we are reluctant to substitute our judgment for that of the officials charged with implementation of the housing allowance.

## BACKGROUND:

Approximately 38 employees of the U.S. Mission to the United Nations currently receive a housing supplement. The U.S. Mission has a total of approximately 130 employees. Administrative/clerical employees, as well as professional employees, receive the supplement. A so-called "grandfather clause" has enabled some individuals who were employees of the U.S. Mission at the time the allowance came into effect to receive the supplement even though they continue to reside as many as 20 miles from the United Nations headquarters.

In order to eliminate problems concerning eligibility determinations, the State Department is planning to modify the existing regulations or propose new legislation.

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## ANALYSIS:

A housing supplement for employees on the staff of the U.S. Mission to the United Nations is authorized by Public Law 93-126, Oct. 18, 1973, 87 Stat. 454, 22 U.S.C. 287e-1 (Supp. III 1973), 1/ which provides:

"The President may, under such regulations as he shall prescribe, and notwithstanding section 529 of Title 31 and section 5536 of Title 5,

"(1) grant any employee of the staff of the United States Mission to the United Nations designated by the Secretary of State who is required because of important representational responsibilities to live in the extraordinarily high-rent area immediately surrounding the headquarters of the United Nations in New York, New York, an allowance to compensate for the portion of expenses necessarily incurred by the employee for quarters and utilities which exceed the average of such expenses incurred by typical, permanent residents of the Metropolitan New York, New York, area with comparable salary and family size who are not compelled by reason of their employment to live in such high-rent area; and

\* \* \* \* \*

"Not more than forty-five employees shall be receiving an allowance under paragraph (1) of this section at any one time." (Emphasis added.)

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1/ The U.S. Code version of the statute contains a printing error.

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Since the statute does not precisely define the phrases "important representational responsibilities" and "extraordinarily high-rent area immediately surrounding the headquarters of the United Nations," a great deal of discretion in determining eligibility for the allowance is left to the administrators of the statute. Nevertheless, the discretion given the officials charged with implementation of the statute is not unbridled. The statute provides that the housing allowance may be granted under such regulations as the President may prescribe. Pursuant to the statutory authority, sections 140 to 145 of the State Department's Standardized Regulations (Government Civilians, Foreign Areas) have been promulgated.

Subsection 142.1 of the Standardized Regulations prescribes the eligibility requirements for the supplement, including the following:

- "(3) He must be required as part of his official duties to attend or host a substantial number of representational functions related to United Nations affairs, and
- "(4) By reason of (3) above, he must be required to live on the East Side of the Borough of Manhattan or other high rent area;"

The above regulations do not specifically delimit the area in which an employee must reside in order to be eligible for the housing supplement. Thus, with respect to the place of residence factor in the eligibility determination, considerable discretion is left with the officials who administer the housing supplement to interpret the statutory limitation. Nonetheless, whether the administrative interpretation is made through regulations or on an informal case-by-case basis, the interpretation, in order to be valid, must be consistent with the statutory standard.

Employees who lived within 20 miles of the United Nations headquarters at the time the housing allowance became effective were granted an administrative exception, under the so-called "grandfather clause," to the requirement that recipients live in East Manhattan. The administrative exception is based on the phrase "or other high rent area" in the regulations quoted

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above. The statutory language concerning permanent residents of the Metropolitan New York, New York, area who are not compelled by reason of their employment to live in such high-rent area precludes an interpretation of the phrase "extraordinarily high-rent area immediately surrounding the headquarters of the United Nations" as being coterminous with the Metropolitan New York area. Whatever the administrative interpretation of the precise limits of the area may ultimately be, it cannot include residences far-distant from the United Nations headquarters without being inconsistent with the statutory standard. Residences in Bronxville, New York; Glen Rock, New Jersey; and in the northern part of the Bronx are clearly not within the "extraordinarily high-rent area immediately surrounding the headquarters of the United Nations." Accordingly, David Stottlemeyer, Joseph Glennon, and Gwendolyn Davis are not in our view entitled to the housing allowance.

We recommend that the regulations be changed to precisely delimit the area of residence for eligibility in a manner consistent with the statutory standard. Thus limiting the discretion of the official charged with the eligibility determination would help to avoid inconsistent judgments and the possibility of abuse with respect to eligibility determinations.

Problems concerning the interpretation and application of the phrase "who is required because of important representational responsibilities to live \* \* \*" are also present. It would be reasonable to interpret "important representational responsibilities" as referring to the overall job responsibilities of an employee. However, the regulations apparently adopt a more narrow interpretation. In order to be eligible under the regulations, an employee "must be required as part of his official duties to attend or host a substantial number of representation functions." In light of the legislative history that indicates that one of the purposes of the statute is to compensate employees who spend a significant portion of their income on expenses related to representation, the regulation appears to reflect a reasonable interpretation of the statutory standard. See Cong. Rec. S19005-07 (daily ed. June 11, 1973).

The regulations require that the employee attend or host a substantial number of representational functions as part of his official duties. We construe the regulation to require that the official duties of the employee himself--as opposed

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to the official duties of the employee's superiors--include attending or hosting representational functions. Furthermore, the regulations require a causal relationship between the employee's official representational duties and his residence in a high-rent area. The number of representational functions attended or hosted must be substantial enough to require residence in the area immediately surrounding the United Nations headquarters.

Since we are without the benefit of formal agency comments, nor in possession of all the facts we would normally require before ruling on a Federal employee's entitlement to a special allowance, we do not feel in a position to make final eligibility determinations on a case-by-case basis. Nevertheless, we offer the following views concerning the presence or absence of support for the allowance in individual cases.

We have reviewed the job descriptions of the employees receiving the allowance. Most of the employees whose job descriptions on their face seemed to indicate their eligibility for the allowance were not interviewed, but assuming that the job descriptions accurately reflect the functions that the employees are actually performing, it appears that the following employees are required to attend or host a substantial enough number of representational functions to be eligible:

James Baker -- Adviser  
Frank Brecher -- AID Adviser  
Rudolph Carter -- Adviser  
Stoney Cooks -- Executive Assistant to U.S. Representative  
William Cunningham -- Adviser  
Nancy Ford -- Adviser  
John Hirsch -- Political Officer  
Larry Kettlewell -- Political Officer  
Robert Kitchen -- Deputy Representative to the Economic  
and Social Council  
John Kriendler -- Political Officer  
Lois Matteson -- Political/Economic Officer  
Donald McHenry -- Deputy Representative in the Security  
Council, Ambassador  
Henry Miller -- Foreign Affairs Officer  
Thomas Offenburger -- Counselor, Public Affairs  
Richard Petree -- Counselor, Political and Security Affairs  
Herbert Reis -- Attorney Adviser  
Reynold Riemer -- International Economist  
David Rowe -- Political Officer



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Richard Seifman -- AID Adviser  
Brady Tyson -- Foreign Service Officer  
Melissa Wells -- U.S. Representative on the Economic & Social  
Council of the United Nations, Ambassador  
Richard Whistler -- Political Officer  
Orme Wilson, Jr. -- Deputy Counselor for Political & Security  
Affairs

However, with respect to other employees, it appears that the payment of the housing allowance is without support. The job descriptions of the following seven employees currently receiving the allowance and the synopses of the interviews conducted by members of the International Division staff with the employees and their supervisors fail to indicate that the employees are required as part of their official duties to attend or host a substantial number of representational functions:

Estelle Aubin -- Administrative Assistant  
Joan Hazelton -- Secretary  
John Morris -- Clerk-Typist  
Deborah Nelson -- Secretary  
Janice Peters -- Secretary-Stenographer  
Marilyn Viaovich -- Secretary  
Gwendolyn Davis -- Secretary (also ineligible because of place  
of residence)

With respect to other employees currently receiving the allowance, the interpretation and application of the statutory standard is unclear.

Gerry M. Proulx and Sandra Kay Jackson are secretaries to Ambassador Young. Both accompany the Ambassador to U.N. conferences. Both attend numerous representational functions in New York and while accompanying the Ambassador overseas. Ms. Jackson states that although she does not consider attendance at these functions to be strictly a job requirement, Ambassador Young expects her to attend. Ms. Proulx considers attendance at such functions as a required part of her duties. Ms. Proulx on several occasions has attended functions in the Ambassador's absence as his representative. Ms. Jackson expects to do so in the future (she came to USUN with Ambassador Young about 6 months ago).

Ms. Gloria Frame also works in the Office of the U.S. Representative to the United Nations. She is secretary to Susan E. Brandt, Secretary of Mission, and also serves as

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Ambassador Young's receptionist. Ms. Frame attends many functions hosted by Ambassador Young. Her immediate superior, Susan E. Brandt, states that Ambassador Young likes his entire staff to attend such functions, although they are not actually forced to do so.

Ms. Karyne D. Jones is the Information Officer in the Public Affairs section. She serves as the assistant to Ambassador Young's press secretary. Someone from the press section is required to attend representational functions. Ms. Jones accompanies the Ambassador to such functions on a rotational basis.

Ms. Paula Salvucci is secretary to Ambassador Lowenstein. Ambassador Lowenstein stated that, at his request, Ms. Salvucci does much of the planning, hostessing, and even cleaning up at the representational functions he hosts.

Mrs. Elizabeth A. Sher is secretary to Ambassador Leonard, the Deputy Representative to the United Nations. She states that she is very involved in hosting and attending representational functions, both with the Ambassador and on her own. Her husband is a press officer with the Foreign Service and they often entertain U.S. and foreign diplomats and officials.

With respect to the above cases, the present regulations and the facts developed offer insufficient guidance for us to make a judgment as to eligibility.

We hope the foregoing will be of assistance to you.